

RULS - AD - 1985 - 250

Sept. 1985

Appendix to Brief + Affidavits filed in opposition to Motion to Transfer + in support of Cross-Motion for Judgment of Compliance.

PGS - 217

BRENER, WALLACK & HILL
2-4 Chambers Street
Princeton, New Jersey 08540
(609) 924-0808
Attorneys for Plaintiff

THE HILLS DEVELOPMENT COMPANY, :
Plaintiff, :

vs. :

THE TOWNSHIP OF BERNARDS in the :
COUNTY OF SOMERSET, a municipal :
corporation of the State of New Jersey, :
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, :

Defendants. :

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY/OCEAN COUNTY
(Mt. Laurel II)

Docket No. L-030039-84 P.W.

CIVIL ACTION

APPENDIX TO BRIEF AND AFFIDAVITS FILED IN OPPOSITION
TO MOTION TO TRANSFER AND IN SUPPORT OF
CROSS-MOTION FOR JUDGMENT OF COMPLIANCE

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

TABLE OF EXHIBITS

- Exhibit A: James E. Davidson, Esq.'s letter of September 18, 1984 to The Honorable Eugene D. Serpentelli enclosing proposed Order Staying Discovery and Intervention for 45 days.
- Exhibit B: Ordinance #704.
- Exhibit C: Arthur H. Garvin, III, Esq.'s letter of October 10, 1984 to The Honorable Eugene D. Serpentelli enclosing proposed form of Order in connection with 45 day stay.
- Exhibit D: The Honorable Eugene D. Serpentelli's letter of October 16, 1984 to Arthur H. Garvin, III, Esq. acknowledging October 10, 1984 letter with proposed Order and reasons for declining to enter said Order.
- Exhibit E: Order Staying Action And Precluding Builder's Remedies For 90 Days, entered December 19, 1984.
- Exhibit F: Master's Report of George M. Raymond, AICP, AIA, P.P. dated June 12, 1984.
- Exhibit G: Order Staying Action And Precluding Builder's Remedies For A Period Ending May 15, 1985.
- Exhibit H: The Honorable Eugene D. Serpentelli's letter of May 13, 1985 to George Raymond regarding second extension of immunity.
- Exhibit I: James E. Davidson, Esq.'s letter of June 12, 1985 to The Honorable Eugene D. Serpentelli advising that the parties had arrived at an agreement and requesting a hearing date and third extension of immunity.
- Exhibit J: September 6, 1985 Concept Plan.
- Exhibit K: James E. Davidson, Esq.'s letter of November 23, 1984 to The Honorable Eugene D. Serpentelli regarding passage of Ordinance #704 and enclosing proposed immunity Order.
- Exhibit L: Bernards Township Amendments to Master Plan, adopted October 30, 1984.
- Exhibit M: Thomas H. Hall, Esq.'s letter of November 5, 1984 to James E. Davidson, Esq. regarding the proposed amendments to Bernards Township's Land Use Ordinance.
- Exhibit N: James E. Davidson, Esq.'s letter of January 3, 1985 to George Raymond enclosing various materials relating to the recent zoning amendments.
- Exhibit O: Thomas J. Hall, Esq.'s letter of January 14, 1985 to George Raymond, AICP outlining significant issues in the case.

- Exhibit P: Harvey S. Moskowitz' memo to George Raymond, AICP summarizing the January 16, 1985 meeting.
- Exhibit Q: Thomas J. Hall Esq.'s letter of January 30, 1985 to Robert E. Hughey with its attachments regarding the Sewer Service.
- Exhibit R: Thomas J. Hall, Esq.'s letter of April 1, 1985 to James E. Davidson, Esq. enclosing several items in connection with the Stipulation of Settlement.
- Exhibit S: Thomas J. Hall, Esq.'s letter of June 24, 1985 to The Honorable Lawrence L. Lasser, Tax Court, advising of Hills Development Company's decision to withdraw its complaint in that case.
- Exhibit T: Memorandum of Agreement drafted by Township counsel (T-1); Memorandum of Agreement with hand-written alterations. (T-2)
- Exhibit U: Proposed Order Of Judgment drafted by Township counsel.
- Exhibit V: Kenneth Mizerny's memo dated October 15, 1984 regarding Ordinance #704.
- Exhibit W: Kenneth Mizerny's memos dated November 28, 1984 regarding up-date of review of Ordinance #704.
- Exhibit X: Michael J. Giuliano Jr.'s. letter and attached memo dated March 4, 1985 to Thomas Hall regarding Ordinance #704 analysis.
- Exhibit Y: Harvey Moskowitz' memo of May 21, 1985 to Township of Bernards Planning Board regarding proposed Ordinance changes.
- Exhibit Z: Alan Mallach's, AICP letter of September 13, 1985 to Thomas F. Carroll, Esq. regarding Fair Share Housing Allocation - Bernards Township.



EXHIBIT A

FARRELL, CURTIS, CARLIN & DAVIDSON

ATTORNEYS AT LAW

43 MAPLE AVENUE

P. O. BOX 145

MORRISTOWN, N. J. 07960

(201) 267-8130

EDWARD J. FARRELL

CLINTON J. CURTIS

JOHN J. CARLIN, JR.

JAMES E. DAVIDSON

DONALD J. MAIZYS

LOUIS P. RAGO

LISA J. POLLAK

HOWARD P. SHAW

CYNTHIA N. REINHARD

MARTIN S. CRONIN

OF COUNSEL

FRANK J. VALGENTI, JR.

171 NEWKIRK STREET

JERSEY CITY, N. J. 07306

(201) 795-4227

September 18, 1984

Honorable Eugene D. Serpentelli, J.S.C.
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:

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

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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



By: James E. Davidson

JED:nmp
Enclosure

cc: ✓ Henry A. Hill, Esq.
Arthur E. Garvin, III, Esq.

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AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS AMENDING THE LAND USE ORDINANCE OF THE TOWNSHIP OF BERNARDS

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 mandate 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 N.J.D. Section 8 Rental Assistance 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 Services, 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 5, Commercial Development -- PRD-4 only, is amended by deleting paragraph 1, and replacing the same with the following:

1. The maximum development shall be limited to 30,000 square feet of gross leasable floor area for the first 800 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, singly 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 c, in its entirety, and replacing the same with the following:

c. The exterior appearance of the principal structure shall not be substantially altered or its appearance as a single-family residence changed.

1. 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 effect 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 1110A., 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 or decree 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.

APPENDIX A

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 codes 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 a PRD application in any R-5 or R-8 zone. In the alternative, applicant may follow procedures for subdivision and site plan approval set forth elsewhere in the ordinance. Once a GDP is approved, applicant shall proceed as provided in the 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. On-street parking and garages
4. Fences
5. Signs

C. Conditional Uses

1. Essential Services
2. Nursery schools
3. Private recreation uses with lights
4. Retail and service commercial under PRD-4 option in accordance with Section 406 requirements

1104. Minimum Tract Size and Gross Density

1. Minimum Tract Size. The minimum tract size for other than single or two-family development in either zone shall be 10 acres.

2. The maximum number of dwelling units shall be as follows:

R-5: PRD-2: 5.5 dwelling units/acre on lands defined as Drylands in Article 200 and 1.0 dwelling unit per acre on lands defined as lowlands in Article 200, which is transferable pursuant to this ordinance and subject to a maximum of 6.5 dwelling units/acre of dry land.

R-8: PRD-4: 5.5 dwelling units/acre, up to maximum of 2,750 dwelling units in the zone.

1105. Minimum Tract Setback

EXHIBIT B

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

1106. Schedule of Area, Bulk and Yard Requirements

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

1107. Distance Between Buildings

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

A. Windowless wall to windowless wall	20 feet
B. Window wall to windowless wall	20 feet
C. Window wall to window wall	
Front to front	75 feet
Rear to rear	50 feet
End to end	30 feet
D. Any building face to right-of-way	25 feet
E. Any building face to collector street curb	40 feet
F. Any building face to arterial street curb	50 feet
G. Any building face to common parking area	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 the Article and do not create any adverse negative impacts.

1108. Minimum Off-Street Parking Requirements

1. Off-street parking shall be provided as follows:

- Dwelling unit with one (1) bedroom or 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:	860 square feet

1110. Lower Income Housing Requirements

A. Number of Lower Income Dwelling Units Required

All developments on contiguous parcels of land totaling 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 PID 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 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 the 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 ensure 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 sales price shall meet ML Laurel II guidelines and be priced to allow persons meeting low and moderate income eligibility standards to purchase such unit.

F. Phasing of Lower Income Housing

1. Lower income housing shall be phased in accordance with the following schedule:

Percentage of Total Dwelling Units	Minimum Percentage of Lower Income Dwelling Units
25	0
50	25
75	100
100	—

The above percentages shall refer to the percentage of total dwelling units having certificates of occupancy.

EXHIBIT B

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 the 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-6 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.

D. 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 612 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)	80'	26'
b. Local street with parking on one side only	80'	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. Cul-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 #75 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 services, 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 the 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.

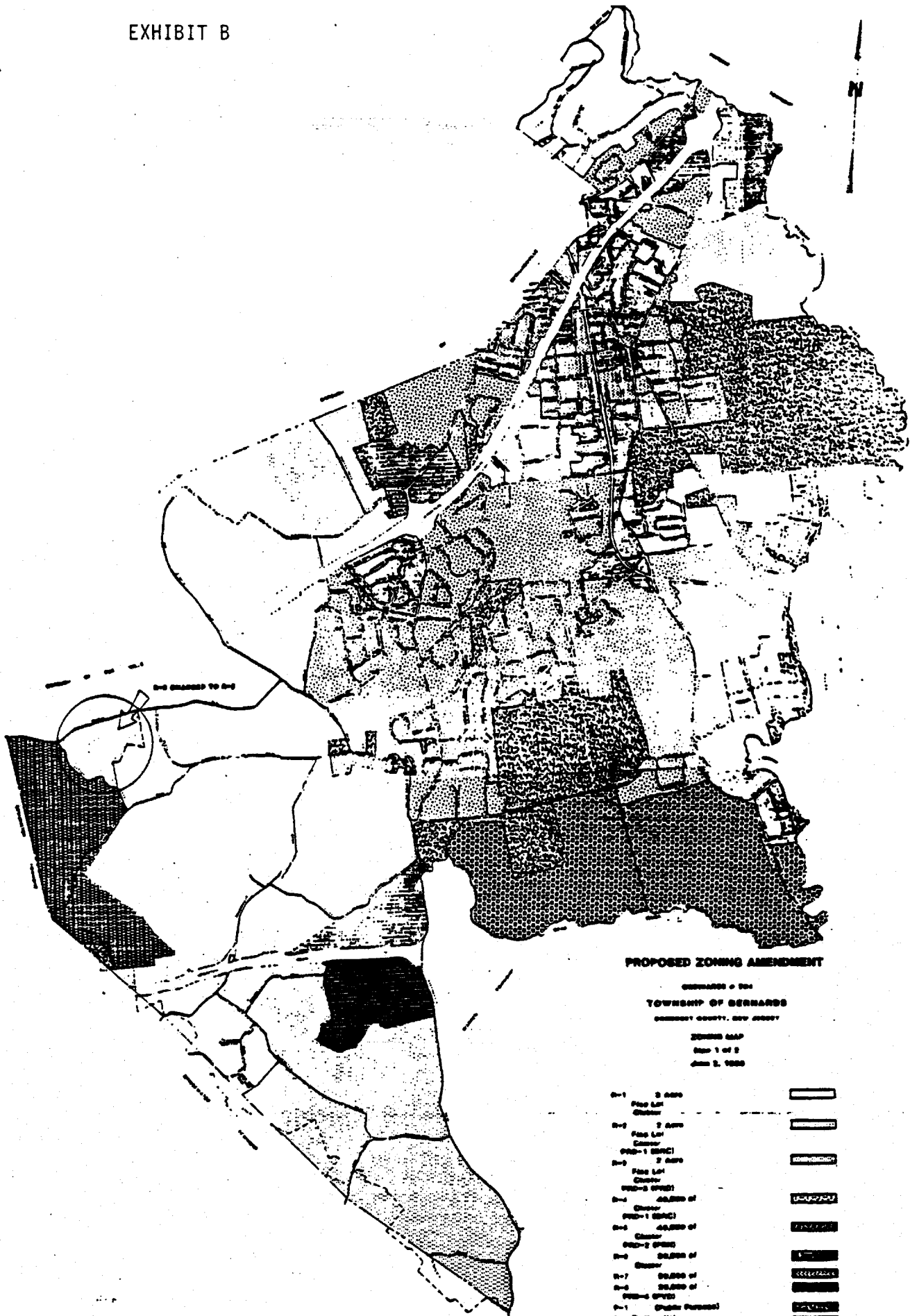
The foregoing having been introduced by the Township Committee of the Township of Bernards on Oct. 2, 1984, and then ordered to be published according to law, will be further considered for final passage and adoption and a public hearing held at a meeting of said Township Committee to be held at William Annun Junior High School, Cumber 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 Library for review in the library. By order of the Township Committee.

James T. Hart
Township Clerk

Introduction: Oct. 2, 1984
Public Hearing: Oct. 22, 1984

EXHIBIT B



PROPOSED ZONING AMENDMENT

ORDINANCE NO. 2004
TOWNSHIP OF BERNARDS
 BERNARDS COUNTY, NEW JERSEY

ZONING MAP
 Map 1 of 2
 June 2, 2008

R-1	2 Acre Rear Lot Cluster	[Symbol]
R-2	2 Acre Rear Lot Cluster (R-2-1 (SNC))	[Symbol]
R-3	2 Acre Rear Lot Cluster (R-3-1 (SNC))	[Symbol]
R-4	40,000 sq ft Cluster (R-4-1 (SNC))	[Symbol]
R-5	40,000 sq ft Cluster (R-5-1 (SNC))	[Symbol]
R-6	20,000 sq ft Cluster (R-6-1 (SNC))	[Symbol]
R-7	20,000 sq ft Cluster (R-7-1 (SNC))	[Symbol]
P-1	Public Purpose See Ordinance	[Symbol]

SCALE: 1" = 1000'

DATE: JUNE 2, 2008

PREPARED BY: [Name]

A true and correct copy of this map as shown on the map sheet is on file in the office of the Township Clerk and is available to the public at the office of the Township Clerk.



EXHIBIT C

KERBY, COOPER, SCHAUL & GARVIN

COUNSELLORS AT LAW

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

9 DE FOREST AVENUE
SUMMIT, NEW JERSEY 07901
201-273-1212

RICHARD C. MOSER
OF COUNSEL
JERRY FITZGERALD ENGLISH
OF COUNSEL

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

AHG:pd
Enclosures
cc: Farrell, Curtis, Carlin & Davidson
Brener, Wallack & Hill





Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE
C. N. 2191
TOMS RIVER, N. J. 08753

October 16, 1984

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

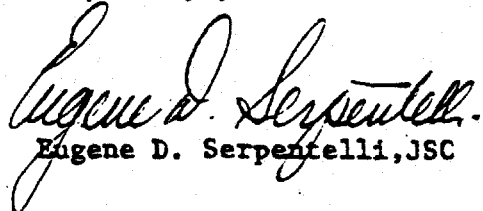
Re: Hills Development Co. v. Township of Bernards et al

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, JSC

EDS:RDE

EXHIBIT E

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

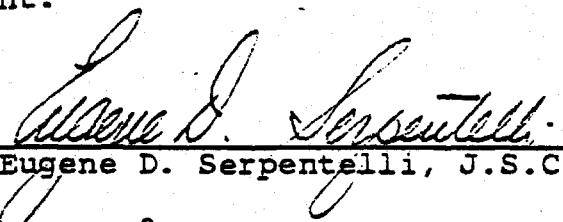
This matter having been opened to the Court jointly by Farrell, Curtis, Carlin & Davidson, Attorneys for Defendants, The Township of Bernards, The Township Committee of the Township of Bernards, and the Sewerage Authority of the Township of Bernards, Kerby, Cooper, Schaul & Garvin, Attorneys for The 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

EXHIBIT E

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;

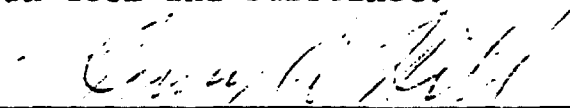
1. Ordered that this matter including all discovery and motions, is stayed by a period of 90 days;
2. Ordered that pending this stay period, during which the parties will have an opportunity to complete the settlement of this matter in compliance with Mount Laurel II, any person who shall commence an 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.

EXHIBIT E

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.

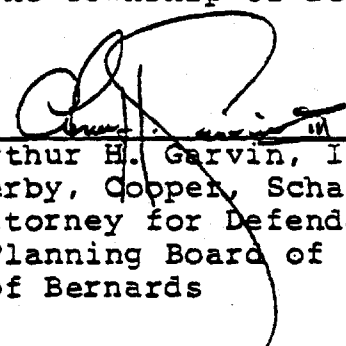

Arthur H. Garvin, III
Kerby, Cooper, Schaul & Garvin
Attorney for Defendant
Planning Board of the Township
of Bernards

Exhibit F

EXHIBIT F

Master's Report

Re: Hills Development Corporation v. Township
of Bernards

Prepared for
Hon. Eugene D. Serpentelli, J.S.C.
New Jersey Superior Court
Ocean County Court House
Toms River, New Jersey 08753

June 12, 1985

by
George M. Raymond, AICP, AIA, P.P.
Chairman
Raymond, Parish, Pine & Weiner, Inc.

EDWARD J. RYBCZYK
BERNARD J. BULLER, P.E., A.I.C.P.
ROBERT GENESLAW, A.I.C.P.
RICHARD HARRALL
GERALD C. LENAZ, A.I.C.P., A.I.A.
EDITH LANDAU LITT, A.I.C.P.
PHILIP M. MICHALOWSKI, A.I.C.P.
JOHN J. SACCARDI
JOHN L. SARNA, P.E.
DAVID B. SCHIFF, A.I.C.P.
STUART I. TURNER, A.I.C.P.

GEORGE M. RAYMOND, A.I.C.P., A.I.A.
NATHANIEL J. PARISH, P.E., A.I.C.P.
SAMUEL W. PINE, A.I.C.P.
MICHAEL WEINER, A.I.C.P.

Services:
Community Development
Comprehensive Planning & Zoning
Economic Development
Environmental
Housing
Land Development
Real Estate Economics
Revitalization
Transportation, Traffic & Parking

June 12, 1985

PATRICIA KELLY
NOEL SHAW JR., A.I.A.
CSABA TEGLAS, A.I.C.P., C.I.P.

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

Re: Hills Development Corporation v. Township of Bernards

My dear Judge Serpentelli:

Pursuant to your Order dated 19 December, 1985 appointing me as special master to review the Amended Land Use Ordinance of Bernards Township as to its compliance with Mount Laurel II and to assist in the resolution of any outstanding issues, I am pleased to report as follows:

1. Fair Share

- a. Indigenous Need - In calculating its indigenous need in accordance with the consensus methodology,¹ the Township used 82 percent of the 1980 deficient and overcrowded units as constituting those likely to be occupied by lower income households.² The Rutgers

¹ The Township's Fair Share Analysis and Compliance Package was set forth in a memorandum addressed to me from Harvey S. Moskowitz, P.P., the Township's planning consultant, dated March 29, 1985, and hereinafter referred to as the Moskowitz Memorandum (see Appendix A).

² Id., p.3.

EXHIBIT F

University refinement of the methodology, using the actual percentage of deficient units that are occupied by income-eligible households in the North Somerset County sub-region established 50 percent as appropriate for use in Bernards Township. This reduces the indigenous need from 42 to 26 units. Of these, 8 units are overcrowded.

- b. Prospective Need - I concur with the Township's determination of 1,314 units.

- c. Present (reallocated) Need - I concur with the Township's determination of 506 units, with 169 units to be provided within the six-year projection period.

The total resulting fair share amounts to 1,509 units. Relying upon prior Court-sanctioned 20 percent fair share reductions in cases of voluntary settlement, the Township has requested a reduction which, using the revised fair share would amount to 302 units.³ A further reduction of 141 units is made pursuant to a

³ Ibid., p. 10.

EXHIBIT F

prior Court order.⁴ This brings the Township's total obligation down to 1,066 units. I have accepted these adjustments in reviewing the adequacy of the proposed compliance package.

2. Compliance Package

The Township has offered the following package toward the satisfaction of its fair share:

(a) Rehabilitation of Heating- and Plumbing-Deficient Units

The Township is willing to undertake the rehabilitation of those units which the 1980 Census reported to be in that condition.⁵ Using the revised method for determining the indigenous need, of the 35 deficient units only 50 percent are deemed to be occupied by income-eligible households. The Township's responsibility would thus be to find and rehabilitate 18 such units. I recommend that the Court allow the Township one year in which to develop a realistic program to that end, including an identification of sources of funding.

⁴ Ibid., p. 10.

⁵ Ibid., p. 13.

EXHIBIT F

(b) New Construction⁶

The Township has rezoned or incentives to developers sufficient production of 839 units, as follows:

- (1) Hills Development Co. The of land in the Township of which 501 acres are located in the Raritan River Basin and 545 acres are located in the Passaic River Basin. The Township has rezoned the Raritan Basin lands, which are located in its Growth Area, to permit a total of 2,750 units with a 20 percent, or 550-unit, Mount Laurel set aside.
- (2) Hovnanian (Society Hill). The 130-acre Hovnanian tract has been rezoned to permit 830 units with a 12 percent set aside for moderate income units, only. This project will therefore produce 101 units of that type. The Township has not imposed a full 20 percent set aside requirement and has

⁶ Ibid., p. 13-14.

EXHIBIT F

not required the developer to provide any low income units in this instance because the land had been rezoned for 6.5 units per acre before Mount Laurel II in response to the Mount Laurel I doctrine which was in effect at the time. The retrofitting of this development with a full Mount Laurel II set aside requirement would have required an additional density bonus which the Township felt would be excessive, particularly since adjacent developments, which were granted their 6.5 unit/acre zoning subsequent to Mount Laurel II, are quite able to provide a full low/moderate set aside of 20 percent.

In the abstract, I would normally view a density limit somewhat above 6.5 units per acre to be acceptable. In this instance, however, I believe the proposed maximum to be justified. The market rate portion of this particular development is designed to sell in the \$70-100,000 range, which will serve a lower segment of the above-moderate income class than any of the several other developments that have been built or are programmed to be built in the Township (see Table 2). As such, the ability of the market-rate

EXHIBIT F

portion of the development to provide the subsidies required for the economic feasibility of low-income units is limited, at best.

To achieve the 12 percent moderate income housing set aside without a density bonus that the Township has given the developer substantial inducements in the form of waivers of fees and standards.⁷

- (3) Several other tracts located in the same vicinity as the Hovnanian tract were mapped in the same zoning district, which permits 6.5 units per acre, subsequent to Mount Laurel II for the express purpose of helping the Township satisfy its enhanced housing obligation. Consequently, these tracts are all subject to the full 20 percent lower income housing set aside, evenly split between low- and moderate-income units. These include the following:

⁷ See Mount Laurel II Fair Share Analysis for Bernards Township, Somerset County, N.J., Harvey S. Moskowitz, July 1, 1984, pp. 23-25.

EXHIBIT F

Tract	Total Capacity	Set Aside	
		Low	Moderate
Kirby	510	51	51
Weymouth Capital	100	10	10
Wagner	162 (a)	16	16
Geyer	172 (a)	17	17

(a) These two tracts were rezoned along with the Kirby and Weymouth sites but were inadvertently not counted in the Moskowitz Memorandum. The capacity of the Geyer property was adjusted to reflect the presence of major wetlands on the tract.

In summary, the total provision which has been made for the production of new lower income housing in Bernards Township amounts to the following:

Development	Lower Income	
	Low	Moderate
Hills	275	275
Hovnanian	--	101
Kirby	51	51
Weymouth Capital	10	10
Wagner	16	16
Geyer	17	17
Sub-Total	369 units	470 units
Total	839 units	

Of the above developments, Hovnanian is under construction, Hills has made a preliminary conceptual plan submission (which cannot be processed prior to settlement), and Kirby is undergoing conceptual review. Every indication, therefore, points to the probable

EXHIBIT F

realization of some 753 units as soon as permitted by the area's market rate housing dynamics.

Deducting that portion of the 1,066 unit fair share which will be satisfied through rehabilitation and the new construction offered by the Township leaves a 209-unit balance. Part of this deficiency will be satisfied by an increase in the 550-unit lower income housing set aside on the Raritan River Basin lands of the Hills Development Corporation by 68 units to a total of 618.

Hills' Passaic Basin lands, which are located in a Limited Growth Area, are zoned for 0.5 units per acre, with a capacity of 273 units. These lands, which are unsewered, cannot be developed with on-site septic tanks due to poor soil conditions. Hills has requested that the Township permit the sewerage of this area by including it in an expanded Environmental Disposal Corporation franchise area. The Township originally refused to allow this out of concern that its acquiescence in the provision of sewers in a portion of its Limited Growth Area may eventually be used by other developers of adjacent vacant lands as a wedge to undermine the integrity of the remainder of the Limited

EXHIBIT F

Growth designation. In response to Hills's request that I intervene I stated that the sewerage of a tract zoned for single family houses on lots averaging more than two acres was outside the area of my concern. I suggested, however, that an offer by Hills to expand its Mount Laurel set aside in the Raritan Basin by 25 percent of the number of units it proposes to build in the Passaic Basin would bring that portion of the project within the Mount Laurel orbit.

