

Affordable v. West Windsor Twp (4/25) (1985)
Living Corp

Brief of Δ West Windsor Twp in Opposition
to Motion by Intervenor Meneely, Inc.
For partial summary judgment

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
MERCER/OCEAN COUNTY
DOCKET NO. L-017812-84 (P.W.)

AFFORDABLE LIVING CORPORATION, INC., a
New Jersey Corporation, and
MANEELY, INC., a New Jersey Corporation,

Plaintiffs,

vs.

WEST WINDSOR TOWNSHIP, a municipal
corporation of the State of New Jersey,
located in Mercer County, New Jersey,

Defendant.

BRIEF OF DEFENDANT WEST WINDSOR TOWNSHIP IN OPPOSITION TO THE MOTION BY
INTERVENOR MANEELY, INC. FOR PARTIAL SUMMARY JUDGMENT

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STATEMENT OF FACTS

This brief is filed on behalf of West Windsor Township to the motion by Intervenor Maneely, Inc. for partial summary judgment with respect to the validity of the Preliminary "A" approval it received and an interpretation of the low and moderate income housing requirements intended to be imposed by that approval.

In support of its position, the Township will rely upon the Resolution of Approval dated December 27, 1982, the Certification of Gerald C. Lenaz, P.P., A.I.C.P., dated April 23, 1985 as well as the Township's Zoning and Planning Ordinances and the arguments contained herein. It is believed that most of the facts contained in the Statement of Facts in Maneely's brief are addressed throughout the remainder of this brief.

POINT I

PRELIMINARY "A" APPROVAL HELD BY MANEELY DOES NOT VEST RIGHTS UNDER THE MUNICIPAL LAND USE LAW

The preliminary "A" site plan approval procedures for planned residential neighborhoods contained in West Windsor Township Ordinance 24-8.2 are specifically noted as "an optional review stage for a developer." Section 24-8.2.1 permits an applicant to proceed through "preliminary 'A' site plan approval" in accordance with the provisions of that section, and also provides an option to proceed with the preliminary review process outlined in subsection 24-8.1.1. That section provides for approval as enabled by the Municipal Land Use Law in accordance with the Township's site plan preliminary and final approval procedures and design regulations as they may apply to the application. Section 24-8.2.1 also specifies that as outlined in Section 24-8.0, the optional review stage is established to provide for flexibility in the review of large planned developments or planned residential neighborhoods. When reviewing the Township's intent with respect to preliminary "A" approval, Section 24-8.0, referred to in 24-8.2.1, should also be considered.

Section 24-8.0.2.b involves developments of 100 acres or more and specifies that applications involving such projects may be submitted in three stages, known as preliminary "A" site plan approval, preliminary "B" (similar to "preliminary" approval so envisioned by the MLUL) site plan approval, and final site plan approval. It also specifies that preliminary "A" site plan approval is optional, but if granted, an applicant may thereafter submit applications by stage or section for preliminary "B" site plan approval. In addition, it

permits an applicant to combine his application for preliminary "B" site plan approval with final site plan approval. In fact, Section 24-8.2.3 specifies the details and design standards required for preliminary "B" and final site plan approvals as being those details and design standards which are specified in the Township's site plan or subdivision ordinances for a MLUL enabled preliminary and final approval applicable to all applications submitted to the Township.

Section 24-8.2.4 provides for review and action by the Planning Board in accordance with the procedures and timing requirements set forth in the Township's site plan ordinances. There is one exception, however, that there shall be no site plan advisory board review for a preliminary "A" approval. Such an exception makes eminent sense in light of the fact that by definition, the Site Plan Review Advisory Board assists and advises the Planning Board with respect to site plans and specifically reviews the technical aspects of the proposed site plan as well as determines the applications compliance with development regulations. Since an application submitted under preliminary "A" approval does not contain the specificity which is required for an ordinary preliminary approval or a preliminary "B" approval, but rather master site plan conceptual issues, review by the Site Plan Review Advisory Board would be inappropriate.

Throughout its brief, Maneely attempts to place the West Windsor Township "preliminary 'A' approval" on par with the Municipal Land Use Law's preliminary approval. This conclusion is clearly erroneous when one closely reviews both the Township's ordinances as well as the Municipal Land Use Law. Section 23-4.5 of the Township's ordinances governs preliminary site plan approval. Included thereunder

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is Section 23-4.5.3 which involves preliminary site plan details. (This section of the Township's ordinances is appended hereto as Exhibit A.) It is submitted that the requirements of the site plan details under this section are far more specific and comprehensive than that required for preliminary "A" approval in Section 24-8.2. The latter deals with the preparation of a broad master plan for a large parcel of ground while the former intended to be the precursor of an actual trial development plan where building footprints, parking areas, lighting and landscaping are precisely delineated. In addition, although these requirements are very comprehensive, they are totally appropriate in light of N.J.S.A. 40:55D-41 which provides for the contents of a site plan ordinance and which incorporates by reference N.J.S.A. 40:55D-38 and 39, both of which contain requirements of subdivision or site plan ordinances, with Section 38 being mandatory and Section 39 being discretionary.

Further, the effect of a preliminary site plan approval is contained in Township Ordinance Section 23-4.5.8. This section is almost identical to N.J.S.A. 40:55D-49, the statutory preliminary approval effect provision. Each of these sections specifies that the general terms and conditions on which preliminary approval was granted cannot be changed. Additionally each describes the rights conferred upon an applicant who obtains a preliminary approval. Notwithstanding that the Township's preliminary "A" site plan approval ordinance requires preliminary "B" approval thereafter, (and hence that preliminary "A" cannot be considered a statutory preliminary), such a conclusion is even more compelling when one reviews and compares the rights allegedly conferred under Township Ordinance 24-8.2.5 which are

clearly different than the rights conferred in the Township's general preliminary site plan approval ordinance (Section 23-4.5.8) and N.J.S.A. 40:55D-49.

In its brief, Maneely calls the Township's requirements for preliminary "A" so extensive and detailed as to "raise a questions as to whether they comport with the requirement of N.J.S.A. 40:55D-46 that preliminary site plan applications be in tentative form for discussion purposes. . . ." (Brief at page 19) In fact, although N.J.S.A. 40:55D-46 outlines the procedure for obtaining preliminary site plan approval, subsection a thereof provides as follows:

An ordinance requiring site plan review and approval shall require that the developer submit to the administrative officer a site plan and such other information as is reasonably necessary to make an informed decision as to whether the requirements necessary for preliminary site plan approval have been met. The site plan and any engineering documents to be submitted shall be required intended to form for discussion purposes for preliminary approval. (Emphasis added)
N.J.S.A. 40:55D-46(a).

Contrary to the claim of Maneely that the Township's ordinances are so extensive and detailed, N.J.S.A. 40:55D-46 requires a review as to whether or not the "requirements necessary for preliminary site plan approval have been met." As discussed above, the requirements for preliminary site plan approval are found in N.J.S.A. 40:55D-38, 39 and 41. Needless to say, when those provisions are reviewed, it is clear that the Township's ordinances with regard to a preliminary site plan and preliminary "B" site plan approval are in total conformance with the Municipal Land Use Law.

It is also clear that Maneely did not present to the Township as part of its preliminary "A" approval those requirements which are

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about ordinance
defining "Effect of
Prelim A Approval"?*

specified by the aforementioned sections of the Municipal Land Use Law. The Maneely brief on page 20 contains a list of elements that were submitted to the Township in connection with the preliminary "A" review. Clearly, the items reviewed do not rise to the level of those required for site plan review under the Municipal Land Use Law or Township Ordinance 23-4.5 (called the "cookie cutter" site plan approach in Maneely's brief). Maneely also infers that only planned unit developments under 100 acres must comply with Township Ordinance 23-4.5.3. (Brief at page 20.) In fact, on a preliminary "B" review, those who opted for preliminary "A" review initially must also meet the requirements of Ordinance 23-4.5.3. Additionally, the Resolution of Memorialization dated December 22, 1982 specifically requires that the applicant submit preliminary "B" or preliminary "B" final applications to the Planning Board for approval. (Resolution at page 74.)

It is submitted that the Township can give no more rights or protection than that which is afforded by the Municipal Land Use Law. Preliminary "A" approval is not contemplated by the Municipal Land Use Law and is a "creature" of the West Windsor Township planning process which was developed by the Planning Board and Township Committee to permit applicants to explain plans and concepts before extensive engineering expenses were incurred in the normal preliminary subdivision and/or site plan approval process. Preliminary "A" approval is at best a concept plan and the plan submitted by Maneely doesn't look like a preliminary site plan at all. There are no building footprints; the location of various types of groups of units are shown only as large blocks. One road is shown for the entire 310 acres; no minor collection roads are shown. Essentially the plan is

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nothing more than a "mini-master plan" for a large piece of property. In fact the Planning Board articulated its intent with respect to the approval and called it "a 'Master Plan' for the staged development of the Planned Residential Neighborhood as enabled under the optional review procedures." (See Resolution at page 2.)

The Preliminary "A" optional procedure was developed in response to Maneely's request to work out with the Township a broad master plan of general land use, main circulation and basic open space and utility service concepts upon which subsequent preliminary and/or combined preliminary/final site plan applications could be based. One of the rights conferred on a preliminary "A" applicant who secures approval, according to 24-8.2.5.c, is that the plans submitted for staging pursuant to 24-8.1.g shall not be changed. It is questionable as to whether any of the rights allegedly conferred by Section 24-8.2.5 would be upheld since they are not founded in the Municipal Land Use Law, but the Appellate Division has already held that the staging or phasing of low and moderate income units by a planning board may be modified so as to provide for a reasonable or proportionate number of low and moderate income units in the first phase of development. Field v. Franklin Tp., 190 N.J. Super. 326, 334 (App. Div. 1983).

Maneely also attempts to argue that N.J.S.A. 40:55D-39(c)(1) authorizes the preliminary "A" approval in lieu of the standard preliminary approval. (Brief at pages 11-12) Once again, the movant has failed to consider the other applicable sections of the Municipal Land Use Law which must be read in concert with 39(c)(1). The "variations from the ordinary standards" referred to in that section are not the procedures for preliminary and final approval as Maneely

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has argued. Rather, those standards for planned developments are defined when one considers N.J.S.A. 40:55D-45 and 40:55D-65(c). N.J.S.A. 40:55D-45 contains various facts and conclusions which must be found by the Planning Board prior to approval of a planned development. Subsection a thereof specifies that any departures by the proposed development from zoning regulations otherwise applicable to the subject property must conform to the zoning ordinance standards pursuant to N.J.S.A. 40:55D-65(c). Section c of the latter statute permits the zoning ordinance to provide districts for planned development as long as an ordinance providing for approval of subdivisions and site plans by the planning board has been adopted and incorporates therein the provisions for such planned developments. N.J.S.A. 40:55D-65(c) also provides in part:

The zoning ordinance shall establish standards governing the type and density, or intensity of land use, in a planned development. Said standards shall take into account that the density, or intensity of land use, otherwise allowable may not be appropriate for a planned development* * * . Such standards may, in order to encourage the flexibility of housing density, design and type, authorize a deviation in various residential clusters from the density, or intensity of the use, established for an entire planned development.

