

Order adopting the findings and recommendations
and permitting Exminster planning Board to
approve units

pgs. 11

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E. D. SERPENTELLI, J.S.C.

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION, SOMERSET COUNTY
DOCKET NOS. ~~L-36896-70 P.W.~~
L-2801-71 P.W.

ALLAN DEANE CORPORATION, :
 :
 Plaintiff, :
 :
 and :
 :
 LYNN CEISWICK, APRIL DIGGS, W. MILTON :
 KENT, GERALD ROBERTSON, JOSEPHINE :
 ROBERTSON and JAMES RONE, :
 :
 Plaintiff-Intervenors, :
 :
 vs. :
 :
 TOWNSHIP OF BEDMINSTER and the :
 TOWNSHIP OF BEDMINSTER PLANNING BD., :
 :
 Defendants. :

CIVIL ACTION

ORDER

LYNN CEISWICK, APRIL DIGGS, :
 W. MILTON KENT, GERALD ROBERTSON, :
 JOSEPHINE ROBERTSON, and JAMES RONE, :
 :
 Plaintiffs, :
 :
 vs. :
 :
 TOWNSHIP OF BEDMINSTER, THE :
 TOWNSHIP COMMITTEE OF THE TOWNSHIP :
 OF BEDMINSTER and the ALLAN DEANE :
 CORPORATION, :
 :
 Defendants. :

11/18/83

Background to this Order

The trial court in this matter, after declaring the Bedminster Zoning Ordinance invalid on December 13, 1979, appointed George M. Raymond as Master with directions to assist in the rezoning by Bedminster Township (hereinafter "Bedminster") and the issuance to Allan-Deane Corporation (hereinafter "Allan-Deane") of corporate relief.

On March 21, 1981 the trial court entered a final judgment granting corporate relief to Allan-Deane and declaring the revised Bedminster Zoning Ordinance constitutional.

The plaintiffs in Ceiswick et al. v. Township of Bedminster et al. filed a notice of appeal on May 1, 1981, on grounds that (1) the final judgment granted corporate relief to Allan-Deane without requiring that Allan-Deane provide any low and moderate income housing and (2) the Bedminster revised zoning ordinance failed to provide a realistic opportunity for low and moderate income housing.

The Appellate Division on August 3, 1983 remanded the appeal to this Court for reconsideration in light of the opinion in Southern Burlington County N.A.A.C.P. v. Township of Mt. Laurel (hereinafter "Mt. Laurel II"), 92 N.J. 158 (1983).

A status conference was held in this matter on October 6, 1983.

Allan-Deane (hereinafter referred to as "The Hills Development Company"), without acknowledging any obligation under Mt. Laurel II, agreed to submit a proposal to provide 20% low and moderate income housing within its development.

This Court at the status conference on October 6, 1983 authorized George M. Raymond (hereinafter the Master) to continue to function as a court-appointed Master and expert, and requested him to report to the Court on

whether the proposal by The Hills Development Company complies with all the requirements placed upon a developer receiving a builder's remedy and specific corporate relief under Mt. Laurel II;

The Hills Development Company Proposal

The proposal of The Hills Development Company containing the following provisions has been submitted to all parties and the Master:

The Hills Development Company will build 260 housing units (hereinafter "units"), in a section hereinafter referred to as "Village Green". Half of these units shall be affordable by and sold to persons of low income, and half of which shall be affordable by and sold to persons of moderate income. Appropriately sized units will be available to both income groups. For purposes of this Order only, key terms are defined as follows:

"Low income" is defined as 50% of the median income of the area which includes Bedminster Township using the median income data for household size prepared by the United States Department of Housing and Urban Development ("HUD").

"Moderate income" is defined as between 50% to 80% of the median income of the area which includes Bedminster Township using the median income data for household size prepared by HUD.

"Affordable" means that at the ceiling income for each income group, for each household size, no household will be required to pay in excess of 25% of gross household income for the total of principal, interest, property taxes, and homeowner's association(s) assessments for each unit, calculated on the basis of a ten (10%) percent down payment.

"Appropriately sized units" are described as follows:

Household Size

1 Bedroom	2 persons
2 Bedroom (loft)	3 persons
2 Bedroom	4 persons
3 Bedroom	5 persons

Predicated on the use of the Newark Standard Metropolitan Statistical Area (SMSA) data, as published in 1983, the following figures are derived:

A. The low and moderate income ceilings for the Newark SMSA are:

<u>Family Size</u>	<u>Low</u>	<u>Moderate</u>
2	\$13,100	\$20,150
3	\$14,700	\$22,700
4	\$16,350	\$25,200
5	\$17,650	\$26,750

B. The Hills Development affordable housing units will sell for the following prices:

	<u>Low Income</u>	<u>Moderate</u>
1 Bedroom	\$26,500	\$---
2 Bedroom(loft)	\$29,500	\$48,500
2 Bedroom	---	\$52,500
3 Bedroom	\$33,500	\$55,500

