

RULS - AD - 1984 - 590

12/19/84

Order Staying Action and Precluding Builders' Remedies for 90 days (3)

- Cover letter from Judge to Counsel (12/26/84)
- Attorney and Judge correspondence

Pgs. 30

ORDER
12-19-84

FARRELL, CURTIS, CARLIN & DAVIDSON
43 Maple Avenue
Morristown, New Jersey 07960
(201) 267-8130

Attorneys for Defendants, The Township of Bernards, et al.

THE HILLS DEVELOPMENT COMPANY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	SOMERSET/OCEAN COUNTY
	:	(Mt. Laurel II)
vs.	:	
	:	Docket No. L-030039-84 P.W.
THE TOWNSHIP OF BERNARDS, et al.,	:	
	:	Civil Action
Defendants.	:	ORDER STAYING ACTION AND
	:	PRECLUDING BUILDERS' REMEDIES
	:	FOR 90 DAYS

This matter having been opened to the Court jointly by Farrell, Curtis, Carlin & Davidson, Attorneys for Defendants, The Township of Bernards, The Township Committee of the Township of Bernards, and the Sewerage Authority of the Township of Bernards, Kerby, Cooper, Schaul & Garvin, Attorneys for The Planning Board of the Township of Bernards, and Brener, Wallack & Hill, Attorneys for Plaintiff, The Hills Development Company and the Court having been informed that the Defendant, Township of Bernards has amended its land use ordinance to provide for

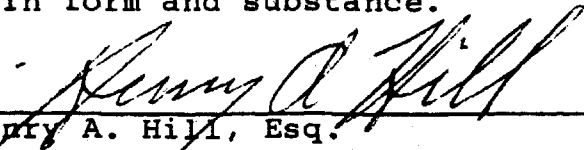
more than 1000 units of low and moderate income housing pursuant to Mount Laurel II; and the Court having been further informed that the parties are in settlement negotiations with regard to some aspects of the aforesaid amendment and other issues; and the Court being satisfied that such voluntary settlements of Mount Laurel II cases may be in the public interest;

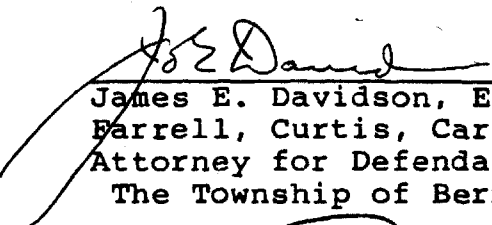
It is on this 19th day of ~~December~~ 1984;

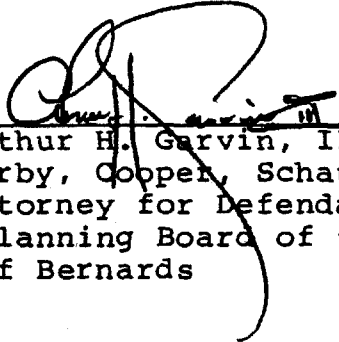
1. Ordered that this matter including all discovery and motions, is stayed by a period of 90 days;
2. Ordered that pending this stay period, during which the parties will have an opportunity to complete the settlement of this matter in compliance with Mount Laurel II, any person who shall commence an action, or who shall apply to intervene in this action, against any or all of the Defendants upon Mount Laurel II grounds shall not be permitted to seek or have a builder's remedy in such action;
3. Ordered that George M. Raymond, 555 White Plains Road, Tarrytown, New York 10591-5179 be appointed as the Court appointed expert to review the Amended Land Use Ordinance and to report to the Court as to its compliance with Mt. Laurel II, and to assist the Court and the parties in resolving any outstanding issues where requested.
4. Ordered that the parties may apply to this Court for an extension of the stay herein ordered if further time is needed to work out this settlement.


Eugene D. Serpentelli, J.S.C.

This Order is consented to both in form and substance.


Henry A. Hill, Esq.
Brener, Wallack & Hill
Attorneys for Plaintiff
The Hills Development Company


James E. Davidson, Esq.
Farrell, Curtis, Carlin & Davidson
Attorney for Defendants,
The Township of Bernards, et al.


Arthur H. Garvin, III
Kerby, Cooper, Schaul & Garvin
Attorney for Defendant
Planning Board of the Township
of Bernards



Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE
C.N. 2191
TOMS RIVER, N.J. 08754

December 26, 1984

Henry A. Hill, Esq.
Brener, Wallach and Hill
2-4 Chambers Street
Princeton, N. J. 08540

James E. Davidson, Esq.
Farrell, Curtis, Carlin and Davidson
43 Maple Avenue
Morristown, N. J. 07960

Re: Hills Development Co. v. Twp. of Bernards

Gentlemen:

Enclosed is a copy of the executed order in the above referenced matter. This order does not contain the signature of Mr. Davidson. However, it has been represented to the Court that he does consent and that he is forwarding to the Court a consent order. By copy of this letter I am forwarding a copy of the order to George Raymond who has consented to serve as the Court appointed expert.

Very truly yours,

EDS:RDH
enclosure
cc: George M. Raymond, w/encl.

Eugene D. Serpentelli, JSC

FARRELL, CURTIS, CARLIN & DAVIDSON

ATTORNEYS AT LAW

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(201) 795-4227

OF COUNSEL
FRANK J. VALGENTI, JR.

December 26, 1984

The Honorable Eugene D. Serpentelli
Judge of the Superior Court
Ocean County Court House
Toms River, New Jersey 08754

Re: The Hills Development Co. v. Bernards Township

Dear Judge Serpentelli:

Please be advised that I am in receipt of a copy of a letter from Mr. Hill to you dated December 18, 1984. In accordance with his instructions, I enclose herewith a signed copy of the Order Staying Action in the above-entitled matter.

Thank you for your cooperation in this regard.

Respectfully submitted,

FARRELL, CURTIS, CARLIN & DAVIDSON

By:


James E. Davidson

JED/sjm

Encl.

cc: Henry A. Hill, Esq.

Arthur H. Garvin, III, Esq.

BRENER, WALLACK & HILL

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THOMAS J. HALL
SUZANNE M. LAROBARDIER +
ROCKY L. PETERSON
VICKI JAN ISLER
MICHAEL J. FEEHAN
MARY JANE NIELSEN + +
E. GINA CHASE^A
THOMAS F. CARROLL
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* MEMBER OF N.J. & D.C. BAR
** MEMBER OF N.J. & PA. BAR
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+ MEMBER OF N.J. & GA. BAR
^A MEMBER OF PA. BAR ONLY

December 18, 1984

FILE NO.