Hence, when these provisions of the Municipal Land Use Law are read in conjunction with each other, it becomes apparent that the variations from ordinary standards provided in N.J.S.A. 40:55D-39(c)(1) refers to housing densities, designs and types rather than standards for preliminary approval which permit less stringent requirements than those required by the statute.

The Township's position that Maneely's approval was only a preliminary "A" and not a statutory preliminary approval is supported

by the Resolution of Memorialization adopted by the Planning Board on December 22, 1982. There are references throughout the Resolution to requirements and conditions which must be met by Maneely at the time of preliminary "B" or preliminary "B"/final site plan approval. Lest the record be unclear, it is appropriate to cite some of those references since, along with the Township's ordinances, the Resolution appears to convey the Township's true intent with respect to a preliminary "A" approval.

The second clause of the introduction to the Resolution states on page 1: "this concept review is provided for as an optional level of review, preliminary to submission of sectionalized site plans and is known as preliminary "A" site plan review." On page 5, there is statement that special drainage and slab construction requirements may be implemented at preliminary "B" or preliminary "B"/final development approval stages to mitigate potential problems with seasonal high water tables. On page 12, the Resolution requires that a plan for the 20,000 square feet of retail convenience uses be submitted at the time of application for preliminary "B" or preliminary "B"/final site plan approval. On page 13, the Board conditioned this approval on the applicant's submission of a plan at the time of preliminary "B" or preliminary "B"/final approval for more direct access to the municipal center. On page 26, a specific statement was made that "the applicant recognizes that sewer capacity cannot be guaranteed at this time." It also states that "subsequent preliminary "B" approvals on a section-by-section basis shall be subject to reservation of capacity from the Township of West Windsor in accordance with then existing ordinances practices and procedures. Pursuant to Township Ordinance

14-2.6A, reservation of capacity is granted when the Planning Board has granted a preliminary site plan or subdivision approval. The aforementioned finding with regard to sewer capacity also evidences that the preliminary "A" approval granted to Maneely was not intended to be a statutory preliminary site plan approval.

In light of the above, it is clear that Maneely does not hold the "vested rights" or other statutory protections afforded by the Municipal Land Use Law. Even if the Court were to find that Maneely has any site plan approval rights, a recent Appellate Division case indicates that a conditional approval or a mere site plan approval, even if final, triggers no rights in the applicant. In Hill Homeowners Association v. City of Passaic, 156 N.J. Super. 505 (App. Div. 1978) the Appellate Division found the builder's contention that reliance upon the final site plan approval was sufficient to protect it from restrictions contained in a subsequent zoning ordinance amendment was without merit. The Court reasoned that although site plan approval was received prior to the adoption of the zoning ordinance amendment, the approval was conditioned upon the applicant's taking title to an adjacent tract of property. The Court stated: "Any action taken by defendant during this interim of only conditional approval must be regarded as being at is risk." Id. at 511-12. The Court also concluded that the defendant/applicant was not justified in relying upon the site plan approval (even after it was unconditionally perfected.) The Hill court said:

All existent authority holds by direct implication that site plan approval triggers no right of reliance. 156 N.J. Super. at 512.

The Court cited Dimitrov v. Carlson, 138 N.J. Super. 52 (App. Div.

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1975), a case in which the Court held that a variance did not create a vested right immunized from subsequently enacted municipal legislation to reach that conclusion. The Hill Homeowners Association court said it saw no reason why site plan approval made final only briefly before the latter ordinance was adopted should be given a different effect.

It should also be noted that although the Court found that reliance on the site plan approval was inadequate; it also stated that the reliance evidence was insufficient to obtain protection against the effect of a change in the ordinance. It is submitted that in the instant case, applicant Maneely holds nothing more than a conditional preliminary "A" site plan approval which, in light of the holding of Hill Homeowners Association, would apparently vest Maneely with no protection from the Township's present rezoning of its property.

There are several cases cited in Maneely's brief which should be distinguished because they are factually inapposite to the case at bar. Maneely cites Bleznak v. Township of Evesham, 170 N.J. Super. 216 (Law Div.) to support its position that a preliminary site plan approval insulates it from further rezoning. It should be noted that as has been previously argued, it is the Township's position that Maneely does not possess a statutory preliminary site plan approval. However, and perhaps more importantly, the Bleznak case involves property owners who held not only a preliminary site plan approval but also a final site plan approval with respect to their property. There is no question that the statutory protections provided the holder of a final site plan approval are vastly different from those provided the holder of a preliminary approval. In fact, N.J.S.A. 40:55D-52 which governs effect of a final approval specifically states that the "zoning

requirements" applicable to the preliminary final approval shall not be changed for a period of two years after the date of final approval. That statute is obviously inapplicable in this case since Maneely does not possess final site plan approval.

The case of Kruvant v. Mayor and Council Tp. of Cedar Grove, 82 N.J. 435 (1980) is also cited in the movant's brief. This case is totally inapplicable to the one at bar since it involves a rezoning which was ordered by the Court and which was not completed by the Township within the 90 day period provided in the Court Order. The holding of the case pertains to the "time of decision rule" in light of a use variance and the applicability of zoning ordinance adopted during the course of litigation.

Even if the Court finds that Maneely has some rights by virtue of a preliminary "A" approval under the Township's ordinances, the equities of this situation must be considered in accordance with the Supreme Court's discussion in Tramarco Corp. v. Garzio, 32 N.J. 448 (1960) and several more recent cases which have also followed the Tramarco decision. Maneely cites Tramarco in support of its position that it has relied upon the Township's ordinances and hence should be afforded protection from rezoning as a matter of equity. Some of the language contained in that case, however, can easily be interpreted as contrary to Maneely's position.

In fact, in balancing the equities or fairness to both the public and the individual property owner, the Supreme Court said that a balance must be struck between the interest of the permittee and the right and duty of the municipality through planning, and the implementation of that scheme through zoning, to make, ordain and

establish all manner of wholesome and of reasonable laws not repugnant to the constitution as may be deemed to be for the good and welfare of the commonwealth and all of the subjects of the same. Id. at 457 citing Roselle v. Wright, 21 N.J. 400, 408-09 (1956). The applicant in Tramarco held a building permit for the construction of a gas station and an ordinance which was subsequently proposed and enacted prohibited the gas station use and required revocation of the building permit. Under the specific facts of that case, the Supreme Court refused to uphold revocation of the building permit. In addition, the Court found that the permittee had been lulled into inaction by the Township's promise that the zoning change contemplated would not affect him.

once we get into court, we need a hearing.

The facts of the instant case are very different. Shortly after it was sued by the Affordable Living Corporation and at which time its zoning ordinance amendments were being contemplated, the Township contacted representatives of Maneely with regard to the rezoning. It wasn't until December, 1984, approximately 8-1/2 months after the Township had contacted Maneely that the Township Attorney and Planner received indication of Maneely's dissatisfaction with the proposed rezoning. If anything, Maneely participated in discussions with the township attorney and planner and offered critiques of the Township's emerging Mt. Laurel II ordinance drafts as it affected countryside and other parcels it owned. Maneely negotiated zoning that concessions from the Township under an apparent guise of a cooperative long term landowner selecting to work with the Township in meeting the Mt. Laurel II doctrine. In addition, throughout the preliminary "A" approval process, Maneely and the Township were aware of the pending Mt. Laurel II case. In fact, the particular circumstances which were

occasioned by the subsequent Mt. Laurel II decision are discussed in Tramarco as being a legitimate basis for ordinance amendments. The Court stated:

There is no suggestion that the governing body suddenly found itself confronted with an ordinance which had become outmoded because of ensuing events. The amendment was provoked by a petition from some of the residents who sought to eliminate gasoline stations out of the zone. 32 N.J. at 458.

While Maneely's application for preliminary "A" site plan approval was being reviewed, the decision in place was that of the Supreme Court in Mt. Laurel I, (issued in 1975). The Mt. Laurel II decision of 1983 is precisely the circumstance discussed by the Tramarco Court. The West Windsor Township Committee found itself confronted with an ordinance which had become outmoded because of the Mt. Laurel II decision. Clearly, the amendments made by the Township Committee including the rezoning of Maneely's property are intended to meet the constitutional obligations established by the Supreme Court in Mt. Laurel II and to bring the Township's ordinances into conformance therewith. Even a preliminary "A" (see Section 24-8.2.6) envisioned the possibility of requiring "adjustments or modifications" in the conditions of an approval based on certain factors amongst which are "unforeseen changes, extreme changes, or unexpected advantages which may have resulted during the time of construction and (or) development (prior to actual construction).

There are several references in the Maneely brief to an alleged expenditure in excess of \$500,000.00 (no supporting documents are provided) by Maneely in connection with the preliminary "A" approval. (Brief at page 41.) Maneely asserts that this investment

justifies the denial of any rezoning of its property. In light of the magnitude of this development, though, the monies spent thus far do not appear to meet the Appellate Division's standard for sufficient substantial reliance. In Dimitrov supra., the holder of a variance had spent and committed nearly \$30,000 on a \$3,000,000 project. The Court held that that expenditure was insufficient and permitted the municipality to rezone the property. The ratio of \$30,000 to \$3,000,000 appears to be even larger than the ratio of \$500,000 to the total value (conservatively estimated in excess of \$100,000,000) of the project proposed by Maneely. Although the expenditure appears high, it must be considered in the context of the magnitude of this project. Dimitrov, 138 N.J. Super. at 61.

It should also be noted that this Maneely property was the property which had previously been selected to meet the Township's Mt. Laurel I obligations. (See Affidavit of Gerald Lenaz.) This particular parcel is in close proximity to the train station affording transportation to both New York and Philadelphia and cities in between and is also nearby office development, including thousands of jobs, along Route 1. Several other factors with respect to the particular circumstances of this case should be considered. When the property was purchased by Maneely, it was not zoned for its present use and hence, when it purchased the property, Maneely had no expectations as to the rights it is alleging under the planned residential neighborhood zoning. In addition, although it has expended some monies in connection with the preliminary "A" approval, there has been no infrastructure built by Maneely. There have been no offsite improvements made nor have any onsite improvements been made to the

property. In addition, there has been no marketing or sales of units by Maneely. In fact no preliminary "B" or final site plan for any section of the project has been filed formally or informally in the 2-1/2 years that have elapsed since preliminary "A" approval was received by Maneely. The site continues to remain a corn field enjoying the benefits of farmland assessment while its owners seek to maximize profits through a clever game of bettering its zoning position.

The doctrine of equitable estoppel is usually not applied against municipal bodies. It may be invoked against a municipality to prevent manifest wrong and injustice but the ultimate objective is fairness both to the public and individual property owner and it is necessary to strike a proper balance between the interests of the property owner and the right and the duty of the municipality to promote the public welfare of the community and proper planning and zoning. Gruber v. Mayor and Tp. Com. of Raritan Tp., 39 N.J. 113, (1962). It is submitted that the expenditures of Maneely which are limited only to preliminary "A" review fees and master planning expenses are not sufficient to tilt the scale in its favor in light of the Township's constitutional obligation to promote the public welfare of the community and the region through planning and zoning which conforms to Mt. Laurel II.