Hills has subsequently offered to build an additional 68 lower income units on its Raritan Basin lands in exchange for the Township's support of the application for expansion of the EDC franchise area.

It should be noted that this solution would avoid the placement of densely developed housing outside the SDGP Growth Area and would retain the existing zoned density of the Hills lands in the SDGP Limited Growth Area. It would also be environmentally superior to the sewerage of the single family houses by means of individual septic tanks. At the same time, it would help the Township reduce substantially its deficit in meeting its fair share obligation.

EXHIBIT F

The additional 68 units would increase the overall density on the Raritan Basin tract from 5.49 to 5.62 units per acre. To permit this to occur the current zoning of this area, which was enacted as part of the Township's effort to comply with Mount Laurel II, and which now limits density to a maximum of 5.5 units per acre, would have to be slightly adjusted.

The Township's concerns regarding the potential use by others of the sewer lines provided in the Limited Growth Area to service the Hills development could be resolved through the sizing of pipes to avoid the creation of excess capacity and through legal instruments acceptable to the Township.

In recognition of the rapid rate of growth which Bernards Township will experience in response to Mount Laurel II I recommend that these additional 68 lower income units be permitted to be phased in during the period 1991-1994.

Credits vs. Phasing

The above modification in the new construction portion of the compliance package would reduce the unsatisfied portion of the Township's fair share obligation to 141

EXHIBIT F

units. I believe that the Township should be credited for the following prior housing initiatives in an amount sufficient to satisfy this portion of the overall lower income housing need.

Ridge Oak Section 8 Senior Citizen Project. This large, 248-unit project was completed in 1977 in response to Mount Laurel I. It serves exclusively lower-income households in compliance with the applicable guidelines of the U.S. Department of Housing and Urban Development. This project is experiencing an annual turnover of between 15 and 18 units.

Market Rate Multi-Family Developments Permitted in Response to Mount Laurel I. In 1979-1980, the Township rezoned 1,480 acres of land which has led to the development of projects with an ultimate capacity of 1,820 units of "least cost" multi-family housing at varying densities, as follows:

EXHIBIT F

Table 1

MOUNT LAUREL I "LEAST COST" DEVELOPMENTS
 Bernards Township, New Jersey

Development	Area (In Acres)	Capacity (in Units)		Status (as of 5/85)	(1)
		Before Rezoning	After Rezoning		
The Ridge		20	104	104 B.P.	70 C.O.
The Barons		25	132	82 B.P.	51 C.O.
Countryside Manor		30	150	150 B.P.	150 C.O.
Lord Stirlingville Vill.		15	150	120 B.P.	1 C.O.
Maple Run		20	64	breaking ground	
Spring Ridge		190 ⁽²⁾	1,220	256 B.P.	No C.O.
Total		300	1,820	612 B.P.	272 C.O.

(1) B.P. = Building Permit.
 C.O. = Certificate of Occupancy

(2) Probable maximum capacity based on environmental considerations.

While none of these units meet the Mount Laurel II test of affordability (see Table 2, below), they do constitute evidence of the Township's cooperative attitude in meeting its obligations under Mount Laurel I, which was the law applicable at the time.

EXHIBIT F

Table 2

SALES PRICES
Mount Laurel I "Least Cost" Developments
Bernards Township, New Jersey

<u>Development</u>		<u>Unit Sales Prices</u>
The Ridge		\$140,000-160,000
The Barons		\$180,000-280,000
Countryside Manor	88 units @	\$100,000-125,000
	62 units @	\$125,000-150,000
Lord Stirling Village		\$170,000-200,000
Maple Run		\$200,000+
Spring Ridge	610 units @	\$100,000-125,000
	610 units @	\$125,000+

Source: Bernards Township.

In recommending that the Township be given credit for its prior efforts as described above I am also cognizant that, in attempting to meet its housing obligation, the Township has already rezoned a grand total of 1,480 acres which, after density adjustments in response to Mount Laurel II, make realistically possible the construction of 4,518 multi-family units. The 273 low density market rate units on Hills's Passaic Basin land and the accompanying 68 Mount Laurel units in the Raritan Basin will also have been made possible by a Mount Laurel-motivated expansion of EDC's franchise area. (See map following.)

EXHIBIT F

At 2.5 persons per household, this number of units will house approximately 12,000 persons. This will almost double the Township's 1980 population of 12,920. As the Court noted (Allan-Deane v. Township of Bedminster, at p.8), while

"numbers alone cannot justify a finding of radical transformation...the statistics do provide some broad guidance in assessing the projected growth rates. The Supreme Court demonstrated its concern for the quantity of construction which could occur within a short time (at 219). Thus the numbers can play some role in the court's determination."

According to the U.S. Census, since 1960 only six of the 146 New Jersey communities with 10,000 or more residents doubled in population over a ten year period (see Table 3). All of these experienced this extraordinary growth rate between 1960 and 1970. Only one of the six, Willingboro Township, was in Bernards Township's 10,000-15,000 population class, and its growth was due to the establishment of Levittown in response to the location in the area of a major steel plant in the early post-World War II period of universal seriously pent-up housing demand.

EXHIBIT F

Table 3

POPULATION GROWTH
Selected Municipalities with 10,000+ Population

<u>Municipality</u>	<u>1960</u>	<u>1970</u>	<u>% Growth</u>
Brick Township (Ocean Co.)	16,299	35,057	115%
Cherry Hill Township (Camden Co.)	31,522	64,395	104%
Dover Township (Ocean Co.)	17,414	43,751	151%
Old Bridge Township (Middlesex Co.)	22,772	48,715	114%
Parsippany-Troy Hills Twp. (Morris Co.)	25,557	55,112	116%
Willingboro Township (Burlington Co.)	11,861	43,386	266%

Note: No municipality in the State of New Jersey with a population in excess of 10,000 persons experienced a growth rate of 100% or more during the 1970s.

I wish to emphasize that the basis for my recommendation that credit for prior programs be given is not the actual eligibility of any of the resulting units toward the satisfaction of any portion of the housing need as defined in Mount Laurel II and as derived according to the AMG methodology. Rather, based on reasoning similar to that which underlies a 20 percent reduction in the local fair share in recognition of a municipality's willingness to comply voluntarily, I feel that a municipality which, prior to Mount Laurel II and unlike its neighbors, did as much as Bernards Township to help alleviate the housing

EXHIBIT F

problem of the less affluent, is entitled to judicial recognition of its efforts.⁸

I wish to emphasize also that, in my opinion, such recognition is only justified now, during the initial round of implementation of Mount Laurel II. After 1990, the only units which should be considered for credit should be those, if any, that have been constructed or authorized since Mount Laurel II in excess of the local obligation for the particular projection period. In cases of future overloads (i.e. disproportionate rates of growth that would result from the accommodation of the full fair share in one projection period) it would seem to me appropriate to resort to phased compliance rather than reduced fair shares.

⁸ The ineligibility, on a unit for unit basis, of housing, which does not meet pricing eligibility requirements or the affordability of which is not guaranteed into the future, is clear. I am also particularly wary of qualifying turnover in existing eligible housing built prior to the commencement of the need projection period. If such turnover in units built before 1980 were to be considered eligible now, logic would require that turnover in Mount Laurel II units built in the 1980s be considered eligible toward the satisfaction of future Mount Laurel obligations. But even apart from the latter consideration, existing lower income units, by definition, serve a need that is already present in the municipality. As a unit becomes vacant, an already present eligible household can be assumed to need it. In the calculation of fair share, except for the narrowly defined indigenous need, the AMG methodology includes only units that are needed to accommodate income-eligible households that are not yet living in the municipality.

EXHIBIT F

Supplementary Apartments. The Township also proposed to use the apartments which will result from its recent amendment of Section 405C.10 of its zoning ordinance to allow accessory apartments as conditional uses in one-family dwellings in all districts. The Township estimates that such apartments may be created in 3 percent, or 114, of the existing 3,785 one family detached units. No detailed method of assuring the affordability of these apartments, initially and over time, has been proposed. In addition, in my opinion it would be unrealistic to expect that such units, which would be located in private homes, can be assured of being eligible and available on the open basis contemplated by Mount Laurel II short of their becoming part of the low/moderate income housing supply administered by the municipality. It is my further view that the ability of the municipality to impose its affordable housing program standards on those homeowners who may initially wish to participate in the program on the terms that would make the units eligible is most doubtful.

For these reasons, I do not believe that this type of apartment would meet the standards of Mount Laurel II

EXHIBIT F

even if the initial affordability issue were to be resolved.

2. The Land Development Ordinance

On November 12, 1984, the Township Committee adopted Ordinance #704 (see Appendix B) which embodies the Township's effort to bring its Land Development Ordinance into compliance with Mount Laurel II. I find the ordinance to be acceptable with a few exceptions, as follows:

Article 1100

Section 1103. The Use Regulations in the R-5 and R-8 Zones as Part of the PRD-2 and PRD-4 Options permit "Planned Development." The definition of "planned development" in Article 200 includes both "planned employment development" which is intended to accommodate "employment uses" and "planned residential development" which is intended to include the type of development contemplated in fulfillment of the Township's Mount Laurel obligation. The reference to "Planned Development" should be modified to preclude the use of any of the lands zoned as part of the Township's compliance package for "employment uses."

EXHIBIT F

Section 1104. The compliance package assumes that all lands zoned for higher density housing will be used for residential purposes. The ordinance should clarify that the number of units on each tract will not be affected should the Township approve the use of any of the tract area for permitted non-residential purposes (i.e., schools, municipal facilities, retail and service commercial uses, etc.).

Section 1110. E. Sale and Resale and Rental of Lower Income Housing

Subsection 5. The ordinance requires each developer to

"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 to seek or buy or rent such housing, and have the opportunity to buy or rent such housing. It shall include advertising and other similar activities."

Since the Township's compliance package includes a number of potential developments, it would appear desirable that more precise guidelines for such a marketing plan be laid down by the Township. At the

EXHIBIT F

least, such a plan should be required to include advertising in newspapers of general circulation serving metropolitan centers and lesser urban and municipalities in the Township's present need region.

Sub-Section 6. There seems to be no good reason why conversion of rental units to condominium ownership should be prohibited for 15 years following their construction so long as the pricing of such units follows the Mount Laurel guidelines.

Section 1112.

Sub-Section A. Drainage. The development's drainage system should not be required to accommodate storm or natural drainage water which originates outside the boundaries of the tract if such water would continue to flow over undeveloped portions thereof.

The ordinance has been in effect for more than six months and has been applied to Mount Laurel set aside developments in the conceptual planning stage without raising objections on the part of the developers involved. It has also been reviewed thoroughly by the Hills Development Corporation's professional advisers who have found it to be reasonable and free of unnecessarily cost generating provisions.

EXHIBIT F

I recommend that the Court accept Ordinance #704 if amended as set forth above.

3. Administration of the Affordable Housing Program

Ordinance #704 places the responsibility for the direction and administration of occupant selection procedures upon a Housing Administrator to be appointed annually by the Township Committee. Despite the fact that the first development which will produce Mount Laurel units has broken ground, such an official has not been appointed as yet and no rules to govern the process--including the establishment of priorities, if any, among applicants--have been formulated.

I understand that the Township has considered the possibility of using the Bedminster Hills Housing Corporation but has found it preferable to devise a different vehicle for the purpose. An ordinance to that effect is currently being prepared. According to the Township Administrator, the marketing of the Mount Laurel units in the first development expected to materialize (Hovnanian) will commence in August, 1985. I recommend, therefore, that the Court require that the Township establish the necessary administrative structure within 30 days and that it submit to the Court the rules and

EXHIBIT F

regulations intended to govern the administration of the affordable housing program and a report on the provisions made for financing the operating expenses connected therewith by July 31, 1985.

4. Fee Waivers and Relaxation of Design and Construction Standards

As an inducement for acceptance by Hovnanian of a 12 percent moderate income housing set aside without the benefit of a density bonus, the Township offered the following (in addition to a relaxation of design and construction standards that have since been incorporated into Ordinance #704):

1. Fast tracking of applications
2. Waiver of fees

The same consideration is appropriate in the case of projects that are granted a density bonus but that offer a full 20 percent set aside that includes low- as well as moderate-income units.

EXHIBIT F

I, therefore, recommend that the Court require the Township to adopt the following application processing schedule:⁹

<u>ACTIVITY</u>	<u>TIMETABLE</u>
1. Application made to the Planning Board	0 day
2. Planning Board provides developer with written determination as to whether application is complete.	14 days
3. Developer furnishes the Planning Board with required additional material. Planning Board forwards copy of applications to municipal agencies. Application is deemed complete.	14 days*
4. Interested municipal agencies file their reports with the Planning Board. All documentation is made available to the public.	21 days
5. Planning Board holds public hearing.	14-28 days
6. The Planning Board grants or denies preliminary approval.	7 days
Total Time	95 days

*In the event that the required additional material is not submitted within the prescribed time period, the Planning Board should be entitled to stop the timetable "clock" until five working days following the date of receipt thereof.

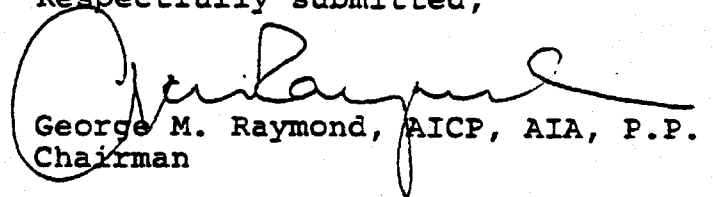
⁹ This schedule was determined to be appropriate by the Court in Urban League of Essex County v. Township of Mahwah on the basis of extensive expert testimony from both the plaintiff developer and the Township.

EXHIBIT F

Waiver of Fees

The Planning Board application fees should be waived for all low- and moderate-income units, whether provided as a set aside or separately from any other units.

Respectfully submitted,

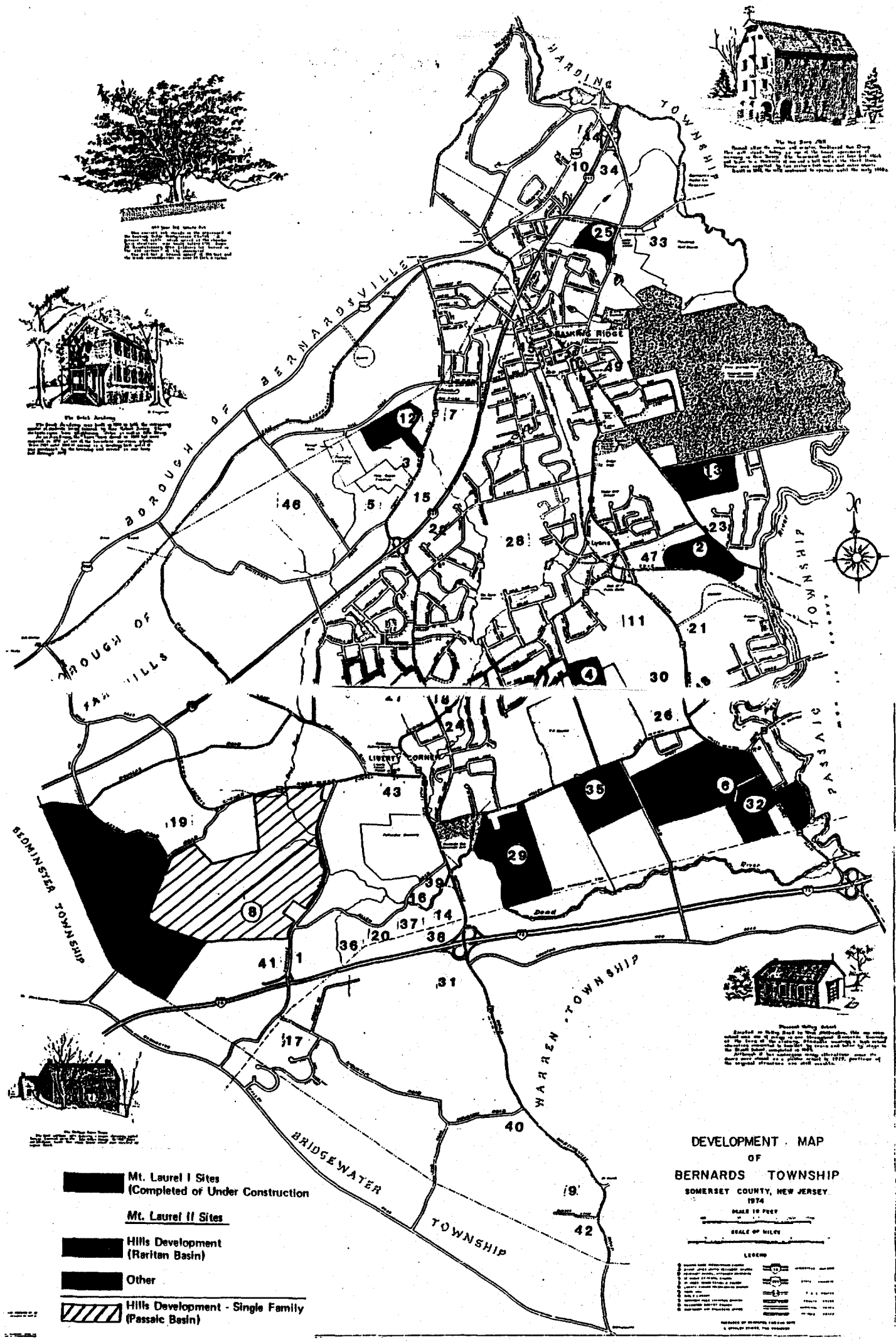

George M. Raymond, AICP, AIA, P.P.
Chairman

GMR:kfv

cc: Henry A. Hill, Esq.
James E. Davidson, Esq.

EXHIBIT F

APPENDIX A



- Mt. Laurel I Sites
(Completed or Under Construction)
- Mt. Laurel II Sites
- Hills Development
(Raritan Basin)
- Other
- Hills Development - Single Family
(Passaic Basin)

DEVELOPMENT MAP
OF
BERNARDS TOWNSHIP
SOMERSET COUNTY, NEW JERSEY
1974

SCALE 10 FEET
SCALE OF MILES

LEGEND

	State Road		Railroad
	Stream		Utility Line
	Township Boundary		County Boundary
	Water		Other

PREPARED BY: [unreadable]
DATE: [unreadable]

EXHIBIT F

TO: George Raymond, P.P., Court Appointed Master, Bernards Township

RE: Bernards Township Fair Share Analysis and Compliance Package

DATE: March 29, 1985

Introduction and Summary of Findings

This memorandum summarizes Bernards Township's fair share obligation and compliance strategy. It indicates that the total 1990 fair share obligation using the consensus methodology is 1,525 lower income units. A multi-faceted compliance strategy has been prepared; most of it is in place at this time. In all, credits for 1,701 lower income units is requested.

Compliance includes rezoning to provide density bonuses and mandatory set-asides, rehabilitation of substandard units, supplementary apartments, credit for Mt. Laurel I compliance, turnover in existing subsidized units, and customary credits for voluntary settlement. The background material and complete analysis is contained in Final Report, Mt. Laurel II Fair Share Analysis for Bernards Township, Somerset County, N.J., July 1, 1984, by Harvey S. Moskowitz, Ph.D.

Fair Share Obligation

The methodology used to analyze the Township's existing and prospective fair share obligation is the consensus methodology developed in a series of seminars attended by approximately 16 planners convened by the Honorable Eugene E.

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Serpentelli, J.S.C., to determine an acceptable common methodology for the Urban League of Greater New Brunswick v. Carteret, et al., case. The procedures and techniques to compute region, indigenous need, and present and future recommended fair share by the experts appears to be the methodology of choice, at least for those cases argued before Judge Serpentelli. Since Somerset County is within the Mt. Laurel II judicial district of Judge Serpentelli, that methodology has been used to determine Bernards Township's low and moderate income housing obligation.

Using the consensus methodology, Bernards Township's total Mt. Laurel housing obligation is 1,862 units of low and moderate cost housing. Of this total, 1,525 is the 1990 obligation.¹ These figures are derived as follows:

¹Reduced by phasing in the present reallocated housing need; one-third of 506, or 169 units by 1990.

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Indigenous Need: Bernards Township

Overcrowded units:	16 units
Units lacking complete plumbing for exclusive use:	5
Units lacking adequate heating system:	<u>30</u>
Total Indigenous Need:	<u>51</u>
Adjusted Indigenous Need (82%):	42 units
<u>Prospective Need:</u>	1,314 "
<u>Present Housing Need:</u>	506
1/3 in place by 1990:	<u>169</u> "
Total Mt. Laurel Obligation by 1990:	<u>1,525</u> units

The following describes the methodology used to obtain the three components of the Mt. Laurel housing obligation.

Indigenous Housing Need

This is a measure of the substandard housing within the municipality, based on data in the 1980 U.S. Census. It includes three indicators of substandard conditions: overcrowded housing, housing lacking complete plumbing for a household's exclusive use, and units lacking an adequate heating system. The data used have been chosen to eliminate double counting. The Mt. Laurel housing need is assumed to be 82 percent of the total indigenous need, based on a study of the New York metropolitan region which established that 82 percent of households living in such housing are low and moderate income.

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Indigenous Need: Bernards Township

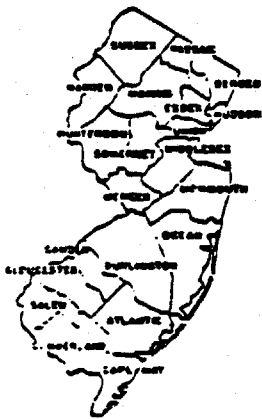
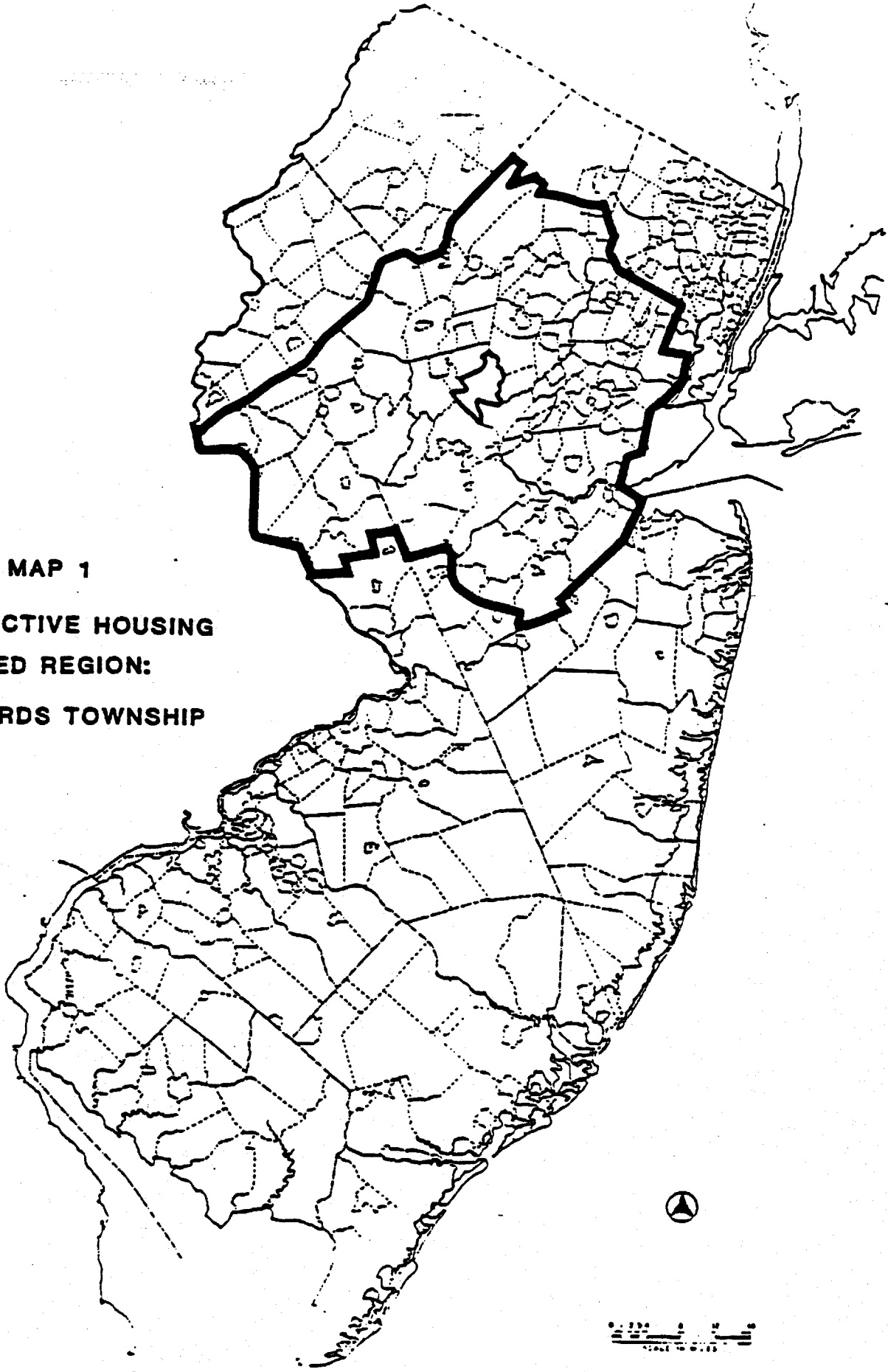
Overcrowded units:	16 units
Units lacking complete plumbing for exclusive use:	5 "
Units lacking an adequate heating system:	30 "
Total Indigenous Need:	51 units
<u>Adjusted Indigenous Need (82%):</u>	42 units

Prospective Housing Need

Prospective need is the Township's share of the housing need resulting from employment growth, household changes, and other factors which generate a demand for new housing. This housing need is forecast for the period 1980-1990, for a housing market region established for Bernards. The region consists of those counties in New Jersey which are entirely or partly within a 30-minute commuting trip by automobile from the Township. This region includes Somerset, Morris, Middlesex, Hunterdon, Union and Essex counties. (See Map No. 1 on following page.)