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

RECEIVED

DEC 19 1984

RE: The Hills Development Co. v. Bernards Township

JUDGE SERPENTELLI'S CHAMBERS

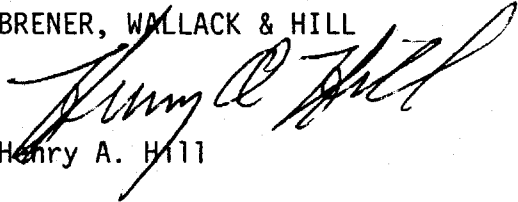
Dear Judge Serpentelli:

In accordance with my telephone conversation with your Law Clerk, please find enclosed a copy of an Order prepared by James Davidson and consented to by myself and Arthur Garvin, attorney for the Planning Board. As I stated to your Law Clerk, James Davidson, who prepared the Order, has apparently neglected to sign it and I am notifying him by copy of this letter that he should get a signed copy to you at his earliest convenience.

Mr. Davidson has indicated to me in a telephone conversation that it is important that this Order be signed as soon as possible, if it is acceptable to Your Honor, as a land owner has informed the Township he has directed his attorneys to institute Mount Laurel litigation and they will be filing such litigation on Thursday, December 20. My client, The Hills Development Company, and Bernards Township are on the verge of a settlement which provides for a substantial number of low and moderate income units both on our site and on other properties, and our current negotiations would be considerably complicated were there another party in this litigation.

Very truly yours,

BRENER, WALLACK & HILL


Henry A. Hill

HAH:klp

enclosure

CC: James Davidson, Esq.

FARRELL, CURTIS, CARLIN & DAVIDSON

ATTORNEYS AT LAW

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December 12, 1984

The Honorable Eugene D. Serpentelli
Judge of the Superior Court
Ocean County Court House
CN 2191
Toms River, New Jersey 08754

Re: Hills Development Company
v. Bernards Township
Docket No. L-030039-84 P.W.

Dear Judge Serpentelli:

Pursuant to your instructions incorporated in your letter to me dated November 28, 1984, I have amended defendants' Order Staying Action to include George M. Raymond as the Court appointed expert in the above entitled matter.

Enclosed please find a copy of an Order Staying Action, the original of which has been transmitted to the parties herein for their consent.

Respectfully,

FARRELL, CURTIS, CARLIN & DAVIDSON

By: 
James E. Davidson

JED/sjm
Encl.

cc: Arthur H. Garvin, III, Esq.
Henry A. Hill, Esq.



Superior Court of New Jersey

746
CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE
C.N. 2191
TOMS RIVER, N.J. 08754

November 28, 1984

James E. Davidson, Esq.
Farrell, Curtis, Carlin and Davidson
43 Maple Avenue
P. O. Box 145
Morristown, N. J. 07960

Re: Hills Development Co. v. Bernards Twp.

Dear Mr. Davidson:

This will acknowledge your letter of November 23, 1984.

The proposed ordinance must be reviewed by the Court appointed expert. Therefore, the order should be amended to provide for that appointment. The function of the expert will be to review the ordinance and to report as to its compliance. Furthermore, to the extent that the expert can assist in resolving the outstanding issues, he may also be utilized for that purpose. The order should provide for the appointment of George M. Raymond, 555 White Plains Road, Tarrytown, New York, 10591-5179.

I believe that Mr. Raymond is uniquely qualified in light of his involvement in Bedminister and in light of the relationship of Bernards' developments to the sewerage issues in Bedminister. If there is any objection to the selection of Mr. Raymond, kindly advise immediately.

Very truly yours,

EDS:RDH
cc: Henry A. Hill, Esq.
cc: Arthur H. Garvin, III, Esq.
cc: George M. Raymond, A.I. P. P.

Eugene D. Serpentelli, J.S.C.

FARRELL, CURTIS, CARLIN & DAVIDSON

ATTORNEYS AT LAW

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171 NEWKIRK STREET
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(201) 795-4227

OF COUNSEL
FRANK J. VALGENTI, JR.

November 23, 1984

Honorable Eugene D. Serpentelli
Judge of the Superior Court
Court House
CN 2191
Toms River, New Jersey 08754

Re: Hills Development Company
v. Bernards Township
Docket No. L-030039-84 P.W.

Dear Judge Serpentelli:

On November 12, Bernards Township adopted an amendment to its land use ordinance pursuant to Mt. Laurel II. A copy of the ordinance is enclosed herein. The ordinance requires Mt. Laurel housing in two separate areas of Bernards Township. The first area (R-8; PRD-4) is owned by the plaintiff in this suit - Hills Development Corporation. The ordinance provides (§1104.2) for 5.5 units per acre up to a maximum of 2750 dwelling units in the zone. (The zone is approximately 500 acres). Section 1110(a) provides for a mandatory set-aside, in that 20% of all dwelling units shall be affordable for lower income housing. The ordinance also provides for similar densities in another area in the township (R-5; PRD-2) as also set forth in §1104.2. In that area there is also a 20% mandatory set-aside except that the set-aside is modified to 15% moderate income housing in developments that have already received conceptual approval and 12% moderate income housing in developments where the sales price of any housing unit in the development will not exceed \$100,000 per unit.

Pursuant to these provisions more than 900 new Mt. Laurel housing (low and moderate) will be constructed. In addition, Mt. Laurel housing is provided which arises out of the redevelopment of current substandard housing together with rehabilitations and apartments in existing housing. This should result in more than 1050 Mt. Laurel housing units being

Honorable Eugene D. Serpentelli
Page Two
November 23, 1984

supplied. There currently exists senior citizens Section 8 housing which was constructed in the late 1970's which provides more than 200 units of low and moderate income housing.

There is, of course, not a clear agreement as to Bernards Township's fair share number. The amended Master Plan of Bernards Township indicates that the fair share is within the range of 1000 to 1200 units. Plaintiff's expert in the above case indicates that he feels that Bernards Township is in the 1300 unit range, whereas the township's expert indicates that he feels the number is in the 1200 unit range. (These opinions both give credit for the existing senior citizen housing). Both experts have used the so-called "consensus methodology" which is set forth in the Lerman report and is discussed in your decision in the Warren Township case.

We feel that the ordinance provides for Bernards Township's fair share of low and moderate income housing pursuant to Mt. Laurel II. The result of the ordinance will be to provide for more than 1050 units; 900 of which will be newly constructed by developers. We also feel that these units will, in fact, be built. Hills Development, as you know, has already built low and moderate income housing in Bedminster and is probably considered the most qualified developer (for that purpose) in New Jersey. Additional factors which we think are valid for your consideration are:

1. One developer in the township has committed to building approximately 730 other units at moderate price (not however qualified for low and moderate status) which will be affordable for another economic level.

2. Under Mt. Laurel I, Bernards Township rezoned for 600 units of least cost housing (initially, prior to the Madison Township Opinion, these were to be strict Section 8 housing or the equivalent). While this attempt did provide substantial housing which was affordable to various income groups we recognize that it did not result in additional low and moderate income housing. Notwithstanding this, we believe Bernards Township should receive some recognition for having employed a somewhat unique system (at that time) of providing housing at that level.