This balancing test was also discussed by the Appellate Division in Urban Farms, Inc. v. Franklin Lakes, 179 N.J. Super. 203 (App. Div. 1981), wherein the Court stated that it did not regard issuance of a building permit as a sine qua non to the applicability of the substantial reliance doctrine. Rather, the Court stated:

[W]e are of the view that its applicability requires a weighing of such factors of the nature, extent and degree of the public interest to be served by the ordinance amendment on the one hand and, on the other hand, the nature, extent and degree of the developer's reliance on the state of the ordinance under which he has proceeded, the extent to which his undertaking has been in any point approved or encouraged by official municipal action, and the extent to which under the circumstances, he should have been aware that the municipality would be likely to change the ordinance prior to the actual commencement of construction. Id. at 221.

The Court called these factors those which constitute the developer's special equities and concluded that if they outweigh the public interest concerns, they should also operate to bar retroactivity of a zoning ordinance amendment. In fact, in this case, Maneely has done nothing more with its preliminary "A" approval other than beginning to market the property apparently some time in late 1984. That action certainly comes after Maneely had knowledge of the Township's plans to rezone its property. Moreover, Maneely should have unquestionably been aware that the Township would be likely to change its ordinance to conform to Mt. Laurel II prior to its commencement of construction of units in the "Countryside" development.

The issue of vested rights must also be considered in light of the Supreme Court's Mt. Laurel II decision. Maneely argues that a Court could modify its zoning if its property was the only developable land left in the Township. (Brief at page 36.) Our Chief Justice apparently believed otherwise. In footnote 51 to the Mt. Laurel II decision, (the only reported decision found dealing with the issue of vested rights in the context of a Mt. Laurel II case), the Chief Justice, speaking for the Supreme Court, criticized Mt. Laurel Township's exclusion from its fair share calculation developable

land. . .that may be vacant for many years, but that has been the subject of an approval plan by a developer. So. Burlington Cty.

N.A.A.C.P. v. Mt. Laurel Tp., 92 N.J. 158, 301 fn. 51 (1983).

It is one thing to exclude in a fair share calculation land that has been actually developed for middle and upper income people--land with houses on it--but a totally different thing to exclude land that may in some sense be said to be "committed" to the same exclusionary uses even though not one single home has been built. Our society may not be willing to rip down what we now have in order to right the wrongs of the past, but we certainly will not allow what are no more than present intentions--in the form of an approved subdivision to be developed over the next 20 years--to perpetuate those wrongs. Id. (Emphasis added.)

This commentary becomes even more persuasive when one considers Maneely's argument that throughout its 300 plus acres of land in a readily developable, convenient area of West Windsor Township, it has no obligation to construct low and moderate income housing absent external subsidies. The Township will certainly not deny that it has other land which could be developed with low and moderate income housing and in fact has zoned other parcels according to its long standing master plan for developing a mix of housing types in close proximity to a growing job base within its Route 1 growth area. However, there can be little disagreement that this particular location in the Township is one of the more suitable for this type of housing. (See Affidavit of Gerald Lenaz.) It also appears that this situation, where there is a large parcel of land, in single ownership zoned but not yet developed for a residential planned neighborhood development, is precisely the type which is contemplated by the Chief Justice as no longer being allowed so that the wrongs created by years of exclusionary zoning are not perpetuated.

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POINT II

THE OBLIGATION OF MANEELY TO CONSTRUCT LOW AND MODERATE INCOME HOUSING

A review of Point II of Maneely's brief regarding its obligation to construct low and moderate income housing is troubling and misleading. It contains several citations to specific portions of the Resolution of Memorialization. Coincidentally omitted, however, are all references that low and moderate income housing "shall be provided", "shall be built", "must be built", and so forth. The housing mix table which summarizes the types of units to be constructed evidences the construction of 154 moderate income units and 77 low income units. Paragraph F on page 6 which respects location of low and moderate income and least cost housing, provides:

Five (5%) percent of the basic density (1,532 units) must be low income units and ten (10%) percent must be moderate income units. These are mandatory inclusionary requirements intended to provide housing opportunities in response to the municipality's obligation to make available a variety of housing for those who cannot afford conventional housing. (Emphasis added.)

This statement is consistent with the Township's zoning ordinance, Section 22-8.14, which states the inclusionary housing provisions and options of the zoning chapter are directed toward increasing the supply of low and moderate income and least cost housing and assuring its disbursement throughout appropriate areas of West Windsor Township. That section also specifically contemplates private, internal subsidies by a developer as one of the options by which the developer can meet the affordable housing requirements.

The Township's ordinances, at the time of Maneely's application for preliminary "A" approval, were in compliance with Mt.

Laurel I. (See Sections 22-8.14 and 11-4.14.2.d attached hereto.)

Least cost housing was permitted since it was then an acceptable means of meeting the Township's lower income housing obligations. All of the discussion in the Maneely Resolution regarding "trade-in" of low and moderate income housing for least cost housing was because of its acceptability in accordance with the Mt. Laurel I decision.

Maneely's plan for a planned residential neighborhood was a conditional use in the PRN-1 zone. (See Ordinance 22-4.14.2.b.) It was so recognized by the Planning Board in the Resolution on page 1. As such, it required specific findings by the Planning Board (see Section 22-1.7), one of which was that the development proposal complied with the conditions and standards for such use as contained in the Township's ordinances. (Section 22-4.14.2.d is the one applicable to this use.) The provision regarding residential unit type, distribution and net density contained in Section 22-4.14.2.d.7(c) required, as a condition of the conditional use, that at least 5% of the units be low income and at least 10% be moderate income.

After articulating various findings in the Resolution, the Planning Board concluded that the conditional use criteria had been met. (See Resolution pages 37-40.) One specific conclusion was that the development would include 5% low income housing and 10% moderate income housing. In fact, if the Planning Board had not found that Maneely met the conditional use criterion respecting low and moderate income housing, or if Maneely had sought relief from meeting such criterion, then jurisdiction would have been divested from the Planning Board since Maneely would have needed a "D" or use variance which can only be granted by the Zoning Board of Adjustment. Darrell v.

Governing Body of Township of Clark, 82 N.J. 426 (1980), N.J.S.A.
40:55D-70.

A review of the Resolution also evidences several other references to the requirement to build low and moderate income housing. On page 9, a finding of the Planning Board was made that one of the purposes of the planned residential neighborhood is to allow for the optimum development of an overall tract of land and to provide a variety of housing types oriented to the full spectrum of housing needs in the Township. Indeed, it says, low and moderate income units referred to in the ordinance are mandatory units and are not incentive option units. Fifteen (15%) percent of the total units in the development must be built for low and moderate income persons.

The Maneely brief makes reference to language in the Resolution recognizing that the classic sources of subsidy with respect to low and moderate income housing may not be available and, under those circumstances, provides some relief for the applicant to return to the Planning Board with regard to this obligation. One of the conditions of approval respecting preservation of required housing states that the mandated low and moderate income units under this conditional use shall be provided in accordance with certain rules specified by the Planning Board. The first of those rules is that as a condition of approval, the applicant (Maneely) must diligently pursue funding and subsidies. (Resolution at pages 61, 71-72.) The Resolution on page 61 required Maneely to file applications for subsidy funds for low and moderate income elderly and family subsidies within 90 days of the date of the Resolution. (No such applications have yet been filed

which in and of itself would void the approval.)

If the applicant is unsuccessful and the Board is satisfied with its diligence, the Resolution provides at page 72 that the applicant may continue under other conditions. Some of the other alternatives permitted, if no subsidies are available are offering the land to a non-profit entity who shall be entitled to develop low/moderate income housing. Once again, a request must be made to the Planning Board in order to follow such a course of action. The Resolution also provides for an alternative, if no subsidies and no non-profit entities are available, that the applicant may request permission to construct least cost housing as an one-to-one substitute for the low and moderate housing if it is made available to families below the maximum income range for least cost housing stipulated by ordinance as being pegged at 150% of the region's median income. The Resolution specifies, though, that:

Any level of affordability, however, which exceeds incomes for mandatory low and moderate income housing shall be justified by the applicant by virtue of a study or studies to be submitted with the trade-in proposal. (Page 73.)

In other words, the Resolution contemplated an explanation by the applicant as to why he couldn't internally subsidize the low and moderate income units before offering them to least cost income households.

The second point which must be considered with respect to this portion of Maneely's argument, and perhaps the more important one, is the fact that nowhere does the Resolution of Memorialization provide unconditional relief for Maneely from the obligation to build 15% low and moderate income housing. In fact, it very clearly establishes the

rule for the preservation of mandated low and moderate income housing and requires ~~that the applicant must return to the Planning Board for approval of any variation from the housing mandate requirements.~~ The only conclusion that can be drawn is that if such relief were refused by the Planning Board, the condition to build 15% low and moderate income housing would remain. All of this must be considered in light of the ordinance under which the approval was granted which mandates a 15% set-aside, 5% for low income and 10% for moderate income housing.

There is absolutely no question that as one of the conditions for this conditional use, Maneely had an obligation to construct at least 5% low income housing and at least 10% moderate income housing. The findings for planned developments which are required by the Municipal Land Use Law (N.J.S.A. 40:55D-45) and the Township's Zoning Ordinance, 22-8.11.b, specifically require a finding by the Planning Board that the departure by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning standards applicable to the planned development. In other words, the Planning Board pursuant to both Municipal Land Use Law and the Township's own ordinances had to make a finding that the planned residential neighborhood development proposed by Maneely conformed to the zoning standards applicable to that development. As cited above, it is clear that pursuant to Ordinance 22-4.14.2.d.7(c), Maneely had to construct a minimum of 5% low income housing and 10% moderate income housing.

The discussion which flows throughout Point II of Maneely's brief with respect to its lack of obligation to build low and moderate housing is also irrelevant in light of Mt. Laurel II. One need only

*Maneely
does not
deny this.*

consider the testimony of Maneely's own witness, Michael Wilburn, who stated:

"The law is very clear that no municipality has a right to compel a private developer to internally subsidize housing." (Maneely brief at page 54, Sept. 16, 1981 transcript at page 6.)

In fact, as we all know, the law is very different today and has been made much clearer by the New Jersey Supreme Court in Mt. Laurel II. Similarly, any idea of converting low and moderate income units to least cost housing is inapplicable under the present Mt. Laurel decision. The rules of the game have changed since Mt. Laurel I.

This approval, by its very nature, must now be read in accordance with the mandates of Mt. Laurel II. Hence, at a minimum, even if Maneely is found to have vested rights with respect to particular zoning densities, it should be required to construct 20% low and moderate income housing.

not necessarily

CONCLUSION

It is the Township's position that the land values of the Maneely property have increased greatly over the past several years and even more so since the time of Maneely's preliminary "A" approval (by virtue of development throughout the region). In addition, in his Certification, Coleman T. Boylan admits that the land values will continue to rise as he threatens that Maneely might just "hold the land" for several more years as an investment property. (Certification at page 33.) When one compares the profit already gained by Maneely who purchased this land in the 60's "for a song" and who continues to receive farmland assessment on hundreds of acres even to this day, it is incredulous to believe that Maneely denies any obligation to build low and moderate income housing absent an external subsidy.