Within this six county region, household growth was projected for the period 1980-1990, using population projections by county for 1990 which were issued in 1983 by the New Jersey Department of Labor & Industry. Of total household growth projected for the region, it is assumed that 39.4 percent will be low and moderate income households, based on the percentage in the state in 1980. This constitutes the region's Mt. Laurel

MAP 1
PROSPECTIVE HOUSING
NEED REGION:
BERNARDS TOWNSHIP



COUNTY KEY MAP

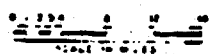


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housing need. This total is then increased by 3 percent, to account for anticipated housing units lost during the period, and additional units needed to provide the vacancy rate needed for a normal housing market. The total prospective Mt. Laurel need for the six county region is 50,484 units.

This total prospective Mt. Laurel housing need was allocated among the region's municipalities, excluding municipalities with no designated growth areas in the State Development Guide Plan, and those state Urban Aid municipalities which already have a disproportionate share of the region's substandard housing.

The allocation formula weights four factors: (1) the Township's share of the region's growth area on the State Guide Plan; (2) the Township's share of the region's employment (private sector jobs in 1982); (3) the Township's share of the region's average annual employment growth (growth in private sector jobs between 1972 and 1982, using a linear regression analysis technique designed to more accurately reflect annual changes); and (4) a financial component based on the ratio of Bernards median household income compared to the region's median household income.

Bernards fair share allocation of the region's prospective Mt. Laurel housing need is 2.169 percent, calculated as follows:

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Growth Area

Bernards	10,694 acres
Prospective Need Region	490,825 acres
Fair Share Allocation	2.179 percent

Employment, 1982

Bernards	6,284 jobs
Prospective Need Region	734,998 jobs
Fair Share Allocation	0.855 percent

Average Annual Employment Growth, 1972-82

Bernards	+624 jobs
Prospective Need Region	+21,961 jobs
Fair Share Allocation	2.841 percent

Financial Factor

Average of Growth Area, Employment, & Employment Growth

$$\frac{2.179 + 0.855 + 2.841}{3} = 1.958 \text{ percent}$$

Median Household Income (1980)

Bernards	\$35,522	=	1.43
Prospective Need Region	\$24,893		

$$1.958 \times 1.43 = 2.80 \text{ percent}$$

Weighted Fair Share Allocation (4 factors)

$$\frac{2.179 + 0.855 + 2.841 + 2.80}{4} = 2.169 \text{ percent}$$

The consensus group has also recommended that each municipality's fair share allocation should be increased by 20 percent to account for municipalities in the region which have no vacant land to provide their allocated share of the housing need, and to provide for some measure of overzoning for market

purposes. The total prospective need allocation for Bernards is therefore calculated as follows:

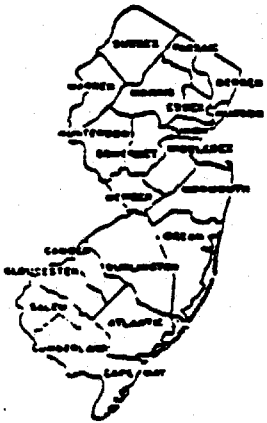
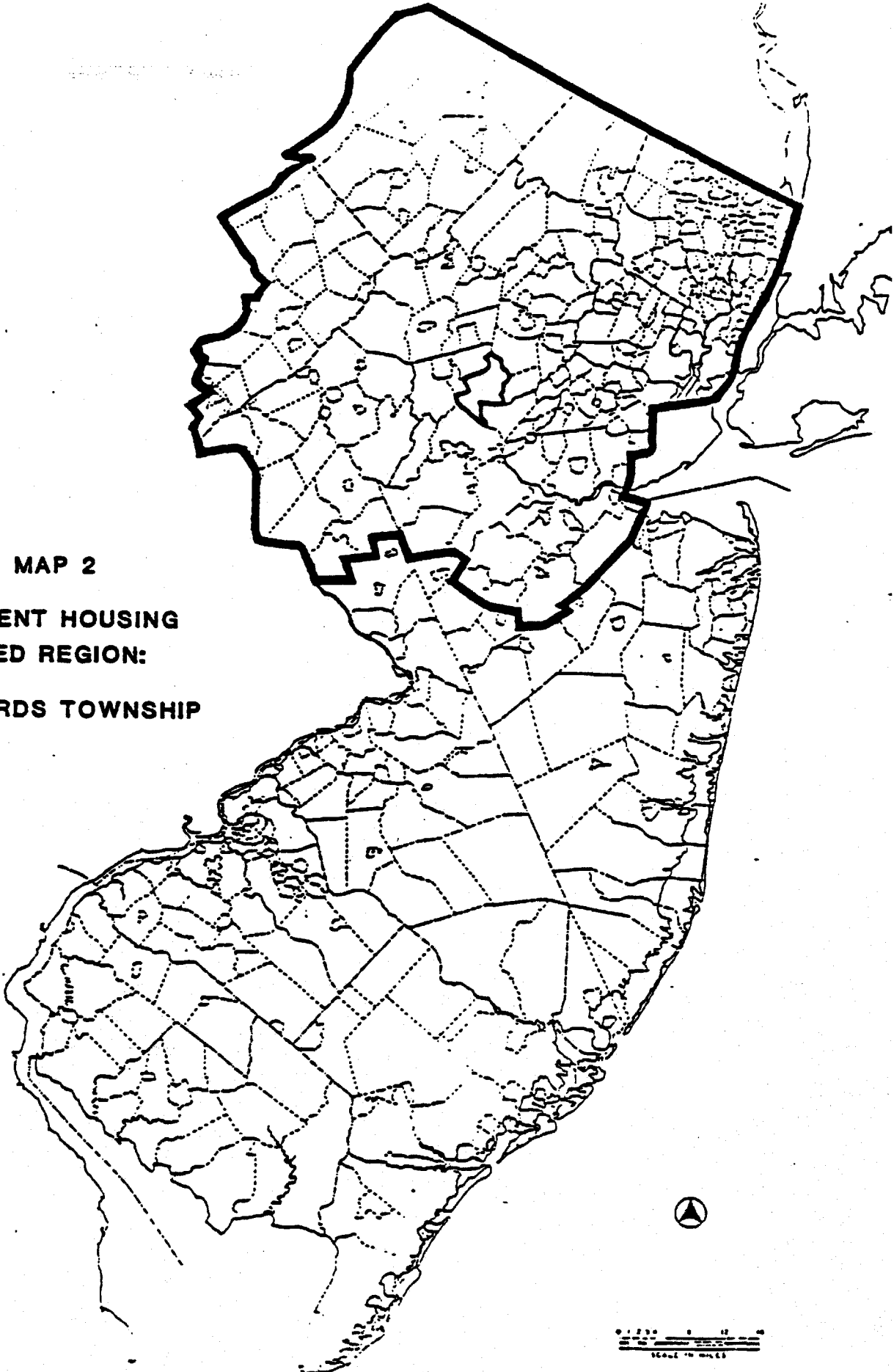
Total Prospective Regional Housing Need:	50,484 units
Fair Share Allocation, Bernards:	1,095 units
Adjusted Fair Share Allocation (+ 20%):	1,314 units

Present Housing Need

The Mt. Laurel II decision stipulated that no municipality should be required to provide a disproportionate share of its indigenous housing need; that is, municipalities which already house substantial numbers of the region's low and moderate income families, and which therefore have a large share of the region's indigenous housing need, should not be assigned an equally large Mt. Laurel housing obligation as a consequence. The regional component of present housing need is generated from municipalities whose indigenous need is a larger percentage of their total housing than the percentage in the region as a whole.

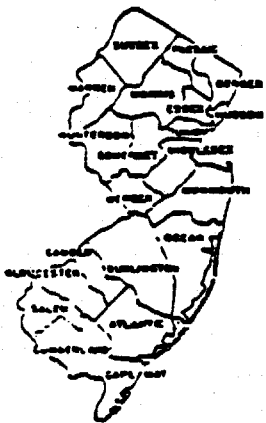
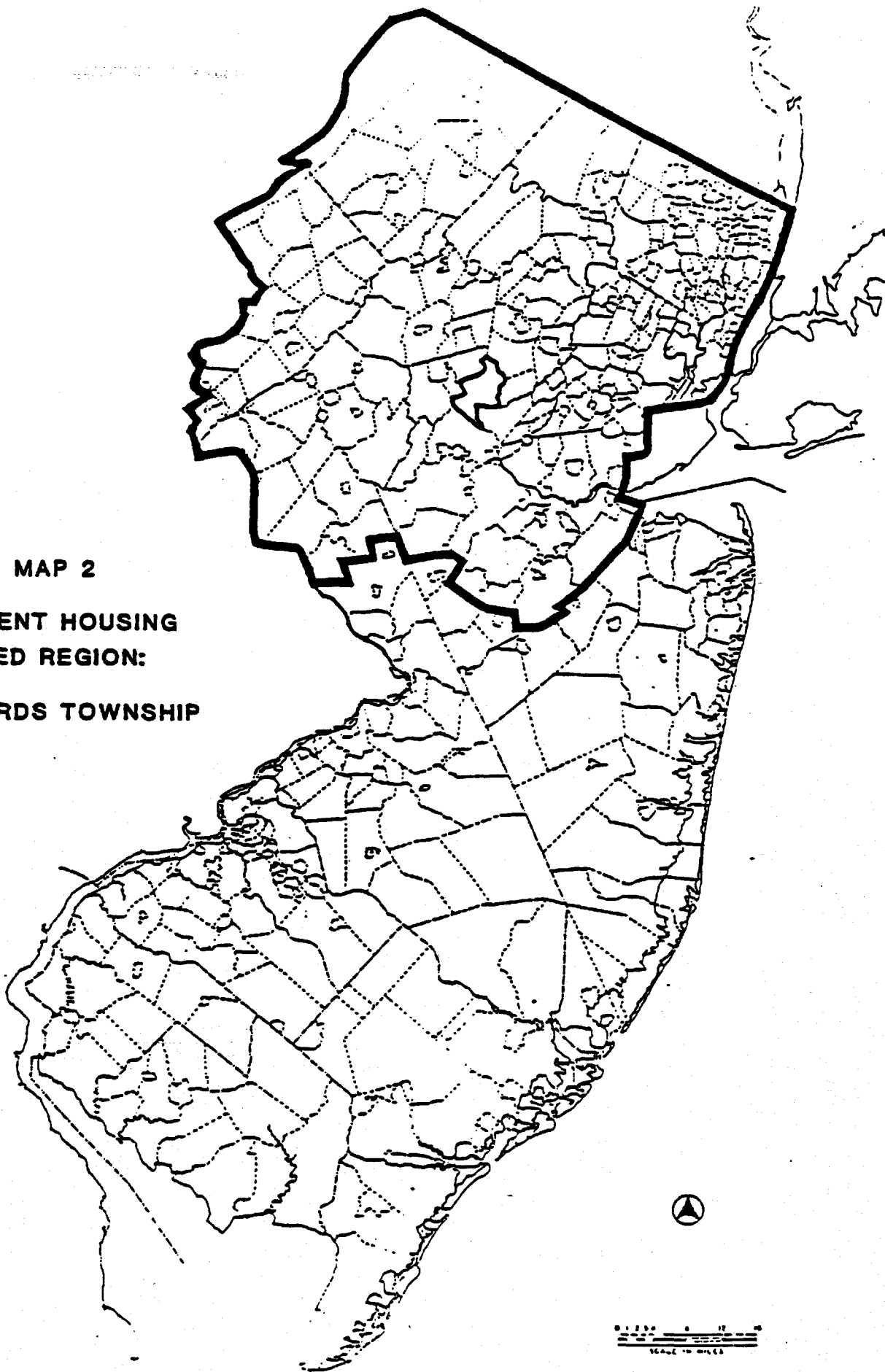
For purposes of calculating and allocating present need, four regions have been established in the state. Bernards is in an eleven-county region which includes all of the counties in New Jersey north of Monmouth and Mercer. (See Map No. 2 on following page.) In this region, 6.4 percent of all housing was substandard, as measured by the Census indicators described above. This percentage is therefore the maximum indigenous need

**MAP 2
PRESENT HOUSING
NEED REGION:
BERNARDS TOWNSHIP**



COUNTY KEY MAP

**MAP 2
PRESENT HOUSING
NEED REGION:
BERNARDS TOWNSHIP**



COUNTY KEY MAP

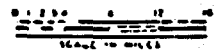


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which a municipality is required to provide. If a municipality's substandard housing (indigenous need) is more than 6.4 percent of its total housing, the "surplus" over 6.4 percent is part of the regional present need. Total "surplus" present need for the 11-county region is 35,014 units. With a 3 percent vacancy rate, the figure becomes 36,064. The total "surplus" present need is then allocated to all the growth area municipalities in the region, excluding those Urban Aid municipalities which already have a disproportionate share of the region's substandard housing.

The formula for allocating "surplus" present need in the region uses three of the four factors in the prospective need allocation formula: share of the region's growth area, share of the region's jobs (as of 1982, the most recent year for which municipal employment data is available), and the financial factor. Bernards Township's fair share of the region's "surplus" present need is 1.169 percent, calculated as follows:

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Growth Area

Bernards	10,694 acres
Present Need Region	704,633 acres
Fair Share Allocation	1.518 percent

Employment, 1982

Bernards	6,284 jobs
Present Need Region	1,247,601 jobs
Fair Share Allocation	0.504 percent

Financial Factor

Average of Growth Area and Employment

$$\frac{1.518 + 0.504}{2} = 1.011$$

Median Household Income (1980)

Bernards	\$35,522	=	1.47
Present Need Region	\$24,177		

$$1.011 \times 1.47 = 1.486 \text{ percent}$$

Weighted Fair Share Allocation (3 factors)

$$\frac{1.518 + 0.504 + 1.486}{3} = 1.169 \text{ percent}$$

As with prospective housing need, the final allocation is increased by 20 percent, to account for municipalities which lack vacant land to provide the housing allocated to them and to provide for some measure of overzoning. Bernards' fair share of the "surplus" present housing need is therefore calculated as follows:

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Total Present Regional Housing Need:	36,064 units
Fair Share Allocation, Bernards:	422 units
Adjusted Fair Share Allocation (+ 20%):	506 units

Since present need was built up over a long period of time, the consensus group recommended a gradual rather than immediate implementation schedule. The present need is recommended to be met over three six-year periods, and that only one-third of the total need, or 169 units, must be met by 1990.

Compliance

The following measures represent Bernards Township's compliance package. It consists of credit for existing housing constructed or approved as part of Mt. Laurel I, rehabilitated units, supplementary apartments, and rezoning to provide for density bonuses and mandatory set-asides. At the outset, however, the Township is requesting a 20 percent reduction in its overall fair share figure as an inducement to settle. This reduces the total obligation to 1,220 units. In addition, in conferences with Judge Serpentelli, a further reduction of 141 units was indicated in return for settling the case brought by Spring Ridge. This further reduces the overall obligation to 1,079 units.

Credit for Existing Housing and Turnover. Ridge Oak, a 248-unit, senior citizen housing complex, was constructed in

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1976-1977. The rents are controlled and meet HUD Section 8 guidelines. Almost all of the units are now low income occupied. The executive director of the complex estimates that 16 to 18 apartments become available annually.

The experts assembled by Judge Serpentelli did not discuss existing subsidized housing units constructed prior to 1980. (Those constructed after 1980 were counted as credit against a municipality's fair share figure.) While some might argue that existing subsidized housing does not increase the housing supply, some recognition of this resource is warranted, particularly since Ridge Oak was constructed in 1976-1977 as part of the Township's willingness to provide lower income housing in response to Mt. Laurel I. Ridge Oak was in addition to rezoning for 600 least cost housing units in five developments to provide a variety of housing types at densities of six (6) units per acre.

The 248 units was the Township's response to an existing or present need and therefore should be credited against the Township's present need allocation of 506 units, bringing the total down to 258 units of which one-third, or 86, are required to be in place by 1990.

In addition to a credit against the Township's present need, the annual turnover of 16-18 units per year in the complex constitutes a prospective or future need resource. The average

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figure of 17 units per year for the decade, or 170 units, was applied to the Township's prospective need.

Balanced Residential Complexes. In 1977, in settlement of a suit filed under Mt. Laurel I, Bernards Township rezoned five areas in the Township to allow construction of 600 multi-family units. All of the complexes have been granted final approval, and their present status is as follows:

<u>Name</u>	<u>Total</u>	<u>Occupied</u>	<u>Under Construction</u>	<u>Approved</u>
The Ridge	104	70	34	-
The Barons	132	51	81	-
Countryside Manor	150	133	17	-
Lord Sterling Village	150	1	120	29
Maple Run	<u>64</u>	<u>-</u>	<u>-</u>	<u>64</u>
Total:	600	255	252	93

While there are no qualifications in terms of occupancy and the units are sold at market levels, the rezoning did comply with Oakwood at Madison in the sense that they represented least cost housing appropriate to Bernards Township. Moreover, the new density of six (6) dwelling units per acre was a significant increase over the previous densities of one (1) dwelling unit per one acre for four of the sites and one (1) dwelling unit per two acres for one site. The multi-family units were also the first in the Township.

We propose that a percentage of the 600 units be applied against the Township's present need since they were constructed in response to an existing (pre-1980) demand.

Rehabilitated Units. The Township's indigenous share of substandard housing (exclusive of overcrowded units) is 35 units. Assuming 82 percent are occupied by Mt. Laurel II households, 29 units would be eligible for rehabilitation credits. Using community development grant funds or local resources if necessary, Bernards will rehabilitate the 29 units by 1990.

Supplementary Apartments. The Township recently amended its zoning ordinance (Section 405C.10) to allow for accessory or supplementary apartments as conditional units in all residential zones. The previous provisions allowed accessory apartments but restricted their occupancy to immediate family members -- mother, father, son, daughter, brother or sister. The new amendment removes the restriction. The new amendment (adopted as part of the compliance package) also permits such units in outbuildings.

The total number of potential apartments is 3 percent of the 3,785 single-family detached dwellings in the Township, or 114 units. This is not unreasonable. Studies in Nassau and Suffolk counties indicate as many as 10 percent of the single-family units have supplementary apartments.

New Construction. The Township has amended its zoning ordinance to eliminate all cost generating features not related to health and safety, provide for fast tracking of Mt. Laurel applications, increase densities, require mandatory set-asides for lower income units, and reduce bulk standards.

The amendment also rezoned several areas of the Township to provide low and moderate income units as follows:

	<u>Total Units</u>	<u>Low & Moderate</u>
Hills Development	2,750	550
Hovnanian	850	101*
Kirby	510	102
Weymouth Capital	<u>100</u>	<u>20</u>
Total	4,210	773

*All moderate income.

The status of the applications are as follows:

- a. Hovnanian: Final approval; construction expected to begin shortly.
- b. Kirby: Application for conceptual approval filed; public workshop scheduled for April 30th.
- c. Hills: Conceptual plans being prepared.
- d. Weymouth Capital: Nothing submitted as of this date.

Of the 773 low and moderate income units projected from the rezonings, 101 will be under construction in 1985, an additional 102 will be approved in 1985, and 550 will be approved after settlement of this lawsuit.

Summary of Compliance Measures

The Township of Bernards has moved expeditiously to meet its Mt. Laurel II obligation. All zoning amendments are in place, and the Township has granted final approval to the first project providing lower income units (Hovnanian). All but one of

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the other proposed lower income units to be constructed by builders are in the pipeline.

The full compliance strategy as applied to the Township's Mt. Laurel II obligation provides for a significant degree of overcompliance, as follows:

Mt. Laurel Obligation (1990)		1,525 Units
Credits:		
20% Settlement:	305	Units
Spring Ridge Settlement:	141	"
Rehabilitated Units:	29	"
Subsidized Housing Turnover:	170	"
Mt. Laurel I Compliance, Ridge Oak Balanced Residential Complexes	-- 169*	"
Supplementary Apartments:	114	"
Rezoning, Hills	550	"
Hovnanian	101	"
Kirby	102	"
Weymouth Capital	<u>20</u>	"
Total:		1,701 Units

*Total of 848 Mt. Laurel I units (600 balanced residential complex units plus 248 subsidized units) credited against Township's total 169 present reallocated need, or a 20% credit.

Additional Comment

Attached as Appendix A is a report dated March 11, 1985 entitled, Fair Share Figures Using Rutgers CUPR Methodology. It indicates that the Township's fair share figure, using a probable Rutgers CUPR methodology would be somewhere between 900-1,000 units.

EXHIBIT F

APPENDIX A

EXHIBIT F

TO: Bernards Township Planning Board and Township Committee
RE: Fair Share Figures Using Rutgers CUPR Methodology
DATE: March 11, 1985

1. The Legislature is now considering a bill which would establish an Affordable Housing Council. They in turn would develop a fair share formula based on fixed regions. (We presently use a commutershed for prospective share and a fixed region for present need.)

2. The methodology would probably be based on the broad parameters suggested in the Rutgers Center for Urban Policy Research report, Mt. Laurel II: Challenge and Delivery of Low-Cost Housing. We have recalculated Bernards Township's Mt. Laurel obligation based on those guidelines and found that the Township's obligation is 1,004 units.

3. As the Board may recall, our fair share number under the consensus methodology is 1,272 units. This is a net figure, however, and includes deductions for Ridge Oak, including the original 248 units and the annual turnover. If those credits were permitted to be applied to the Rutgers methodology, it would reduce the number to approximately 746 units. (The 248 units that we have taken credit for with respect to Ridge Oak was applied only to the present need. Under the Rutgers formula, that present need is only 88 units to begin with, so this is the maximum credit we could get for the original Ridge Oak construction.)

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Bernards Township, Somerset County
West Central (Region 3)

Rutgers CUPR Mt. Laurel Analysis

Present Regional Housing Need

(includes indigenous and reallocated present need)

8,520 Units: 1980 Present Need
2,812 Phased in Need (1980 X .33)

Prospective Regional Housing Need (1980-1990)

22,002 Units

Total Need by 1990 (present plus prospective)

24,814 Units

Allocation Factors*

Employment, 1982

Bernards: 6,284

Hunterdon	20,492	-	6,987	=	13,505
Middlesex	240,832	-	32,322	=	208,510
Somerset	82,957	-	161	=	82,796
Warren	24,632	-	5,385	=	<u>19,247</u>

Net Employment: 324,058

Bernards as a Percent of Region 3:

$\frac{6,284}{324,058} = .01939 = 1.939\%$

*Deductions are made for non-growth and selected urban aid municipalities.