For all the reasons set forth above, it is our contention that the zoning amendment complies with Mt. Laurel and should be acceptable to the court. It is my understanding that the

Honorable Eugene D. Serpentelli
Page Three
November 23, 1984

density provided for the Hills property and the 20% mandatory set-aside are acceptable to Hills. There are, however, some issues still open regarding Hills most of which relate to design requirements, off-tract improvements, and other similar matters which must be negotiated before the current litigation can be finally settled. It is our feeling that all the issues outstanding can be finally settled by the parties themselves.

We are, however, concerned that the status of our Mt. Laurel compliance efforts should not be disturbed while we are settling these issues and therefore respectfully request a stay of this matter and a stay of any action, or intervention in the current action, being brought by persons seeking a builders remedy.

I am, therefore, enclosing a copy of a form of Order for your consideration. I am distributing the Order to the other attorneys for their consent.

If you think it would be helpful to discuss the matter, we would be happy to meet with you at your convenience.

Respectfully yours

FARRELL, CURTIS, CARLIN & DAVIDSON

By:


James E. Davidson

JED/sjm
Encl.

cc: Henry A. Hill, Esq.
Arthur H. Garvin, III, Esq.

FARRELL, CURTIS, CARLIN & DAVIDSON
43 Maple Avenue
Morristown, New Jersey 07960
(201) 267-8130
Attorneys for Defendants, The Township of Bernards, et al.

THE HILLS DEVELOPMENT COMPANY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	SOMERSET/OCEAN COUNTY
	:	(Mt. Laurel II)
vs.	:	
	:	Docket No. L-030039-84 P.W.
THE TOWNSHIP OF BERNARDS, et al.,	:	
	:	Civil Action
Defendants.	:	ORDER STAYING ACTION AND
	:	PRECLUDING BUILDERS' REMEDIES
	:	FOR 90 DAYS

This matter having been opened to the Court jointly by Farrell, Curtis, Carlin & Davidson, Attorneys for Defendants, The Township of Bernards, The Township Committee of the Township of Bernards, and the Sewerage Authority of the Township of Bernards, Kerby, Cooper, Schaul & Garvin, Attorneys for The Planning Board of the Township of Bernards, and Brener, Wallack & Hill, Attorneys for Plaintiff, The Hills Development Company and the Court having been informed that the Defendant, Township of Bernards has amended its land use ordinance to provide for

more than 1000 units of low and moderate income housing pursuant to Mount Laurel II; and the Court having been further informed that the parties are in settlement negotiations with regard to some aspects of the aforesaid amendment and other issues; and the Court being satisfied that such voluntary settlements of Mount Laurel II cases may be in the public interest;

It is on this day of , 1984;

1. Ordered that this matter including all discovery and motions, is stayed by a period of 90 days;

2. Ordered that pending this stay period, during which the parties will have an opportunity to complete the settlement of this matter in compliance with Mount Laurel II, any person who shall commence an action, or who shall apply to intervene in this action, against any or all of the Defendants upon Mount Laurel II grounds shall not be permitted to seek or have a builder's remedy in such action;

3. Ordered that the parties may apply to this Court for an extension of the stay herein ordered if further time is needed to work out this settlement.

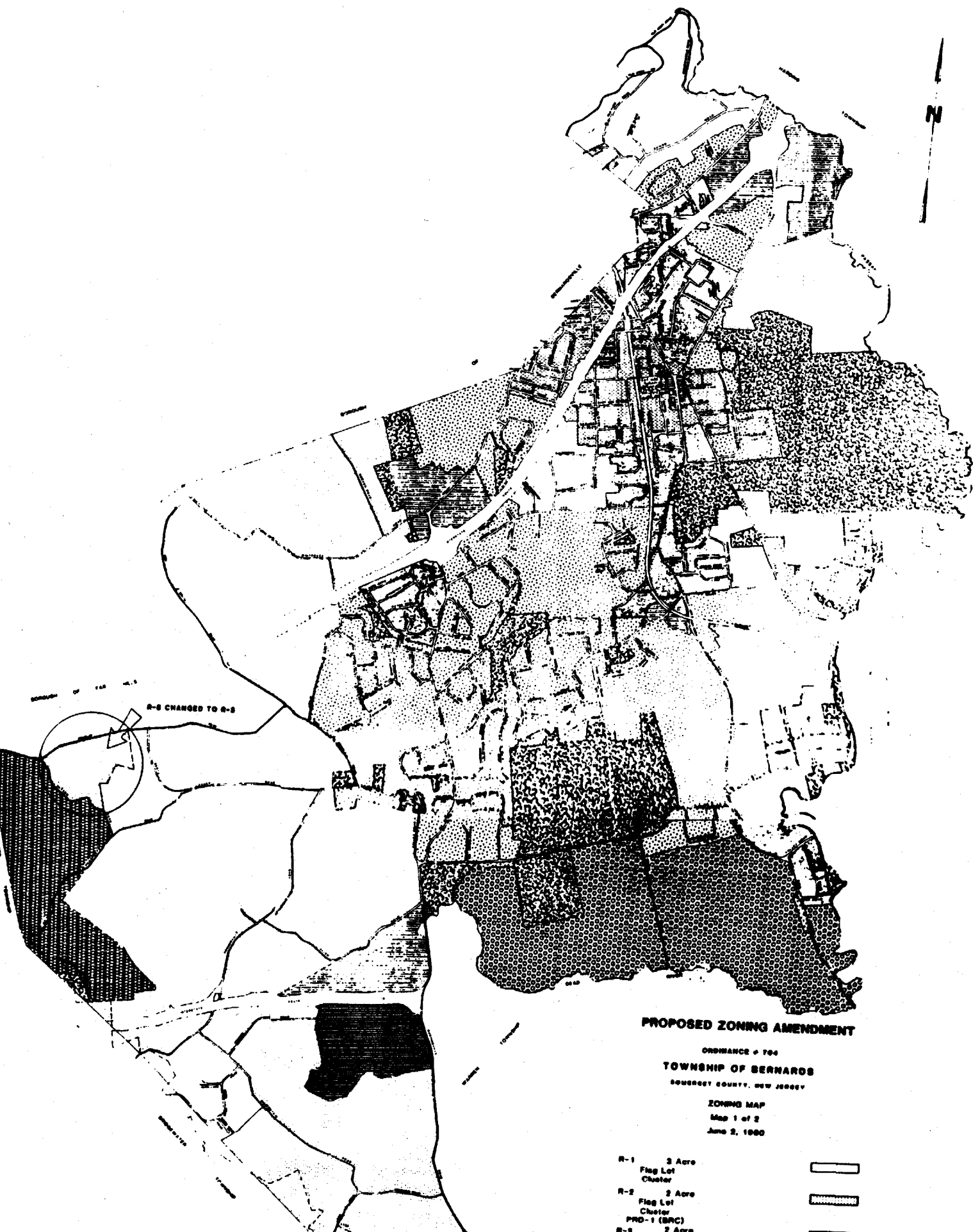
Eugene D. Serpentelli, J.S.C.