Notwithstanding any profits which already exist by virtue of increasing land values to subsidize the present 15% low and moderate income housing requirement, the Township has provided an additional 3.5 dwelling units per acre to make the construction of affordable housing more feasible for the Maneely project.

While the Mt. Laurel II case was pending the Township sought to do the best it could to meet the existing Mt. Laurel I requirements. It tried to make certain that the lower income housing would be built at sometime. The Township should not be penalized and lose the site it had previously selected for Mt. Laurel housing simply because the preliminary "A" approval came just before the Mt. Laurel II decision. Certainly the equities balance in favor of the Township's right to rezone and require 20% low and moderate income housing whether or not

Maneely is found to have any vested rights under its preliminary approval.

Respectfully submitted,

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By Lucille E Davy
LUCILLE E. DAVY

DATED: April 23, 1985

22-1.6A TOWNSHIP OF WEST WINDSOR ORDINANCES

d. Every building hereafter erected or moved shall be on a lot adjacent to a public street, and all structures shall be so located on lots as to provide safe and convenient access for servicing, fire protection and required off-street parking.

22-1.6A Right to Farm.

The right to farm all land is hereby recognized to exist as a natural right and is also hereby ordained to exist as a permitted use everywhere in the Township of West Windsor, regardless of zoning designation and regardless of specified uses and prohibited uses set forth elsewhere in this chapter, subject only to the restrictions and regulations for intensive fowl or livestock farms and subject to township Health and Sanitary codes. The right to farm as it is used in this section includes the use of large irrigation pumps and equipment, aerial and ground seeding and spraying, large tractors, numerous farm laborers and the application of chemical fertilizers, insecticides, and herbicides; all for the purpose of producing from the land agricultural products such as vegetables, grains, hay, fruits, fibers, wood, trees, plants, shrubs, flowers and seeds. This right to farm shall also include the right to use land for grazing by animals, subject to the restrictions for intensive fowl or livestock farms. The foregoing uses and activities included in the right to farm, when reasonable and necessary for the particular farming, livestock or fowl production, and when conducted in accordance with generally accepted agricultural practices, may occur on holidays, Sundays and weekdays, at night and in the day, and the noise, odors, dust and fumes that are caused by them are also specifically permitted as part of the exercise of this right.

It is expressly found that whatever nuisance may be caused to other by such uses and activities so conducted is more than offset by the benefits from farming to the neighborhood and community, and to society in general, by the preservation of open space, the beauty of the country side and clean air and by the preservation and continuance of farming operations in West Windsor Township and in New Jersey as a source of agricultural products for this and future generations.

22-1.7 Conditional Uses.

Uses listed as a conditional use in a particular district may be permitted by the planning board, only after it has determined that the development proposal complies with the conditions and

standards set forth in this chapter for the location and operations of such use. In addition to the conditions and standards set forth elsewhere in this chapter, all conditional uses shall comply with the following conditions and standards.

a. That all proposed structures, equipment, or material shall be readily accessible for fire and police protection.

b. That the proposed use shall be of such location, size and character that, in general, it will be in harmony with the appropriate and orderly development of the district in which it is proposed to be situated, will not significantly impact the environment in an adverse way, and will not be detrimental to the orderly development of adjacent properties in accordance with the zoning classification of such properties.

c. That, in addition to the above, in the case of any use located in, or directly adjacent to, a residence district:

1. The location and size of such use, the nature and intensity of operations involved in or conducted in connection therewith, its site layout and its relation to access streets, shall be such that both pedestrian and vehicular traffic to and from the use and the assembly of persons in connection therewith will not be hazardous or inconvenient to, or incongruous with, the residence district, or conflict with the normal traffic of the neighborhood, and

2. The location and height of buildings, the location, nature, and height of walls and fences, and the nature and extent of landscaping on the site, shall be such that the use will not hinder or discourage the appropriate development and use of adjacent land and buildings, nor materially affect property value thereof

d. Each application for a conditional use shall be accompanied by a proposed site plan showing the size and location of the lot, the location of all buildings and proposed facilities including

access drives, parking areas, and all streets within two hundred (200) feet of the lot, except that for planned developments where permitted as a conditional use, the planning board may adopt special procedures for the efficient processing of planned development applications including procedures for the informal submission of sketch plans, preliminary and final plans and to require such information, analyses and professional evaluations as it deems necessary to evaluate the proposed development at each stage of the application process.

e. Any lot for which a conditional use may be granted shall be deemed to be a conforming use in the district in which such use is located, except as provided in paragraph f below, provided that such approval shall affect only the lot or portion thereof for which such use shall have been granted. A conditional use approval shall be valid for one year unless preliminary approval of a site plan for the lot involving the conditional use has been granted, at which time the applicant shall receive the same rights as that provided for preliminary approval of site plans stipulated in the township's Site Plan Ordinance. If a planned development is involved then the conditional use approval shall have the same approval life as that granted to the planned development application.

f. In case of review of the nonconforming use of vacant land under Article VIII, section 22-8.0 hereof, the planning board may impose such reasonable conditions, including, but not limited to, the placing of fencing and screening, as will minimize the impact such open use has upon surrounding residential properties. In such cases the planning board may also permit reasonable changes in existing structures on the land, within the limitations of the district in which said use is located, for the purpose of limiting the open use of the land.

22-1.8 Uses Requiring Site Plan Review.

Site plans for all property uses, except individual single family residences, custom designed for the owners' own occupancy, and those exemptions as permitted by the township's Site Plan Ordinance, shall be reviewed and approved by the planning board prior to the issuance of a building permit. In considering any site plan hereunder, the planning board shall be governed by the objectives and standards contained within the Site Plan Ordinance and other applicable ordinances of West Windsor Township.

d. *Maximum Permissible Development Density.* The average gross density shall not exceed ten (10) dwelling units per acre.

e. *Maximum Improvement Coverage:* Forty (40%) percent.

f. *Design:* The standards and principles for design set forth in subsection 22-4.14.2d 9 (b) of this Article as well as those applicable provisions contained in the township's Site Plan, Subdivision and Provisions Applicable to Site Plans and Subdivisions Ordinances shall be used in the design of residential uses permitted in this district.

22-4.13.2 *Individual Lots.* Bulk and area regulations for individual townhouse lots, subject to the regulations for such uses as contained in the R-4 District, Article IV, subsection 22-4.9.2 of this chapter.

22-4.13.3 *Maximum Building Height:*

a. Building heights for all dwelling types exclusive of mid-rise apartments may vary from one (1) to four (4) stories, but in no case shall they exceed forty-five (45) feet.

b. Building heights for mid-rise apartments may vary from four (4) to six (6) stories, but in no case shall they exceed seventy (70) feet.

22-4.14 Use Regulations - PRN-1 Residence District [Planned Residential Neighborhood].

22-4.14.1 *Permitted Uses.* In a PRN-1 district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses:

a. Any permitted use in an R-1 district.

22-4.14.2 *Conditional Uses.* In a PRN-1 district, the following uses may be permitted as conditional uses:

a. Any use permitted by condition in an R-1 district with the exception of subsection 22-4.1.2, paragraphs a, b, and d.

b. Single-family, detached; two-family, detached; single-family, semi-detached; townhouse; maisonette; or garden apartment dwellings or any combination thereof within an approved planned residential neighborhood. Single-family, zero lot line dwellings may also be included, provided they meet the dwelling unit distribution criteria as stated in paragraph d 7 herein.

22-4.14 TOWNSHIP OF WEST WINDSOR ORDINANCES

c. Common open space. Common open space subject to the requirements of subsection 22-4.13.3 of this Article.

d. A planned residential neighborhood, subject to the following conditions and standards conforming to the requirements for planned developments stipulated in Article VIII of this chapter.

1. *Minimum development area.* One hundred (100) acres in contiguous parcels served by sewer and public water systems. For purposes of this requirement, streets existing prior to the development of a PRN shall not be deemed to divide acreage nor be a part of the acreage.

2. *Maximum permissible average gross density.* Five (5) dwelling units per acre shall be the basic average gross density permitted, unless increases under the incentive options in subsection 22-4.14.2d 3 herein are permitted by the planning board, up to but not to exceed six (6) dwelling units per acre.

3. *Incentive options for increased gross density.* Maximum permissible average gross density of a planned development may be increased under the following options:

(a) *Least cost housing:* For each dwelling unit of non-subsidized least cost housing provided above the permitted basic average gross density and maintained as such thereafter, an additional conventional dwelling unit may be built, up to a maximum increase in the basic average gross density of ten (10%) percent.

(b) *Low or moderate income housing:* For each unit of housing subsidized by a Federal, State or private subsidy program which provides units for low or moderate income families or individuals, including senior citizens and maintained as such thereafter, an additional conventional dwelling unit may be built, up to a maximum increase in the basic average gross density of ten (10%) percent.

4. *Neighborhood convenience services.* Neighborhood commercial uses, such as stores for retail sales and services, professional offices, restaurants, taverns, and gasoline stations may be permitted if they are designed and intended primarily to serve the residents of the PRN. In no case shall such areas designated for commercial use and accessory uses thereto exceed two (2%) percent of the total planned development area.

Bulk controls with regard to FAR and maximum improvement coverage for such designated neighborhood convenience services areas shall conform to those regulations as set forth for the B-1 district, Article V, section 22-5.2 of this chapter.

5. *Public services.* Public service facilities (e.g., schools, firehouses, etc.) may be located within the designated common open space of an approved PRN provided such uses shall not exceed seven and one-half (7.5%) percent of the total development tract area of a PRN.

6. *Minimum frontage.* Three hundred (300) feet in total as measured along a public street which provides access to the PRN.

7. *Residential unit type, distribution and net density.* In the PRN-1 district, there shall be a range of housing types, densities, costs and rents in accordance with the requirements set forth below:

(a) Residential units shall be distributed by type in accordance with the following schedule:

(1) At least five (5%) percent, but not more than fifteen (15%) percent of the units in a PRN shall be developed as single-family, detached units. Single-family zero lot line dwellings may be provided if they constitute a minimum of ten (10%) percent of the total units to be developed in a PRN.

(2) At least forty (40%) percent, but not more than sixty (60%) percent of the units in a PRN shall be developed as two-family, detached; single-family, semi-detached; or townhouse units.

(3) At least thirty-five (35%) percent, but not more than forty-five (45%) percent of the units in a PRN shall be developed as garden apartments or maisonettes.

The above distribution schedule as to percentage ratios for dwelling types may be varied by the planning board provided the applicant shall demonstrate through a market feasibility study and other documentation as may be required by the planning board that such variation is necessary. Any variation granted by the planning board shall maintain at least three (3) dwelling types and insure that forty (40%) percent of a planned development tract can be maintained in common open space.

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(b) Net density of particular types of dwelling units shall be in accordance with the schedule below. In calculating permitted net densities as outlined herein, the area of land covered by such uses shall include internal local streets, parking areas, and all private yards, but not areas designated as common open space or development collector streets, nor areas that may be occupied by commercial uses.