C. With a 10% downpayment and a mortgage obtained through the New Jersey Mortgage Finance Agency, the annual cost for the first year will be:

<u>Income</u>	<u>Low Income</u>	<u>Moderate</u>
1 Bedroom	\$3,065	---
2 Bedroom(loft)	\$3,411	\$5,607
2 Bedroom	---	\$6,070
3 Bedroom	\$3,873	\$6,416

D. Based on a study prepared by a market research firm, Residential Concepts Incorporated, these units have a 1983 estimated market value as shown:

<u>Unit</u>	<u>Estimated Market Value</u>
1 Bedroom	\$51,000
2 Bedroom(loft)	\$58,700
2 Bedroom	\$70,000
3 Bedroom	\$79,800

The Hills Development Company further proposes to:

A. Establish a mechanism to regulate the purchase process and sales price upon re-sale so that, to the extent possible, the units continue to remain affordable to, and occupied by lower income persons.

B. Establish a procedure for creating a non-profit corporation which will oversee the screening and selection process for lower income purchasers and the resale controls and to resolve other questions concerning the administration of the lower income units.

C. Establish an income recapture mechanism to provide a partial repayment of the differential between the fair market value of the units and the affordable price of the units, in the event that the incomes of unit owners rise to a point whereby they can afford to make recapture payments.

The Master at a meeting on November 7, 1983 determined that the proposal complies with the requirements established in Mt. Laurel II, and has confirmed his findings in a letter to this Court dated November 11, 1983.

Bedminster Land Development Ordinance Provisions

Bedminster has commenced a process to amend its Land Development Ordinance to bring it into compliance with Mt. Laurel II and, at the request for the Ceiswick plaintiffs (the New Jersey Department of the Public Advocate) and this Court, has delayed any further ordinance revisions pending the submission of the Hills Development Company proposal and the reports of the Master required by Paragraphs B and C of the Case Management Order of this Court dated November 3, 1983.

The Hills Development Company proposal requires a waiver from certain features of the Bedminster Land Development Ordinance which is

presently in effect, and which provides the framework on which the proposal can be approved in accordance with the requirements of the Municipal Land Use Law. The waivers are specifically Section 13.606.4j(1) which requires that at least 25 percent of the lower income units be senior citizen housing; Section 13.606.4j(2) which requires that 35% of the units be rental housing; and Section 13.606.4j(3) which requires certain bedroom ratios.

The Master recommended that the senior citizen and bedroom ratio requirements be waived in this case in order to permit the implementation of Mt. Laurel II lower income housing, and determined the following bedroom provisions of the Hills Development Company proposal to be reasonable:

<u>Number of Units</u>	<u>Size of Units</u>
68	1 Bedroom
68	2 Bedroom (loft)
80	2 Bedroom
44	3 Bedroom

The parties agreed that rental housing can be important since some families are unable to purchase a home because they do not have a downpayment.

The Hills Development Company proposed, in lieu of rental housing, to create a fund to provide downpayments so that 44 sales units are available to low income purchasers who are unable to raise any or all of the downpayment and who otherwise would be unable to purchase a home.

The Master determined that the proposed number of sales units without the required downpayment constitutes an acceptable substitute for the required rental units, and accordingly recommended waiver of the Bedminster rental requirement.

The Need for Expedition

The feasibility of this specific proposal is dependent upon New Jersey Mortgage Finance Agency financing (hereinafter MFA).

MFA indicated it will consider this proposal on December 2, 1983.

MFA indicated that it is important to its consideration that this Court review and approve the lower income housing proposal, and that the Bedminster Planning Board approve the site plan application prior to December 2, 1983.

The construction and marketing schedule of The Hills Development Company requires municipal approval of all units proposed for the inner loop which were originally submitted to the Bedminster Planning Board on August 26, 1983, which application has been deemed "conditionally" complete by the Bedminster Planning Board, such condition being a certification that the lower income units meet the requirements of Mount Laurel II.

It is necessary to expedite the entire approval process for The Hills Development Company lower income and inner loop market units.

Modifications of the Plan

In the event that The Hills Development Company is unable to obtain MFA financing by January 1, 1984, the site plan approval for Village Green and any market units contained in the pending applications in excess of 207 shall be deemed void. In that event, The Hills Development Company has the option to return to this Court within 60 days of the MFA decision with a revised plan to meet Mt. Laurel II, or to terminate its settlement offer. The above shall not, in any way, modify the Board's required review and approval of the market units set forth in the Order of November 3, 1983, provided that the substantive requirements of the Bedminster Land Development Ordinance have been met or appropriate waivers granted.

In order to permit adequate consideration of the resale, recapture and other provisions of The Hills Development Company proposal, it may be necessary for The Hills Development Company or one of the parties to suggest modifications in the form of the resale and recapture provisions, in the structure of the non-profit corporation, or in other parts of the proposal, which modifications shall not alter The Hills Development Company's compliance with the basic requirements of the Mt. Laurel II decision.