This Order is consented to both in form and substance.

Henry A. Hill, Esq.
Brener, Wallack & Hill
Attorneys for Plaintiff
The Hills Development Company

James E. Davidson, Esq.
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The Township of Bernards, et al.

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Attorney for Defendant
Planning Board of the Township
of Bernards



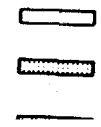
R-2 CHANGED TO R-3

PROPOSED ZONING AMENDMENT

ORDINANCE # 704
TOWNSHIP OF BERNARDS
 SOUMERSET COUNTY, NEW JERSEY

ZONING MAP
 Map 1 of 2
 June 2, 1990

- R-1 3 Acre
Flag Lot
Cluster
- R-2 2 Acre
Flag Lot
Cluster
- PRD-1 (BRC)
2 Acre
- R-3 2 Acre



**ORDINANCE #704
USE ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS AMENDING THE LAND
BE IT ORDAINED by the Township Committee of the Township of Bernards in the County of Somerset and State of
New Jersey that:**

WHEREAS, the Supreme Court of New Jersey, in the case known as Mount Laurel II, has announced a rule of law requiring that every municipality in New Jersey must provide a realistic opportunity for the construction of its fair share of a regional need for low and moderate income housing; and

WHEREAS, litigation is pending against the Township of Bernards in which it is alleged that the present Land Development Ordinance of the Township of Bernards fails to comply with the mandates of Mount Laurel II, and

WHEREAS, through prior enactments the Township of Bernards has provided density bonuses to developers and has otherwise provided a realistic opportunity for the construction of low and moderate income housing, and

WHEREAS, it is found to be in the best interests of the Township of Bernards to amend its Land Development Ordinance so as to further ensure the actual construction and availability of a fair share of low and moderate income housing in the Township of Bernards

NOW THEREFORE, BE IT ORDAINED that the Land Development Ordinance of the Township of Bernards be amended as follows:

1. There is added to said Land Development Ordinance a new Article 1100, as set forth in Appendix A to this amendatory Ordinance.
 2. Section 202, Definitions, is amended in the following manner:
 - (A) Inserting, after Subsection 122, Lot Width, the following new subsections:
 - 122.A Lower Income Household: A household meeting the income eligibility limits for a household designated as low and very low contained in H.U.D. Section 8 Rental Assistant Program Income by Family Size for the appropriate housing region for various size households, or other generally accepted state or federal agency standards.
 - 122.B Lower Income Housing: Those dwelling units which are affordable to purchase or rent by a lower income household using not more than 28 percent of the family income for sales housing and 30 percent for rental housing.
 - (B) Inserting, after Subsection 180, Retail Sales and Service, the following new Subsection:
 - 180.A Reviewing Body: The Planning Board, except where otherwise required by N.J.S.A. 40:55 D-1 et seq.
 3. Section 405, Conditional Uses, Subsection C, Specific Requirements, paragraph 6, Commercial Development — f. The maximum development shall be limited to 30,000 square feet of gross leasable floor area for the first 600 dwelling units of the PRD-4 and 1000 square feet of gross leasable floor area for each additional 20 dwelling units of the PRD-4 thereafter, not to exceed an overall total of 50,000 square feet of gross leasable floor area, and provided that the Board shall find that the intent of the proposed commercial uses, singularly and in combination, serve a local and not a regional market.
 4. Section 405, Conditional Uses, Subsection 10, Apartment within a single family residence, is amended in the following manner:
 - (A) Deleting paragraph a. in its entirety, and replacing the same with the following:
 - a. The number of apartments within a single-family residence shall be limited to one, and shall be located within the principal building or an out-building existing at the time of passage of this amendment.
 - (B) Deleting paragraph b. in its entirety.
 - (C) Deleting paragraph e. in its entirety.
 - e. The exterior appearance of the principal structure shall not be substantially altered or its appearance as a single-family residence changed.
 - f. The minimum size of apartments shall conform to FHA minimum unit size by bedroom count.
 5. The Zoning Map of the Township of Bernards, Somerset County, New Jersey, dated June 2, 1980, and revised through December 14, 1982, Map 1 of 2, is hereby amended in the manner shown in the attached Appendix B to this amendatory ordinance, and the map attached as said Appendix B is hereby adopted and is declared to be part of the Land Development Ordinance of the Township of Bernards.
- BE IT FURTHER ORDAINED that if any part of this Ordinance is declared invalid, such invalid part shall not affect or invalidate the remainder of this Ordinance, PROVIDED, however, that in the event that any provision for a mandatory set-aside, as specified in Section 1110.A., is declared invalid all property owners to whom such provision was intended to apply shall nonetheless be required to include a reasonable number of lower income dwelling units as part of any development on such property.
- BE IT FURTHER ORDAINED that this Ordinance shall take effect immediately upon final passage and publication, provided, however, that the provisions of this Ordinance shall expire one year from its effective date, unless further extended by ordinance, unless on or before such expiration date a Mt. Laurel II judgment of repose is entered by the Law Division of the Superior Court of New Jersey with respect to the Land Development Ordinance of the Township of Bernards.

ARTICLE 1100 — REGULATIONS APPLICABLE TO THE R-5 AND R-8 ZONING DISTRICTS PROVIDE AND LOW AND MODERATE INCOME HOUSING

11.01. Purpose
The purpose of this Article 1100 is to establish procedures for approving PRD developments in the R-5 and R-8 zoning districts in order to comply with the provisions of Mt. Laurel II. The regulations and controls contained in this Article shall be interpreted to assure the construction of lower income housing which meets the standards and guidelines set forth in Mt. Laurel II. Any provisions of any other ordinances or Articles in conflict with this Article 1100 and which imposes restrictions or limitations not related to health and safety shall be inapplicable to developments under this Article 1100.

It is also the intent of this Article to provide a realistic opportunity for the construction of a variety of housing types and income levels in the Township, including housing for lower income households; and to encourage the development of such lower income housing, and other housing, by providing specific land use regulations addressing those needs. These regulations are designed to meet the mandate of Mt. Laurel II.

1102. Regulations Applicable to the R-5 and R-8 Zones as Part of the PRD-2 and PRD-4 Options

A. Application Procedure

1. Applicant shall submit required plans and documents to the Planning Board for review and approval. The Planning Board shall distribute the plans to those agencies required by law to review and/or approve development plans and to Township agencies which normally review development plans.
2. The Planning Board shall hold a public hearing in accordance with N.J.S.A. 40:55D-46.1 on the application. The initial hearing shall be held not less than thirty (30) days nor more than forty-five (45) days from the date of submission of a complete application.
3. Applicants with 10 or more acres may elect to submit a Concept Plan in accordance with Section 707 as part of this ordinance set forth elsewhere in this ordinance. Once a GDP is approved, applicant shall proceed as provided in this ordinance for subdivision and/or site plan approval.