(1) The net density of single-family, detached units shall not exceed four (4) dwelling units per acre except where the planning board may grant an increase to five (5) dwelling units per acre for the provision of single-family zero lot line dwellings as stipulated herein.

(2) The net density of semi-detached and two-family units shall not exceed eight (8) dwelling units per acre.

(3) The net density of townhouses shall not exceed ten (10) dwelling units per acre.

(4) The net density of garden apartment and maisonette dwelling units shall not exceed fifteen (15) dwelling units per acre.

(c) At least five (5%) percent of the dwelling units within a PRN shall be constructed and kept available for families whose incomes do not exceed the "Public Housing Admission Limits" as they are defined for the township by the Department of Housing and Urban Development. At least ten (10%) percent of the dwelling units within a planned residential development shall be constructed and kept available for families whose incomes do not exceed the "Section 8 Family Income Limits" as they are defined for the township by the Department of Housing and Urban Development.

8. *Maximum improvement coverage.* Forty (40%) percent of the area of the PRN.

9. *Bulk requirements.*

(a) Building heights may vary from one (1) to four (4) stories, but in no case shall they exceed forty-five (45) feet.

(b) Lot sizes and dimensions, yard sizes and building arrangement may be freely disposed and arranged, provided the PRN conforms to a development plan approved by the planning board pursuant to the applicable provisions contained in the township's Site Plan, Subdivision, and Provisions Applicable to

Site Plans and Subdivisions Ordinances, and in accordance with the following standards:

(1) No portion of a dwelling shall be closer than twenty-five (25) feet to the right-of-way of a local internal road or fifty (50) feet to a collector road, or major thoroughfare as designated by the township's master plan.

(2) Along all boundary lines of any PRN district, except where they coincide with the right-of-way lines of a Federal, State or county road, public utility right-of-way, or public parks, the same zoning provisions of the abutting district shall prevail with respect to the side yards, rear yards, screen planting and such other transitional features.

22-4.14.3 *Common Open Space.*

a. *General Requirements.* Except as otherwise provided herein, not less than forty (40%) percent of the development area shall be designed as and devoted to common open space for use primarily by the residents of the planned development. Such designated open space shall be in major continuous parcels, having adequate access to public and private roads and consisting of land in a natural state or land developed for specific recreational purposes according to recreational guidelines established in the township's Site Plan Ordinance.

b. *Ownership Requirements.* Such common open space may be deeded to the township or other governmental agency or dedicated to a homeowner's association or trust, which incorporation and by-laws shall be approved by the planning board. If common recreation and open space areas are not dedicated and accepted by the township or another governmental agency, the landowner shall provide for and establish an organization for the ownership and maintenance of any common recreation areas and open space and such organizations shall not be dissolved nor shall it dispose of any of same by sale or otherwise (except to an organization conceived and established to own and maintain the common recreation areas and development open space) without first offering to dedicate the same to the township or any other government agency.

If the applicant proposes that the open space shall be dedicated to the township, then the planning board shall forward each request with its recommendation, prior to granting of preliminary plan approval of a development application containing open space, to the township committee.

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If the township committee does not approve such dedication, the applicant may submit a cluster or planned development plan providing only for ownership of common land as outlined herein.

c. *Open Space Maintenance Requirements.*

1. In the event that the organization created for open space management shall, at any time after the establishment of a planned development, fail to maintain any open space or recreation area in a reasonable order and condition in accordance with the plan, the township may serve written notice upon such organization or upon the owners of the development setting forth the manner in which the organization has failed to maintain said areas in reasonable condition, and said notice shall include a demand that such deficiencies of maintenance be cured within thirty-five (35) days thereof and shall set the date and place of a hearing thereon which shall be held within fifteen (15) days of the notice. At such hearing the township may modify the terms of the original notice as to the deficiencies and may give an extension of time not to exceed sixty-five (65) days, within which they shall be cured.

If the deficiencies set forth in the original notice or in modifications thereof shall not be cured within said thirty-five (35) days or any extension thereof, the township, in order to preserve the open space and maintain the same for a period of one (1) year may enter upon and maintain such land. Said entry and said maintenance shall not vest in the public any rights to use the open space and recreation areas except when the same is voluntarily dedicated to the public by the owners.

Before the expiration of said year, the township shall, upon its initiative or upon the request of the organization theretofore responsible for the maintenance of said areas, call a public hearing upon fifteen (15) days written notice to such organization and to the owners of the development to be held by the township at which hearing such organization and owners of the development shall show cause why such maintenance by the municipality shall not, at the election of the township, continue for a succeeding year. If the township shall determine that such organization is ready and able to maintain said open space and recreation areas in reasonable condition, the township shall cease to maintain said open space and recreation areas at the end of said year. If the township shall determine such organization is not ready and able to maintain said open space and recreation areas in

a reasonable condition, the township may, in its discretion, continue to maintain said open space and recreation areas during the next succeeding year and, subject to a similar hearing, a determination in each year thereafter. The decision of the township in any such case shall constitute a final administrative decision subject to judicial review.

2. The cost of such maintenance by the municipality shall be assessed pro rata against the properties within the development that have a right of enjoyment of the open space in accordance with the assessed value at the time of imposition of the lien, and shall become a lien and tax on said properties and be added to and be a part of the taxes to be levied and assessed thereon, and enforced and collected with interest by the Township and in the same manner as other taxes.

22-4.15 Bulk and Area Regulations - PRN-1 District.

The standards for the PRN-1 district shall be the same as those for an R-2 district.

Article V Regulations for Business Districts

22-5.0 General.

The regulations applicable to the business districts are as follows:

22-5.1 Use Regulations - B-1 Business District [Neighborhood Convenience].

22-5.1.1 *Permitted Uses.* In a B-1 district, no building or premises shall be used and no building shall be erected or altered which is arranged, intended, or designed to be used, except for one or more of the following uses and all such uses shall be subject to the performance standards set forth in the township's Site Plan Ordinance:

- a. Stores and shops for the conduct of any retail business, excluding drive-in establishments.
- b. Personal service establishments (e.g., a tailor, barber shop, or beauty salon).

e. No mechanical or electrical equipment is used that will be detectable to the normal senses or that will create electrical or radio interference.

f. The retail sale of goods and services in structures designed or altered to make such activities the primary use of any structure shall not be construed to be a home occupation under the terms of this chapter.

22-8.10 Calculation of Common Open Space.

For purpose of this chapter, calculation of common open space shall not include: parking areas or accessways thereto, lands privately owned or in fee simple, or, open space lands that are part of a residential condominium or rental project and used for the calculation of net density requirements.

22-8.11 Planned Developments.

a. *General.* Various types of planned developments listed as permitted or conditional uses in certain districts herein may be permitted by the planning board only after it has determined that the development proposal complies with the conditions and standards set forth in this section, notwithstanding other applicable regulations of this chapter or additional conditions for the particular planned development.

b. *Findings for Planned Developments.* Prior to approval of any planned development the planning board shall find as required by NJS 40:55D-45, the following facts and conclusions:

1. That departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to the zoning standards applicable to the planned development;

2. That the proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space are adequate;

3. That provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate;

4. That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established;

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5. In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.

22-8.12 Utilities.

Electric and telephone lines shall be underground to the structures from existing utility poles.

22-8.13 Flag Lots.

Flag lots are permitted, subject to the provisions of Subdivision Ordinance, Article V, subsection 22-5.6.7. Only one flag lot shall be approved by the planning board from the same original parcel provided none have been granted since August 15, 1975.

22-8.14 Application and Interpretation of Low/Moderate Income and Least Cost Housing Provisions.

a. *General.* The inclusionary housing provisions and options of this chapter are directed toward increasing the supply of low and moderate income and least cost housing and assuring its dispersal throughout appropriate areas of West Windsor Township. These provisions may be complied with through approved rent subsidy and/or housing purchase plans of State or Federal agencies, either directly or channeled through public non-profit or limited profit sponsorship, or through public, private or internal subsidies.

b. *Insuring That Low/Moderate and Least Cost Housing Will be Kept Available.*

1. Applicants may use Federal or State rental or purchase subsidy programs or other legal mechanisms, to bring onto the market the required low and moderate income housing. Such applications with guaranteed rental or purchase subsidies of twenty (20) years or more or applicants who have entered into a contract with a non-profit, limited profit or government sponsor who have obtained such subsidies shall be deemed to have shown that such housing will be kept available upon resale or re-rental for persons within the low or moderate income range specified in the subsidy.

2. For least cost housing provisions, applicants may use any of the subsidy provisions outlined in subsection 22-8.14 b 1 herein, or enter into disposition agreements, in the form of covenants running with the land, or create a mechanism through a Homeowners Association vehicle in planned development, or create any other legal mechanism which may be approved by the planning board and will, in its opinion, insure that such housing will be kept available for a term of twenty (20) years or more upon resale or re-rental for persons within the least cost housing range.

c. *Periodic Adjustments of Low/Moderate and Least Cost Income Levels.*

1. Low and moderate income levels shall be those income levels, as are determined for the township, from time to time by the U.S. Department of Housing and Urban Development.

2. Least cost income levels shall be those income levels which range above moderate income levels as defined herein and up to one hundred fifty (150%) percent of the median income as defined, from time to time for the township by the U.S. Department of Housing and Urban Development.

Article IX Administrative Procedures.

22-9.0 Establishment of Planning Board.

The planning board heretofore created by West Windsor Township is continued and is hereby established pursuant to the N.J.S.A. 40:55D-1 et seq. as the planning board for said municipality.

a. *Composition.* The planning board shall consist of nine (9) members, who shall be divided into the following four (4) classes, for convenience in designating their manner of appointment:

1. Class 1. The Mayor.

2. Class 2. One of the officials of the township other than a member of the governing body to be appointed by the mayor; provided that the member of the environmental commission who is also a member of the planning board, as may be required by N.J.S.A. 40:56A-1 shall be deemed to be a class 2 planning board member if there is both a member of the zoning board of adjustment and a member of the board of education among class 4 or alternate members.

23-4.5 Preliminary Site Plan Approval.

23-4.5.1 *Objectives of Review.* The preliminary site plan shall be reviewed to determine the acceptability of the detailed design concept and shall be in sufficient detail to enable the board to ascertain compliance with the performance standards and other standards of this chapter as well as applicable township ordinances.

23-4.5.2 *Application.* Two or more copies of the preliminary site plan, an application in a form approved by the planning board, and the requisite fee shall be delivered to the administrative officer.

23-4.5.3 *Preliminary Site Plan Details.* The preliminary site plan application technical materials, notwithstanding any other requirements of this or other township ordinances, shall contain the following:

a. Locator map at a scale of one inch equals two thousand feet (1" = 2,000'), or larger scale, showing the lot and block number of the parcel in question and the lot and block numbers of adjacent and opposite properties. This map should also show any contiguous lot in which the applicant has any direct or indirect interest, and the nature of the applicant's interest.

b. Photographs of the property where necessary to show any unusual topographic, environmental or physical aspect of the site. This would include but not be limited to rock outcroppings, vegetation, natural drainageways, wetlands and existing structures and improvements.

c. A preliminary plan at a scale of one inch equals fifty feet (1" = 50'), or larger scale, and any supplemental plans that are necessary to properly depict the project. In the case of a complex project a scale other than one inch equals 50 feet (1" = 50') may be submitted provided that one (1) copy of a photomechanical reduction to a scale of one inch equals fifty feet (1" = 50') is submitted. The preliminary plan shall show at least the following information:

1. North arrow, scale, graphic scale, date and notes and dated revisions.

2. The zoning district in which the parcel is located together with the district boundaries included within the boundaries of the parcel or within two hundred (200) feet therefrom. All setback lines, landscape strips, landscape buffers, building heights and

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other bulk requirements shall be shown and dimensioned. Any deviation from requirements of this chapter shall be specifically shown.