EXHIBIT F

Growth Area

Bernards: 10,694 Acres

Hunterdon	26,759	-	0	=	26,759
Middlesex	154,110	-	6,432	=	147,678
Somerset	100,455	-	0	=	100,455
Warren	23,047	-	0	=	<u>23,047</u>

Net Growth Area: 297,939

Bernards as a Percent of Region 3:

$$\frac{10,694}{297,939} = .03589 = 3.589\%$$

Employment Growth (72-82)
(Linear Regression)

Bernards: +624

Hunterdon	601	425
Middlesex	5,932	7,040
Somerset	3,067	3,071
Warren	208	<u>61</u>

Net Employment Growth: 10,597

Bernards as a Percent of Region 3:

$$\frac{624}{10,597} = .05888 = 5.888\%$$

EXHIBIT F

Modified Wealth Factor: Aggregate Regional Wealth

HUNTERDON:

1980 Mean <u>Household Income</u>	X	1980 <u>Households</u>	=	
\$27,979	X	28,515		\$797,821(1,000's)

Deduct Non-Growth Municipalities:

Alexandria	27,359	X	877	23,994(1,000's)
Bethlehem	28,704		918	26,350
Bloomsbury	24,117		308	7,428
Califon	25,143		352	8,850
Delaware	29,301		1,263	37,007
East Amwell	27,660		1,134	31,366
Franklin	28,489		752	21,424
Frenchtown	19,040		586	11,157
Glen Gardner	18,623		278	5,177
Hampton	20,722		557	11,542
Holland	25,218		1,485	37,449
Kingswood	23,882		922	22,019
Lambertville	17,879		1,613	28,839
Lebanon Twp.	27,297		1,719	46,924
Milford	19,101		484	9,245
Stockton	19,782		252	4,985
Tewksbury	54,753		1,285	70,358
Union	37,823		1,053	39,828
West Amwell	25,144		775	<u>19,487</u>

Deduction Total: 463,429

\$797,821
-463,429

Net Aggregate
County Wealth:

\$334,392(1,000's)

EXHIBIT F

MIDDLESEX:

	1980 Mean		1980	
	<u>Household Income</u>	X	<u>Households</u>	=
	\$25,023	X	196,708	\$4,922,224 (1,000's)

Deduct Urban Aid Municipalities:

New Brunswick	16,965	X	13,244	224,684 (1,000's)
Perth Amboy	17,003		13,617	<u>231,530</u>

Deduction Total: 456,214

\$4,922,224
-456,214

Net Aggregate
 County Wealth: \$4,466,010 (1,000's)

SOMERSET:

	1980 Mean		1980	
	<u>Household Income</u>	X	<u>Households</u>	=
	\$30,278	X	67,368	\$2,039,768 (1,000's)

Deduct Non-Growth Municipalities:

Rocky Hill	30,614	X	267	<u>8,174 (1,000's)</u>
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Deduction Total: 8,174

\$2,039,768
-8,174

Net Aggregate
 County Wealth: \$2,031,594 (1,000's)

EXHIBIT F

WARREN:

	1980 Mean	X	1980	
	<u>Household Income</u>	X	<u>Households</u>	=
	\$21,330	X	29,406	\$627,230 (1,000's)

Deduct Non-Growth Municipalities:

Allamuchy	33,887	X	969	32,837 (1,000's)
Belvidere	20,149		935	18,839
Blairstown	27,567		1,380	38,042
Franklin	24,598		741	18,227
Freylinghuysen	24,718		456	11,271
Hardwick	22,052		287	6,329
Hope	23,189		494	11,455
Knowlton	20,541		682	14,009
Liberty	21,669		574	12,438
Oxford	18,311		570	10,437
Pahaquarry	14,779		13	192
White Twp.	22,418		921	20,647

Deduction Total: 194,723

\$627,230
-194,723

Net Aggregate
County Wealth: \$432,507 (1,000's)

REGION 3 NET WEALTH (1,000's)

Hunterdon:	\$334,392
Middlesex:	4,466,010
Somerset:	2,031,594
Warren:	<u>432,507</u>
	\$7,264,503 (1,000's)

EXHIBIT F

BERNARDS SHARE OF REGIONAL WEALTH

Bernards Mean Income X Households
Net Regional Wealth

$$\frac{\$40,331 \times 3,711}{\$7,264,503} = \frac{149,668}{7,264,503} = .02060 = 2.060\%$$

MODIFIED CONSENSUS ALLOCATION

Present Need*

$$\frac{\text{Employment Factor} + \text{Growth Area Factor} + \text{Modified Wealth Factor}}{3} \times$$

Regional Phased Present Need = Present Need

$$\frac{.01939 + .03589 + .02060}{3} = .02529 \times 2,812 = 71 \text{ Units}$$

71 X 1.2 (land availability in region) =

85 X 1.03 (vacancy factor) = 88 Units Total
Present Need

*Includes reallocated surplus and indigenous need.

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MODIFIED CONSENSUS ALLOCATION

Prospective Need

$$\frac{\text{Employment Factor} + \text{Growth Area Factor} + \text{Employment Growth Factor} + \text{Modified Wealth Factor}}{4}$$

X Regional Prospective Need = Prospective Need

$$\frac{.01939 + .03589 + .05888 + .02060}{4} = .03369$$

.03369 X 22,002 = 741 Units

741 X 1.2 (land availability factor) =

889 X 1.03 (vacancy factor) = 916 Units Total
Prospective Need

Total Obligation by 1990:

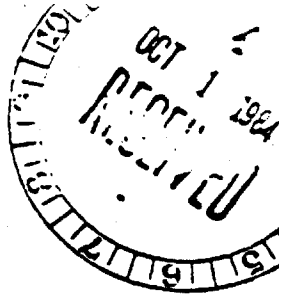
Prospective Need:	916
Present Need:	<u>88</u>
	<u>1,004 Units</u>

EXHIBIT F

APPENDIX B

EXHIBIT F

ORDINANCE #704



AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF BERNARDS AMENDING THE
LAND USE ORDINANCE OF THE TOWNSHIP OF BERNARDS

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:

*Introduced 10-2-84
Public Hearing 10-22-84*

*Copies to T.C.
Admin.
Dept.
Bell. Bell*

EXHIBIT F

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 - PRD-4 only, is amended by deleting paragraph f. and replacing the same with the following:

EXHIBIT F

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, and replacing the same with the following:

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.

EXHIBIT F

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.

EXHIBIT F

APPENDIX A

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

1101. 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 a PRD application in any R-5 or R-8 zone. In the alternative, applicant may follow procedures for subdivision and site plan approval 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. Nursery schools
3. Private recreation uses with lights
4. Retail and service commercial under PRD-4 option in accordance with Section 405 requirements

1104. Minimum Tract Size and Gross Density

1. **Minimum Tract Size.** The minimum tract size for other than single or two-family development in either zone shall be 10 acres.

2. The maximum number of dwelling units shall be as follows:

R-5; PRD-2: 5.5 dwelling units/acre on lands defined as Drylands in Article 200 and 1.0 dwelling unit per acre on lands defined as lowlands in Article 200, which is transferable pursuant to this ordinance and subject to a maximum of 6.5 dwelling units/acre of dry land.

R-8; PRD-4: 5.5 dwelling units/acre, up to a maximum of 2,750 dwelling units in the zone.

1105. Minimum Tract Setback

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.

1106. Schedule of Area, Bulk and Yard Requirements

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	5,000	30'	25'	10'/15'	25'	20%	35'
Townhouse	N/A	16'	25'	N/A	20'	60%	35'
Dwelling, Two-Family (horizontally separated)	6,000	60'	25'	10'/15'	25'	40%	35'
Dwelling, Two-Family (vertically separated)	3,000/unit	30'	25'	0/10'	25'	40%	35'
Dwelling, Multi-Family	N/A	N/A	N/A	N/A	N/A	35%	35'

1107. Distance Between Buildings

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

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

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 objectives of this Article and do not create any adverse negative impacts.

1108. Minimum Off-Street Parking Requirements

1. Off-street parking shall be provided as follows:

Dwelling unit with one (1) bedroom or 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 Units: 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 to 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 sales price shall meet Mt. Laurel II guidelines and be priced to allow persons meeting low and moderate income eligibility standards to purchase such unit.

F. Phasing of Lower Income Housing

1. Lower income housing shall be phased in accordance with the following schedule:

<u>Percentage of Total Dwelling Units</u>	<u>Minimum Percentage of Lower Income Dwelling Units</u>
25	0
50	25
75	100
100	-

The above percentages shall refer to the percentage of total dwelling units having certificates of occupancy.

EXHIBIT F

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.

llll. 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.

D. 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 612 of this Ordinance.

EXHIBIT F

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. Cul-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 P.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.



EXHIBIT G

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
Plaintiff, : LAW DIVISION
vs. : SOMERSET/OCEAN COUNTY
 : (Mt. Laurel II)
 :
 : Docket No. L-030039-84 P.W.
THE TOWNSHIP OF BERNARDS, et al., :
Defendants. : Civil Action
 : ORDER STAYING ACTION AND
 : PRECLUDING BUILDERS' REMEDIES
 : FOR A PERIOD ENDING
 : MAY 15, 1985

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

EXHIBIT G

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; and the Court having entered an Order staying this action and precluding builder's remedies for 90-days; and the parties having requested an extension until May 15, 1985; and for good cause shown;

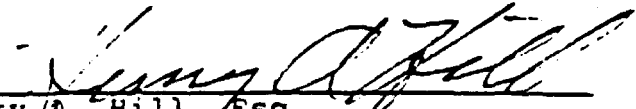
It is on this 29 day of ~~the~~ April, 1985;

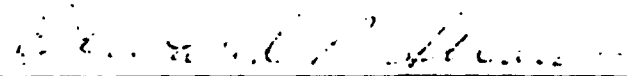
ORDERED that this Court's Order dated December 19, 1984 is extended in all respects for a period ending May 15, 1985.


Eugene D. Serpentelli, A.J.S.C.

EXHIBIT G

This Order is consented to both in form and substance.


Henry A. Hill, Esq.
Bréner, Wallack & Hill
Attorneys 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



EXHIBIT H



Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

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

May 13, 1985

Mr. George Raymond
Raymond, Parish, Pine & Weiner, Inc.
555 White Plains Road
Tarrytown, N. Y.
10591-5179


Re: Hills Development v. Township of Bernards

Dear Mr. Raymond:

I wish to acknowledge your letter of May 8, 1985. I note that the first immunity order in this matter was entered on December 19, 1984 allowing for 90 days in which to provide a compliance package. By the extension of the immunity to June 15, 1985 the township would have had six months to complete the compliance package.

I will honor your request for an extension to June 15, 1985 with the express understanding that no further extension will be granted. I also note that if matters can be resolved sooner, the compliance package will be submitted before the expiration date.

Very truly yours,


Eugene D. Serpentelli,
N. J. S. C.

EDS:RDH
copy to:
James Davidson, Esq.
Thomas J. Hall, Esq. ✓



EXHIBIT I

FARRELL, CURTIS, CARLIN & DAVIDSON

ATTORNEYS AT LAW

43 MAPLE AVENUE

P.O. BOX 145

MORRISTOWN, N.J. 07960

(201) 267-8130

171 NEWKIRK STREET

JERSEY CITY, N.J. 07306

(201) 795-4227

OF COUNSEL
FRANK J. VALGENTI, JR.

EDWARD J. FARRELL

CLINTON J. CURTIS

JOHN J. CARLIN, JR.

JAMES E. DAVIDSON

DONALD J. MAIZYS

LOUIS P. BAGG

LISA J. POLLAK

HOWARD P. SHAW

CYNTHIA N. REINHARD

MARTIN G. CRONIN

June 12, 1985

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

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

Dear Judge Serpentelli:

The parties in the above mentioned matter have arrived at an agreement to settle and conclude the above matter. Additionally the Township has been working with George Raymond on all aspects of the Township's compliance package, and we believe we have reached an understanding which is satisfactory to Mr. Raymond and the municipality. I am in the process of drafting a proposed order and judgment which will be satisfactory to the parties and the Court. The drafting of the proposed judgment has proved difficult. It is my understanding that this process, including the drafting of the judgment, has delayed the filing of George Raymond's report, although Mr. Raymond has indicated to me that he expects to have his report filed by the end of this week.

I respectfully request that the Court schedule a hearing date to review the proposed settlement and compliance package in order to dispose of the action and bring the matter to a conclusion. I would expect to submit all reports and documentation necessary for the Court's review well in advance of the hearing date. I would also respectfully request that the Order dated April 29, 1985 which was supplemented by the Court's

EXHIBIT I

Honorable Eugene D. Serpentelli
Page Two
June 12, 1985

letter dated May 13, 1985 be extended until such hearing date
and until the matter is finally disposed of by the Court.

Both my adversary and Mr. Raymond have indicated to me that
they concur with this request.

Respectfully submitted,

FARRELL, CURTIS, CARLIN & DAVIDSON

By: 
James E. Davidson

JED/sjm
cc: Arthur H. Garvin III, Esq.
Henry A. Hill, Jr., Esq.
Mr. George Raymond



Exhibit J, (September 6, 1985 Concept Plan) submitted herewith.



EXHIBIT K

FARRELL, CURTIS, CARLIN & DAVIDSON

ATTORNEYS AT LAW

43 MAPLE AVENUE

P.O. BOX 145

MORRISTOWN, N.J. 07960

(201) 267-8130

OF COUNSEL

FRANK J. WALBENTI, JR.

EDWARD J. FARRELL
CLINTON J. CURTIS
JOHN J. CARLIN, JR.
JAMES E. DAVIDSON
DONALD J. MAJEWS
LOUIS A. RAGO
—
LISA J. POLLAK
HOWARD P. SHAW
CYNTHIA N. REINHARD
MARTIN G. CROMB

171 NEWKIRK STREET
JERSEY CITY, N.J. 07308
(201) 796-4227

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

COPY

EXHIBIT K

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

EXHIBIT K

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 L. Davidson

JED/sjm

Encl.

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



EXHIBIT L

BERNARDS TOWNSHIP
AMENDMENTS TO MASTER PLAN

Adopted October 30, 1984

Master Plan Amendments

1. Page 9 - Add a new objective to the list of objectives under the goal of providing "a reasonable relationship between housing, employment and retail development," as follows:

The Township's land use policy should provide a realistic opportunity for the construction of low and moderate income housing.

2. Page 19 - Under Future Residential Development, after the introductory paragraph, a new paragraph should be added entitled, Bernards Township's Mt. Laurel II Obligation:

The Supreme Court decision of January 20, 1983, known as Mt. Laurel II, directed that any municipality in a designated growth area in the State Development Guide Plan of 1980 is responsible for a share of the regional housing need as well as its own "indigenous" need, as indicated by data on substandard housing conditions in the municipality. All but the westernmost portion of Bernards Township and public parklands along the boundary with Harding Township are included in a growth area on the State Guide Plan. Using generally accepted methodology to compute its fair share, Bernards Township's 1990 Mt. Laurel housing obligation is between 900-1,300 units of low and moderate cost housing.

The Township will provide the low and moderate income units as follows:

- a. Provide funds through the Community Development Grant program or other sources to rehabilitate substandard housing units
- b. Amend its Land Development Ordinance to provide for supplementary apartments
- c. Require from developers in the R-5 (PRD-2) zone a percentage of lower income units
- d. Increase the density on property owned by Hills Development generally west of Somerville Road and currently zoned R-8 (PRD-4) to provide for 5.5 dwelling units per acre of which 20 percent will be lower income units

EXHIBIT L

3. Page 21 - After "Quarry," the following paragraph should be added:

Mt. Laurel II Housing

As part of its Mt. Laurel II obligation, the Township proposes to rezone certain lands for Mt. Laurel II housing. These include the Hills Development land in the area adjacent to Bedminster for 5.5 dwelling units per acre of which 20 percent would be low and moderate income. In addition, the R-5 district south of Valley Road is also recommended for low and moderate income housing as part of any proposed planned development (PRD-2). In this zone, at least 20 percent of all development shall be low and moderate income in accordance with the Mt. Laurel II mandate except for those properties for which conceptual approval has already been granted (Spring Ridge). In that case, the responsibility of the applicant shall be for 15 percent moderate income housing. Where an applicant is proposing to sell market housing at less than \$100,000 per unit, in 1983 dollars, the housing responsibility shall be limited to a maximum of 12 percent moderate income housing.

4. Page 27 - Figure 5, Recommended Land Use Plan, should be amended to show the Hills property in the Raritan basin (presently zoned R-8) adjacent to Bedminster Township and that land located south of Valley Road (presently zoned R-5) to include a Mt. Laurel II housing component.

In addition, the following parcels shall be rezoned from R-8 (2 dwelling units per acre) to R-3 (one (1) dwelling unit per two (2) acres): Block 171, lots 3, 4, 5, 6, & 13. These parcels, totalling 121 acres, are located on the southeasterly corner of Douglas Road and Layton Road. The purpose of the rezoning is to reduce the impact on the Liberty Corner area of the increased density needed to secure Mt. Laurel II housing.

5. Page 34 - Second paragraph, delete the last sentence which refers to fair share.

EXHIBIT L

6. Page 34 - Add a fourth paragraph under "Undeveloped Areas," as follows:

In addition to moderately priced flats and luxury townhouses, the Township has embarked on an aggressive program to provide for its fair share of low and moderate income housing in accordance with the Mt. Laurel II mandate. This includes density bonuses to Hills Development and design and fee waivers to R-5 developers (under PRD options) to make a portion of their housing affordable to low and moderate income families in accordance with the Mt. Laurel II mandate.

7. Page 36 - Before "Recommendations," a paragraph should be added which would read as follows:

These units, of course, are in addition to those units to be provided as part of the Township's specific obligation under Mt. Laurel II.



Exhibit M

EXHIBIT M

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540

(609) 924-0808

CABLE "PRINLAW" PRINCETON
TELECOPIER (609) 924-6239
TELEX. 837652

HARRY BRENER
HENRY A. HILL
MICHAEL D. MASANOFF**
ALAN M. WALLACK*

GULIET D. HIRSCH
GERARD H. HANSON
J. CHARLES SNEAK**
EDWARD D. PENN.+
ROBERT W. BACSO, JR.+
MARILYN S. SILVIA
THOMAS J. HALL
SUZANNE M. LAROBARDIER+
ROCKY L. PETERSON
VICKI JAN ISLER
MICHAEL J. FEEHAN
MARY JANE NIELSEN++
E. GINA CHASE^
THOMAS F. CARROLL
JANE S. KELSEY

* MEMBER OF N.J. & D.C. BAR
** MEMBER OF N.J. & PA. BAR
* MEMBER OF N.J. & N.Y. BAR
** MEMBER OF N.J. & GA. BAR
^ MEMBER OF PA. BAR ONLY

FILE NO.

November 5, 1984

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.

James E. Davidson, Esq.
November 5, 1984
Page 2

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 ± 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,

% low/moderate	% market
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.

James E. Davidson, Esq.
November 5, 1984
Page 3

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.

James E. Davidson, Esq.
November 5, 1984
Page 4

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. Hall

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



EXHIBIT N

FARRELL, CURTIS, CARLIN & DAVIDSON

ATTORNEYS AT LAW

43 MAPLE AVENUE

P. O. BOX 145

MORRISTOWN, N. J. 07960

(201) 267-8130

EDWARD J. FARRELL

CLINTON J. CURTIS

JOHN J. CARLIN, JR.

JAMES E. DAVIDSON

DONALD J. MAIZYS

LOUIS P. RAGO

LISA J. POLLAK

HOWARD P. SHAW

CYNTHIA H. REINHARD

MARTIN S. CRONIN

OF COUNSEL

FRANK J. VALGENTI, JR.

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

January 3, 1985

FEDERAL EXPRESS

Mr. George Raymond
Raymond, Parish, Pine & Weiner, Inc.
555 White Plains Road
Tarrytown, New York 10591

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

Dear Mr. Raymond:

Pursuant to our telephone conversations I am enclosing various materials relating to the recent zoning amendment made by Bernards Township. The amendment was made in order that Bernards could better provide for its share of low and moderate income housing pursuant to Mount Laurel II.

The zoning amendment was adopted on November 12, 1984. I am enclosing herein a copy of my letter to Judge Serpentelli dated November 23 which gives a brief description of the ordinance. Also enclosed are the following documents:

- 1) Ordinance #704;
- 2) Land Development Ordinance of Bernards Township;
- 3) Master Plan of Bernards Township; and
- 4) A report by Harvey S. Moskowitz dated July 1, 1984 and entitled "Mt. Laurel II Fair Share Analysis for Bernards Township, Somerset County, N.J."

Mr. Moskowitz' report sets forth much of the background information which was used in arriving at Ordinance #704. Ordinance #704 is consistent with Moskowitz' recommendations, although some changes were made.

EXHIBIT N

Mr. George Raymond
Page Two
January 3, 1985

I trust these materials will be enough to give you the required background information to begin your analysis of Bernards Township's Mt. Laurel Ordinance.

In our last telephone conversation, we discussed meeting on January 15. Since that time I have spoken with Mr. Moskowitz and have determined that he is not available on that date. I would, therefore, like to suggest the morning of January 16, 1985 as an alternative date. I will contact the representatives of Hills Development to see if that date is convenient for them.

Please call me at your earliest convenience so that we can firm up that date or seek an alternate date.

Very truly yours,



James E. Davidson

JED/sjm
Encl.

cc: Henry A. Hill, Esq.
Arthur H. Garvin, III, Esq.
Mr. H. Steven Wood
Mr. Harvey S. Moskowitz

Exhibit O

EXHIBIT O

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540

(609) 924-0808

CABLE "PRINLAW" PRINCETON
TELECOPIER: (609) 924-6239
TELEX: 837652

HARRY BRENER
HENRY A. HILL
MICHAEL D. MASANOFF**
ALAN M. WALLACK*

GULIET D. HIRSCH
GERARD H. HANSON
J. CHARLES SHEAK**
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*** MEMBER OF N.J. & N.Y. BAR
**** MEMBER OF N.J. & GA. BAR
***** MEMBER OF PA. BAR ONLY

FILE NO.

January 14, 1985

George Raymond, AICP
Raymond, Parrish, Pine and Weiner
555 White Plains Road
Tarrytown, NY 10591

Dear George:

As you requested, I have set down on paper those issues which are of greatest importance to Hills. I believe that none of the issues pose insurmountable problems, and that with diligent effort on the part of the parties, and with your assistance, we should be able to resolve these issues in a timely fashion.

I understand that we are meeting at 10:00 a.m., Wednesday, January 16th, 1985 at the Bernards Township Municipal Building.

See you then.

Regards,


Thomas J. Hill

SEND VIA EXPRESS

Enclosure

cc John Kerwin
Henry A. Hill, Esq.
Arthur Garvin, III, Esq.
James Davidson, Esq.

EXHIBIT 0

MEMORANDUM

TO: George Raymond, AICP, Special Master in Bernards Township

FROM: Brener, Wallack and Hill, Counsel to The Hills Development Company

RE: Issues in the Hills v. Bernards case

DATE: January 14, 1985

Pursuant to your request, we have set down below what we regard as the remaining significant issues in the Bernards case:

1. Total number of units Hills will be permitted to construct:

The Township has "capped" the number of units permitted by the revised zoning in the Raritan Basin at 2750. Hills has lands within the Raritan Basin in excess of the 500 + acres in its main holdings, and these should be accorded the 5.5 du/ac rights otherwise permitted.

For a variety of reasons, it would be desirable to have additional flexibility in the zoning ordinance.

2. Permitted commercial space.

The Township has allowed The Hills 50,000 square feet of commercial space, designed to serve the internal needs of the Hills residents. With the expanded size of the development, 150,000 square feet would be more appropriate to service the needs of the residents. This would include provisions for neighborhood shopping as well as professional offices.

3. Sewer service:

(a) Service to the Passaic Basin.

As you may be aware, Hills had originally proposed to service the lots in the Passaic Basin with a community septic system. This was the "desired" policy of DEP in 1981. DEP has now indicated that it will not permit the construction of the community septic system it had originally indicated it would approve in the Passaic Basin. Without some sort of sewer service, the lots are undevelopable at the present time. The probable gallonage of effluent to be generated by the 275 + houses in the Passaic—less than 100,000 g.p.d.—could be accommodated in at least two ways. DEP has suggested that it would be appropriate to have the homes serviced by the Bernards Sewage Treatment system, and the technical processes necessary to connect to an available Bernards plant for treatment are within relatively easy reach.

In the alternative, Environmental Disposal Corp. (EDC) could provide sewage treatment for the lots. It would be necessary for EDC's franchise area to be expanded to the outbounds of the Hills property, for the 201 and 208 plans for the area to be amended, and for EDC to receive full municipal cooperation to carry out

EXHIBIT 0

this service.

Which ever alternative is selected, it is necessary for this question to be resolved in order to settle the suit.

(b) Expansion of EDC's plant.

Hills believes that an endorsement from Bernards as to the social desirability of the expansion of the EDC plant to serve the lower income units and the market units necessary to support them would be helpful in securing 201/208 modifications, as necessary.

4. Revisions to the Bernards Township Ordinance:

It is understood that as part of the settlement with Bernards, a concept plan vesting rights/obligations as to both Hills and Bernards as to location of roads, densities of sites for housing/commercial development, number of units, development standards, drainage, open space, community facilities and related issues for a period of at least ten (10) years will be included.

This Concept Plan will be, therefore, outside the existing Bernards Township Ordinance. However, there are a number of specific changes which Hills believes are necessary in the existing Ordinance. Some of the problems have been previously pointed out (see Hall letter of 11/5; Mizerney memos of 10/15 and 11/28, all attached). By way of illustration—and retaining the right to point out additional problems which may occur as a result of detailed discussions between Hills and Bernards—we suggest the following problem areas:

a. Design Standards:

- i. Bulk standards: As one illustration, the standards for the one-acre zoned land permit a larger house than would be permitted in the two-acre zone under the cluster provision.
- ii. Maximum building coverage: As previously noted by K. Mizerney (see memo of 10/15/84), the standards established in the Ordinance—20% for one/two family dwellings; 35% for multi-family—make no sense and should be eliminated.
- iii. Front yard requirements: should be no more than 20 feet; should have optional provisions for reduction to 10 feet.
- iv. Building separation requirements: as per Mizerney memos of 10/15 and 11/28.
- v. Height restrictions need to be modified so as to permit the potential for 3½ stories—say, 45 feet—which may be required for certain product types under uphill/downhill configurations.
- vi. Road widths, curbing requirements, building size limits, parking standards, and numerous other restrictions in the Ordinance could be modified with cost savings and no loss of public health, safety and convenience.

EXHIBIT 0

b. Application processing:

i. The initial application procedures are too cumbersome, detailed and expensive. Hills intends to provide a schematic Concept Plan, and, in view of the fact that it has already provided Bernards with a previous environmental/community impact report, and in view of the fact that the area has been re-zoned, by the Township, to a higher density— with the Township's full knowledge of what the environment is in that area, and what Hills intends to do with the land, it seems redundant and cost-generative to require Hills to provide Environmental Impact/Community Impact statements.

ii. The process of building lower income housing along with market units can be impeded or rendered much more expensive by delays in the processing of applications— delays which serve no one. Therefore, Hills wants "fast-tracking" on all applications, not just Concept plan applications. "Fast-tracking" means deletion of unnecessary details, elimination of unnecessary reviews, scheduling so that the technical reviews are conducted in a high-priority fashion, and board consideration of projects with lower income housing on a priority basis. As one example of this, when Hills proposes a subdivision/site plan, the whole process of review ought to take place within 60 days following submission, with special meetings exclusively devoted to considerations of Hills applications held as frequently as necessary—every week or every other week, if necessary, for the entire buildout period. Given the fact that other builders may also seek to provide lower income housing, Hills wishes to have a guarantee that its applications would be first on the agenda for all Planning Board meetings at which it has any application pending.

iii. The procedures for waivers/modifications of the terms of the Ordinance need to be streamlined.

c. Fees:

While Hills welcomes the elimination of applicable fees for lower income housing, it wants a guarantee that:

i. fees charged for all housing it builds in Bernards not exceed the actual cost of the inspections performed;

ii. Use of "prototype" building designs must result in reduction of fees charged;

iii. If other developers providing lower income housing are provided with waivers of fees for both market and lower income housing, Hills wants the same waiver. Hills cannot be placed in any competitive disadvantage with other developers providing lower income housing.

d. Engineering Standards:

The Hills review of engineering standards indicates that many are excessive, cost generative, and unnecessary to support health/safety standards.