1103. Use Regulations.

A. Permitted Uses

1. Dwelling, One-Family
2. Townhouse
3. Dwelling, Two-Family
4. Dwelling, Multi-Family
5. Public parks, playgrounds, conservation areas, and municipal facilities
6. Common Open Space
7. Planned Development

B. Accessory Uses

1. Personal recreational facilities
2. Accessory buildings
3. Off-street parking and garages
4. Fences
5. Signs

C. Conditional Uses

1. Essential Services
2. Nurseries

All development shall maintain a 50-foot minimum buffer to all exterior property lines. Said buffer shall be bermed or landscaped and remain unoccupied except for entrance roads or utilities. Buffers may include minimum yard requirements for all single-family, two-family and townhouse development.

Permitted Uses	Minimum Lot Area (sq. ft.)	Minimum Lot Width	Minimum Yards			Maximum Building Coverage	Maximum Height
			Front	Side one/both	Rear		
Dwelling, One-Family Townhouse	5,000	50'	25'	10'/15'	25'	20%	35'
Dwelling, Two-Family (horizontally separated)	N/A	16'	25'	N/A	20'	80%	35'
Dwelling, Two-Family (vertically separated)	6,000	60'	25'	10'/15'	25'	40%	35'
Dwelling, Multi-Family unit	3,000	30'	25'	0/10'	25'	40%	35'
1107. Distance Between Buildings	N/A	N/A	N/A	N/A	N/A	35%	35'

The minimum distance between townhouses and multi-family buildings shall be as follows:

- A. Windowless wall to windowless wall
- B. Window wall to windowless wall
- C. Window wall to window wall
 - Front to front 20 feet
 - Rear to rear 30 feet
 - End to end 75 feet
- D. Any building face to right-of-way 50 feet
- E. Any building face to collector street curb 30 feet
- F. Any building face to arterial street curb 25 feet
- G. Any building face to common parking area 40 feet
- 12 feet

The Planning Board may reduce the above distances by not more than 20 percent if there is an angle of 20 degrees or more between buildings and if extensive landscaping and buffers, which provide necessary screening and shielding, are placed between buildings, and further provided that the reductions assist in meeting the objective of this Article and do not create any adverse negative impacts.

1108. Minimum Off-Street Parking Requirements
- Dwelling unit shall be provided as follows:
1. Off-street parking shall be provided as follows:
 - Dwelling unit with one (1) bedroom for less: 1.5 spaces
 - Dwelling unit with two (2) bedrooms or more: 2.0 spaces
 2. An additional ten (10) percent (of that computed in #1 above) off-street parking shall be provided for visitors.
 3. All common off-street parking shall be located within 300 feet of the dwelling unit served.

1109. Minimum Floor Area for Dwelling Units
- 1 bedroom: 550 square feet
 - 2 bedroom: 660 square feet
 - 3 bedroom: 850 square feet
1110. Lower Income Housing Requirements
- A. Number of Lower Income Dwelling Units Required
- All developments on contiguous parcels of land totalling ten (10) acres or more as of 10/2/84 in the R-5 and R-8 zones shall be developed in accordance with the PRD requirements and shall be required to provide twenty (20) percent of all dwelling units to be affordable for lower income households, except as provided below:
1. A minimum of 15 percent moderate income housing only shall be required in developments which have received conceptual approval prior to July 1, 1984, and which have not received preliminary or final approval.
 2. A minimum of 12 percent moderate income housing only shall be required in developments where the maximum sales price of any housing unit will not exceed \$100,000 per unit (in 1983 dollars).
- As used in this Section A, a parcel is considered "contiguous" even though it is traversed by one or more roadways, so long as the land on both sides of the roadway is in common ownership. Lands acquired after 10/2/84 may not be combined to form a new contiguous parcel and may not be added to, or considered a part of, a contiguous parcel which existed on or before that date.
- B. Eligibility Standard
1. Except as provided above, one-half of all lower income units shall meet HUD Section 8, or other assisted housing programs, eligibility requirements for very low income and one-half shall meet HUD eligibility requirements for lower income.
 2. Applicant may substitute alternate comparable standards (other than HUD) where appropriate and to the satisfaction of the Planning Board.

- C. Housing Cost Component
- In computing the eligibility of purchasers or renters for sales or rental housing, not more than 30 percent of family income may be used for rent and not more than 28 percent of family income may be used for purchase of sales housing. The following costs shall be included:
- Rental Units: Gross Rent
 Sales Unit: Principal and Interest
 Insurance
 Taxes
 Condominium or homeowners association fees

- D. Subsidies
- Government subsidies may be used at the discretion of the applicant to fulfill the requirements of the section. The lack of said subsidies shall in no way alter or diminish the lower income requirements of this ordinance.
- E. Sale and Resale and Rental of Lower Income Housing
1. All lower income dwelling units shall be required to have covenants running with the land to control the sale or resale price of units or to employ other legal mechanisms which shall be approved by the Planning Board Attorney and will, in his opinion, ensure that such housing will remain affordable to persons of lower income.
 2. The owner of all rental units shall provide legal documentation to be approved by the Planning Board Attorney to assure that rental units will remain affordable to persons of lower income.
 3. In the event no low or moderate income purchaser is found within 60 days from the day a unit is offered for sale or resale, the low income unit may be sold to a moderate income purchaser or, if none is available, to any interested purchaser, and the moderate income unit, to any interested purchaser at a price which meets the eligibility requirements as described above. Resale controls shall remain in effect for any subsequent resales.
 4. The Township and the applicant may develop reasonable qualifications for occupants of lower income housing. Selection procedures shall be directed and administered by a Township official appointed each year as the Housing Administrator by the Township Committee. The Township Committee may arrange for third party administration of resale, and tenant selection of lower income housing.
 5. The developer shall formulate and implement a written affirmative marketing plan acceptable to the Planning Board. The affirmative marketing plan shall be realistically designed to ensure that lower income persons of all races and ethnic groups are informed of the housing opportunities in the development, feel welcome or seek or buy or rent such housing, and have the opportunity to buy or rent such housing. It shall include advertising and other similar outreach activities.
 6. Sales prices and rents may be increased in accordance with the annual Metropolitan New York Regional Consumer Price Index for Housing of the Department of Labor plus reimbursements for documented monetary outlays for reasonable improvements and reasonable costs incurred in selling the unit.
 7. Rental units may be converted to condominium units after 15 years, but the unit shall be sold to persons meeting low and moderate income requirements.
- F. Phasing of Lower Income Housing
1. Lower Income Housing

2. Any development in the R-5 and R-8 zoning districts for which a conceptual plan, subdivision, or site plan has been approved shall be considered a single development for purposes of this paragraph "F" regardless of whether parts or sections are sold or otherwise disposed of to persons or legal entities other than the one which received approval. All such approvals and conditions of approvals shall run with the land.