3. Survey map, prepared by a licensed surveyor of New Jersey, showing boundaries of the properties, lines of all existing streets and roads, easements, rights-of-way, and areas dedicated to public use within two hundred (200) feet of the development. These shall be dimensioned and where applicable, referenced as to direction.

4. Reference to any existing or proposed deed restrictions or exceptions concerning all or any portion of the parcel. A copy of such covenants, deed restrictions or exceptions shall be submitted with the application.

5. The existing and proposed contours, referred to U.S. Coast and Geodetic Survey Datum, at a contour interval of not less than two (2) feet. Existing contours are to be indicated by solid lines. Location of existing rock outcroppings, high points, watercourses and drainageways, depressions, ponds, marshes, vegetation, wooded areas and other significant existing features including previous flood elevations of watercourses, ponds and areas as determined by survey. Trees of five (5) inches or over in caliper shall be specifically located and identified. Any proposed change of such natural features shall be specifically noted.

6. The location, size, elevation, slope and type of storm drainage structures and other utility structures, above and below grade, whether publicly or privately owned. Design calculations supporting the adequacy of proposed drainage structures and/or surface drainage shall be submitted. The site plan shall include existing ponds, streams and watercourses as well as the designated greenbelt, if applicable.

7. The location of all existing buildings, bridges, culverts, paving, lighting, signs or any other structures with grade elevations for each structure.

8. The distances measured along the right-of-way lines of existing streets abutting the property, to the nearest intersection with other streets.

9. The proposed use or uses of the land, buildings and structures.

10. The quantitative aspects of the proposal such as improvement coverage, number of units, square feet of construction,

value of construction, density, coverage, number of employees, number of residents and area of land, etc. Specifically identified on the site plan, in tabular form, shall be pertinent zoning data, indicating the bulk/area requirements of the zone in which the proposed development is located and how the proposed development responds to the zoning requirements.

11. The proposed buildings and structures and any existing structures to remain, with dimensions, setbacks, heights (in feet and stories), and first floor or grade elevations. Existing buildings and structures to be removed shall be indicated. Sketch or typical building elevations indicating type of materials to be used.

12. The location and designs of any off-street parking areas, bicycle parking, service, trash or loading areas showing size and location of bays, aisles, barriers, planters, maneuvering areas, and traffic patterns.

Include manufacturer's cut or illustration depicting type of bicycle parking facility proposed. Also provide typical plan layout of facility at an appropriate scale to determine location from walkways and building lines.

13. The means of vehicular access for ingress to and egress from the site, showing the proposed traffic channels, lanes and any other structure or device intended to control traffic.

14. The location, design, and size of any on- or off-site pedestrian parks and bicycle pathways, open space, common open space, plazas and recreation areas or any other public use areas.

15. The location and design of all proposed utility structures and lines, storm water drainage on-site and off-tract, with manholes, inlets, pipe sizes, grades, inverts and directions of flow, as well as telephone, power and light, water hydrant locations, sewer and gas, whether publicly or privately owned.

16. The location and design of the proposed screening, landscaping and planting, including a planting plan and schedule of plant materials.

17. The location of all outdoor lighting (free-standing or on building), the size, nature of construction, lumens, heights, area and direction of illumination, footcandles produced, typical manufacturer cuts illustrating style, and time controls proposed for outdoor lighting and display.

18. The location and design of all signs, the size, nature of construction, height and orientation, including all identification

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signs, traffic and directional signs and arrows, free-standing and facade signs and time controls for sign lighting.

19. The location and size of all proposed easements, rights-of-way, public areas to be dedicated to the public or to be restricted or defined by deed or any other arrangement. Also the location of any master plan proposals indicating roadway, public area or facility shall be shown.

d. All items as required in the environmental impact statement as set forth in Article V, section 23-5.9 of this chapter or statement concerning such which does not apply.

e. Where applicable, the method by which any common or public open space or commonly held building or structure is to be owned and maintained.

f. Where warranted, such other material deemed necessary by the planning board to evaluate the physical, fiscal or socio-economic impact of the proposed development upon the township.

23-4.5.4 Preliminary Site Plan Review. Within forty-five (45) days of receipt by the administrative officer of a complete site plan application for ten (10) acres of land or less and ten (10) dwelling units or less, or within ninety-five (95) days of receipt of a complete application for a site plan of more than ten (10) acres or more than ten (10) dwelling units or within such further time as may be agreed upon by the developer, the planning board shall act upon the application. Upon receipt of a complete application, the administrative officer shall submit one (1) copy to each member of the site plan review advisory board and one (1) copy of the application to the following professionals and boards:

- a. The township engineer.
- b. The township planning consultant.
- c. The township board of health.
- d. The township fire inspection officer.
- e. The township environmental commission and its consultant.
- f. The township shade tree committee.
- g. The township chief of police.
- h. Mercer County Planning Board and where applicable, the State Department of Transportation.

- i. The township sewer operating committee.
- j. Such other boards or professionals as the planning board may deem necessary (e.g., D&R Canal Commission, school board, etc.)

The professionals and boards shall have a period of thirty (30) days after filing date of the preliminary site plan on a minor site plan application or seventy-three (73) days on a major site plan application to make a report and recommendations concerning the preliminary site plan. The planning board shall take such recommendations into account but shall have the right to proceed in the absence of any such recommendation.

23-4.5.5 Preliminary Site Plan Hearing. All actions of the planning board on preliminary site plans shall be at a public hearing. Public notice of an application as provided in Article III, section 24-3.3 of Provisions Applicable to Site Plans & Subdivisions Ordinance shall be required.

23-4.5.6 Preliminary Site Plan Action. After the conclusion of the hearing, but in no event later than the first regular meeting following the hearing, the planning board shall by resolution approve, disapprove, or conditionally approve the preliminary site plan, stating reasons for any disapproval.

23-4.5.7 Decisions of Planning Board. See Article III, section 24-3.4 of the Provisions Applicable to Site Plans and Subdivisions Ordinance for decisions on site plan applications under varying procedural conditions.

23-4.5.8 Effect of Preliminary Approval. Preliminary approval of a site plan shall, except as provided in subsection 23-4.5.9 herein, confer upon the applicant the following rights for a three (3) year period from the date of the preliminary approval:

- a. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and on-site and off-tract improvements; and any requirements peculiar to the specific site plan. The township may modify by ordinance such general terms and conditions of preliminary approval as they relate to public health and safety provided such modifications are in accord with amendments adopted by ordinance subsequent to approval.

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b. That the applicant may submit for final approval on or before the expiration date of preliminary approval the whole or a section or sections of the preliminary site plan.

23-4.5.9 *Extension of Preliminary Approval.* The applicant may apply for and the planning board may grant extensions on such preliminary approval for additional periods of at least one (1) year but not to exceed a total extension of two (2) years provided that if the design standards have been revised by ordinance, such revised standards may govern.

In the case of a site plan for an area of fifty (50) acres or more, the planning board may grant the rights referred to above for such period of time, longer than three (3) years, as shall be determined by the planning board to be reasonable taking into consideration: 1) the number of dwelling units and non-residential floor area permissible under preliminary approval; 2) economic conditions; and 3) the comprehensiveness of the development. The applicant may apply for thereafter and the planning board may thereafter grant an extension to preliminary approval for such additional period of time as shall be determined by the planning board to be reasonable taking into consideration: 1) the number of dwelling units and non-residential floor area permissible under preliminary approval; 2) the potential number of dwelling units and non-residential floor area of the section or sections awaiting final approval; 3) economic conditions; and 4) the comprehensiveness of the development; provided that if the design standards have been revised, such revised standards may govern.

In the event no extension is applied for, preliminary approval shall expire and the site plan shall lapse three (3) years from such approval.

23-4.5.10 *Variances; Planning Board Review in Lieu of Board of Adjustment.* The planning board when reviewing applications for site plans shall have the power to grant to the same extent and subject to the same restrictions as the board of adjustment, variances from lot area, lot dimensional, setback and yard requirements, provided that relief shall not be granted for more than one (1) lot.

23-4.6 Final Site Plan Approval.

23-4.6.1 *Objectives of Review.* The final site plan shall be reviewed to ascertain whether the construction documents to be utilized in construction of the project substantially conform to the approved preliminary site plan.

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review advisory board and one (1) copy to each of those professionals and boards having received a copy of the preliminary plan.

The professionals and boards shall have a period of thirty (30) days after receipt of the final plan to make a report and recommendations concerning the final plan. The planning board shall take such recommendations into account but shall have the right to proceed in the absence of any such recommendation.

23-4.6.5 Final Plan Hearing. Planning board action shall take place at a hearing. No public notice of application shall be required.

23-4.6.6 Decision of Planning Board. As set forth in Article III, section 24-3.4 of Provisions Applicable to Site Plan and Subdivision Applications Ordinance for decisions on site plan applications under varying procedural conditions.

23-4.6.7 Effect of Final Approval. Final approval shall terminate the time period of preliminary approval for the section granted final approval and shall guarantee the applicant that the zoning requirements applicable to the preliminary approval and all other rights conferred upon applicant as part of preliminary approval shall not be changed for a period of two (2) years after the date of final approval.

23-4.6.8 Time Limit for Final Approval and Extensions. Final approval shall expire two (2) years from the date of final approval unless the applicant has secured a building permit to commence construction. The planning board may extend final approval, and the protection offered under subsection 23-4.6.7 herein, for one (1) year. Up to three (3) such extensions may be granted.

In the case of a site plan for a planned commercial development, planned industrial park development, or residential cluster of fifty (50) acres, or conventional site plan for one hundred fifty (150) acres or more, the planning board may extend the rights granted under final approval for such period of time, longer than two (2) years, as shall be determined by the planning board to be reasonable taking into consideration: 1) the number of dwelling units and non-residential floor area permissible under final approval; 2) economic conditions; and 3) the comprehensiveness of the development. The developer may apply for thereafter, and the planning board may thereafter grant, an extension of final approval for such additional period of time as shall be determined by the planning board to be reasonable taking into consideration:

1) the number of dwelling units and non-residential floor area permissible under final approval; 2) the number of dwelling units and non-residential floor area remaining to be developed; 3) economic conditions; and 4) the comprehensiveness of the development.

