

ML

General

6-7-85

Memo to judge re: unique issues  
relevant to land use in the context  
of the ML doctrine such as PUDs  
& other long term planning devices.

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## BRENER, WALLACK &amp; HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET

PRINCETON, NEW JERSEY 08540

(609) 924-0808

HARRY BRENER  
HENRY A. HILL  
MICHAEL D. MASANOFF\*\*  
ALAN M. WALLACK\*  
GERARD H. HANSON<sup>Δ</sup>  
GULIET D. HIRSCH

J. CHARLES SHEAK\*\*  
EDWARD D. PENN.+  
ROBERT W. BACSO, JR.+  
MARILYN S. SILVIA  
THOMAS J. HALL  
SUZANNE M. LAROBARDIER+  
ROCKY L. PETERSON  
VICKI JAN ISLER  
MICHAEL J. FEEHAN  
MARTIN J. JENNINGS, JR.\*\*  
MARY JANE NIELSEN++  
E. GINA CHASE\*\*  
THOMAS F. CARROLL  
JANE S. KELSEY

JUDGE SERPENTELLI'S CHAMBERS  
CABLE "PRINLAW" PRINCETON  
TELECOPIER: (609) 924-6239  
TELEX: 837652

\* MEMBER OF N.J. & D.C. BAR  
\*\* MEMBER OF N.J. & PA. BAR  
+ MEMBER OF N.J. & N.Y. BAR  
++ MEMBER OF N.J. & GA. BAR  
Δ CERTIFIED CIVIL TRIAL ATTORNEY

June 7, 1985

FILE NO.

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

RE: Concept plan/Overall preliminary plans

Dear Judge Serpentelli:

The purpose of this letter is to seek your advice and guidance as to how we might solve a problem which is generic to a number of Mt. Laurel II settlements. The issue concerns the need to protect both the developers and municipalities in large scale developments, to be constructed over an extended period of time, when the developments involve the expenditure of a considerable sum of money for infrastructure, and will include provisions for mandatory set asides of lower income housing.

This letter and its attachments may appear to be somewhat bulky. Lest you be dissuaded from proceeding further, this letter contains the following items:

1. An argument for what I would term the planning rationale for some kind of mechanism to provide long range, overall planning (with vesting of rights) for the protection of both the developer and the municipality; followed by a discussion of how we have viewed the Municipal Land Use Law and the case law in this area. Attached to this letter is a discussion memorandum which was prepared by Guliet Hirsch of this office which discusses both issues at greater length.
2. I have enclosed three illustrations, derived from cases which are in active negotiation leading, we believe, towards settlement. In fact, the concept plan issue is of major concern in these three cases (as well as a variety of others).
3. The letter includes a discussion of some alternatives which we think Your Honor might find acceptable and which will provide both the municipality and the developer the protection they

need.

Because of the generic nature of this problem, I am seeking your guidance, without copying all the parties in all the cases which are affected by this. If you would prefer a more formalized procedure, with copies of this letter sent to all counsel in the several cases affected by it, please advise.

#### I. The Planning Issues:

Planned developments, (as in "Planned Unit Developments") by their very nature, are anticipated to be long term projects which are intended to have considerable design flexibility and long range construction schedules. In effect, a planned development is "free form zoning", with a Master Plan, or a development scheme, to be proposed by the developer and to be constructed, either directly by the developer or by builders who have agreed to follow the common developmental scheme, over a build-out period which could extend for ten, fifteen or twenty years. Typically, a planned development will require the extension of substantial public services, such as road improvements, sewer lines, other lines and other public utilities, most of which have to be paid for "up front", to insure their availability throughout the entire developmental process.

In terms of their willingness to approve planned developments, municipalities want to know what the projected planned development is likely to become: what standards are to be followed during the construction process, where the roads will go, how much open space there will be, whether or not adequate public services will be available, what the impact on the community is likely to be, what environmental impacts exist, what kind of traffic problems are likely to be generated by the development, and so forth.

For his part, the developer wants to know that once his proposed plan development has been reviewed and approved by the municipality, he will be able to stage his improvements, do his marketing research, contract for all the road improvements, sewer improvements, water improvements and all of the other aspects of a development necessary to bring an idea from concept into reality.

