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11/5/84

Hills Dev. Co letter to Davidson re Proposed  
Ordinance

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November 5, 1984

FILE NO.

James E. Davidson, Esq.  
Farrell, Curtis, Carlin and Davidson  
43 Maple Avenue  
Morriston, New Jersey 07960

3000-04-02

Dear Mr. Davidson:

On behalf of The Hills Development Company, let me thank you for your letter to Henry A. Hill dated October 15, 1984, which enclosed a copy of the proposed amendments to the Bernards Township Land Development Ordinance. Both in your October 15th letter, and in meetings prior to the introduction of the ordinance and in subsequent telephone conversations, you have solicited our comments as to the settlement process. I have set forth our concerns and comments below.

At the outset, The Hills applauds the effort now underway to pass an ordinance which complies with Mount Laurel II standards. We recognize this is a difficult process, and believe that the Ordinance which we have seen is a good start towards an Ordinance which would enable us to settle the litigation we have brought against Bernards, and permit Bernards to obtain the repose which it seeks. Our comments, below, are offered in an attempt to be helpful, and to identify those points which we believe ought to be addressed as soon as possible. We have included comments as to issues in the proposed Ordinance as well as matters of concern to Hills which are outside of the Ordinance process.

I. The proposed Ordinance:

Page 3, section 404.f.

The Hills Development Company objects to the limit of 50,000 square feet of gross leasable floor area of commercial space. In initial conversations with Bernards, we had indicated that we were interested in 150,000 square feet of commercial as part of a package which included residential development at 5.5 du/ac.

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**Section 1100**

**Section 1104:** Contains a "cap" of 2,750 du; which does not reflect the fact that Hills has perhaps 20 acres of land in the R-8 zone which is in the Raritan basin, outside of the 500 acres  $\pm$  about which most attention is focused. Hills intends to leave those 20 acres or so undeveloped and would like to transfer building credits from that area into the main landholding.

**Section 1106:** Contains a maximum building coverage requirement, which would hamper Hills ability to deliver lower income housing product. See the attached comments of Kenneth J. Mizerny, the project planner for Hills. Some of Mr. Mizerny's comments are highlighted in this letter, and we think that your office and Bernards' planner should look at all of Mr. Mizerny's comments.

**Section 1106** also contains a height restriction of 35', and we think 45' feet would be preferable; and contains a front yard requirement of 25', while we think 10' would be preferable.

**Section 1107.** Please note Mr. Mizerny's comments.

**Section 1110:** We think a significant probability of unequal competitive advantage exists for those developers owning land in the R-5 zone as opposed to those owning land in the R-8 zone, both as to the percentage of units required and, as we will note below, in the concessions granted to developers in the R-5 zone not granted to the R-8 developers.

We have no comments at this time with respect to your proposed resale/marketing procedures. We are learning a great deal from the Bedminster project and may have some concrete suggestions for you based on our experience in Bedminster at a later time.

We would suggest modifying your phasing requirements to bring them in line with those used in Bedminster and approved by the Court, namely,

<b>% low/moderate</b>	<b>% market</b>
0%	up to 25%
25%	up to 50%
50%	up to 75%
100%	more than 75%

It would even be wise to permit some relaxation of these phasing requirements, since a developer may chose to do what Hills did in Bedminster--build all of the lower income units at once, after the market pattern of the unrestricted units was set.

Sections 1111 and 1112 : Please note Mr. Mizerny's comments.

**II. Items outside the proposed Ordinance.**

The proposed ordinance does not replace the existing Ordinance, and we have some major problems remaining with that. These include:

1. **Submission requirements.** We believe that the submission process is far more complex and cumbersome than is necessary for any protection of the public health, safety and welfare; would not withstand judicial scrutiny, and serves neither the Township nor the developer. You have recognized this by giving "fast-tracking" to other developers providing lower income housing; and we think that Hills is entitled to at least that much.

2. **Waiver of fees.** It is our understanding that your Planning Board has already waived fees for a competitive developer in the area so as to induce him to provide lower income housing. We understand that this waiver of fees was for the entire development, not just the lower income portion thereof. We would also like to have the development fees waived.

3. The Off-tract contributions need to be discussed between your engineer and ours, and a reasonable figure developed which both of our clients could agree to. We cannot live with the present formula with the higher density in place, and I think neither of us wants to leave this case with any issues unresolved.

4. We have some general problems with your design requirements. The building length, number, and mix requirements not only violate the previous (Leahy) Order, but also make it impossible for us to provide the kind of units which we are providing in Bedminster. Just one example: 605 D requires that no building have more than 8 units in it. In several of our product types, for which the architectural work is already done, for which construction has been completed, and for which there is an obvious market, we have buildings with 16 units or more, and we fail to see why we should either discard a winning formula or be forced to seek a waiver of this requirement. There are other design problems, such as the parking stall size requirement, the granite block curbing requirement, the shade tree requirement, and other illustrations referenced in our complaint. Rather than list all of the design problems in the letter, a better way to proceed with this is to have your planner and ours sit down together and work out a series of proposals which meet our mutual goals.

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The tax issue we have previously discussed may well have worked itself out, in fact, since Hills intends to proceed to market the lots which were affected by the series of errors affecting the tax assessment. We may wish to review this, particularly if there is a delay in marketing those lots.

There is a significant problem we may face with respect to the lots we have begun to develop in the Passaic basin--the sewer issue. As you know, we had proposed serving the 268 + units in the Passaic with a "community septic system", and have had some discussions with your Sewerage Authority as to how the systems would be monitored, serviced, and maintained. One proposal we had put forward was to have Environmental Disposal Corp. handle that process.

We have now learned that NJDEP is raising some questions as to the final approval of the community septic system proposal, based on preliminary data which they got from a project in Wisconsin. We have learned that later data seems to contradict the earlier findings and perhaps the issue can be resolved on a technical basis. However, we are also thinking that a better approach might well be to abandon the idea of a community septic system, and tie the lots into the Environmental Disposal Corp. plant or into the Bernards sewer system. If we do go forward with the EDC sewer possibilities, we would be willing to size the pipes, pumping station, and all other facilities so that they would serve only those lots we are zoned for in the Passaic and would covenant with you that we are not going to sewer any more areas within the Passaic basin.

Such a solution might be the best one, both from an immediate standpoint and also from a longer-run maintenance view, and we should discuss it. If this is a desirable way to proceed, Hills will have to work out the administrative problems with NJDEP and would have to expand its franchise area, and the cooperation of Bernards Township would be vital in both areas.

As I suggested, I am enclosing Mr. Mizerney's critique, and would be happy to assist in arranging meetings between Mr. Mizerney and your planning/technical staff, as well as between Bob Rodgers, our traffic engineer, and your engineering/technical staff. There are a series of important details which need to be resolved if we are to have a complete settlement of all issues in this case, which is, I think, the goal which both Hills and Bernards are trying to reach.

Best regards,

  
Thomas J. Hill

Enclosure  
TJH-3  
cc: Henry A. Hill  
John Kerwin