23-4.6.9 *Conditions of Final Approval.* The planning board may, as a condition of final approval:

a. Grant final approval only for designated geographic sections of the development;

b. Grant final approval for certain work but require resubmission for final approval for designated elements such as, but not limited to such items as: landscaping, signs, or street furniture, and require approval of these elements as a prerequisite for a certificate of occupancy;

c. Condition the granting of a certificate of occupancy subject to the applicant or developer or subsequent heirs or assignees meeting certain requirements within a designated period of time, not to exceed one (1) year, from the date of issuance of the certificate of occupancy. This may include, but is not limited to, such items as: the installation of landscaping, erection of signs, installation of improvements, or re-evaluation of circulation patterns.

Article V

General Performance Standards

23-5.0 General Intent.

No site plan shall be approved by the planning board unless the use meets the performance standards herein set forth and such State or Federal standards as may be more stringent than those set forth herein. Failure to comply with the performance standards at any time after the issuance of a certificate of occupancy shall be cause for revocation of such certificate. In reviewing any site plan, the planning board shall consider:

23-5.1 Circulation and Parking.

The pedestrian and vehicular traffic movement within and adjacent to the site with particular emphasis on the provision and layout of parking areas, off-street loading and unloading, movement of people, goods and vehicles from access roads, within the site, between buildings and between buildings and vehicles shall be reviewed

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the board of adjustment shall grant or deny approval of the application within one hundred twenty (120) days after the date of submission of a complete application to the administrative officer.

24-3.4.15 *Extension of Time for Decision.* Any time period for action by the planning board may be extended with the consent of the applicant or appellant.

24-3.4.16 *Failure to Make Decision Within Time.* The failure of the planning board to act within such time period or extension thereof shall constitute a decision favorable to the applicant or appellant. A certificate of the administrative officer as to such failure shall be issued on request of the applicant or appellant, and it shall be sufficient in lieu of written endorsement or other evidence of approval required by this chapter and shall be accepted as such by the county clerk for purposes of filing subdivision plats.

24-3.5 Supplemental Review Requirements for Planned Residential Neighborhood [PRN] Developments and Planned Developments.

24-3.5.1 *General.* Planned residential neighborhood (PRN) and planned development applications, upon receipt of favorable findings for a planned development by the planning board as stipulated in the township Zoning Ordinance, shall be reviewed, where applicable, in accordance with the subdivision or site plan procedures and design regulations as they may apply to the application.

24-3.5.2 *Common Open Space.*

a. The final plan for a development containing common open space shall delineate and dimension such open space and shall designate the name of the person responsible for the maintenance thereof. The documents creating responsibility for such maintenance shall be approved by the planning board and filed with the township tax assessor and the Mercer County Clerk.

b. In a planned development to be developed in one phase, all proposed improvements of the common open space, as indicated on the approved final plan, including recreational facilities, buildings and landscaping shall be completed before more than twenty-five (25%) percent of the certificates of occupancy of dwelling units or square feet of non-residential structures will be granted by the township

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c. For planned developments staged overtime into different phases, all proposed improvements of the common open space within a phase of the development as indicated on the approved preliminary plan, shall be at a minimum eighty (80%) percent completed with performance bonds posted for the remaining twenty (20%) percent of common open space improvements and at least twenty-five (25%) percent of the certificates of occupancy of dwelling units or square feet of non-residential structures in a phase shall be issued, prior to the planning board granting final approval to a succeeding phase of development. The planning board shall determine extent of common open space completion based on a field inspection report prepared by the township engineer indicating percentages of quantities of work completed as measured against proposed improvements shown on the final plan of each section.

24-3.5.3 *Obligation of Successive Owners in Planned Developments.*

a. In the event of any conveyance or transfer of any property within a planned development, the planning board shall be given notice of such intended conveyance or transfer prior to any actual transference thereof. Such notice shall be accompanied by the following information:

1. A precise description of the interest being transferred.
2. The obligations to be assumed by the transferee.
3. A copy of any agreement entered into between the transferor and the transferee.
4. An agreement that the transferee agrees to be bound by all of the applicable provisions of prior planning board approvals.
5. Such other information as may be required by the planning board.

b. The planning board, following receipt of such notice and supporting information, shall consider the effect of the proposed conveyance or transfer on the completion and implementation of any terms, conditions, and obligations imposed pursuant to the approvals granted by the planning board and may require such additional assurances as it shall deem necessary to protect the public interest, and the integrity of the approved planned development plan.

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The terms, conditions and obligations of any planning board approvals shall be binding on the original developer, their successors and assigns, provided, that no obligation, term or condition may be assigned without the prior written consent of the planning board.

24-3.5.4 *Additional Documentation in Support of Preliminary and/or Final Approvals.* The planning board may require additional documentation and study by the applicant in support of a planned development application for preliminary or final approval. Such documentation may be based on earlier data submitted by the applicant in order to gain favorable findings of approval as required by the township's Zoning Ordinance, updated as appropriate for the development application. The board may require, but shall not be limited to, one or all of the following:

a. In the case of a proposed development which contemplates construction over a period of years, information indicating that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.

b. For the particular stage which approval is sought, information that indicates the stage is substantially self-functioning and self-sustaining with regard to access, utility services, parking, common open space, all amenities and other similar physical features and shall be capable of occupancy, operation and maintenance upon completion of construction and development.

c. That each stage for which approval is sought is properly related to every other segment of the planned development and to the community as a whole and to all necessary community services which are available or which may be needed to serve the planned development in the future.

d. That adequate protection is provided to ensure the proper disposition of each stage for which approval is sought through the use of maintenance and performance guarantees, covenants and other formal agreements.

e. That the applicant demonstrate through a market feasibility study and other possible study techniques the demand for the principal proposed uses within each stage for which approval is sought, the probable rental prices or sales costs for such facilities and other relevant market data.

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f. That the applicant provide a cost benefit analysis or other similar study to review the relative estimated municipal costs, services and ratables which might be anticipated for the stage of development for which approval is sought.

g. That the applicant provide a circulation study indicating the effect of the planned development on its surrounding areas including estimates of total automotive trips generated, peak hour demand, present anticipated traffic volumes, existing street capacities and other elements which may influence and be influenced by the proposed planned development.

24-3.6 Application by Corporation or Partnership.

a. A corporation or partnership applying to the planning board or the board of adjustment for permission to subdivide a parcel of land into six (6) or more lots or for approval of a site to be used for commercial purposes shall list the names and addresses of all stock-holders or individual partners owning at least ten (10%) percent of its stock of any class or at least ten (10%) percent of the interest in the partnership, as the case may be.

b. *Disclosure of Ten (10%) Percent Ownership Interest of Corporation or Partnership which is Ten (10%) Percent of Applying Corporation or Partnership.* If a corporation or partnership owns ten (10%) percent or more of the stock of a corporation, or ten (10%) percent or greater interest in a partnership, subject to disclosure pursuant to subsection 24-4.3.2a, that corporation or partnership shall list the names and addresses of its stockholders holding ten (10%) percent or more of its stock or of ten (10%) percent or greater interest in the partnership, as the case may be, and this requirement shall be followed by every corporate stockholder or partner in a partnership, until the names and addresses of the noncorporate stockholders and individual partners, exceeding the ten (10%) percent ownership criterion established in this act, have been listed.

c. *Disapproval of Application.* The planning board, board of adjustment or governing body shall not approve the application of any corporation or partnership which does not comply with sections 24-3.6a or 24-3.6b.

d. *Penalty.* Any corporation or partnership which conceals the names of the stockholders owning ten (10%) percent or more of its stock, or of the individual partners owning a ten (10%)

24-8.0 TOWNSHIP OF WEST WINDSOR ORDINANCES

Article VIII
Approval Procedure for Planned Developments (In
the R-3, R-4, R-5 and R-5A Districts) and Planned
Residential Neighborhoods.

24-8.0 Applicability.

24-8.0.1 *General Intent.* The intention of this Article is to provide a flexible procedure for the review, consideration and hearings involving planned developments and planned residential neighborhoods. This procedure recognizes that the process may involve conditional use approval, site plan approval, subdivision approval and additional affirmative findings by the board in regard to planned developments and planned residential neighborhood applications. This Article does not apply to the R-1 and R-2 districts.

24-8.0.2 *General Procedure.*

a. *Developments of Less Than One Hundred (100) Acres.* A distinction is made in this Article between planned developments under one hundred (100) acres and those over that size. Applications where the entire tract to be developed or potentially part of the planned development zoning district is under one hundred (100) acres shall proceed generally as provided for in Article IV (Procedures for Site Plan Approval) in the Site Plan Ordinance. Sketch plan submission is encouraged. In addition to site plan approval, conditional use approval and a request for favorable findings as required by statute and/or ordinance shall be applied for concurrently with preliminary site plan approval. Notwithstanding the above, the planning board, may, upon application by an applicant, grant the applicant permission to proceed as provided for in subsection 24-8.0.2 below.

b. *Developments of One Hundred (100) Acres or More.* Applications involving over one hundred (100) acres, under this Article, may be submitted in three (3) stages known as "Preliminary A Site Plan Approval", "Preliminary B Site Plan Approval" and "Final Site Plan Approval". Preliminary A Site Plan Approval, involves a submission with regard to the entire tract which will be the subject of the planned development. This approval is optional, but if granted, an applicant may thereafter submit applications, by section or stage, for Preliminary B Site Plan Approval. In addition, an applicant may combine his application for Preliminary B Site Plan Approval with Final Site Plan Approval, all as

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provided for in this Article. In the event that the applicant determines not to apply for Preliminary A Site Plan Approval, then the application shall proceed in the manner provided for in regard to applications for developments of under one hundred (100) acres. Applications for Preliminary A Site Plan Approval shall be accompanied by applications for conditional use approval and a request for favorable findings.

24-8.1 Procedures for Planned Developments Under One Hundred (100) Acres.

24-8.1.1 *Review Requirements.* Planned development applications, in addition to conditional use approval, and request for favorable findings for a planned development by the planning board as stipulated in the township Zoning Ordinance, shall be reviewed, where applicable, in accordance with the township's subdivision or site plan preliminary and final approval procedures and design regulations as they may apply to the application.

24-8.1.2 *Additional Documentation in Support of Preliminary and/or Final Approvals.* The planning board may require additional documentation and study by the applicant in support of a planned development application for preliminary or final approval. Such documentation may include data submitted by the applicant in order to gain favorable findings for a planned development approval as required by the township's Zoning Ordinance, updated as appropriate for the development application. The board may require, but shall not be limited to, one or all of the following:

a. *Master Land Use Plan* at a scale of one (1) inch equals two hundred (200) feet, or other appropriate scale, illustrating:

1. Outbound limits of property.
2. Existing contours at two (2) foot intervals.
3. Existing roads.
4. Proposed arterial and collector roads.
5. Location map indicating relation to adjacent zoning districts.
6. Existing land uses within two hundred (200) feet of property.
7. Various proposed land uses for designated use areas.