Conclusion

And the Court having considered the report of the Master, and the comments of all counsel, and good cause having been shown;

IT IS on this day of November, 1983, ORDERED that:

1. This order supplements the Case Management Order entered November 3, 1983;

2. The findings and recommendations of the Master, contained in his letter to this Court dated November 11, 1983, concerning the compliance of the Hills Development Company proposal with Mt. Laurel II requirements shall be and hereby are adopted;

3. The proposal of The Hills Development Company submitted to this Court with the approval of the Master constitutes, for and with respect to the 1,287 residential units in the residential portion of the PUD which is the subject of this Order, compliance with all of the requirements of a developer receiving a builder's remedy and specific corporate relief under Mt. Laurel II;

4. Upon final site plan approval of The Hills Development Company's lower income units by the Bedminster Planning Board, and MFA approval of the financing for these units, Bedminster shall receive credit for the 260 units towards satisfaction of its fair share obligation under Mt. Laurel II;

5. Notwithstanding Paragraph E of the November 3, 1983 Case Management Order, Bedminster Planning Board shall have the right to approve 353 market units and the 260 affordable units. If the Bedminster Planning Board, subject to the exercise of reasonable discretion and the imposition of necessary conditions, approves The Hills Development Company application for 353 market units and 260 affordable units (which units are in addition to all residential units approved for The Hills Development to date), then, in that event, the Bedminster Planning Board shall be deemed to be in compliance with the Case Management Order dated November 3, 1983, and this Order. Such approval shall be subject to the following conditions:

- a. Building permits may not be issued for more than 207 of the above described market units until MFA approval for funding of the lower income units is obtained and documented to the planning board attorney;
- b. In the event that a MFA funding commitment is not received by January 1, 1984 for the lower income units in the Village Green section, building permits shall not be issued for more than 207 of the market units within the above described applications unless the Hills Development Company demonstrates either of the following:
 1. That an order has been issued by this Court relieving the Hills from its obligation to provide low and moderate income housing, or
 2. That it is committed to provide 260 low and moderate income units despite the failure to obtain MFA funding, which units shall be phased in a

manner to be provided in a subsequent Order of this Court.

- c. A waiver is hereby granted from Bedminster Land Development Ordinance section 13-606.4 j(1) in order not to require the Hills to provide affordable housing restricted to senior citizens;
- d. A waiver is hereby granted from Bedminster Land Development Ordinance section 13-606.4j(2) in order to permit all of the affordable units to be offered for sale;
- e. A waiver is hereby granted from Bedminster Land Development Ordinance section 13-606.4j(3) so that no four bedroom units are required and only 44 three bedroom units are required.
- f. In the event that the commitment of MFA funding for these 260 units is not demonstrated and The Hills Development Company is not relieved of its obligation to provide low and moderate income housing by this Court order, or does not make a commitment to provide such units despite its failure to obtain MFA funding, building permits will not be issued for more than 207 of the market units discussed above.

6. Any suggested modifications of the proposal by any party shall be submitted first to the Master for his review, and then submitted to this Court within sixty (60) days of this Order;

7. The figures contained in this Order are predicated on data for the Newark SMSA published in 1983. Upon the promulgation of new figures for the Primary Metropolitan Statistical Area (PMSA) which includes Somerset

County, The Hills Development Company may apply to this Court for a determination as to whether any modification of its proposal is warranted.

8. The Master and the parties are directed to continue the studies and reports ordered in Paragraph C of this Court's Case Management Order, dated November 3, 1983, in accordance with the terms thereof. The Master is instructed to submit his report, if at all possible, on or before December 7, 1983.;

9. Nothing in this Order shall be construed so as to:

- a. Prevent the parties and the Master, after completing the studies referred to in Paragraph 8 of this Order and Paragraph C of the Case Management Order dated November 3, 1983, from drafting and enacting into law revised development regulations for Bedminster Township which are in full and complete compliance with Mt. Laurel II;
- b. Prevent the imposition on all developers in the Township of Bedminster, including the plaintiff Hills Development Company, of all the requirements of the revised land development regulations of Bedminster Township as they may hereafter be amended to comply with Mt. Laurel II; provided, however, that any approvals granted by the Township or this Court with respect to The Hills Development Company's 1,287 residential units which are the subject of this Order, shall be governed by the provisions of this Order, the Case Management Order of November 3, 1983, and the previous Order issued by Judge Leahy, dated March 21, 1981.

- (c) Prevent the imposition of all of the requirements of a developer receiving a builder's remedy and specific corporate relief under Mt. Laurel II upon all areas, lands and future development of The Hills Development Company other than with respect to the 1,287 residential units which are the subject of this Order, as to which units the Orders listed in (b), above, shall control;
- (d) Imply that The Hills Development Company has waived any rights with respect to any other lands which it owns in Bedminster;
- (e) Imply that this Order or the proposal contained herein has any precedential use in any other case, due to the unique factual and legal circumstances of this case.

DATED: *November 18, 1983*


EUGENE D. SERPENTELLI, J.S.C.