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Oct. 26, 1983

- Letter from ~~exped~~ Master ~~to~~ George Raymond
to Judge serpentelli

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JUDGE SERPENTELLI'S CHAMBERS

The Honorable Eugene J. Serpentelli, J.S.C.
Superior Court of New Jersey
Ocean County Court House
Toms River, New Jersey 08753

RE: Allan-Deane Corp. v Township of Bedminster

My dear Judge Serpentelli:

Since the 20-day period during which you requested me to attempt to resolve the issues related to the ability of the Hills Development Corporation to proceed with the development of its low- and moderate-income housing during the 1983 building season will end tomorrow, I thought it appropriate to provide you with a progress report.

Following your telephone call to me on October 7, 1983, whereby you authorized me to continue to work toward a resolution of the still pending Mt. Laurel II issues in the above-referenced case, I proceeded to call Mr. John Kerwin, President of Hills, for a copy of the low/moderate housing proposal. I received that document on Saturday, October 8.

I then called Mr. Richard Coppola, the Township's planning consultant, to discuss the feasibility from the Township's point of view of speedy approval of the Hills application. Mr. Coppola suggested that it would be inappropriate for the Township to consider approving the Hills low/moderate income housing proposal before Court determination of Bedminster's total Mount Laurel II responsibility. As I understood it, this position was based on the fact that, in addition to the 1287 units in the PUD portion of its development in Bedminster, Hills also proposes to develop between 400 and 500 units in the form of lower density residential clusters at the top of the hill. I suggested that, while I did not know what the Court might decide regarding the need for Hills to provide more than the 260 "affordable" units which are the subject of its current application, resolution of that question need not delay the approvals that would permit the conceptually approved 1287-unit PUD to continue on schedule. I indicated my intention to deal with the question raised by

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Mr. Coppola in the context of the second part of my assignment, i.e. that of helping the Court determine Bedminster's overall compliance with the requirement that it accommodate its "fair share" of the indigenous and regional housing needs.

Following review of the Hills "affordable" housing proposal, I concluded that the most constructive, as well as most expeditious, method of trying to arrive at a product that I would be prepared to recommend to the Court would be for me to meet informally with Mr. Alan Mallach, Hills' housing consultant and, in large part, author of the proposal. With Mr. Kerwin's permission I met with Mr. Mallach on Friday, October 14. I asked him to rethink a number of features of the proposal and produce either a completely revised document or a memorandum setting forth the changes which he thought would reflect my comments or his reasons for their not being given consideration. Unfortunately, immediately following our meeting, Mr. Mallach left on a week's trip to California. He promised to work on the revisions immediately upon his return.

I then asked Mr. Kerwin as to the effect of a delay beyond the 20-day period, both because of the need for another review of the "affordable" housing proposal and the required processing time regarding site plan approval. Mr. Kerwin informed me that the impending expiration on December 31 of the New Jersey Mortgage Finance Agency's legislative authority to issue tax exempt bonds threatens the availability to Hills of one of the chief "affordable" housing feasibility ingredients and that speedy site plan approval is, therefore, essential. Court approval of the methods of assuring that the low/moderate income units will be in compliance with the Mount Laurel II criteria is needed to permit actual construction of those units to begin before the onset of winter.

This led me to call Mr. William Scher, Chairman of the Bedminster Planning Board. I urged him to separate, for processing purposes, the review of the physical plans before the Board from considerations having to do with the Mount Laurel II issues, to enable Hills to proceed with development of the "affordable" units in the event that the Court will approve their eligibility. Mr. Scher assured me that he saw no reason why site plan approval for all sections of the development now before the Planning Board could not be expedited barring problems with the completeness of the application and conformance with local ordinances.