G. Waiver of Fees

Notwithstanding any ordinance requirement of the Township of Bernards, the applicable approving agency shall waive the following fees for every unit designated as lower income housing in the R-5 zoning district:

1. Subdivision and site plan application fees;
2. Building permit fees, except State and third party fees;
3. Certificate of occupancy fees;
4. Pro-rated part of the engineering fees, applicable to lower income housing;
5. Off-tract improvement fees.

In addition, the applicable approving agency shall waive off-tract improvement fees for every unit designated as lower income housing in the R-8 zoning district.

1111. Common Open Space Requirements

A. A minimum of twenty (20) percent of the land area of any development other than single or two-family housing and which may include environmentally restricted land, shall be designated for conservation, open space, recreation and/or other common open space.

B. All property owners and tenants shall have the right to use the common open space.

C. Common open space may be deeded to the Township, if accepted by the Governing Body, or to an open space organization or trust, or to a private non-profit organization charged with the provision of recreation activities for the residents of the development.

B. All common open space deeded to an open space organization, trust, or private organization, shall be owned and maintained as provided for in N.J.S.A. 40:55D-43.

1112. Engineering and Construction Design

A. Drainage

1. Where non-structural means of controlling surface runoff, such as swales, is feasible and adequate such non-structural means shall be considered.

2. The system shall be adequate to carry off the storm water and natural drainage water which originates not only within the lot or tract boundaries but also that which originates beyond the lot or tract boundaries at the time of development. No storm water runoff or natural drainage water shall be so diverted as to overload existing drainage systems or create flooding or the need for additional drainage structures on other private properties or public lands without proper and approved provisions being made for taking care of these conditions.

3. Techniques for computing water runoff shall be as indicated in Sections 511 and 613 of the Bernards Township Land Development Ordinance.

4. Where required by the Township and as indicated on an improved development plan, a drainage right-of-way easement shall be provided to the Township where a tract or lot is traversed by a system, channel or stream. The drainage right-of-way easement shall conform substantially with the lines of such watercourse and, in any event, shall meet any minimum widths and locations as shown on any official map and/or master plan.

B. Lighting

1. Street lighting shall be provided for all street intersections, parking areas, and anywhere else deemed necessary for safety reasons.

2. Any outdoor lighting such as building and sidewalk illumination, driveways with no adjacent parking, the lighting of signs, and ornamental lighting, shall be shown on the lighting plan in sufficient detail to allow a determination of the effects upon adjacent properties, roads, and traffic safety from glare, reflection, and overhead sky glow in order to recommend steps needed to minimize these impacts.

3. The maximum intensity of lighting permitted on roadways shall be as required in Section 812 of this Ordinance.

C. Sanitary Sewers

Where required and where a public or private treatment and collection system is provided, the developer shall design and construct such facilities in accordance with the N.J.D.E.P. permit requirements and in such a manner as to make adequate sewage treatment available to each lot and structure within the development from said treatment and collection system. If a public or private treatment and collection system is included as part of a development application, the developer shall install sewers, including connections to each home to be constructed.

D. Streets

1. All developments shall be served by paved streets in accordance with the approved subdivision and/or site plan, all such streets shall have adequate drainage.

2. Local streets shall be planned so as to discourage through traffic.

3. The minimum public street right-of-way and cartway and the minimum private street cartway shall be in accordance with the following schedule:

	R.O.W.	Cartway
a. Collector street (no parking on either side)	50'	26'
b. Local street with parking on one side only	50'	26'
c. Local street with no on-street parking	40'	24'
d. Local street with on-street parking on both sides	50'	30'

4. Street design and construction standards shall be as required in Sections 509, 607, and 608 of this Ordinance except as noted below:

a. Cut-de-sacs shall be no more than 1,250 feet in length and shall provide access to no more than 80 dwelling units. A turnaround shall be provided at the end of the cul-de-sac with a paved turning radius of 40 feet and a R.O.W. radius in the case of public streets of 50 feet.

b. The pavement standard for all roads shall be a base course of four (4) inches of Bituminous Stabilized Base, Mix No. 1 placed on a compacted, unyielding subgrade, with a surface course of two (2) inches of Bituminous Concrete, type F.A.B.C. — 1, Mix #5 applied in accordance with State highway specifications. If sub-base material is unsatisfactory, four (4) inch stone, sub-base material may be required.

E. Water Supply

Where public water is available, adequate water service, in terms of adequacy of flow and pressure, shall be made available to each lot or building within the development. The system shall be designed and constructed in accordance with the requirements and standards of the agency or authority having water supply jurisdiction.

1113. Waivers

Notwithstanding any provisions set forth elsewhere in this Article, the Planning Board may waive any engineering and construction design requirements contained in this Article, in order to achieve the objectives of this Article, provided that the Planning Board shall be satisfied that such a waiver does not jeopardize the public health and safety, and the same is consistent with the intent and purpose of this ordinance.

The foregoing having been introduced by the Township Committee of the Township of Bernards on Oct. 2, 1984, and then ordered to be published according to law, will be further considered for final passage and adoption and a public hearing held at a meeting of said Township Committee to be held at William Annin Junior High School, Quincy Road, Basking Ridge, N.J. in the said township on October 22, 1984, at 8:00 p.m. when and where, or at such time and place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning said ordinance.

Copies of Ordinance 704 have been placed on file with the Township Clerk and are available for public examination and acquisition. Copies will also be available in the Bernards Township Office and the Township Committee.

October 25, 1984

Henry A. Hill, Jr., Esq.
Brener, Wallack & Hill
2-4 Chambers Street
Princeton, New Jersey 08540

Re: Hills Development Company vs. Bernards Township

Dear Henry:

Enclosed please find a copy of a letter dated October 16, 1984 from Judge Serpentelli to Art Garvin. For some reason the judge did not copy either you or me. The letter is self-explanatory. The judge indicates that the procedure we suggested in requesting a stay is not in accordance with his normal approach to granting immunity to lawsuits.

If we are able to work out the provisions of our Mt. Laurel Ordinance and if the Township passes the Ordinance in the near future, we should be able to work around his problem.

Very truly yours,

James E. Davidson

JED/sjm
Encl.
cc: Arthur H. Garvin, III, Esq.

C
O
P
Y



Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE
C. N. 2191
TOMS RIVER, N. J. 08763

October 16, 1984

Arthur H. Garvin, III, Esq.
Kerby, Cooper, Schaul & Garvin, Esqs.
9 De Forest Avenue
Summit, N. J. 07901

Re: Hills Development Co. v. Township of Bernards et al

Dear Mr. Garvin:

I have your letter of October 10, 1984 which enclosed a proposed order.