Both for the municipality's sake and for the developer's sake, some kind of long range planning process which binds both parties seems to be inherent in the planned unit development process.

#### II. The Law

In New Jersey and elsewhere, the notion of planned unit development, which included long range vesting and planning and zoning flexibility was debated both in the legislature and the courts. The Planned Unit Development Act of 1967, codified as 40:55-55 et. seq. was our first attempt at providing statutory authorization for planned unit developments. Section 5 of that act (copy enclosed) set forth what a developer had to do in order to obtain tentative approval of a planned unit development.

Subsequent sections of the act provided for public hearings, municipal findings, and a process whereby final approval could be provided. If final approval were granted, section 9f of the original act provided for five year vesting of the PUD and provided that the developer could proceed with development under that approved scheme.

When the municipal land use act was revised in 1975, the existing planning, zoning, and planned unit development acts were folded together and planned unit developments did not obtain the specific protection which they might have been able to obtain via the 1967 act. Given the fact that there were a few developers with very large scale projects underway, the need for this kind of special "pre-subdivision" planning may not have been as apparent as it is with very large scaled developments.

### III. Alternative ways of meeting the need for long term planning for large developments

The Hirsch memorandum (copy attached) sets forth an argument that the Municipal Land Use Act could be read so as to provide an overall concept development via the preliminary subdivision process.

A second procedure would be to utilize what appears to be the discretionary ability of municipalities under 40:55D-39c and 40:55D-39d to set forth the procedures whereby some kind of vested rights could accrue to a developer and a municipality without necessarily invoking the preliminary application procedures set forth within the typical subdivision application process. Examples of that procedure are set forth in two suggested ordinances prepared by municipal planning consultants in cases presently before this office. In one case, the proposed draft ordinance (which has not been submitted to the municipality's governing body as yet) was drafted by Richard T. Coppola; and in the other case (which also has not been presented to the municipality's governing body) the proposed mechanism was drafted by Carl Hintz.

An alternative way to cover the process would be to include a concept plan as part of a settlement procedure. An example of this is also attached hereto. This procedure would be in the nature of an agreement between the Township and the developer, and would cover the basic items necessary to sustain both the investment on the part of the development and the understandings reached by the municipality as to the scope and impact of the proposed development.

### IV. Conclusion

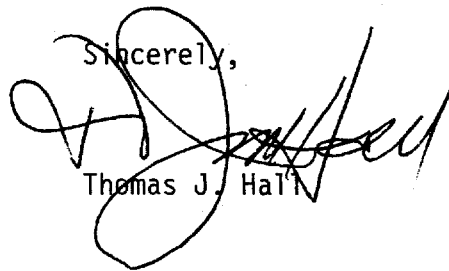
In order to achieve the protection to all of the parties of a law suit which involves large scale development taking place over a period of years, which will require investments for public infrastructure and include a commitment for lower income housing, some mechanism needs to be devised to have a planned unit development scheme in place which carries rights and obligations for both parties. In the absence of clear language in the Municipal Land Use Law, some kind of "concept plan" or "test plan" or "preliminary plan" needs to be provided via other means. The kind of "rolling test plan" envisioned by both Richard Coppola and Carl Hintz provide for public input and an opportunity for review of the development plan from time to time, which is highly desirable; the concept of including a stipulated agreement as to the provisions of the concept

plan provides some reasonable assurance of certainty for both parts, but does not provide for public input nor does it provide for the opportunity to change the plan as circumstances might dictate.

Such concept plan approval, however obtained, appears to be a prerequisite to settling those large scale suits for which typical ordinance language or typical approval procedures simply are inadequate.

I would be most grateful to Your Honor for any guidance which you could offer in this regard, and would be happy to provide Your Honor with any further information or to arrange a dialogue among the attorneys or various parties in several of the cases in which we are involved, if Your Honor thought that would be useful.

Sincerely,

A handwritten signature in black ink, appearing to read "T. J. Hall", written over the printed name.

Thomas J. Hall

TJH:klp

enclosures