On October 25, I attended a meeting of the plan review sub-committee of the Bedminster Planning Board. I stated that the first branch of my charge, as I understand it, is to make it possible for Hills Development Corporation to commence

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construction during the 1983 building season on (1) the Mayfields 8 and 9, Stone Run 2 and Fieldstone 2 sections of its development, pursuant to the understandings reached at the October 6 Case Management Conference; and (2) in the event that the Court should approve the 260-unit Mayfields 5, 6 and 7 package (since re-named "Village Green") as in compliance with the Mt. Laurel II criteria for low/moderate income housing, on these units as well.

I urged the Township to break the issue which confronts it into three parts, as follows:

- (a) The processing and approval, as expeditiously as possible, of the physical (site plan) aspects of the application before it. I related that, in a phone conversation, the chairman of the Township's Planning Board indicated that he saw no reason why this could not be accomplished.
- (b) Review and comment to the Court promptly upon receipt of the Hills' proposed methods for assuring that the Village Green units will be and will remain affordable to low and moderate income persons, as required under Mount Laurel II.
- (c) Participate with me and the three litigants (Allan-Deane, the Public Advocate, and Dobbs) in a review of Bedminster's compliance with the quantitative requirements under Mount Laurel II.

I suggested that, in my opinion, approval of the 260 Village Green units as satisfying the Mount Laurel II criteria before Court approval of the Housing Element of Bedminster's Master Plan and its Land Development Regulations would not preclude a finding by the Court that the 260 units do not exhaust Hills' low/moderate housing obligation, should such a finding be appropriate.

The sub-committee expressed concern that, should the Court find that Hills was obligated to provide additional such units, the Township's approval of the applications now before it would pre-empt all land owned by Hills which would be suitable for low/moderate housing. The Hills representatives at the meeting made clear that there would still be room for close to 200 additional units in that portion of its holdings which is located in the Pluckemin plain which, while now intended for market rate housing, could be switched to low/moderate housing. Thus, in the event of a Court order that Hills provide low/moderate units in addition to the 260 in Village Green, this would be one of the available options.

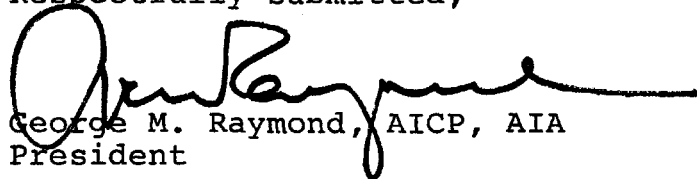
As I understand it, the situation currently stands as follows:

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1. Hills has requested that, at its November 2 meeting, the Township Planning Board determine that Hills' application covering the Mayfields 8 and 9, Fieldstone 2 and Stone Run 2 market rate sections and the Village Green 5, 6 and 7 low/moderate sections is complete. Barring last minute findings of deficiencies in the submission, it appears that this will occur.
2. Hills' housing consultant, Alan Mallach, will submit to me and to all others concerned a revised low/moderate affordability proposal on or about October 28. A meeting of the Township with all litigants and myself has been scheduled for November 7 to review this submission. My intent is to submit it to the Court at the earliest possible time following my arriving at a determination of its compliance with the Mount Laurel II criteria so that, if appropriate, the Court would be able to approve the 260 Village Green units as the low/moderate component of its 1287-unit PUD at the earliest possible time following approval of the site plan therefor by the Township.
3. A meeting of the full Planning Board has been scheduled for November 21. Present indications are that the site plans for all of the sections encompassed in the Hills application will be approved at that time.

I regret that the schedule had to be extended to double the 20 days originally hoped for. I believe, however, that I can assure the Court that everyone involved has acted in good faith and that the delay was inevitable given the complexities of the issue. If it is in order, I would recommend the setting of a tentative date for a hearing on this aspect of the issue before the Court for the earliest possible date following November 21.

Respectfully submitted,


George M. Raymond, AICP, AIA
President

GMR:nrm

cc: Alfred L. Ferguson, Esq.
Henry A. Hill, Esq.
Kenneth E. Meiser, Esq.
Joseph L. Basralian, Esq.
Herbert A. Vogel, Esq.
Roger W. Thomas, Esq.