EXHIBIT 0

5. Off-Tract improvements:

The Hills will provide up to \$ 3.24 million dollars to support all off-tract improvements generated by its development, provided:

a. Hills and Bernards agree to a timetable and location of the improvements to be undertaken by Bernards; including the Allen Road extension/bridge

b. Hills and Bernards agree to a timetable and approval standards of all road/utility improvements to be undertaken by Hills; including the reconstruction/realignment of Schley Mountain Road.

c. Bernards agrees that this sum will cover all assessments made by governmental bodies, whether state, county or local, for road improvements. Hills cannot agree to contribute a known sum of money to improve roadways impacted by its development; and remain liable for "assessments" proposed by other levels of government which intend to improve roadways as a result of their own or other developer's planning processes.

The figure agreed to reflects an assessment to the 50,000 square feet of commercial space, with an understanding that the assessment is based on 33% of the otherwise applicable assessment, inasmuch as the traffic generated therein is related to the internal needs of the development. When Bernards reaches agreement with the Hills as to the additional 100,000 square feet of commercial space, it would be appropriate to make an additional contribution to the off-tract improvement fund.

6. Farmland Assessment:

Hills and Bernards have an existing dispute as to taxation. If the sewer problem in the Passaic Basin is resolved as suggested, then the taxation issue can also be resolved. If the Passaic basin land is not sewered, then the issue remains and must be resolved. Meetings between counsel for Hills and Bernards are scheduled in advance of the meeting with the Master.

7. Open Space requirements

The Hills is willing to discuss placement of open space and dedication of lands to the Township for community facilities/open space/passive recreation purposes. This is an issue which needs to be fully resolved before the concept plan is finalized and agreed to by all parties.

tjh-4/1/14

Exhibit P



EXHIBIT P

HARVEY S. MOSKOWITZ P.P., P.A.
Community Planning & Development Consultant

D R A F T

TO: George Raymond, AICP, Special Master; Bernards Twp.
(Copies to James E. Davidson, Esq.; Arthur Garvin, Esq.;
Steven Wood; Peter Messina, P.E.; John H. Kerwin; Tom
Hall, Esq.; and Kenneth Mizerny, P.P.)

DATE: January 23, 1985

This memorandum summarizes the results of the January 16, 1985 meeting which dealt with the points raised in the memo submitted by Brener, Wallack & Hill dated January 14th.

A. Total number of units Hills will be permitted to construct in the Raritan Basin will be 2,750.

B. Hills is requesting additional retail space up to 100,000 square feet. Hills is to submit a memorandum in support of the additional space. They indicated they can live with the 50,000 square feet as recommended in the Master Plan.

C. A number of questions were raised with respect to the request by Hills to allow EDC to extend force mains into the Passaic River Basin to serve the single-family homes. The Township will seek the advice of its sewer consultants (Killiam Associates) with respect to the various options including community septic systems and extension of EDC force mains into the basin. The Township will also try and get approval from the State for community septic systems within a 90-day period. Hills will submit a copy of an agreement which would allow for the

expansion of EDC force mains into the Passaic Basin and which would include suggested safeguards to prevent their use by anyone else but Hills.

D. Ordinance Revisions

1. Concept plan. It was agreed that the concept plan will show the building footprint, parking areas, and major and minor roads. The applicant indicates that he will submit full engineering details as required by the Township for Schley Mountain Road and Allen Road for their approval.

2. Bulk standards.

a. The Township will revise the ordinance to eliminate any limitation on house size in the two-acre cluster zone providing the lot size is at least one acre or larger.

b. Maximum building coverage. This standard will be changed to "Maximum Impervious Coverage." I would suggest the figures be changed as follows:

Dwelling, one-family detached:	50	percent
Townhouse:	75	"
Patio Home:	80	"
Dwelling, two-family (horizontally separated):	50	"
Dwelling, two-family (vertically separate):	50	"
Multi-family:	70	"

c. Front yard requirement shall remain as set forth in the ordinance.

d. Building separation shall remain as set forth in the ordinance.

e. Height restrictions. We are presently working on a revision to the standard to allow a higher maximum based on topography; in other words, three stories in the rear with a maximum height of 40 feet would be permitted. The measurement would be computed from the average finished grade around the structure. Hills will also submit a product line to indicate the maximum height needed.

f. Road widths shall remain as indicated.

g. The parking spaces will be reduced to 9' X 18' allowing for an overhang.

h. The Township will add efficiency units as a permitted use with a minimum floor area of 400 square feet.

3. Curbs and drainage.

a. Curbs (Page 600.9). The Township will either modify the basic ordinance or modify Ordinance 704 to indicate that mountable concrete curbs shall be permitted in high density single-family detached areas and in the R-5 and R-8 zones.

b. Swales. Amend Ordinance 704 to read that swales may be used for drainage purposes along major roads where there is a minimum distance of 40 feet between abutting buildings and pavement.

E. Application Processing

1. EIS and CIS Submissions. I have not reviewed what has been submitted with respect to the EIS and CIS but I will get to

EXHIBIT P

George Raymond, AICP

January 23, 1985

Page 4.

determine whether any additional material is needed. At this point I don't think there is any.

2. Time for review. It was agreed to use the timetable in the Mahwah decision. These are as follows:

	<u>Number of Days</u>	
	<u>Each</u>	<u>Total</u>
a. Determination as to whether application is complete:	14	14
b. Additional material submitted to make application complete (Township must review & certify as complete or indicate what is needed:	14	28
c. All municipal agency reviews and reports:	21	49
d. Start of public hearing:	na	63-77
e. Grant or denial of approval:	30	93-107
The total time from original application submitted to the Township until official action by the Board shall be not greater than:		107

3. Hills is to submit specific list of what constitutes unnecessary details.

4. It is agreed that Article 8, which calls for detailed engineering plans, applies only to public streets. No construction can begin until these plans have been approved.

F. Fees

1. The Township agrees to waive all municipal fees on low and moderate income units.

2. On prototype buildings, the State Building Code permits a reduction in fees of 25 percent. The Township agrees to follow that requirement.

G. Off-Tract Improvements

1. I believe there was agreement that \$3,240,000 in off-tract fees was a reasonable amount. If the commercial exceeds 50,000 square feet, applicant will pay 1984 additional trip costs.

2. Peter Messina will provide Hills the new I-78 and Martinsville Road interchange costs.

H. Summary

1. Hills will:

- a. document the need for additional commercial space;
- b. provide a resolution or agreement with respect to the extension of sewers into the Passaic Basin;
- c. provide designs for patio homes so that we can develop standards;
- d. provide product type to ascertain height requirements;
- e. provide information as to what constitutes unnecessary cost generating details in ordinances.

2. The Township will:

- a. examine all sewer options;
- b. attempt to get community septic approvals within 90 days;
- c. modify ordinances as suggested in the memo;
- d. review EIS and CIS requirements;
- e. provide interchange costs.



EXHIBIT Q

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540

CABLE "PRINLAW" PRINCETON
TELECOPIER: (609) 924-6239
TELEX: 837652

HARRY BRENER
HENRY A. HILL
MICHAEL D. MASANOFF**
ALAN M. WALLACK*

GULIET D. HIRSCH
GERARD H. HANSON
J. CHARLES SHEAK**
EDWARD D. PENN*
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MARILYN S. SILVIA
THOMAS J. MALL
SUZANNE M. LAROBARDIER*
ROCKY L. PETERSON
VICKI JAN ISLER
MICHAEL J. FEENAN
MARY JANE NIELSEN**
E. GINA CHASE*
THOMAS F. CARROLL
JANE S. KELSEY

(609) 924-0808

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

January 30, 1985

FILE NO.

Mr. Robert E. Hughey
Commissioner
Department of Environmental Protection
John Finch Plaza
802 Labor & Industry Building
Trenton, NJ 08625

Re: Sewer Service for property owned by The Hills Development Company located in the Passaic Basin section of Bernards Township to service a proposed single family home development.

Dear Commissioner Hughey:

The purpose of this letter is to outline efforts made by the Hills Development Company to provide sewer service to a portion of its property in Bernards Township in New Jersey; to outline shifts in NJDEP sewer policy and to illustrate how those policies shifts have affected this particular project; and to request the Department to provide clear guidance to ourselves and the Township so that we may proceed to an acceptable resolution of a serious problem.

1. History of the project.

The Hills Development Company ("Hills") or its predecessor in interest, has owned property in Passaic Basin since 1969. In 1979, it formulated a proposal to build approximately 275 single family homes in the area. In conformance with then DEP policy, it formulated an application to sewer this project with an on-site treatment system, which would have discharged effluent into the Dead River. An application was made to NJDEP in September, 1979.

At that point, Hills' predecessor in interest was informed that Departmental policy did not favor package treatment plans, and were advised

EXHIBIT Q

Mr. Robert E. Hughey
January 30, 1985
Page 2

that such plans were not likely to receive approval by the Department. The applicant was informed that DEP preferred Community Septic Systems (CSS).

Hills and Bernards Township agreed that CSS would be more compatible with Bernards Township growth policies, and Hills applied for an on-site CSS in 1982. DEP reviewed the project and indicated all technical issues regarding design and engineering were resolvable and that conceptually the project could be approved.

In July 1982, The Hills Development Company received a letter from S.T. Giallella, Chief of DEP's Bureau of Municipal Waste Management, advising the Company that the area (Sections 1A and 1B of The Hills Development Company's Bernards Township, Passaic Basin single family lot program) should be serviced by the Bernards Township Sewerage Authority and that the Community Septic System was therefore inconsistent with the appropriate 201 and 208 Plans (See Exhibit A attached). The application was resubmitted in October 1982, and again rejected by DEP in February 1983 as being inconsistent with the 201 Plan. (See attached letter Exhibit B.)

Subsequent to this, Bernards Township submitted information expressing their opinion that The Hills Development site, although in their franchise area, was not within their sewer service area. This material was reviewed by the USEPA who in May 1983, advised DEP and the other parties that effluent from the Hills site was not figured into the Harrison Brook plant and therefore The Hills should not necessarily connect into the Bernards Township Sewerage Authority. (See Exhibit C). In June 1983 DEP, concerned with this USEPA decision, advised The Hills to resubmit its application for a Community Septic System. (See Exhibit D). After considerable time and expense, the application was prepared once again and resubmitted to DEP in November 1984. (A copy of this application, already in your possession will be supplied upon request). In December 1984, DEP responded once again that the CSS was inconsistent with 208 planning, stating that "...this area (The Hills) is to be sewered by the Bernards Township Sewerage Authority, not by a Community Septic Water Treatment Facility". (Attachment E).

2. Effect of NJDEP Policy Shifts.

Since 1979, Hills has been attempting to develop its property in an environmentally responsible manner. Both Hills and Bernards Township feel at a loss as to how to proceed with this project. Based on early NJDEP policy, Hills formulated a plan for a package treatment system. When informed this was unacceptable, Hills spent substantial additional monies in the design of a Community Septic System. When the Department told Hills that once again there was a policy shift, Hills has informally requested the BTSA to connect its project with Bernards Township system but has been informally told that such a connection is not acceptable.

EXHIBIT Q

Mr. Robert E. Hughey
January 30, 1985
Page 3

Thus far, the project is no closer towards development than it was in 1979, and Hills has spent several hundreds of thousand dollars in attempting to resolve this issue in an environmentally responsible manner. This is in addition to the many thousands of dollars in site work undertaken in reliance on the Department's earlier policies and the subdivision approvals granted by the Township.

3. Proposed solution.

Hills Development Company would accept DEP's determination that the Bernards Township Sewerage Authority (BTSA) would offer the most technically feasible and environmentally and economically responsible means of providing sewer service to its site. Further, since resolution of this issue is essential to the settlement of a Mt. Laurel case, a connection of the project with the BTSA would result in positive socio-economic impact to the area.

Because of its growth management policies and the capacity figures supplied by its experts, BTSA has been unwilling, thus far, to agree to treat effluent generated by the project. Part of the rationale of such an unwillingness was Bernard's understanding that CSS was an appropriate way to proceed. If the Department will unequivocally indicate that it will not approve a CSS system for that area, and will, instead, accept only connection to a existing Public Utility System, then we would proceed with negotiations with Bernards Township as the preferred means of providing service to this area.

In the alternative, the Environmental Disposal Corporation, a franchised public utility currently in existence, would be willing to provide sewer service to this site. EDC operates an 850,000 gallons per day advanced waste water treatment system discharging to the Raritan River, and any connection to this project would require modification to the existing "201" and "208" Plans and would also require the Department's acceptance of a modest inter-basin transfer of water.

Hills and Bernards Township are moving, in an accelerated fashion, to resolve issues which were raised by Mount Laurel litigation. One of the items essential to the solution of the problem is the provision of an adequate, environmentally responsible waste water treatment system for the 273 homes in the Passaic Basin which, along with a larger number of units to be built in the Raritan Basin and serviced by EDC, will be part of a comprehensive Mount Laurel II compliance program for Bernards Township. Neither Hills nor Bernards Township wish to delay resolution of this issue, and both Bernards and Hills seek clear direction from the Department as to which alternative would be acceptable.

We would appreciate the opportunity to meet you, the Director of the Division of Water Resources and the appropriate members of the Department so that this matter can be resolved in a timely fashion. Please

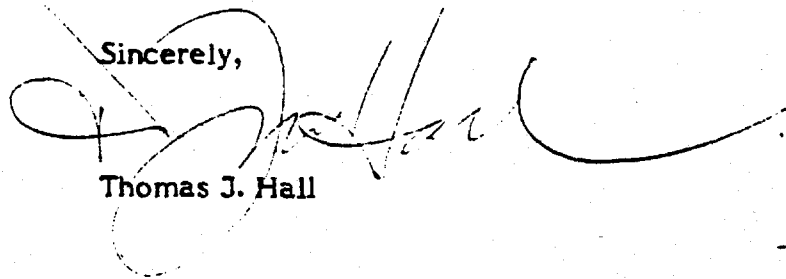
exhibit q

Mr. Robert E. Hughey
January 30, 1985
Page 4

advise us when a convenient time for such a meeting can be arranged. Representatives of the Bernards Township Sewerage Authority as well as representatives of The Hills have indicated they would be willing to participate in such a meeting.

Thank you for your attention to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas J. Hall', written in a cursive style. The signature is positioned above the printed name 'Thomas J. Hall'.

Thomas J. Hall

TJH/4/sp

cc: John Gaston
George Horzepa
Arnold Schiffman
Bernards Township Sewerage Authority
George Raymond, AICP
James Davidson, Esq.
John Kerwin
Ray Ferrara, Ph.D.
Harvey S. Moskowitz, P.P.



RECEIVED JUL 12 1982

State of New Jersey
ENVIRONMENTAL PROTECTION
OF WATER RESOURCES
P. O. BOX CN 029
TRENTON, NEW JERSEY 08625

HF
KM ✓
RH.

EXHIBIT A

JUL 08 1982

P.O. Box 500
Pluckemin, New Jersey 07978

Re: Hills Development Section 1A & 1B
Low Pressure System and Community Recharge Field
Bernards Township
Project No. SC-82-3160-4

Gentlemen:

This office reviewed the above referenced project consisting of a low pressure system and community recharge field for Section 1A & 1B of the Hills proposed development in Bernards Township, Somerset County.

During the review process our staff investigates the consistency with any existing 201 and 208 plans. In your case we reviewed to see if the project was consistent with the Upper Passaic River Basin 201 Facilities Plan, Environmental Impact Statement (EIS) done by the Environmental Protection Agency (EPA) and the Northeast New Jersey 208 Water Quality Management Plan. We checked with our Grants Administration and found that the Bernards Township Sewerage Authority recently received a grant from EPA to expand their treatment plant up to a design capacity of 2.5 MGD. In reviewing the above noted facilities plans we found that the 2.5 MGD design capacity provides sewage capacity for serving the area of the proposed Hills Development project. This determination was made in concert with EPA and our Bureau of Planning and Standards (208).

Based on these findings the proposed on-site treatment and disposal system is inconsistent with the existing facilities plan and EIS. Consequently we have no recourse but to reject the project without prejudice. However, we shall retain the plans for the treatment and disposal system, but return the plans for the sewage collection system.

EXHIBIT Q

Our regulations specify that the project if resubmitted within one year from the date of rejection will not require any additional fee. If the conflict, as now viewed, is resolved then the project may be resubmitted.

Very truly yours,

S. T. Giallella, P.E., P.P., Chief
Bureau of Municipal Waste Management
Water Quality Management

WQM4:emd

cc: Arnold Schiffman, Director, Div. of Water Resources
Keller & Kirkpatrick
Township of Bernards Sewerage Authority
Mayor and Members Bernards Township Committee
Bob Hargrove, EPA

EXHIBIT Q

FEB 17 1983

The Hill Development Company
P.O. Box 500
Pluckemin, New Jersey 07978

Re: Hills Development Section
LA & LB Low Pressure System
and Community Recharge Field/Bernards Township
Project No. SC-82-3479-4

Gentlemen:

This office was sent the above referenced project on October 26, 1982 which was acknowledged on November 11, 1982. The project consisted of a low pressure sewer system and community recharge field for Section LA & LB of the proposed Hills Development in Bernards Township, Somerset County. This project was previously submitted and was rejected, in a letter dated July 8, 1982, because it was inconsistent with the Bernards Township - Upper Passaic 201 Facilities Plan.

We agreed to accept the resubmission of this project so as not to unduly delay the issuance of a construction permit while the 201 inconsistency question was resolved. During the 90 day review period, it was expected that the appropriate documents regarding the resolution of the inconsistency of this project, with the Bernards Township - Upper Passaic 201 Facilities Plan, would be submitted.

The required documentation as noted above has not been submitted within the 90 day review period and we therefore, have no recourse but to reject and return, without prejudice, this project. When the inconsistency question is resolved, the project may be resubmitted. No additional review fee will be required if the project is resubmitted on or before July 8, 1983.

Very truly yours,

ORIGINAL signed and mailed

S. T. Giallella, P.E., P.P., Chief
Bureau of Municipal Waste Management
Water Quality Management

WQN52:emd
enclosures

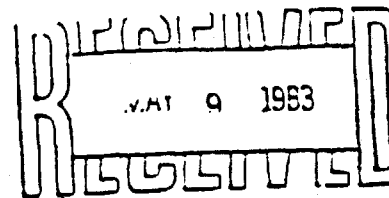
cc: Keller & Kirkpatrick
Township of Bernards Sewerage Authority
Mayor and Members of Bernards Township Committee

bcc: D.W. Palmer



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278



MAY 5 1983

Mr. George Caporale
Division of Water Resources
New Jersey Department of Environmental Protection
P.O. Box CN-029
Trenton, New Jersey 08625

Dear Mr. Caporale:

This is in response to your recent request for additional comments on the consistency of the proposed Hills Development in Bernards Township with the Upper Passaic environmental impact statement (EIS).

Based on my review of the draft EIS and materials submitted by your office and Mr. Louis Rago of Farrell, Curtis, Carlin & Davidson, I have determined the following:

- 1) The service area for the funded Bernards Township wastewater treatment plant does not include the area of the proposed Hills Development.
- 2) The 2.5 mgd capacity of the Bernard plant will be met by the population projected for the delineated service area without affecting environmentally sensitive areas.
- 3) The draft EIS included a provision for serving the portions of Bernards Township that are outside of the delineated service area with on-site systems. This provision will be restated in the final EIS.
- 4) Approval of the Hills Development will not cause an inconsistency between the EIS and the 208 plan.

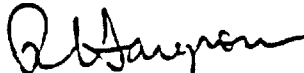
Therefore, our previous recommendation that the Hills Development connect to the funded Bernards Township wastewater treatment plant is withdrawn.

I want to reiterate our understanding that the portions of the Hill Development study area delineated as environmentally constrained in the draft EIS should not be served by the development's wastewater treatment facilities.

RECEIVED MAY 16 1983

I hope this satisfies your concerns regarding this project. If you have any further questions, please feel free to call me at (212) 264-8670.

Sincerely yours,



Robert Hargrove, Life Scientist
New Jersey/Puerto Rico Section
Environmental Impacts Branch

cc: B. Chalofsky, NJDEP
L. Rago, Farrell, Curtis, Carlin & Davidson
J. Coe, E. T. Killam Associates
M. Frost, Frost Associates



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DIVISION OF WATER RESOURCES

P.O. BOX CN 029

TRENTON, NEW JERSEY 08625

JOHN W. GASTON, JR. ES
DIRECTOR

JUN 08 1983

Mr. John H. Kerwin, President
The Hills Development Company
P.O. Box 500
3 Burnt Mill Road
Pluckemin, New Jersey 07978

Re: Sewer Service Area and Hills Development

Dear Mr. Kerwin:

As reflected in the enclosed letter to Bernards Township Sewerage Authority, the Department has resolved the inconsistencies between the Hills Development Low Pressure System Community Recharge Field proposal and the Upper Passaic River Basin 201 Environmental Impact Statement. It is our determination that the sewer service area will be limited to that area shown on Plate I (enclosed) which does not include the Hills Development proposal. Therefore, you may resubmit the application for a sewer extension permit and NJPDES permit for the ground water discharge.

We are in receipt of your April 21, 1983 letter regarding treatment of the wastewater from the site at the recently permitted Environmental Disposal Corporation Treatment Plant. The Department is not opposed to entertaining this alternative. In fact, the Department recognizes some merit to such an approach considering the soil limitations of the Bernards Township site for subsurface disposal and the advantage of managing all the wastewater from the Hills Development at one facility. However, it must be realized that both the Upper Raritan and Northeast New Jersey Water Quality Management Plans would require an amendment in addition to the Upper Raritan Watershed Wastewater Facilities Plan. This, of course, could require a substantial amount of time to process. However,

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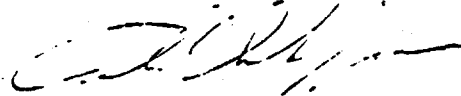
EXHIBIT D

EXHIBIT Q

Mr. John H. Kerwin
Re: Sewer Service Area and Hills Development
Page 2

barring any unforeseen environmental concerns, we are willing to work with you towards this alternative. Please let us know of your intentions in this regard.

Sincerely yours,



Arnold Schiffman
Administrator
Water Quality Management

WQM13:cjr

Enclosure

cc: Richard Salkie, Construction Grants
Barry Chalofsky, 208 Planning
Bob Hargrove, EPA
Bernards Township
Bedminster Township
Farrell, Curtis, Carlin and Davidson
James Coe, E. T. Killam Associates
M. Frost, Frost Associates
Bernards Township Sewerage Authority

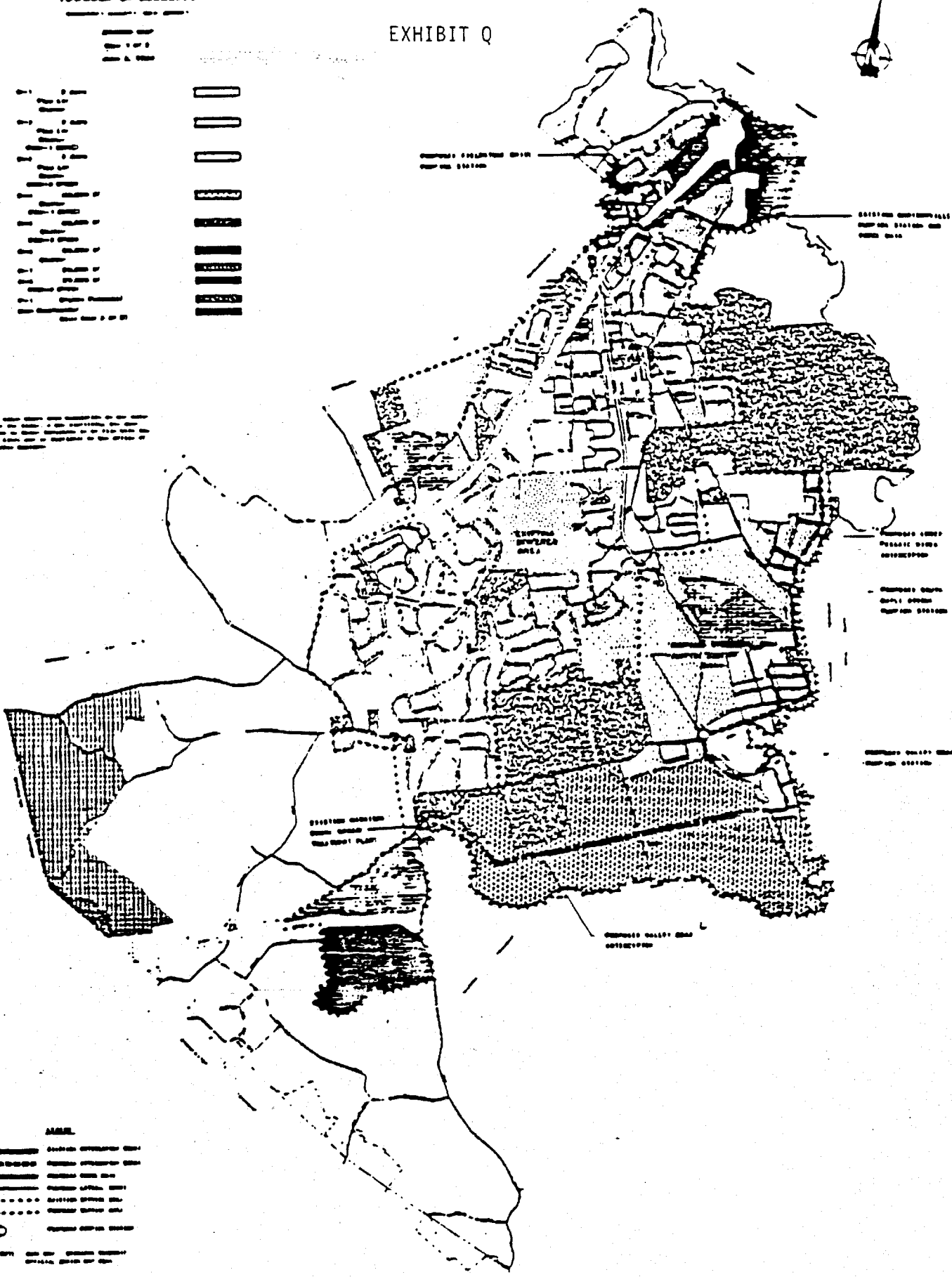
EXHIBIT Q

TOWNSHIP OF GERRARD

- Legend for Township of Gerrard showing various symbols and patterns used on the map.