The procedure being followed is not in accordance with my normal approach to granting immunity to builder's remedy suits. I have previously been agreeable to granting immunity from builder's remedy suits if the township will stipulate the present invalidity of its ordinance and its fair shae number. The order as submitted merely delays the interim process for 45 days while the township attempts to resolve the matter. I do not believe that that is a healthy practice in Mount Laurel litigation given the procedure which I am willing to follow. I will be happy to confer with all counsel concerning the matter at your earliest convenience.

Very truly yours,

Eugene D. Serpentelli
Eugene D. Serpentelli, JSC

EDS:RDH

KERBY, COOPER, SCHAUL & GARVIN

COUNSELLORS AT LAW

9 DE FOREST AVENUE

SUMMIT, NEW JERSEY 07901

201-273-1212

RUSSELL T. KERBY, JR.
JOHN W. COOPER
ROBERT F. SCHAUL
ARTHUR H. GARVIN III
PHYLLIS B. STRAUSS

RECEIVED
OCT 12 1984
RICHARD G. MOSER
OF COUNSEL
JERRY FITZGERALD ENGLISH
OF COUNSEL
JERRY'S CHAMBERS

October 10, 1984

Honorable Eugene D. Serpentelli
Court House, CN-2191
Toms River, NJ 08754

Re: Bernards Township, etal ads Hills
Development Company
Docket No. L-030039-84 P.W.

Dear Judge Serpentelli:

Please find enclosed an original and three copies of the proposed form of Order to be executed by Your Honor in connection with the 45 day stay in this matter. If the Order is in a form satisfactory to Your Honor, all parties respectfully request that Your Honor execute same and that a copy be returned to the office of the undersigned in the enclosed, stamped envelope.

Your Honor's kind attention to this matter is most appreciated.

Respectfully yours,

Arthur H. Garvin III
ARTHUR H. GARVIN, III

AHG:pd

Enclosures

cc: Farrell, Curtis, Carlin & Davidson
Brener, Wallack & Hill

FARRELL, CURTIS, CARLIN & DAVIDSON
43 Maple Avenue
Morristown, New Jersey 07960
(201) 267-8130

Attorneys for Defendants, The Township of Bernards, et al

THE HILLS DEVELOPMENT COMPANY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	SOMERSET/OCEAN COUNTY
	:	(<u>Mt. Laurell II</u>)
vs.	:	
	:	Docket No. L-030039-84 P.W.
THE TOWNSHIP OF BERNARDS, et al,	:	
	:	Civil Action
Defendants.	:	
	:	ORDER STAYING DISCOVERY AND
	:	PRECLUDING BUILDERS' REMEDIES
	:	FOR 45 DAYS

This matter having been open to the Court jointly by Brener, Wallack & Hill, Attorneys for Plaintiff, The Hills Development Company, Farrell, Curtis, Carlin & Davidson, Attorneys for Defendants, The Township of Bernards, The Township Committee of the Township of Bernards, and the Sewerage Authority of the Township of Bernards, and Kerby, Cooper, Schaul & Garvin, Attorneys for The Planning Board of the Township of Bernards, and the Court having been informed that the parties to this litigation desire to enter into settlement negotiations with the view in mind of revising the Township's zoning including the zoning applicable to the Plaintiff's property in a manner acceptable to Defendants,

to Plaintiff, and to the Court in light of the Mount Laurel II decision; and the Court being satisfied that such voluntary settlements of Mount Laurel II cases may be in the public interest:

It is on this day of , 1984;

1. Ordered that all discovery and motions in the above entitled case are stayed by a period of 45 days;

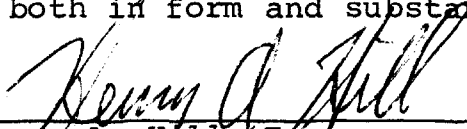
2. Ordered that pending this stay period, during which the parties will have an opportunity to attempt to put together a settlement which will comply with Mount Laurel II, any person who shall commence an action, or who shall apply to intervene in an action, against any or all of the Defendants upon Mount Laurel II grounds during such period shall not be permitted to seek or have a builder's remedy in such action;


3. Ordered that nothing in this Order shall be construed by this Court to imply that the Township of Bernards is not presently in compliance with the Mount Laurel II decision; and

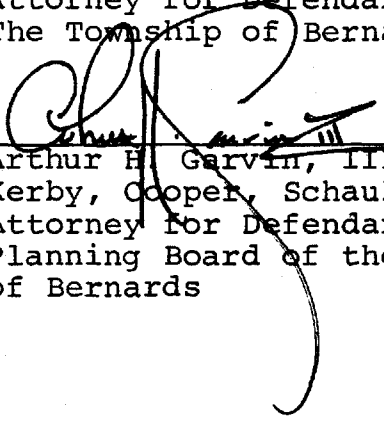
4. Ordered that the parties may apply to this Court for an extension of the stay herein ordered if further time is needed to work out this settlement.

Eugene D. Serpentelli, J.S.C.

This Order is consented to both in form and substance.


Henry A. Hill, Esq.
Brener, Wallack & Hill
Attorney for Plaintiff
The Hills Development Company


Howard P. Shaw, Esq.
Farrell, Curtis, Carlin & Davidson
Attorney for Defendants,
The Township of Bernards, et al


Arthur H. Garvin, III
Kerby, Cooper, Schaul & Garvin
Attorney for Defendant
Planning Board of the Township
of Bernards

FARRELL, CURTIS, CARLIN & DAVIDSON

ATTORNEYS AT LAW

43 MAPLE AVENUE

P.O. BOX 145

MORRISTOWN, N. J. 07960

(201) 267-8130

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171 NEWKIRK STREET
JERSEY CITY, N. J. 07306
(201) 795-4227

LISA J. POLLAK
HOWARD P. SHAW
CYNTHIA H. REINHARD
MARTIN G. CRONIN

September 18, 1984

Honorable Eugene D. Serpentelli, J.S.C.
Court House, CN-2191
Toms River, New Jersey 08754

RECEIVED

SEP 20 1984

Re: Hills Development Company v.
Bernards Township
Docket No. E-030039-84 P.W.

JUDGE SERPENTELLI'S CHAMBERS

Dear Judge Serpentelli:

Enclosed are an original and two copies of a proposed Order Staying Discovery and Intervention for 45 days in the referenced matter. We have been asked to submit this Order to the Court on behalf of all counsel, and to respectfully request that the Order be signed and filed. All counsel have signed their consent.

Counsel and other representatives of the parties have been actively engaged in discussions aimed at producing a settlement which will be acceptable to the parties and the Court. All counsel agree that those discussions are at a stage where it would be beneficial to have the enclosed Order entered, in order to enable counsel and the parties to focus their time and efforts upon the attempt to reach a settlement and to prepare and consider an ordinance which would be the centerpiece of such settlement.

