

Letter from Dobbs' attorney re: objections and concerns to  
~~the~~ Hills Dev. Co's proposal of 11/9/83

pg. 5

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Peter J. O'Connor, Esquire

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November 17, 1983

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 CORPORATION vs.  
TOWNSHIP OF BEDMINSTER  
DOCKET NO. L-36896-70P.W.  
L-2801-71P.W.

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Dear Judge Serpentelli:

The purpose of this letter is to set forth the objections and concerns of my client, Leonard Dobbs, regarding The Hills Development Company proposal for low and moderate income housing dated November 9, 1983. The proposal, as presently framed, does not satisfy Mount Laurel II decision. The proposal does not provide housing for low and moderate income families which is affordable with 25% of their income. Furthermore, the proposal does not meet the 50 and 80% of median income criteria and does not provide a range of housing affordable by persons of low and moderate means whose income is below the maximum 50% and 80% ceilings.

This is the first case in the State of New Jersey after Mount Laurel II to address the standard of affordability required by the New Jersey Supreme Court. The ruling in The Hills Development Company matter will establish a standard of statewide importance for future cases. My client is personally committed to providing affordable low and moderate income housing in his development and had directed me to object to The Hills proposal in order to achieve necessary modifications which will provide a standard with integrity and meaningful opportunities for low and moderate income families.

My role in this matter is as Special Counsel for Mr. Dobbs because of my background in the Mount Laurel issues. I have served as counsel for the plaintiffs in the Mount Laurel case since 1970 (along with Ken Meiser, Public Advocate, and Carl Bisgaier, formerly Public Advocate). I have spent 13 years in developing the Mount Laurel doctrine. During this time I have also served as Deputy Director of a five County legal services program specializing in the rights of the poor, especially housing, and have served during the last eight years as Executive Director of the Fair Share Housing Center, Cherry Hill, New Jersey, a non-profit tax-exempt group whose goal is to implement the Mount Laurel I and Mount Laurel II decisions. In addition, I am the Housing Administrator of several non-profit corporations which have developed and managed almost 500 units of low and moderate income housing and are presently in the process of developing an additional 123 units.

November 17, 1983  
Page 2

This letter is not meant to obstruct the development of a satisfactory proposal by The Hills Development Company nor is it intended to impede the November 21, 1983 Bedminster Township Planning Board schedule and the December 2, 1983 New Jersey Mortgage Finance Agency meeting to review The Hills application for tax-exempt mortgage financing. Both of these events can be accomplished, along with a satisfactory resolution of needed modifications to The Hills proposal in order to make it one that provides affordable housing for low and moderate income families under the Mount Laurel II decision.

We recommend that the Court direct Bedminster Township Planning Board to consider and provide final approval to the Hills proposal on the condition that the Court subsequently approve the Hills proposal as affordable housing under Mount Laurel II. The necessary ordinance waivers can be provided in this context without delaying the matter. We further submit that the issues to be raised below regarding the Hills proposal can be resolved with the Master, the parties and the Court prior to the NJMFA meeting.

#### CRITICISM OF THE HILLS DEVELOPMENT COMPANY PROPOSAL

I. DEVELOPER: The proposal requests approval of 1287 residential units, along with certain office and commercial space. The Developer proposes 260 units of low and moderate income sales housing. The proposal for the low and moderate income units, contrary to the comments of the Master, will not be affordable to families with income of 42.5% of median and 68% of median.

Specific deficiencies which need to be remedied before this proposal can be approved are as follows:

(1) Low and moderate income families will not be able to afford the downpayment requirements set forth on page 2-12 and 2-13 of the proposal. These range from \$2650. to \$3350. for low income families and \$4850. to \$5550. for moderate income families. The downpayment requirement not only forces the families to pay an excessive amount of their income, but is unrealistic for families who can barely live in today's economic climate much less save sufficient funds to meet these downpayment requirements. If the families are required to borrow the downpayment, in most cases they will not have sufficient credit and asset support for such loans and further the requirement will force additional income to be devoted for shelter over and above the Mount Laurel II requirements.

The Developer has recognized the truth of this criticism by agreeing to provide a fund of \$139,000. to provide grants for 44 of the low income families. If this is needed to make this aspect of the proposal affordable, how can the remaining 216 units be deemed affordable without such downpayment assistance?