Additional legend text or notes.



- Legend for the main map showing symbols for roads, boundaries, and other features.

SCALE: 1" = 1 MILE



State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF WATER RESOURCES

CN 029

TRENTON, NEW JERSEY 08625

JOHN W. GASTON JR., P.E.
DIRECTORDIRK C. HOFMAN, P.
DEPUTY DIRECTOR

December 26, 1984

Mr. Neil V. Callahan
The Hills
P.O. Box 500
Pluckemin, New Jersey 07978

Re: The Hills Sections 1A and B - Bernards Twp.

Dear Mr. Callahan:

The Bureau of Planning and Standards has reviewed your project for consistency with the provisions and recommendations of the Northeast New Jersey Quality Management Plan. We have found your project to be inconsistent with this plan. According to the provisions of the plan, this area is to be served by the Bernards Twp S. A., not by a community septic wastewater treatment facility. In addition our review indicates that your project is either partially or totally within a wetlands, as identified on the U.S. Fish and Wildlife /Wetlands Inventory. This problem needs to be addressed before a permit can be issued.

A finding of inconsistent means that the Department cannot issue a permit for the project as proposed. If you wish to proceed with the project, please contact me or Barry Chalofsky at (609) 633-7021. We will inform you as to the appropriate procedure to follow.

Sincerely,

George Horzempa, Chief
Bureau of Planning and Standards

cc: Dennis Palmer
John Trela

RECEIVED JAN 02 1985

EXHIBIT Q

Determination By The WQMP Agency*

This project or activity, as proposed, has been reviewed by this agency in accordance with the Areawide Water Quality Management Plan (WQMP). The following determination has been made by either the appropriate designated WQMP agency, or the Department (where appropriate).

- Project is consistent with Plan
 Project is not inconsistent with Plan**
 X Project is inconsistent with Plan***

The Hills - Section 1A and B - Bernards Twp.
(Name of Project)

Sewer Extension/ground water discharge
(Type of Permit)

Northeast Water Quality Management Plan
(Name of Plan)

Bureau of Planning and Standards, NJDEP
(Name of Agency)

Barry Chalofsky
(Authorized Signature)

Barry R. Chalofsky, P.P. December 26, 1984
Name Date

Supervising Planner
(Title)

Note: For the name of the appropriate WQMP agency, or any other questions, contact the Bureau of Planning and Standards, NJDEP at (609)633-7021.

- * This form may be necessary for the submission of other NJDEP permits.
- ** A finding of not inconsistent has the same effect as a finding of consistent
- *** A finding of inconsistent precludes the Department from issuing a permit.

Exhibit R



EXHIBIT R

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540

(609) 924-0808

CABLE "PRINLAW" PRINCETON
TELECOPIER (609) 924-6239
TELEX: 637682

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JANE S. KELSEY

* MEMBER OF N.J. & D.C. BAR
** MEMBER OF N.J. & PA. BAR
* MEMBER OF N.J. & N.Y. BAR
** MEMBER OF N.J. & CA. BAR
* CERTIFIED CIVIL TRIAL ATTORNEY

FILE NO.

April 1, 1985

James E. Davidson, Esquire
Farrell, Curtis, Carlin, & Davidson
43 Maple Avenue
Morristown, New Jersey 07960

Dear Jim:

I am glad we had the chance to discuss the pending Stipulation of Settlement at the Mount Laurel conference on Saturday.

I am enclosing the following items:

1. A redrafted Stipulation of Settlement, which reflects a conversation I had with George Raymond today. George is going to review the material he has and will set forth his understanding of your fair share of lower income housing. The Stipulation now includes language making it clear that the Township would receive a Judgment of Repose as a consequence of this Settlement. I have also added some language which protects The Hills Development Company in the event that legislation, now pending, ultimately manages to get signed into law. We both realize that George Raymond has not yet rendered a final decision on fair share and compliance, and the final draft of the Settlement Order will reflect his decisions.
2. I am also including the Memorandum of Understanding which I drafted on receipt of material from Orth-Rodgers;
3. Ken Mizerny's draft of Appendix "E", which includes the changes which Ken believes necessary to be made in the existing Ordinance with respect to building coverage, site design, and application procedures. This material is being reviewed by Harvey Moskowitz now.
4. I am also including a draft of Appendix "F", which reflects the time period set forth in the Manwah decision.

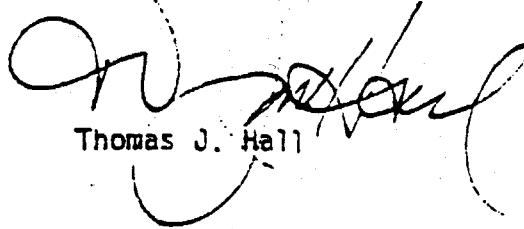
EXHIBIT R

Mr. James Davidson
April 1, 1985
Page 2

I believe this case is now ripe for settlement, and would propose that we schedule a meeting among the parties to be held no later than April 10. This will give us the opportunity to work through the document, on a line by line basis if necessary, so that we can get this case (and the Farmland Assesment case, which is currently scheduled for trial on April 17) out of the way in a timely fashion.

I look forward to hearing from you in the near future.

Sincerely,

A handwritten signature in black ink, appearing to read 'Thomas J. Hall', written over a circular stamp or mark.

Thomas J. Hall

TJH/ehl
Enclosures

cc: John Kerwin
Art Garvin
George Raymond

EXHIBIT S

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540

(609) 924-0808

CABLE "PRINLAW" PRINCETON
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* MEMBER OF N.J. & D.C. BAR
* MEMBER OF N.J. & PA. BAR
* MEMBER OF N.J. & N.Y. BAR
** MEMBER OF N.J. & GA. BAR
* CERTIFIED CIVIL TRIAL ATTORNEY

June 24, 1985

FILE NO. 3000-04-02

The Honorable Lawrence L. Lasser
Presiding Judge, Tax Court of New Jersey
Richard J. Hughes Complex
CN-975
Trenton, New Jersey 08625

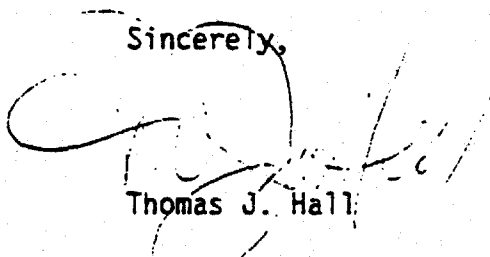
RE: The Hills Development Company v. Bernards Township
Docket No. 18-02044A-83C

Dear Judge Lasser:

This is to inform you that The Hills Development Company, after consultation with the Township of Bernards, has decided to withdraw its complaint in this case, and respectfully requests that you dismiss this matter. At the present time, this matter is scheduled to be heard before Your Honor on June 27.

Thank you very much for your consideration to this request.

Sincerely,


Thomas J. Hall

TJH:klp

cc: Louis Rago



DRAFT
7/2/85
7/3/85

MEMORANDUM OF AGREEMENT

EXHIBIT T-1

The parties to this agreement are HILLS DEVELOPMENT COMPANY, of 3 Burnt Mill Road, Pluckemin, New Jersey (Hills); ENVIRONMENTAL DISPOSAL CORPORATION, of a wholly owned subsidiary of Hills (EDC); TOWNSHIP OF BERNARDS, of Collyer Lane, Basking Ridge, New Jersey, a municipal corporation of the State of New Jersey (Township); THE PLANNING BOARD OF THE TOWNSHIP OF BERNARDS (Planning Board); and, THE TOWNSHIP OF BERNARDS SEWERAGE AUTHORITY (Sewerage Authority)

The parties are entering into this memorandum of agreement as part of the settlement of the matter of The Hills Development Company v. The Township of Bernards, et als., Docket No. L-030039-84 and it is intended that this memorandum of agreement will be attached to the Judgment in that matter and will be part thereof.

1. That portion of Hills' property located within the Raritan Watershed, stipulated to consist of approximately 501 acres, has been zoned pursuant to the Bernards Township Land Development Ordinance as amended by Ordinance #704 as R-8 with a PRD-4 option. (A mapping of the Hills property is attached hereto as Schedule A.) Pursuant to that zoning, a total of 2,750 dwelling units can be built within said portion of the

property. Hills will build 20% of the total number of units to be constructed on said portion of the property as housing affordable to lower income households, pursuant to Mt. Laurel

II. Such housing for lower income households ("lower income" includes both "low" income and "moderate" income housing, as those terms are defined in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) at n. 8, p 221) shall be constructed in accord with a housing plan, referenced below. At least 50% of such housing shall be constructed for low income households.

2. The Township, including the Township Planning Board, stipulates that Hills shall be entitled to construct said 2,750 dwelling units within the Raritan Basin; provided that such development is in accordance with the 20% limitation referred to in paragraph 1 hereof and other provisions of Bernards Township Land Development Ordinance as amended; and, further provided that site plan and subdivision standards as set forth in the Bernards Township Land Development Ordinance as amended and as modified by this agreement are observed. Such construction shall not be subject to phasing or other timing requirements except as provided in Ordinance #704 as amended.

3. Hills shall not seek to obtain any additional density nor seek the right to construct additional units on the aforementioned approximately 501 acres within the Raritan Watershed or any other property within such watershed now owned

by it. Hills hereby agrees to limit its Raritan Basin development to 2,750 units (except as provided for in paragraph 4 hereof) and will forego development on other properties that it currently owns in the Raritan Watershed. The properties located in the Raritan Watershed include the following:

<u>Lot</u>	<u>Block</u>	<u>Owner</u>
------------	--------------	--------------

In the event that Hills acquires any other property in the Raritan Watershed, west of Somerville Road and north of Interstate 78, Hills agrees to not develop such property or seek greater density than that currently existing under the Bernards Township Land Development Ordinance (1 unit per 3 acres).

Hills agrees to provide deeds, assignments, acknowledgments and other documents necessary to regulate and restrict the development of such property as hereinabove provided.

4. Hills Development will provide 68 additional lower income units which shall be constructed in the Hills property located in the Raritan Watershed. Such additional lower income units shall be constructed prior to the completion of more than ninety (90%) per cent of Hills total development (other than these units) which includes 2750 units in the Raritan Basin and 273 units in the Passaic Basin. Such construction shall take place during a period commencing 1991 and ending 1994. At least

fifty (50%) percent of such units shall be constructed for low income households.

5. That portion of the Hills property located within the Passaic Watershed stipulated to consist of approximately 545 acres has been zoned as R-8 upon which the parties agree that a total of 273 dwelling units can be built, subject to the provisions of the Bernards Township Land Development Ordinance. Hills shall not be entitled to develop this property in any density which will result in more than 273 dwelling units.

6. Hills hereby stipulates that it will not seek to obtain any additional density nor seek the right to construct additional units on the aforementioned approximately 545 acres within the Passaic Watershed. Hills hereby agrees to limit its Passaic Watershed development to 273 units.

Hills agrees to provide deeds, assignments, acknowledgments and other documents necessary to regulate and restrict the development of such property as hereinabove provided.

7. Hills agrees to grant an easement to the Township or its assigns which shall effect an area surrounding its development for open space area. Such area shall be ___ wide and the approximate location thereof is shown on Schedule A attached hereto. No structure or other construction or development shall take place on, over or under such open space area except as permitted by the Township.

In no event, however shall sanitary sewers or sewerage facilities be placed or constructed on, over or under such open space area without regard to whether such open space is used for road, drainage or other purposes.

Hills agrees to provide deeds, assignments, acknowledgments and other documents necessary to regulate and restrict the development of such open space area as hereinabove provided.

B. Township of Bernards and Township of Bernards Sewerage Authority agree to take whatever action is reasonably necessary to extend the franchise of the Environmental Disposal Corp. (hereinafter referred to "EDC") a franchised public utility, licensed by the New Jersey Board of Public Utilities to that portion of the Hills property which is located in the Passaic Watershed and upon which the 273 units hereinabove referred to will be constructed. Such franchise will only include that area upon which the units are to be built and will be limited to the following properties and structures:

(a) 273 residential units;

(b) a public school building which may be erected on property now owned by Hills on a site chosen by mutual agreement between Hills and the Township as hereinafter provided;

No structure or facility outside this property shall be permitted to connect to the EDC sewerage system.

9. EDC agrees to provide sewerage collection and disposal system for the properties in question and to limit its franchise as herein provided.

(a) The 273 units referred to herein will be so designed and constructed so as to generate no more than 110,000 gallons per day (gpd) of sewerage based on current design standards.

(b) The public school building which may be erected will be allocated sewer capacity in an amount not to exceed 25,000 gpd. Such facility shall be connected to the EDC central sewerage collection and treatment system described above. Such capacity allocated hereunder for the school will not be available until the EDC plant is expanded as contemplated and described herein. The property to be used as a school site shall be of sufficient size to meet state standards. Hills shall deed such site to the Township or as it directs. It is expected that the proposed site shall be approximately 20 acres. The aggregate of all facilities to be constructed on the property owned by Hills within the Passaic Watershed to be served by the EDC expanded franchise will be designed so as to not generate more than 135,000 gpd of sewerage based on current design standards.

(i) The school site shall be selected within _____ years from the date hereof.

(ii) In the event that the site shall not be used for a school site it shall be used for permanent open space, park, recreation or other public purpose. The property shall not be used for residential or commercial purposes and shall contain no structures other than those used for the aforesaid purposes and uses accessory thereto.

(iii) The allocation of sewer capacity set forth herein shall be held available for the proposed site until _____, at which time such capacity is subject to being reallocated. In no event, however, shall such capacity be used to create additional development.

(c) The Township of Bernards Sewerage Authority agrees to approve and consent to EDC's service, if such action is necessary to meet NJDEP requirements. A proposed franchise expansion resolution is set forth as Appendix _____.

(d) The Bernards Township Sewerage Authority will cooperate with EDC by reviewing designs for pumps, force mains, collectors, and other structures designed to serve the structures, dwellings, and facilities referenced above. It is specifically stipulated that physical facilities designed to service Hills properties in the Passaic Watershed portion of the Township will be sized and located in such a manner as to preclude expansion of the system in the Passaic Basin beyond

that necessary to serve the properties referenced above. Hills agrees that it will provide reasonable funds to the Township for an engineering review fee, provided, however, that such sums shall not exceed Ten Thousand (\$10,000) dollars.

(e) Notwithstanding the above Bernards Township and Bernards Township Sewerage Authority will not assume any responsibility for the correct design, construction or use of the contemplated sewerage facilities and will not assume any liability for incorrect design, construction or use of the facilities. Hills and EDC agree to accept liability and hold Bernards Township and Bernards Township Sewerage Authority harmless from all actions, suits, administrative proceedings or otherwise which arise out of the design, construction or use of these facilities including any violation of EDC's discharge permit or permits.

10. The Township stipulates that upon notification by Hills that all agreements with EDC have been executed, and that EDC has commenced construction of appropriate sewerage works to serve the Passaic Basin, the Township will enter into an agreement with Hills and with EDC as follows:

(a) EDC will construct, on a site satisfactory to the Township and the New Jersey Department of Environmental Protection (NJDEP), sewage conveyance pipes and a holding tank or tanks to hold effluent from houses constructed during the period during which the permanent connections with the EDC plan

are being built; the Township and Authority agree to approve and consent to EDC construction, maintenance and operation of these temporary sewerage facilities as long as the same are in accordance with any approvals required by any agency having jurisdiction. The Township and Authority will not assume any costs associated with construction, operation or maintenance of these temporary facilities. It is the responsibility of Hills or EDC to get necessary approvals from NJDEP and any other body or agency having jurisdiction for the temporary facilities. The Township and Sewerage Authority agree to take such actions as are reasonably necessary to assist Hills and EDC in getting approvals for such temporary sewerage facilities. EDC and Hills agree to hold Township and Authority harmless from any actions, suits, administrative proceedings or otherwise which arise from such temporary facilities;

(b) The grant of the franchise to EDC to serve the Hills property in the Passaic Watershed notwithstanding, the Bernards Township Board of Health will have jurisdiction to inspect such holding tank or tanks and sewage facilities during such temporary holding period, and to regulate the use thereof pursuant to the law so made and provided;

(c) Hills, upon submission to the Township of satisfactory evidence that it has met all relevant subdivision, site plan, Board of Health, Department of Environmental Protection and construction code requirements, shall be

authorized to obtain building permits (and subsequently, certificates of occupancy) for houses and other facilities within the Passaic Watershed;

(d) Such use of a holding tank and sewage management program shall be discontinued upon the completion of all construction, inspections and acceptance of the expansion of the EDC facilities required to service the Passaic Watershed properties and all facilities abandoned or received, if necessary, shall be done so in accordance with applicable regulations of any body or agency having jurisdiction thereof.

(e) Security (?)

11. The Township stipulates that it shall support the proposed expansion of the EDC plant, located in Bedminster Township, New Jersey, from its present 850,000 gpd capacity to 1.75 million gpd capacity. Such an application is currently pending before the New Jersey Department of Environmental Protection. The expansion is necessary to provide sewage service for housing units to be built as a result of Mount Laurel II settlements in Bernards Township and Bedminster Township, including the housing proposed to be constructed in the Passaic Watershed.

The Township shall take all reasonably necessary actions support modifications of plans or requirements established by the New Jersey Department of Environmental Protection, the

United States Environmental Protection Agency, or the County of Somerset. Resolutions necessary to support these expansion plans are set forth in Appendices _____ and _____, incorporated herein and made a part hereof as if set forth at length herein.

12. The parties hereto stipulate that Hills will provide \$3,240,000. as its contribution to the Township for the construction of required off-tract improvements in the Township. Such improvements are hereby determined to be reasonable and necessary street and drainage improvements which are necessitated or required by construction of the Hills development referred to herein and covers all Hills' liability for off-tract improvements to be required by the Township without regard to whether such off-tract improvements are to municipal or Somerset County facilities.

The aforementioned \$3,240,000 is based on the following parameters:

- (a) Hills will construct no more than 2,818 units of housing in the Raritan Watershed;
- (b) Hills will construct no more than 273 units of housing in the Passaic Watershed;
- (c) Hills will construct no more than 50,000 square feet of retail commercial or office space.

Any additional retail or commercial space, approved by the Township, if any, shall be subject to additional contributions for off-site improvements, which shall also reflect a credit

given for internalization of traffic within Hills' properties, as set forth in the Memorandum of Understanding, dated _____ concerning the off-tract improvements. That Memorandum of Understanding, including the timing of the construction of off-tract improvements, is attached hereto as Appendix ____, attached hereto and made a part hereof as if set forth at length herein.

13. Hills and the Township of Bernards stipulate and agree that the Bernards Township Land Development Ordinance as amended by Ordinance #704 and as further amended as set forth on Schedule A of the Judgment in this matter shall control the development of the Hills properties.

14. The parties stipulate that the Concept Plan Map attached hereto as Appendix _____ and made a part hereof as set forth herein will serve as a general guide to the development within properties which it owns in the Township. Hills shall provide engineering details, as quickly as possible, for the planned development of Schley Mountain Road and Allan Road. The Township shall implement a timely review and approval process of said road plans, specifically with regard to that portion of Schley Mountain Road which begins in Bedminster Township and provides access to Block 59, Lots 1.01 and 1.02 as shown on the Tax Maps of Bedminster Township.

15. The parties stipulate that the Concept Plan provides an overall general guide to the development of Hills property and

Hills shall be permitted to build in accordance with the generalized layout, with regard to number of buildings, generalized location of roads, density ranges, and other particulars noted on the map. Hills shall submit detailed preliminary and final applications for each subdivision and site plan for the Planning Board's review, as provided by ordinance as provided herein.

16. The parties stipulate that Hills shall draft, and the Township shall review and approve, a plan for the construction and operation of lower income housing to be built by Hills. The parties stipulate that no decision has been reached, at this time as to whether such housing shall be for sale, rental housing, or a combination of the two forms of ownership and use. When developed, and thereafter reviewed and approved by the Court, this housing plan shall be made part of the Order in this case.

17. The development of the Hills property shall not be affected by any municipal action arising out of any State, County of municipally imposed moratorium or phasing schedule, except to that portion of the development which relates to the 68 additional units which are to be phased in during the period of 1991 to 1994, as hereinabove described.

18. This agreement and any terms hereof may be modified by the parties hereto by a written agreement. Any such modification shall not result in the Township being unable to

provide for a realistic opportunity for the construction of lower income housing as provided in the Judgment in this matter.

DRAFT
9/2/85
7/3/85

MEMORANDUM OF AGREEMENT

EXHIBIT T-2

The parties to this agreement are HILLS DEVELOPMENT COMPANY, of 3 Burnt Mill Road, Pluckemin, New Jersey (Hills) or its assigns; ENVIRONMENTAL DISPOSAL CORPORATION, of Box 506, Pluckemin, New Jersey (EDC) or its assigns; ~~ENVIRONMENTAL DISPOSAL CORPORATION OF HILLS (EDC);~~ TOWNSHIP OF BERNARDS, of Collyer Lane, Basking Ridge, New Jersey, a municipal corporation of the State of New Jersey (Township); THE PLANNING BOARD OF THE TOWNSHIP OF BERNARDS (Planning Board); and, THE TOWNSHIP OF BERNARDS SEWERAGE AUTHORITY (Sewerage Authority)

The parties are entering into this memorandum of agreement as part of the settlement of the matter of The Hills Development Company v. The Township of Bernards, et als., Docket No. L-030039-84 and it is intended that this memorandum of agreement will be attached to the Judgment in that matter and will be part thereof.

1. That portion of Hills' property located within the Raritan Watershed, stipulated to consist of approximately 501 acres, has been zoned pursuant to the Bernards Township Land Development Ordinance as amended by Ordinance #704 as R-8 with a PRD-4 option. ^{That ordinance, currently in effect, is attached here to as Appendix A.} (A mapping of the Hills property is attached hereto as Schedule A.) Pursuant to that zoning, a total of 2,750 dwelling units ^{may} ~~can~~ be built within said portion of the

property. Hills will build 20% of the total number of units to be constructed on said portion of the property as housing affordable to lower income households, pursuant to Mt. Laurel

II. Such housing for lower income households ("lower income" includes both "low" income and "moderate" income housing, as those terms are defined in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) at n. 8, p 221)

shall be constructed in accord with a housing plan, referenced below. At least 50% of such housing shall be constructed for low income households.

2. The Township, including the Township Planning Board, stipulates that Hills shall be entitled to construct said 2,750 dwelling units within the Raritan Basin; provided that such development is in accordance with the 20% limitation referred to in paragraph 1 hereof and other provisions of Bernards Township Land Development Ordinance as amended; and, further provided that site plan and subdivision standards as set forth in the Bernards Township Land Development Ordinance as amended and as modified by this agreement are observed. Such construction shall not be subject to phasing or other timing requirements except as provided in Ordinance #704 as ^{proposed to be amended as set forth in} ~~amended~~. Appendix B.

3. Hills shall not seek to obtain any additional density nor seek the right to construct additional units on the aforementioned approximately 501 acres within the Raritan Watershed or any other property within such watershed now owned

by it. Hills hereby agrees to limit its Raritan Basin development to 2,750 units (except as provided for in paragraph 4 hereof) and will forego development on other properties that it currently owns in the Raritan Watershed. The properties located in the Raritan Watershed include the following:

<u>Lot</u>	<u>Block</u>	<u>Owner</u>
10	173	Hills Development
22 01	174	Hills Development

~~a portion of the property in Block 174 is in the Raritan Basin.~~

A portion of Lot 1.01Q

In the event that Hills acquires any other property in the Raritan Watershed, west of Somerville Road and north of Interstate 78, Hills agrees to ~~not~~ develop such property ~~at~~ at densities ~~greater density than the~~ currently existing under the Bernards Township Land Development Ordinance (1 unit per 3 acres).