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24-8.1.2
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Each particular residential land area shall be documented as to acreage, the type of residential dwelling unit proposed and the number and net density of dwelling units of each type proposed to be situated within each designated use area. If permitted commercial uses are intended, the proposed floor area shall be indicated within a designated use area and the floor area ratio shall be stipulated. The proposed total number of dwelling units and gross density for the planned developments shall be indicated together with an indication of percentage and numbers of dwelling units by type for the entire tract.

b. *An Open Space, Common Open Space, Recreation and Facility Plan* indicating the major areas to be devoted to common open space, open space, major pedestrian network and its relationship to principal on-tract and off-tract public facilities (e.g. train stations, shopping, etc.), recreational purposes and a description of the intended improvements within the areas, as well as any intended public facilities. The plan shall also describe the intended ownership, maintenance and operation of common open space, open space, recreation and conservation areas and/or facilities within the planned development. A single vehicle for the ownership and management of common elements is encouraged.

c. *A Traffic Circulation Plan* indicating all existing and proposed arterial or major collector streets, typical road cross-sections and critical elevations and grades. The plan shall indicate how the overall collector road network relates to the terrain, the overall design of the planned development and the road network of the township. In addition, and as a minimum, the plan shall indicate:

1. Projected peak hour traffic volumes on arterial and collector roads at the time of completion of each proposed section of development and at the time of completion of ultimate development of the project, including both internal and adjacent external volumes.

2. Peak hour volume capacity relationship or level of service at ultimate development on major collector and arterial roads.

3. Projected peak hour turning movements at ultimate development, for all major intersections both internally and adjacent to project.

4. A description of any off-tract road or intersection improvements necessitated by the planned development and a general schedule for their implementation.

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5. The traffic circulation plan shall describe appropriate mass transit opportunities within and to the planned development.

d. A *Utility Plan* indicating existing and proposed sewer and water lines, pump stations, wells, and documentation from respective utility companies as to the feasibility and availability of connections to electric, gas and telephone facilities. The plan shall also indicate:

1. Alignment, general grades and basic design of major elements of sanitary sewer collection system and documentation from appropriate agency to confirm feasibility of serving and capacity for all areas of the project requiring sewers.

2. Alignment and basic design of major elements of water distribution system and documentation from appropriate agency to confirm feasibility of providing potable water supply and fire protection to all areas of project requiring service.

e. A *Drainage Plan* indicating the proposed method of controlling and draining storm water on and from the site and including supportive calculations. Additionally, a conceptual description of the intended Soil Erosion and Sediment Control Plan shall be submitted. The plan shall also indicate for storm drainage:

1. Alignment, general grades and basic design of major elements of collection system to confirm feasibility of handling anticipated runoff from all areas of project.

2. Flood elevations on major drainage channels, indicating anticipated flood levels for twenty-five (25) and fifty (50) year storms.

3. Existing general grade of areas surrounding project to determine impact on on-site and off-site drainage.

4. Description of any off-tract drainage improvements necessitated by the planned development and a general schedule for their implementation to be expressed in terms of the staging plan required hereafter.

f. An *Environmental Impact Statement* as specified in the township's Site Plan Ordinance.

g. A *Staging Plan* where the planned development is intended to be developed over a number of years or in more than one (1) stage, indicating the areas to be developed in each stage

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and the proposed sequence of development of the stages. No residential stage shall be less than twenty-five (25) acres in size except with the approval of the planning board. In addition, the plan shall indicate:

1. That adequate protection is provided to ensure the proper disposition of each stage through the use of maintenance and performance guarantees, covenants and other formal agreements.

2. Information that indicates the stage is substantially self-functioning and self-sustaining with regard to access, utility services, parking, common open space, all amenities and other similar physical features. Further, each stage shall be capable of occupancy, operation and maintenance upon completion of construction and development of that stage or, in the case of subsequent stages, such subsequent stages shall likewise be in harmony with those under construction or in place.

3. That each stage is properly related to every other segment of the planned development and to the community as a whole and to all necessary community services which are available or which may be needed to serve the planned development in the future.

4. A description of the off-tract and off-site improvements that would be constructed by a particular stage and proposed responsibility for construction of such improvements including pro rata share computations, if appropriate.

h. A *Market Plan* that demonstrates through a market feasibility study or other study techniques the demand for the principal proposed uses within the planned development and each stage, the probable rental prices or sales costs for such facilities and other relevant market data.

i. A *Community Benefit Plan* that demonstrates through a cost benefit analysis or other similar study, the relative estimated municipal costs, services and revenues which might be anticipated as a result of the development of the planned development, for the 1) township, 2) county; and 3) the school district. In addition, a statement with regard to the profile of the estimated population to be introduced into the community as a result of the development shall be submitted in estimate form. In addition, the community benefit statement shall set forth the adequacy or inadequacy of current public services in relation to the probable population and a plan or description to raise the level of public

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services and facilities, if needed, to accommodate the probable demands resulting from the implementation of the planned development. The writer of the Community Benefit Plan shall consider, for example, police, fire, library, rescue and solid waste disposal services when considering the impact of the developments.

24-8.1.3 *Review and Action by the Planning Board.* The planning board shall review and take action on a preliminary or final development application for a planned development or section thereof as provided for preliminary and final site plans in the township's Site Plan Ordinance.

24-8.1.4 *Effect of Approval.* Planned developments processed under this section shall receive the same rights and be subject to the same time periods of expiration and extensions as provided for preliminary and final site plans in the township's Site Plan Ordinance with the following modifications:

a. The planning board may grant preliminary or final approval for initial and extension periods longer than that stipulated in the township's Site Plan Ordinance, taking into consideration: 1) the potential number of dwelling units; 2) the comprehensiveness of the development; and 3) economic conditions, provided that, if the design standards have been revised by ordinance, such revised standards may govern.

24-8.2 Procedures for Planned Developments Over One Hundred (100) Acres and Planned Residential Neighborhoods.

24-8.2.1 *Review Requirements.* As outlined in section 24-8.0, an optional review (stage) "Preliminary A Site Plan Approval" is established to provide flexibility in the review of large planned developments or planned residential neighborhoods. An applicant is not required to submit a development application for review and approval of "Preliminary A Site Plan Approval" in accordance with the provisions of this section, but, instead, may immediately proceed to the preliminary review process as outlined in subsection 24-8.1.1 herein.

24-8.2.2 *Details Required for "Preliminary A Site Plan Approval."* The details specified as discretionary requirements under subsection 24-8.1.2 herein shall be mandatorily required for planned development or planned residential neighborhood submissions under this section.

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24-8.2.3 *Details Required for "Preliminary B" and Final Site Plan Approvals.* The details and design standards specified in the township's Site Plan or Subdivision Ordinances for preliminary and final approval shall be required as applicable for all submissions under this section.

24-8.2.4 *Review and Action by the Planning Board.* The planning board shall follow the procedures and timing requirements for review and take action on submissions under subsections 24-8.2.2 and 24-8.2.3 herein as provided for preliminary and final site plans in the township's Site Plan Ordinance except under subsection 24-8.2.2 there shall be no site plan advisory board review.

24-8.2.5 *Effect of "Preliminary A Site Plan Approval."* Preliminary A Site Plan Approval shall confer upon the applicant the following rights and obligations for a period of time to be determined by the planning board in accordance with subsection 24-8.1.4 herein:

a. That the submitted land use plan shall not be changed with reference to the proposed total number of dwelling units within the planned development or planned residential neighborhood, the proposed number and type of dwelling units within each designated residential area, and the gross floor area within any designated commercial areas. Provided, however, that the densities and floor areas so established will be maximums, shall not be guaranteed and, in each case, shall comply with the applicable provision and ordinances of the township at the time of Preliminary B/Final Site Plan Approval. Such densities and floor areas shall be subject, in all cases, to further review at the Preliminary B or Preliminary B/Final Site Plan Approval stage.

b. That the location and general specifications for the proposed arterial road and major collector roads shall not be changed.

c. That the other submitted plans, as outlined in subsections 24-8.1.2 b, d, e, and g herein shall not be changed.

d. That no lands receiving Preliminary A approval of a planned development shall be conveyed in any manner unless the conditions of subsection 24-8.4.1 herein are satisfied.

✓ e. That a mechanism for preservation of all required subsidized and/or least cost housing, as stipulated and defined in the township's Zoning Ordinance for the particular type of planned development, be established.

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PROVISIONS APPLICABLE TO
SITE PLANS AND SUBDIVISIONS

24-8.3

f. That "Preliminary B Site Plan or Preliminary B/Final Site Plan Approval" for a stage or stages of the planned development may be submitted for review and action by the planning board.

24-8.2.6 *Modifications or Adjustments.* As a further condition for approval of a stage or stages, the planning board may require or permit adjustments or modifications in the conditions established in the approved Preliminary A Site Plan to compensate for differences between the estimates of record on previously approved and completed sections or stages and the actual conditions prevailing at the time of completion of such sections or stages. Consideration, in accordance with this subsection may be given to the balance of land uses established, consistency with the conditions of the standards established in township ordinances for planned developments and planned residential neighborhoods, the extent of the variance from the social and economic estimates on which previous approvals may have been based, the overall maximum and minimum requirements established elsewhere, by ordinance, and the effect of unforeseen changes, extreme conditions or unexpected advantages which may have resulted during the time of construction and development.

24-8.3 Off-Tract Improvements in Regard to Planned Developments and Planned Residential Developments.

24-8.3.1 Generally, provisions dealing with off-tract improvements are set forth at Article V in Provisions Applicable to Site Plans and Subdivision.

24-8.3.2 Additional off-tract improvements may be required beyond those established as a result of Preliminary A Site Plan Approval, resulting from information and experience generated by a review of the detailed section site plans. Further, the sequence of installation of such off-tract improvements may be accelerated or delayed pending upon such information and experience.

24-8.3.3 No Final or Preliminary B/Final Site Plan Approval shall be granted approval until a performance guarantee or guarantees in favor of the township as required by ordinance and as permitted in the Municipal Land Use Law, shall be submitted insuring installation of the infrastructure to support such development. Infrastructure shall include onsite, on-tract and off-tract improvements

24-8.4 TOWNSHIP OF WEST WINDSOR ORDINANCES

24-8.4 Effect of Preliminary B and Final Site Plan Approval.

Submissions under this section shall receive the same rights as stipulated under subsection 24-8.1.4 herein.

24-8.4.1 *Obligation of Successive Owners in Planned Developments.*

a. In the event of any conveyance or transfer of any property within a planned development having received preliminary approval, the planning board shall be given notice of such intended conveyance or transfer prior to any actual transference thereof. Such notice shall be accompanied by the following information:

1. A precise description of the interest being transferred.
2. The obligations to be assumed by the transferee.
3. A copy of any agreement entered into between the transferor and the transferee.
4. An agreement that the transferee agrees to be bound by all of the applicable provisions of prior planning board approvals.
5. Such other information as may be required by the planning board.

b. The planning board, following receipt of such notice and supporting information, shall consider the effect of the proposed conveyance or transfer on the completion and implementation of any terms, conditions, and obligations imposed pursuant to the approvals granted by the planning board, and may require such additional assurances as it shall deem necessary to protect the public interest, and the integrity of the approved planned development plan.

The terms, conditions and obligations of any planning board approvals shall be binding on the original developer, their successors and assigns, provided, that no obligation, term or condition may be assigned without the prior written consent of the planning board.

24-8.5 Common Open Space - Supplemental Requirements.

a. The final plan for a development containing common open space shall delineate and dimension such open space and shall designate the name of the person responsible for the maintenance thereof. The documents creating responsibility for such main-