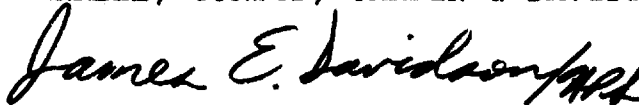
If the Order is entered, please return a conformed copy to us in the enclosed postpaid envelope. We are certain

Honorable Eugene D. Serpentelli, J.S.C.
Page Two
September 18, 1984

that all counsel would be available to confer with Your Honor, in person or by telephone, to discuss the Order in case you have any questions.

Respectfully yours,

FARRELL, CURTIS, CARLIN & DAVIDSON

A handwritten signature in cursive script that reads "James E. Davidson". The signature is written in dark ink and is positioned above the typed name "James E. Davidson".

By: James E. Davidson

JED:nmp
Enclosure

cc: Henry A. Hill, Esq.
Arthur H. Garvin, III, Esq.

BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540
(609) 924-0808
ATTORNEYS FOR PLAINTIFF

Plaintiff	:	SUPERIOR COURT OF
	:	NEW JERSEY
THE HILLS DEVELOPMENT COMPANY	:	LAW DIVISION -
	:	
vs.	:	SOMERSET/OCEAN COUNTY
	:	(<u>Mt. Laurel II</u>)
Defendants	:	Docket No. L-030039-84 P.W.
	:	
THE TOWNSHIP OF BERNARDS in the	:	CIVIL ACTION
COUNTY OF SOMERSET, a Municipal	:	
Corporation of the State of New	:	ORDER STAYING DISCOVERY AND
Jersey, THE TOWNSHIP COMMITTEE OF	:	INTERVENTION FOR 45 DAYS
THE TOWNSHIP OF BERNARDS, THE	:	
PLANNING BOARD OF THE TOWNSHIP OF	:	
BERNARDS and the SEWERAGE AUTHORITY	:	
OF THE TOWNSHIP OF BERNARDS	:	

This matter having been open to the Court jointly by Brener, Wallack & Hill, Attorneys for Plaintiff, The Hills Development Company, and Farrell, Curtis, Carlin & Davidson, Attorneys for Defendants, The Township of Bernards, The Township Committee of the Township of Bernards, The Planning Board of the Township of Bernards and the Sewerage Authority of the Township of Bernards, and the Court having been informed that the parties to this litigation desire to enter into settlement negotiations with the view in mind of bringing Defendants, The Township of Bernards, et al., into compliance with the Mount Laurel II decision by revising the Township's zoning including the zoning applicable to the Plaintiff's property; and the Court being satisfied that such voluntary settlements of Mount Laurel II cases may be in the public

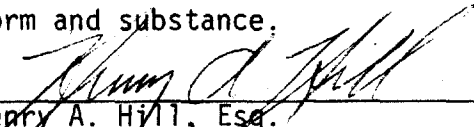
interest:

It is on this day of , 1984:

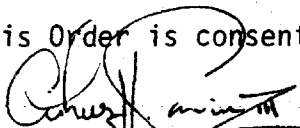
1. Ordered that all discovery and motions in the above entitled case are stayed by a period of ~~45~~ days;
2. Ordered that pending this stay period, during which the parties will have an opportunity to attempt to put together a settlement designed to bring Bernards Township into compliance with Mount Laurel II, no intervention will be permitted in the above entitled action;
3. Ordered that nothing in this Order shall be construed by this Court to imply that the Township of Bernards is not presently in compliance with the Mount Laurel II decision; and
4. Ordered that the parties may apply to this Court for an extension of the stay herein ordered if further time is needed to work out this settlement.

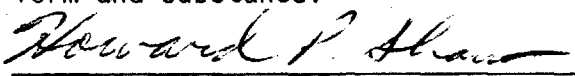
The Honorable Eugene D. Serpentelli, JSC

This Order is consented to both in form and substance.


Henry A. Hill, Esq.
Brener, Wallack & Hill
Attorney for Plaintiff
THE HILLS DEVELOPMENT COMPANY

This Order is consented to both in form and substance.


Arthur H. Garvin, III
Kerby, Cooper, Schaul &
Garvin
Attorneys for Defendant
Planning Board of the
Township of Bernards


Howard P. Shaw, Esq.
Farrell, Curtis, Carlin & Davidson
Attorney for Defendants
THE TOWNSHIP OF BERNARDS, et al.

BRENER, WALLACK & HILF

ATTORNEYS AT LAW

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CABLE "PRINLAW" PRINCETON
TELECOPIER: (609) 924-6239
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HARRY BRENER
HENRY A. HILL
MICHAEL D. MASANOFF**
ALAN M. WALLACK*

GULIET D. HIRSCH
GERARD H. HANSON
J. CHARLES SHEAK**
EDWARD D. PENN*
NATHAN M. EDELSTEIN*
THOMAS L. HOFSTETTER**
ROBERT W. SACSO, JR.*
EDWARD M. BERNSTEIN*
MARILYN S. SILVIA
THOMAS J. HALL
SUZANNE M. LAROBARDIER
ROCKY L. PETERSON
VICKI JAN ISLER
MICHAEL J. FEEHAN

* MEMBER OF N.J. & D.C. BAR
** MEMBER OF N.J. & PA. BAR
* MEMBER OF N.J. & N.Y. BAR
* MEMBER OF N.J. & FLA. BAR

FILE NO. 3000-04-02

September 12, 1984

James E. Davidson, Esq.
Farrell, Curtis, Carlin & Davidson
43 Maple Street
Morristown, NJ 07960

RE: The Hills Development Company v. Bernards Township

Dear Jim:

In accordance with our telephone conversation, I am enclosing a proposed form of Order which would, if consented to by you and signed by the judge:

1. Stay all proceedings in this case for a period of 30 days;
2. Prevent all interventions;
3. Prevent the Order from being construed in any fashion prejudicially against the Township; and
4. Provides for further extensions, if needed.

If the Order meets with your approval and you want to send it to the judge, I think you should explain to the judge that we will be trying during this period to settle the case, and that although no other parties have to date sued Bernards Township, that the Township is concerned that their efforts to settle this case and to comply with Mount Laurel might be interfered with by an avalanche of new litigation once the public is aware that the two parties are attempting to settle the case. I think the judge will sign the Order and prevent intervention if you put it on that basis since he is aware that certain towns such as Franklin Township in Somerset County have had numerous lawsuits filed, (there are eleven developers suing Franklin) which have made settlement almost impossible.

At my client's directions, I have shortened the period of the stay since they are concerned that a 60 day stay would unduly delay the litigation in the event we are unable to reach a settlement or have the settlement approved by the Township Committee. They will consent to reasonable extensions, however, if we

James E. Davidson, Esq.

September 12, 1984

-2-

can make reasonable progress during the stay. My clients are anxious for business reasons to attempt to get the matter settled as soon as possible.

Very truly yours,

BRENER, WALLACK & HILL


Henry A. Hill

HAH:klp

enclosure