Hills agrees to provide deeds, assignments, acknowledgments and other documents necessary to regulate and restrict the development of such property as hereinabove provided.

delete

4. Hills Development will provide 68 additional lower income units which shall be constructed in the Hills property located in the Raritan Watershed. Such additional lower income units shall be constructed prior to the completion of more than ninety (90%) per cent of Hills total development (other than these units) which includes 2750 units in the Raritan Basin and 273 units in the Passaic Basin. ^{It is intended that} such construction ^{will} take place during a period commencing 1991 and ending 1994. ~~At least~~

*See
Letter*

fifty (50%) percent of such units shall be constructed for low income households.

5. That portion of the Hills property located within the Passaic Watershed stipulated to consist of approximately 545 acres has been zoned as R-8 upon which the parties agree that a total of 273 dwelling units can be built, subject to the provisions of the Bernards Township Land Development Ordinance. Hills shall not be entitled to develop this property in any density which will result in more than 273 dwelling units.

6. Hills hereby stipulates that it will not seek to obtain any additional density nor seek the right to construct additional units on the aforementioned approximately 545 acres within the Passaic Watershed. Hills hereby agrees to limit its Passaic Watershed development to 273 units

Hills agrees to provide deeds, assignments, acknowledgments and other documents necessary to regulate and restrict the development of such property as hereinabove provided. *UNLESS WRITTEN AGREEMENTS WITH THE TOWNSHIP SHOULD PERMIT INCREASED*

delete

~~7. Hills agrees to grant an easement to the Township or its assigns which shall effect an area surrounding its development for open space area. Such area shall be wide and the approximate location thereof is shown on Schedule A attached hereto. No structure or other construction or development shall take place on, over or under such open space area except as permitted by the Township.~~ *Change d to:*

7. The Township of Bernards and the Bernards Township Sewerage Authority agree to grant an expansion of the franchise area of EDC to serve the 273 residential structures and the public school proposed to be constructed on land currently owned by Hills, all in the Passaic Basin portion of Hills current landholdings.

This grant of franchise is specifically conditioned on the following:

a. The franchise shall be carefully described by metes and bounds and shall all be internal to property held by Hills. The franchise shall not extend to the the rights of way of public roads external to the Hills current landholdings in the Passaic Basin, specifically, Mount Prospect Road, Liberty Corner Road and Somerville Road.

b. Any development undertaken by Hills within the Passaic Basin shall include a setback from the public roadways, in conformance with the Land Development Ordinance, which setback shall serve to buffer the development from the public road.

c. EDC shall provide sewer service to the Hills' Passaic Basin properties through interceptor and trunk lines located internal to the Hills property and not within the public rights of way of boundary roads, specifically Mount Prospect Road, Liberty Corner Road and Somerville Road. If engineering considerations require the placement of interceptor and trunk lines adjacent to boundary roads, such trunk lines shall be placed in the buffer area owned by Hills. Such trunk lines shall be separated from the edge of the public right-of-way of any boundary road by no less than twenty (20') feet of land owned by Hills.

In no event, however shall sanitary sewers or sewerage facilities be placed or constructed on, over or under such open space area without regard to whether such open space is used for road, drainage or other purposes.

Hills agrees to provide deeds, assignments, acknowledgments and other documents necessary to regulate and restrict the development of such open space area as hereinabove provided.

delete

~~8. Township of Bernards and Township of Bernards Sewerage Authority agree to take whatever action is reasonably necessary to extend the franchise of the Environmental Disposal Corp. (hereinafter referred to "EDC") a franchised public utility, licensed by the New Jersey Board of Public Utilities to that portion of the Hills property which is located in the Passaic Watershed and upon which the 273 units hereinabove referred to will be constructed. Such franchise will only include that area upon which the units are to be built and will be limited to the following properties and structures:~~

- ~~(a) 273 residential units;~~
- ~~(b) a public school building which may be erected on property now owned by Hills on a site chosen by mutual agreement between Hills and the Township as hereinafter provided;~~

8. The Township of Bernards and the Bernards Township Sewerage Authority specifically retain authority for sewerage service in all other areas of the Township (other than those properties currently being served by EDC) and there shall be no extension of sewerage service or connection of any property outside of Hills property to the EDC system.

No structure or facility outside this property shall be permitted to connect to the EDC sewerage system.

9. EDC agrees to provide sewerage collection and disposal system for the properties in question and to limit its franchise as herein provided.

(a) The 273 units referred to herein will be so designed and constructed so as to generate no more than 110,000 gallons per day (gpd) of sewerage based on current design standards.

(b) The public school building which may be erected will be allocated sewer capacity in an amount not to exceed 25,000 gpd. Such facility shall be connected to the EDC central sewerage collection and treatment system described above. Such capacity allocated hereunder for the school will not be available until the EDC plant is expanded as contemplated and described herein.) The property to be used as a school site shall be of sufficient size to meet state standards. Hills shall deed such site to the Township or as it directs. It is expected that the proposed site shall be approximately 20 acres. The aggregate of all facilities to be constructed on the property owned by Hills within the Passaic Watershed to be served by the EDC expanded franchise will be designed so as to not generate more than 135,000 gpd of sewerage based on current design standards.

The Township & the Sewerage Authority agree to support the expansion of the EDC Plant in Bernards & will adopt a resolution substantially as set forth in Appendix C.

The school site land transfer shall be governed by the following considerations:

a. Hills shall retain ownership of the land until such time as the Bernards Township School Board ("Board") completes all necessary State plan reviews and has allocated sufficient funds to commence construction of the building. Thereafter, Hills shall convey the site to the Board on its request.

b. If the Board elects not to construct a public school building on that site or fails to complete the plan reviews and appropriate the funds as set forth above by July 1, 1990, Hills' obligation to provide the site is extinguished.

c. The property shall be reserved for use as a public educational facility and ownership and use of such property shall automatically revert to Hills if the facility is ever used for any other purpose other than public education.

(i) The school site shall be selected within _____ years from the date hereof.

delete

(ii) In the event that the site shall not be used for a school site it shall be used for permanent open space, park, recreation or other public purpose. The property shall not be used for residential or commercial purposes and shall contain no structures other than those used for the aforesaid purposes and uses accessory thereto.

(iii) The allocation of sewer capacity set forth herein shall be held available for the proposed site until _____, at which time such capacity is subject to being reallocated. In no event, however, shall such capacity be used to create additional development. *Changed to.*

(c) The Township of Bernards Sewerage Authority agrees to approve and consent to EDC's service, if such action is necessary to meet NJDEP requirements. A proposed franchise expansion resolution is set forth as Appendix D.

(d) The Bernards Township Sewerage Authority will cooperate with EDC by reviewing designs for pumps, force mains, collectors, and other structures designed to serve the structures, dwellings, and facilities referenced above. It is specifically stipulated that physical facilities designed to service Hills properties in the Passaic Watershed portion of the Township will be sized and located in such a manner as ^{approved} to preclude expansion of the system in the Passaic Basin beyond *by the Township Engineer. Such designs will be limited to (begin next page.)*

→

Hills has allocated 25,000 gpd of capacity which it holds under agreement from EDC to serve the school site. The allocation of sewer capacity for the school site set forth herein shall be held available for the proposed site until July 1, 1990, after which such allocation of capacity shall revert to the management and control of Hills; provided, however, if the Board has begun the process of constructing such school, the capacity shall be reserved for the Board until 1995, or until the date of completion of the school, whichever comes first. At such time as the school is ready to be sewered, the Board shall enter into an Agreement with EDC to arrange service.

If such capacity does revert to Hills, it shall not be used to serve additional development within the Passaic Basin portion of Bernards Township without the express approval of the Bernards Township Committee and the Bernards Township Sewerage Authority.

that necessary to serve the properties referenced above. Hills agrees that it will provide reasonable funds to the Township for an engineering review fee, provided, however, that such sums shall not exceed Ten Thousand (\$10,000) dollars.

~~Let~~ Notwithstanding the above Bernards Township and Bernards Township Sewerage Authority will not assume any responsibility for the correct design, construction or use of ~~the contemplated sewerage facilities~~ ^{contemplated under this agreement} and will not assume any liability for incorrect design, construction or use of the facilities. Hills and EDC agree to accept liability and hold Bernards Township and Bernards Township Sewerage Authority harmless from all actions, suits, administrative proceedings or otherwise which arise out of the design, construction or use of these facilities including any violation of EDC's discharge permit or permits.

10. The Township stipulates that upon notification by Hill that all agreements with EDC have been executed, and that EDC has commenced construction of appropriate sewerage works to serve the Passaic Basin, the Township will enter into an agreement with Hills and with EDC as follows:

(a) ^{Hills and/or} EDC will construct, on a site satisfactory to the Township and the New Jersey Department of Environmental Protection (NJDEP), sewage conveyance pipes and a holding tank or tanks to hold effluent from houses constructed during the period during which the permanent connections with the EDC plant

are being built; the Township and Authority agree to approve and consent to ^{Hills and/or} AEDC construction, maintenance and operation of these temporary sewerage facilities as long as the same are in accordance with any approvals required by any agency having jurisdiction. The Township and Authority will not assume any costs associated with construction, operation or maintenance of these temporary facilities. It is the responsibility of Hills or EDC to get necessary approvals from NJDEP and any other body or agency having jurisdiction for the temporary facilities. The

Township and Sewerage Authority agree to take such actions as are reasonably necessary to assist Hills and EDC in getting approvals for such temporary sewerage facilities. EDC and Hills agree to hold Township and Authority harmless from any actions, suits, administrative proceedings or otherwise which arise from such temporary facilities;

(b) The grant of the franchise to EDC to serve the Hills property in the Passaic Watershed notwithstanding, the Bernards Township Board of Health will have jurisdiction to inspect such holding tank or tanks and sewage facilities during such temporary holding period, and to regulate the use thereof pursuant to the law so made and provided;

(c) Hills, upon submission to the Township of satisfactory evidence that it has met all relevant subdivision, site plan, Board of Health, Department of Environmental Protection and construction code requirements, shall be

→ But the Bernards Township Sewerage Authority agrees to act as agent for Hills/EDC if necessary to obtain all necessary permits from NJDEP.

authorized to obtain building permits (and subsequently, certificates of occupancy) for houses and other facilities within the Passaic Watershed;

(d) Such use of a holding tank and sewage management program shall be discontinued upon the completion of all construction, inspections and acceptance of the expansion of the EDC facilities required to service the Passaic Watershed properties and all facilities abandoned or received, if necessary, shall be done so in accordance with applicable regulations of any body or agency having jurisdiction thereof.

~~delete (e) Security (?)~~

11. The Township stipulates that it shall support the proposed expansion of the EDC plant, located in Bedminster Township, New Jersey, from its present 850,000 gpd capacity to 1.75 million gpd capacity. Such an application is currently pending before the New Jersey Department of Environmental Protection. The expansion is necessary to provide sewage service for housing units to be built as a result of Mount Laurel II settlements in Bernards Township and Bedminster Township, including the housing proposed to be constructed in the Passaic Watershed.

The Township shall take all reasonably necessary actions to support modifications of plans or requirements established by the New Jersey Department of Environmental Protection, the

United States Environmental Protection Agency, or the County of Somerset. Resolutions necessary to support these expansion plans are set forth in Appendices _____ and _____, incorporated herein and made a part hereof as if set forth at length herein.

any request by Somerset County

12. The parties hereto stipulate that Hills will provide \$3,240,000 as its contribution to the Township for the construction of required off-tract improvements in the Township. Such improvements are hereby determined to be reasonable and necessary street and drainage improvements which are necessitated or required by construction of the Hills development referred to herein and covers all Hills' liability for off-tract improvements to be required by the Township without regard to whether such off-tract improvements are to municipal or Somerset County facilities.

The township specifically agrees not to provide any land use approvals on Hills receiving Somerset County approval or to delay

The aforementioned \$3,240,000 is based on the following

parameters:

- (a) Hills will construct no more than 2,818 units of housing in the Raritan Watershed;
- (b) Hills will construct no more than 273 units of housing in the Passaic Watershed;
- (c) Hills will construct no more than 50,000 square feet of retail commercial or office space.

Any additional retail or commercial space, approved by the Township, if any, shall be subject to additional contributions for off-site improvements, which shall also reflect a credit

(d) The Township will supply documentation as to:

- i. the necessity for the construction of the particular road or section of road for which Hills contribution is required, including an indication of how development of Hills property requires such road improvements; and
- ii. Whether contributions from other developers are also allocated to the particular road or section of road; and if so, the percentage of Hills contribution in terms of the total construction cost.

given for internalization of traffic within Hills' properties, as set forth in the Memorandum of Understanding, dated July 1977 concerning the off-tract improvements. That Memorandum of Understanding, including the timing of the construction of off-tract improvements, is attached hereto as Appendix E, attached hereto and made a part hereof as if set forth at length herein. *Excluded hereafter*

13. Hills and the Township of Bernards stipulate and agree that the Bernards Township Land Development Ordinance as amended by Ordinance #704 and as further amended as set forth on *in Appendix B attached hereto* Schedule A of the Judgment in this matter shall control the development of the Hills properties.

14. The parties stipulate that the Concept Plan Map attached hereto as Appendix F and made a part hereof as set forth herein will serve as a general guide to the development within properties which it owns in the Township. Hills shall provide engineering details, as quickly as possible, for the planned development of Schley Mountain Road and Allan Road. The Township shall implement a timely review and approval process of said road plans, specifically with regard to that portion of Schley Mountain Road which begins in Bedminster Township and provides access to Block 59, Lots 1.01 and 1.02 as shown on the Tax Maps of Bedminster Township.

15. The parties stipulate that the Concept Plan provides an overall general guide to the development of Hills property and

Appendix C further contains a schedule for payments, based on a cost per unit to be constructed, and indicates that 50% of the allocated cost for road improvements shall be paid when a building permit is issued and 50% shall be paid when the unit receives a certificate of occupancy, as well as setting forth a schedule of improvements in conjunction with the Hills building program.

Hills shall be permitted to build in accordance with the generalized layout, with regard to number of buildings, generalized location of roads, density ranges, and other particulars noted on the map. Hills shall submit detailed preliminary and final applications for each subdivision and site plan for the Planning Board's review, as provided by ordinance as provided herein.

Changed to section 16

17. ~~The parties stipulate that Hills shall draft, and the Township shall review and approve, a plan for the construction and operation of lower income housing to be built by Hills. The parties stipulate that no decision has been reached, at this time as to whether such housing shall be for sale, rental housing, or a combination of the two forms of ownership and use when developed, and thereafter reviewed and approved by the Court, this housing plan shall be made part of the Order in this case.~~ *delete*

The housing plan shall be approved by the Planning Board.

18. ~~17.~~ The development of the Hills property shall not be affected by any municipal action arising out of any State, County ^{or} ~~of~~ municipally imposed moratorium or phasing schedule, except to that portion of the development which relates to the 68 additional units which ^{may} ~~are to~~ be phased in during the period of 1991 to 1994, as hereinabove described.

see letter

19. ~~18.~~ This agreement and any terms hereof may be modified by the parties hereto by a written agreement. Any such modification shall not result in the Township being unable to

16. The Township's Land Development Ordinance shall be further amended to include revised standards for subdivisions, substantially in accord with the language set forth in Appendix G, attached hereto.

provide for a realistic opportunity for the construction of lower income housing as provided in the Judgment in this matter.



8-130
DRAFT
7/27
1/24
10/1

FARRELL, CURTIS, CARLIN & DAVIDSON
43 Maple Avenue
Post Office Box 145
Morristown, New Jersey 07960
(201) 267-8130

Attorneys for Defendants, Township of Bernards, Township
Committee of the Township of Bernards and the Sewerage Authority
of the Township of Bernards.

THE HILLS DEVELOPMENT COMPANY,
Plaintiff,

-vs-

THE TOWNSHIP OF BERNARDS in the
COUNTY OF SOMERSET, a municipal
corporation of the State of New
Jersey, 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,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION
: SOMERSET/OCEAN COUNTIES
: Docket No. L-030039-84

: Civil Action
:
: ORDER OF JUDGMENT

This matter having been opened to the Court on application
by all the parties hereto, and Brener, Wallack & Hill (Henry A.
Hill, Esq.) appearing on behalf of plaintiffs; Farrell, Curtis,
Carlin & Davidson (James E. Davidson, Esq.) appearing on behalf
of defendants, the Township of Bernards in the County of
Somerset, the Township Committee of the Township of Bernards,
and the Sewerage Authority of the Township of Bernards; and

Kerby, Cooper, Schaul & Garvin (Arthur H. Garvin, III, Esq.) appearing on behalf of Defendant, the Planning Board of the Township of Bernards, for entry of a Judgment concluding this action;

And the Court having considered the pleadings in this matter, the report of the Master appointed in this matter, George Raymond, and the Land Development Ordinance of the Township of Bernards, Ordinance #704 which amends the Land Development Ordinance of the Township of Bernards, and a report of Harvey Moskowitz, Planner for the Township of Bernards;

And, the Township of Bernards having developed a proposed strategy, including the enactment of Ordinance 704, proposed amendments to Ordinance 704 and other municipal actions, for fully complying with its obligation to provide a realistic opportunity for the provision of its fair share of low and moderate income housing, as that term is used in Southern Burlington County N.A.A.C.P. vs. Township of Mt. Laurel, 92 N.J. 158 (1983) ("Mt. Laurel II"), hereinafter referred to as the "compliance package";

This Court having reviewed the Township of Bernard's compliance package at a hearing held on _____, 1985 and having conducted other proceedings in connection with this action, and the Court having heard and considered the arguments of counsel;

And based on the above submissions the Court having made the following findings of fact and conclusions of law:

1. For the period ending 1991 the Township of Bernards is required to provide a realistic opportunity for the provision of 1066 units of low and moderate income housing, which number shall constitute the "fair share" of the Township of Bernards for provision of such housing, as that term is used in Southern Burlington County N.A.A.C.P. vs. Township of Mt. Laurel, 92 N.J. 158 (1983) ("Mt. Laurel II");

2. As part of Ordinance #704 the allowable density of the lands owned by plaintiff Hills was increased to provide 2750 units to be constructed in the R-8 zone. The sole purpose and intent of that increase in density was to enable Hills, pursuant to the 20% set aside mandated in Ordinance #704, to construct 550 units of low and moderate income housing.

3. Attached hereto as Exhibit B is a memorandum of agreement between the parties which recites in detail the understanding of the parties as it relates to the development of plaintiff's property which the parties intend to implement as part of and as consideration of the settlement of this action.

4. The defendant Township has indicated its agreement to certain amendments to Ordinance #704 which amendments include a provision for 68 additional units to be located in the R-8 (PRD-4) zone, such units to be phased in and constructed during

the period commencing 1991 and ending 1994, all as more specifically set forth on Exhibit A attached hereto.

5. The compliance package including Ordinance #704, as so amended, and with the further provisions specified in this order, provides a realistic opportunity for the satisfaction of the Township's fair share of low and moderate income housing;

And for good cause shown:

NOW, THEREFORE, I, on this _____ day of _____, 1985

ORDERED AND ADJUDGED that:

1. Bernards Township Land Development Ordinance as amended by Ordinance #704 and as to be further amended as herein provided provides a realistic opportunity for the provision of Bernards Township's fair share of lower income housing, pursuant to the requirements set forth in Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983).

2. The determination of compliance set forth herein is conditioned on the following:

(a) The defendants shall modify the Bernards Township Land Development Ordinance in the manner set forth on Exhibit A attached hereto, including specifically the following provisions:

(1) An increase in density in that portion of the Hills property located in the Raritan Basin to provide 68 additional units of housing, 50% of which shall be low income housing and 50% of which shall be moderate income housing. The construction of such housing shall be phased in so that such

housing shall be provided during the period 1991 through 1994 as more specifically provided in the memorandum of agreement attached hereto as Exhibit B hereof.

(2) Planning Board application fee for those units in a development in the R-8 zone which are low or moderate income housing units shall be waived.

(3) The regulation of low and moderate income housing including rental, sale, re-rental, and re-sale, in order to assure that such housing shall remain low and moderate income housing for a period of _____ years from the date hereof.

(4) A provision that will insure that development applications for developments which include low and moderate income housing units should be completed and action taken within a 95-day period commencing on the date of submission of a complete application, or within such further time as may be consented to by the developer.

(b) The parties shall implement the memorandum of agreement attached hereto as Exhibit B.

FURTHER ORDERED that this action shall be dismissed with prejudice and without costs; and that the defendant, Township of Bernards, shall be entitled to repose from further litigation relating to its obligation to provide housing for low and moderate income families under Mt. Laurel II or otherwise, and the determination of Bernards Township's fair share, and the judgment of its compliance with its Mt. Laurel II obligation

under the conditions set forth in this Order, shall have res judicata effect, despite changed circumstances, for a period of six years, the period to begin on the date of entry of this judgment.

J.S.C.





MEMORANDUM

To: John Kerwin
Henry Hill
Thomas Hall
Pegi Schnugg

From: Ken Mizerny

Date: October 15, 1984

Re: Ordinance 704, Bernards Township
Project No. 840200

I have reviewed the above captioned ordinance and have the following comments.

1. Section 1106, Schedule of Area, Bulk and Yard Requirements.

My main objection here is the establishment of a maximum building coverage requirement for all unit types. Specifically, I have a problem with the 20% standard for one and two family dwellings and 35% for multifamily. The twenty percent for the single family will prohibit the Hills from developing the small lot product they are thinking about using. The 35% in the multifamily is very marginal assuming a Village Green type product at 20-25 units per acre net density. If I recall correctly, the original 1981 settlement with Bernards excluded any type of building coverage requirement. We should stick to this. There is really no rational basis for having a building coverage requirement because stormwater runoff is computed using total impervious cover, not just building cover. Total impervious cover is a function of gross density, which in this case is established at 5.5 du/ac. The only thing a building coverage requirement does when coupled with other reasonable bulk standards is to place a back door limit on achievable net densities. In effect, it undermines the integrity of other bulk standards.

Additionally, I would like to see the front yard requirement of 25 feet reduced to 20 feet with the option in certain instances for a further reduction to 10 feet. This would enable us to use some of the site planning techniques we employed in Knollcrest.

EXHIBIT V

MEMORANDUM

Ordinance 704, Bernards Township

October 15, 1984

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2. Section 1107, Building Separation Requirements

I would recommend the following changes:

- a. Reduce the front to front window wall to window wall separation from 75 to 60 feet.
- b. Reduce the 25 foot requirement between any building face to R.O.W. to 20 feet with the ability to reduce further to 10 feet.
- c. A new category should be added which allows that any building face with attached garages be permitted to be 5 feet from the edge of a cartway. This is the same as we have been doing in Fieldstone and Crestmont.

3. Section 1110F, Phasing for Lower Income Units

This should be modified to bring it in line with the requirement for Bedminster Township.

4. Section 1111, Common Open Space

Twenty percent common open space is required for all but single family detached housing. While this could work to our advantage since the Hills contemplates mostly single family, I think this provision could cause some contention during site plan and subdivision review. I'm sure the town is going to want to see more open space than the Hills is obliged to provide. I think it would be better to set out the standard for the whole project at the outset and avoid the inevitable controversy later.

5. Section 1112D, Streets

This provision requires that all streets provide a 40-50 foot minimum R.O.W. There is no relief for private streets. This could be particularly problematic in a townhouse product similar to Stone Run and Knollcrest.

6. In addition to the ordinance provisions above I would offer the following comments:

- a. Unit Count: The ordinance puts a cap on the number of units in the Raritan Basin at 2,750 units; assuming 501 acres in the Raritan at 5.5 du/ac., the cap falls short by 5.5 units. Additionally, we can't get credit for that portion of the Water Tank site which falls in Bernards Township.

EXHIBIT V

MEMORANDUM

Ordinance 704, Bernards Township

October 15, 1984

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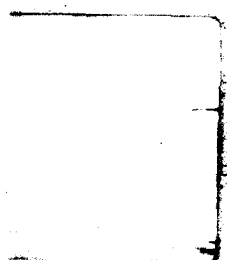
- b. They did not give us any relief from the extensive submission requirements for Concept, Preliminary and Final approvals. Additionally, there is no accelerated approval process for developments containing lower income housing.
- c. There is no waiver of fees for lower income housing.
- d. There has been no adjustment to the Off-Tract Improvement Ordinance. With the new density we would be more than doubling our contribution.
- e. The design standards for the commercial still have some strange requirements concerning number and sizes of buildings. We should ask that these be revised.
- f. We should clarify, perhaps in letter agreement, that the Hills is no longer obliged to provide a school site or a 100 acre park.
- g. The original consent judgement should be reviewed to identify those cost generative design standards which were excluded in the Judgement but, nevertheless, found their way into the Bernards Ordinance. These should be removed from the ordinance, at least for developments with lower income housing.