(2) The tables on pages 2-12 and 2-13 use 28% of income but use a 9% interest rate for initial affordability determinations. However, the proposal intends to increase the interest rate one-half of a percent over three years until this rate returns to the NJMFA rate of 10.5%. The initial proposal and the determination on affordability should be calculated at 10.5% unless the interest reduction is long term and not a one year subsidy with incremental increases which return it to the higher 10.5%. The 1.5% difference in the interest should be calculated initially in determining the feasibility of this proposal.

(3) Footnote 8 of the Mount Laurel II decision, 92 N.J. 221, refers to shelter costs at 25% of income and in some cases 30% of income; however, these percentages include all shelter costs, especially utilities and a reserve for repair and replacement. The Hills proposal does not include within the 25% or 28% calculation the cost of utilities and repair and replacement reserve. The Developer should present information on a projected cost of utilities and interior maintenance and these costs should be added to the shelter costs before the affordability determination is made; otherwise, the addition of these items will undermine the 25-28% of income for shelter and require the families to pay substantial additional amounts. These calculations can easily be provided by submitting specifications to the appropriate utility company which can provide current costs and projections for utilities. The repair and replacement projections can be developed from HUD and New Jersey Housing Finance Agency standards. Without this latter element, the low and moderate income families will be faced with additional expenditures for capital repairs which will require a disproportionate amount of their income to be devoted to shelter.

(4) The pro forma on page 2-6 of the Hills proposal, although it is for only 172 units and needs to be revised for 260 units, includes all of the Developer "contributions" except land in the financing package. The Developer, if this total Hills proposal is approved, will receive unencumbered return on the 1027 market units and will finance the balance of the project; namely, the low and moderate income proportion through NJMFA and receive, based on the Developer's construction costs, \$46.73 per square foot, for example, for the 567 square foot single family unit. Under current market conditions, this appears to provide sufficient funds, without land costs, to cover Developer costs, including the items listed in the pro forma on page 2-6. In other words, the contribution of the Developer to the low and moderate income package needs to be specified before the Court deems that the units can not be

provided for a lesser cost to low and moderate income families. We are not suggesting that the Court scrutinize the Developer's books because that could prove to be a disincentive to the private developer market which is needed to assist any implementation of Mount Laurel II; however, the Court should not accept the present proposal in which the Developer has set forth certain figures without understanding, based on those figures and Developer representations, the scope of the Developer's contribution to this package. We submit that such scrutiny will indicate that the units can be provided at a lower cost to the low and moderate income families.

II. BEDMINSTER TOWNSHIP: The Township of Bedminster, under the proposal before the Court, is providing Court-ordered zoning, nothing more. If the Hills matter is going to result in a Mount Laurel II standard of affordability, the issues of affirmative action by the Township must be included in the Court's review on the issue of affordability.

There are certain actions, referred to in the Mount Laurel II decision, which must be part of this proposal and whose inclusion will contribute to reducing the cost of the units to the low and moderate income families. These actions include the following:

(1) Tax abatement with a payment to the Township in lieu of taxes for certain municipal services. There is no tax reduction proposed herein.

(2) The Township should be required to apply for federal Community Development Block Grant funds which can be used to reduce the Developer's cost of site improvements, water and sewer hook-up fees, professional fees, administrative and interest costs. The Township should be required to make a multi year application for these funds and devote them to reducing the cost of the Hills units to low and moderate income families. Note, footnote 27 in Mount Laurel II opinion, 92 N.J. 264.

(3) The Hills proposal does not address municipal support in the areas of garbage and trash collection, street maintenance and utility installation costs for lighting, all of which may reduce the condominium fee requirement. These should be reviewed.

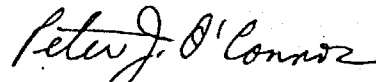
In conclusion, the above matters if specified, reviewed and included in the determination on affordability will reduce the overall cost of the housing to the low and moderate income families

November 17, 1983

Page 5

and make the units affordable by persons with income no greater than 50 and 80% of median, including a reasonable range below those ceilings. We respectfully request that the overall project go forward at the Planning Board as indicated above, and that a schedule of meetings be established to resolve the above matters with the Master prior to the NJMFA meeting and certainly before final determination of affordability is given by this Court.

Very truly yours,

  
PETER J. O'CONNOR

PJOC:g

cc: All parties and Master