Kenneth J. Mizerny
Associate/Project Manager

KJM/cr

Exhibit W





MEMORANDUM

TO: John Kerwin
Henry Hill
Tom Hall

FROM: Ken Mizerny *km*

DATE: November 28, 1984

RE: Updated Review of Bernards Township Ordinance 704.
Project #8402

1106 Revise Schedule of Area, Bulk and Yard Requirements

1. Eliminate maximum building coverage for all unit types.
2. Add new category, Patio Homes with the following requirements:
 - a. Minimum lot area: 3200 sq.ft.
 - b. Minimum lot width: 40 ft.
 - c. Minimum frontage: 20 ft.
 - d. Minimum frontyard: 20 ft. (from curblines)
 - e. Minimum sideyard: 0 ft./10 ft. (one/both)
 - f. Minimum rearyard: 5 ft. when adjacent to open space; 15 ft. when adjoining rear of another lot.
 - g. Maximum bldg. height: 35 ft.
3. Modify Dwelling, One-family:
 - a. Add, minimum frontage: 25 ft.
 - b. Minimum frontyard: 20 ft. (from curblines)

EXHIBIT W

*MEMORANDUM***

Updated Review of Bernard Township Ordinance 704

November 28, 1984

Page Two

4. Modify frontyard requirement for all unit types to: 20 ft. from curblin.

1107 Revise Distance Between Buildings

1. Window wall to windows wall front to front: 50 feet
2. Any building face to right of way: 12 feet
3. Add new category. Any building face with garage to common parking area: 5 feet.

1109 Revise Minimum Floor Area for Dwelling Units by adding; Efficiency: 400 square feet.

1111 Revise Common Open Space Requirements as follows: An amount of land equal to 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 restrictive land, shall be designated for conservation, open space, recreation and/or other common open space.

1112D3 R.O.W. and Cartway Widths

Revise cartway width for local street with no one street parking from 24 to 20 feet.

KJM/yr



REC-112-300-11-204

MEMORANDUM

TO: John Kerwin
Henry Hill
Tom Hall

FROM: Ken Mizerny *EM*

DATE: November 28, 1984

RE: Hills, Project No. 8402

I recommend that the following elements be incorporated into the submission requirements for Concept Plan approval for the Hills property in Bernards Township. I anticipate that the Concept Plan will be approved as part of the Settlement Agreement between the Township and The Hills.

1. Development Plan

This plan should indicate the location and area of the major land use elements including; residential, commercial, common open space and major roads. The total number of dwelling units by zoning district, the total number of lower income housing units and the total square footage of commercial should also be shown on the plan.

2. Circulation Plan

This plan should show the location of the major collector roadways providing circulation through out the site and access points to the site. The plan should also include typical roadway cross-sections indicating R.O.W. and cartway widths.

3. Utilities Plan

This plan should show how the development will be serviced by sewer and water. The plan should include the location of the major sewer collection system and the water distribution system. The general location of any pump stations or water tanks should also be indicated.

4. Drainage Plan

This plan should show the size and location of detention (or retention) facilities, drainage patterns and major stream crossings.

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MEMORANDUM

Concept Plan Submission

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A full Environmental Impact Statement or Project Report should not be required as part of the Concept Plan Submission. Since the zoning is in place, a full Environmental Impact Statement, as currently required in the ordinance, should not be necessary since it would infact justify the existing zoning. The Hills would be willing to develop a best management practices procedure for construction and an on-going maintenance which would address environmental concerns in a more practical and useful way.

The approved Concept Plan should be vested for a minimum of ten (10) years. Additionally, upon approval of the Concept Plan the Applicant should have the right to construct the major infrastructure including roads, utilities and drainage systems by submitting completed engineering drawings of the improvements to the Township Engineer and obtaining his approval. The construction of these major improvements should not be the subject of a formal site plan application and approval. This in no way alleviates the applicant of the responsibility of obtaining site plan and/or subdivision approval for the proposed buildings and their appertinant infrastructure.

KJM/yr

Exhibit X



LYNCH, CARMODY, GIULIANO & KAROL, P.A.

CONSULTING ENGINEERS • LAND PLANNERS • SURVEYORS • LANDSCAPE ARCHITECTS

Registered Professional Staff

Thomas F. Lynch
Cornelius P. Carmody (1970-1984)
Michael J. Giuliano, Jr.
John D. Karol
Donald M. Abbott
Brian S. Fiannery
Thomas R. Hansen
R. Niels Sperling
William Voeltz
Lee Webb

March 4, 1985

Brenner, Wallach & Hill
2-4 Chambers Street
Princeton, NJ 08540

Attention: Tom Hall

Re: THE HILLS - Planned Development
85-0386-1

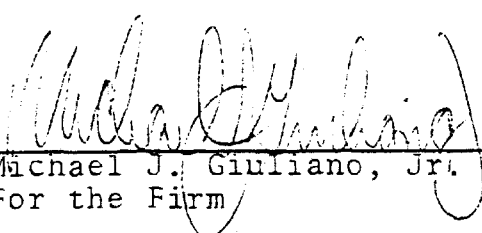
Dear Mr. Hall:

As per my discussion with Mr. Ken Mizerny, attached you will find a Memo addressing the cost generative provisions of the Bernards Township Development Regulations (Articles 500 and 600).

If we can be of further assistance in this matter, please do not hesitate to contact this office.

Very truly yours,

LYNCH, CARMODY, GIULIANO & KAROL, P.A.



Michael J. Giuliano, Jr.
For the Firm

MJG/bb
Attachment
cc: Ken Mizerny, P.P.

LYNCH, CARMODY, GIULIANO & KAROL, P.A.

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M E M O

TO: THOMAS HALL, ESQ. DATE: FEBRUARY 27, 1985
FROM: MICHAEL J. GIULIANO, JR., P.E. RE: THE HILLS - BERNARDS TWP.

ASSESSMENT OF COST GENERATIVE PARAMETERS WITHIN THE BERNARDS TOWNSHIP
ORDINANCES ENTITLED: "ARTICLE 500 - DEVELOPMENT REGULATIONS" AND
"ARTICLE 600 - DESIGN STANDARDS"

509.B.2 Public Streets -- This section requires that arterial streets have a right-of-way width of 60 feet and that all other streets have a right-of-way width of 50 feet. These right-of-way widths may be excessive depending upon the width of the pavement which they will encompass. The right-of-way widths should be a function of the requirement for sidewalk, i.e., one side of street or both, pavement width, and housing type. Sixty feet and 50 feet represent, in our opinion, maximum widths which should not be applied to all developments.

510.A.2B Parking & Loading, Location of Spaces, /Residential Zones -- This section states that no more than one required parking space for single family detached dwelling units on lots of 30,000 s.f. or more shall be located in a front yard area. This is unreasonable since the minimum front yard is 50 feet in the appropriate zones and includes more than

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Re: The Hills - Bernards Twp.

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one space by virtue of the length of the driveway. Again, in paragraph 2 within the PRD for multi-family development, only one space may be located in a paved driveway to the garage. However, depending upon the length of the driveway, there may be more than one space available and this should be allowed in the calculation of off-street parking spaces.

- 511.A.7.C Drainage/Design Storms -- This section mandates that a 25 year storm be utilized to size all pipe lines and other components of the infrastructure. A 10 year frequency storm is adequate for this purpose, which will result in smaller and less costly pipelines and other infrastructure components.
- 513.C.1. Water Supply and Fire Protection -- This section states that fire hydrants should be located as approved by the Chief of The Basking Ridge or Liberty Corners Fire Departments. This criteria is too discretionary and may be cost generative if an unreasonable approach is taken by the fire department staff. A more conventional way to space fire hydrants is based upon a dimensional criteria, such as, a proximal area of 500 feet.

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- 514.A.1. Utilities/Utilities to be Provided -- This section mandates that all developments be serviced by gas service. This may be cost generative depending upon the type of housing, as well as the proposed heating units and appliances most available to the developer. The type of fuel specified should be directed by the market at the time of construction. This section also requires that cable T.V. be provided and, again, this may be cost generative and should not be mandated.
- 514.B.1. Utilities/Location -- This section mandates that all proposed utilities be below ground. This may be cost generative and above ground utilities should be allowed.
- 516.B. Screening and Buffering/Buffers -- This section requires that any development proposed pursuant to PRD criteria is required to provide a 25 feet continuous screen, landscaped buffer when abutting residential zones. It is unnecessary to buffer a residential development from a residential zone.
- 604.D. Development Standards/Transition Areas -- This section requires that any proposed lot which is adjacent to or in a defined proximity of an existing developed lot, must provide for additional area and, possibly, a landscaped buffer. This seems contrary to the zone of the proposed lot and may be cost generative depending upon the Board requirements.

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- 605.B.1 Development Standards-PRD/Buffer Areas -- This section requires single-family lots within a PRD to provide substantial buffers when they shall be constructed adjacent to existing single-family residential lot. Again, this is a hardship upon the proposed development and unreasonable and cost generative to buffer a residential development from existing residential development.
- 605.B.2 Development Standards-PRD/Buffer Areas -- This section requires that no public right-of-way or roadway be located within 50 feet of an existing off-tract residential property line or from within 150 feet of a zone boundary except if the Board determines the roadway shall be used for future development purposes. This may be cost generative depending upon the burden placed upon the property to effect a reasonable lot yield.
- 607.C. Design of Streets/Pavement Materials -- This section requires the base course of 5 inches placed upon 4 inches of sub-base with a finished course of 1½ inches. This may be excessive since pavement thickness is the function of the type of soil underlying the base course and, in many cases, a base course of only 2 or 3 inches is satisfactory, possibly even less on minor streets. Pavement thickness should be a function of field testing of the roadway sub-grade.

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- 607.G. Design of Streets/Grades -- This section promulgates the maximum road grade for a local street as 8 percent where 10 percent as a reasonable maximum. This may be cost generative since more earthmoving may be required if steeper grades are necessary to complete the development.
- 607.I. Design of Street/Non-Curbed Roads -- This section requires that road side swales be designed to carry 25 year frequency storms where a 10 year frequency storm is reasonable for adequate public safety. A 25 year storm may cause larger swales, larger right-of-way widths and more earth grading, which are all cost generative.
- 608.C. Design of Intersections/Separation -- This section requires excessive separation between existing and proposed intersections which may be cumbersome and cause hardship in effecting a reasonable subdivision design.
- 610.A. Parking, Loading and Access/Sizes of Parking Spaces -- This section requires that all spaces be either 10'x20' or 9'x20' while accepted design practice is currently 9'x18'.
- 610.C.2 Parking, Loading and Access/Standards for Parking Loading and Access -- This section requires that all off-street parking be paved with a minimum 1½ inches of FABC top course upon a minimum of 3½ inches of stabilized base and minimum of 4 inches of compacted sub-base. Again,

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Re: The Hills - Bernards Twp.

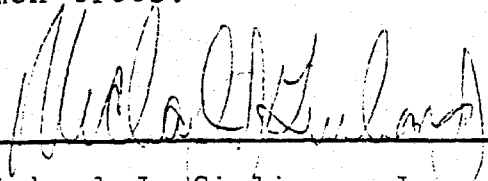
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pavement thickness should be a function of field testing with a minimum specification 2 inches of FABC placed on 6 inches of compacted Type 5A Road Gravel. This section also states that no more than one required parking space may be located in a driveway to a garage.

This is unreasonable in light of the fact that many multi-family type driveways are very long and may provide parking for more than one vehicle. The development should be given credit for these extra spaces.

614.C. Landscaping and Shade Trees/Shade Trees -- This section requires that each development provide for shade trees having a maximum spacing of 50 feet along each side of the street. This is an excessive and cost generative requirement. A lesser spacing i.e., possibly 100 feet is adequate.

616.B. Tree Removal/Tree Protection -- This section requires that wells be placed around trees which are to remain and have fill placed around their root structure. This may be very cost generative if the Planning Board mandates that many trees be saved. The saving of trees which are to be filled should be at the discretion of the developer unless they are specimen trees.



Michael J. Giuliano, Jr.
N.J.P.E. #25314

Exhibit Y

EXHIBIT Y

HARVEY S. MOSKOWITZ P.P., P.A.
 Community Planning & Development Consultant

TO: Township of Bernards Planning Board
 RE: Ordinance Changes (Hills settlement)
 DATE: May 21, 1985

As part of the Hills settlement, a number of changes have been requested by Hills with respect to Ordinance No. 704, which was adopted as part of the Township's Mt. Laurel compliance package. Peter Messina and I talked with Ken Mizerny, Hills designer, and reviewed each of the changes they requested. Most of the changes were not acceptable to us, and Hills backed off or modified their request. For example, they wanted to reduce the front yard setback on all housing types to 20 feet. We indicated that 25 feet would be the minimum except for patio homes.

The changes and the reasons for the change are noted below.

A. Section 1106. Schedule of Area, Bulk and Yard Requirements
 (Existing)

60% - lot frontage.

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	5,000	50'	25'	10'/15'	25'	20%	35'
Townhouses	N/A	16'	25'	N/A	20'	60%	35'
Dwelling, Two-Family (horizontally separated)	6,000	60'	25'	10'/15'	25'	40%	35'
Dwelling, Two-Family (vertically separated)	3,000/unit	30'	25'	0/10'	25'	40%	35'
Dwelling, Multi-Family	N/A	N/A	N/A	N/A	N/A	35%	35'

EXHIBIT Y

Schedule of Area, Bulk and Yard Requirements
(Proposed)

Permitted Uses	Minimum Lot Area (sq. ft.)	Minimum Lot Width	Minimum Yards			Maximum Impervious Coverage	Maximum Height
			Front	Side one/both	Rear		
Dwelling, One-Family	5,000	50'	25'	10'/15'	25'	60%	35'
Townhouses	N/A	16'	25'	N/A	20'	70%	35'
Dwelling, Two-Family (horizontally separated)	6,000	60'	25'	10'/15'	25'	50%	35'
Dwelling, Two-Family (vertically separated)	3,000/unit	30'	25'	0/10'	25'	50%	35'
Dwelling, Multi-Family	N/A	N/A	N/A	N/A	N/A	35%	35'
Dwelling, Patio Home	4,000	40'	20' ^a	0 or 12'/12'	20' ^a	70%	35'

a. measured perpendicular to the right-of-way.

The proposed schedule includes a new housing type, patio or zero lot line. It's a single-family unit attached to another single-family unit on one side and at least a 24-foot separation on the other side. In addition, the lot lines and building are not perpendicular to the right-of-way. We have sketches on the layout, and it is an exciting and viable concept.

The other change recommended by Hills is to change "maximum building coverage" to "maximum impervious coverage." This makes sense because it more accurately reflects coverage, runoff and open space. Since impervious surface includes drive-ways, sidewalks, etc., the previous figures for building coverage have been adjusted upward.

B. Section 1107. Distance Between Buildings

The existing regulations are:

Window wall to window wall:		
Front to front		75 feet
Rear to rear		50 "
End to end		30 "

Mizerny suggested two additional dimensional categories as follows:

Window wall to window wall:		
Long side to long side		75 feet
Front to rear		50 "
Front to end		45 "
Rear to rear		50 "
Rear to end		40 "
End to end		30 "

We concur in the addition.

C. Section 1109. Minimum Floor Area for Efficiency Units

(new category) Efficiency dwelling units: 400 sq. ft.

D. Section 1111. Common Open Space Requirements

The current paragraph reads as follows:

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.

The change we recommended after discussion with Mizerny is as follows:

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

common open space. Such open space shall be reasonably related to the dwelling it is designated to serve.

We believe the change allows slightly more flexibility while still preserving the intent of the original section.

E. Add the following definition:

Patio Home - a single-family detached dwelling unit with one side of the building located on the side lot line. Side lot lines need not be perpendicular to the street or street right-of-way.

F. Section 405C.6. Commercial Development

1. Delete subparagraphs "f," "j," and "k." These paragraphs now read as follows:

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 1,000 square feet of gross leasable floor area for each additional 20 dwelling units of the PRD-4 thereafter, providing 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.

j. The maximum gross leasable floor area of any single building shall be 5,000 square feet except that one building may have a gross leasable floor area equal to 60% of the total allowable gross floor area for the commercial development portion of the tract.

k. Certificates of Occupancy shall be issued for commercial development as follows:

1) When Certificates of Occupancy have been issued for 500 dwelling units within the tract or within 1,000 feet of the tract (or municipal) boundary, Certificate(s) of Occupancy shall be issued for a maximum of 75% of the gross floor area.

2) When Certificates of Occupancy have been issued for dwelling units within the tract or within

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Ordinance Changes (Hills)

May 21, 1985
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1,000 feet of the tract (or municipal) boundary, Certificate(s) of Occupancy shall be issued for 100% of the gross floor area.

Subparagraphs "f" and "k" would be part of the settlement agreement. We had recommended paragraph "j" be deleted earlier. (We should have included "k" as well.) Subparagraph "j" restricts all but one commercial building to 5,000 square feet. There doesn't appear to be any planning rationale for this requirement.

2. Paragraph "i" of Section 405C.6 reads as follows:

No building shall be located within 50 feet of any line establishing the Commercial Development Area or any street right-of-way line. No parking area or internal roadway shall be located within 50 feet of any line establishing the Commercial Development Area or within 25 feet of any street right-of-way line.

Hills recommended, and Peter and I agree, that the minimum setback distance be changed from 50' and 25' to 25' and 10', respectively, as reflected in this revised paragraph:

No building shall be located within 50 feet of any line establishing the Commercial Development Area or any street right-of-way line. No parking area on an internal roadway shall be located within 25 feet of any line establishing the Commercial Development Area or within 10 feet of any street right-of-way line.

The reason for the change is that parking areas are required to be further away from commercial areas than housing. This doesn't make sense. They can serve as buffers with proper landscaping, etc.

EXHIBIT Y

Bernards Planning Board
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G. Section 604. Development Standards (Cluster)

Mizerny suggested that we delete 604C, maximum floor area, which is set at 20 times lot width plus 10 percent for two-story houses.

See separate memo dated 5/21/85 on this matter.

H. Section 607G. Curbs

The following sentence should be added to the first paragraph:

Mountable curbs shall be permitted for high density single-family detached, two-family, patio homes and townhouses within the R-5 and R-8 zones.

We allow this now in these zones.

I. Section 610A.1 Parking Space Size

Change to 9' X 18'.

We have recommended this change before.



Exhibit Z

EXHIBIT Z

Alan Mallach, AICP
15 Pine Drive Roosevelt New Jersey 08555

609-448-5474

September 13, 1985

Thomas Carroll, Esq.
Brener Wallack & Hill
2-4 Chambers Street
Princeton, New Jersey 08540

RE: Fair Share Housing Allocation
Bernards Township

Dear Tom:

As per your request, I have reviewed possible alternative fair share allocations for Bernards Township that might come about should the township succeed in transferring to the Fair Housing Council, and in being able subsequently to determine its fair share allocation de novo based on the Council guidelines to be adopted.

As I indicated to you in our conversation, it is my opinion that it is really not possible to predict what such a fair share allocation actually would be. The discretion of the Council in framing its guidelines under Sec. 7 of the Fair Housing Act is broad in the extreme; that section contains a long series of criteria or factors which can be applied in innumerable ways and have wildly unpredictable effects on the eventual fair share number, depending on how the Council proposes to apply them. Furthermore, the act makes clear that it is the municipality that actually makes the allocation, based on the Council guidelines. That, in turn, introduces a further note of massive uncertainty into the matter.

While it is impossible to predict what the number will be, it is possible, by looking at a number of alternatives, to show that it would not necessarily be significantly different, in particular significantly lower, than the fair share allocation established under the Consensus methodology. In order to reach this conclusion, I have carried out a series of analyses based on certain features of the act which can be predicted to some reasonable extent; specifically, (a) the requirement that regions contain from two to four counties; and (b) the credits permitted under Sec. 7(c)(1) of the act. I have also examined the effect, in the context of the four-county region developed by the Rutgers Center for Urban Policy Research, of (a) eliminating the reallocation of present need entirely; and (b) using the lower prospective need figures given in the CUPR study. A summary of these analyses is given below, with more detailed information on attached sheets.

Thomas Carroll, Esq. (2)

September 13, 1985

I. Three County Region/Consensus Methodology: The first analysis utilizes the consensus methodology, but limits the region, for both present and prospective need, to the PMSA, made up of Hunterdon, Middlesex and Somerset Counties. The effect of this change would be to increase the fair share allocation for Bernards Township, by approximately 20%. The indigenous need remains the same, and the reallocation present need is reduced, since the only communities from which present need is reallocated in the three county region are New Brunswick and Perth Amboy. The prospective need is increased, since all three counties have relatively high household increase figures, and by definition, there are fewer communities in the smaller region among which to distribute the increase. The estimated allocation, without regard to potential credits, which are discussed below, is:

INDIGENOUS NEED	42
REALLOCATED PRESENT NEED	20
PROSPECTIVE NEED	1778
TOTAL FAIR SHARE ALLOCATIION	<u>1840</u>

II. Four County Region/CUPR Prospective Need: The above analysis utilized the prospective need assessment developed for the Consensus methodology, which is substantially higher than that developed by CUPR. Specifically, the Consensus methodology projects a need of 31,888 units in the three county region by 1990, while the CUPR projection is for a need of 22,002 units by 1990 in a region that adds Warren County to the three counties of the PMSA. Similarly, the CUPR methodology has been used to estimate the percentage of substandard units in Bernards that are occupied by lower income households, in order to determine indigenous need. We have disregarded, as noted earlier, any reallocation of present need. The estimated allocation, again without regard to potential credits, is:

INDIGENOUS NEED	36
PROSPECTIVE NEED	1188
TOTAL FAIR SHARE ALLOCATION	<u>1224</u>

III. Credits: Section 7(c)(1) of the act provides for credits for current units of low and moderate income housing, as defined in the act. I have analyzed the potential credits available to Bernards Township under that provision, based on the interpretation of the provision that I have made in the analysis you have previously received, and I have concluded that Bernards Township could potentially qualify for approximately 317 such "credits". Since, to the best of my knowledge, The Ridge Oak senior citizen development was constructed and occupied prior to 1980, this credit figure includes the units in that development and no further credits for that development are appropriate.

EXHIBIT Z

Thomas Carroll, Esq. (3)

September 13, 1985

Based on this assessment of credits, the adjusted fair share allocations would be (a) for the three county region, using the Consensus methodology need determination, [1840-317 =] 1523; and (b) for the four county region, using the CUPR need determination, [1224-317 =] 907 units.

I hope this is useful.

Very truly yours,


Alan Mallach

AM:ms
enc.

EXHIBIT Z

TABLE 1: FAIR SHARE ALLOCATION COEFFICIENTS

	GROWTH AREA	1972 EMPLOYMENT	1982 EMPLOYMENT
HUNTERDON/1	26,759 A	9,280	13,936
MIDDLESEX	154,110	141,251	208,510
SOMERSET/2	100,455	56,952	82,796
WARREN/3	23,047	7,986	9,288

	GROWTH AREA	AVG. ANN EMP. CHANGE	1982 EMPLOYMENT	MEDIAN INCOME
3 COUNTY REGION	281,324	9,776	305,242	\$24,891
4 COUNTY REGION	304,371	9,906	314,530	\$24,689

	BERNARDS	3 COUNTY %	4 COUNTY %
GROWTH AREA	10694	3.80%	3.51%
EMPLOYMENT	6284	2.06	2.00
EMP. CHANGE	624	6.38	6.30
MEDIAN INCOME	\$35,522	1.422 TO 1	1.439 TO 1

1/growth area includes Clinton Town, Clinton Township, Flemington, Hampton, High Bridge, Lebanon Borough, Raritan, Readington, and Tewksbury.

2/Growth area includes all municipalities except Rocky Hill.

3/Growth area includes Hackettstown, Independence, Mansfield, Washington Borough and Washington Township.

EXHIBIT Z

 TABLE 2: COMPUTATION OF FAIR SHARE ALLOCATION

A. 3 COUNTY/CONSENSUS METHODOLOGY

INDIGENOUS NEED 42

PRESENT NEED:

$3.80+2.06/2 = 2.93 \times 1.422 = 4.17$

$3.80+2.06+4.17/3 = 3.343\% \times 1463 = 49$

$49 \times 1.2 = 59 \times 1.03 = 61/3 =$ 20

PROSPECTIVE NEED:

$3.80+2.06+6.38/3 = 4.08 \times 1.422 = 5.80$

$3.80+2.06+6.38+5.80/4 = 4.51$

$4.51 \times 31888 = 1438 \times 1.2 = 1726 \times 1.03 =$ 1778

TOTAL 1840

B. 4 COUNTY/CUPR NEED DETERMINATION

INDIGENOUS NEED (51 X .7) 36

PROSPECTIVE NEED:

$3.51+2.00+6.30/3 = 3.937 \times 1.439 = 5.665$

$3.51+2.00+6.30+5.665/4 = 4.369$

$4.369 \times 22002 = 961 \times 1.2 = 1153 \times 1.03$ 1188

TOTAL 1224

EXHIBIT Z

 TABLE 3: DETERMINATION OF SEC. 7(C)(1) CREDITS

	RENTERS		OWNERS	
	0-\$9999	\$10000-\$19999	0-\$9999	\$10000-\$19999
PERCENTAGE OF INCOME FOR SHELTER:				
< 25%	88	32	5	127
25-34%	66	15	7	70
35% +	53	21	142	158
N. C.	5	0	18	0
PERCENTAGE OF INCOME [< 30%/330% +] INCLUDING ALLOCATION OF N. C. UNITS				
< 30%	124	40	9	162
30% +	88	28	163	193
			TOTAL < 30% =	335
			LESS 50% OF INDIGENOUS NEED UNITS	[18]
			POTENTIAL CREDITS AVAILABLE	<u>317</u>

