

RULS-AD-1985-370

11/7/85

In Hills Dev. Co. v. Bernards Township:

- Letter to court from Davidson
- Notice of Motion for Stay
- Letter Brief
- Certifications of Davidson + Garrin
- Order

PGS-31

*1/11/85*

**FARRELL, CURTIS, CARLIN & DAVIDSON**

ATTORNEYS AT LAW

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FRANK J. VALGENTI, JR.

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JOHN J. CARLIN, JR.  
JAMES E. DAVIDSON  
DONALD J. MAIZYS  
LOUIS P. RAGO  
LISA J. POLLAK  
HOWARD P. SHAW  
CYNTHIA H. REINHARD

November 7, 1985

RECEIVED

NOV 7 1985

JUDGE SERPENTELLI'S CHAMBERS

Superior Court of New Jersey  
Appellate Division Clerk  
CN 006  
Trenton, New Jersey 08625

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

Dear Madam:

Please be advised that this law firm represents the Township of Bernards in connection with the above-entitled matter. In this regard enclosed herewith are an original and four copies of the following documents for filing:

- 1) Notice of Motion for Stay;
- 2) Letter Brief;
- 3) Certification of James E. Davidson, Esq.;
- 4) Certification of Arthur H. Garvin, III, Esq. and
- 5) Order.

By copy of this letter we are serving two copies of the aforementioned pleadings upon the Honorable Eugene D. Serpentelli, J.S.C., and upon Brener, Wallack & Hill, attorneys for plaintiff-respondent, The Hills Development Company, all by hand delivery by messenger.

Please also be advised that in accordance with our telephone conversation with Helene Chusick of your office, this matter has been set down before the Honorable Virginia Long, J.A.D., at the

RULS - AD - 1985 - 370

Appellate Division Clerk  
Page Two  
November 7, 1985

Hughes Justice Complex, Trenton, New Jersey on Tuesday, November  
12, 1985 at 10:30 a.m.

As a matter of convenience to the court, also enclosed please  
find three copies of Defendants/Appellants Brief and Appendix and  
Notice of Motion for Leave to Appeal previously filed on October  
31, 1985.

Respectfully,

FARRELL, CURTIS, CARLIN & DAVIDSON

By:

  
James E. Davidson

JED/sjm  
Encl.

HAND DELIVERED

cc: Honorable Eugene D. Serpentelli  
Henry A. Hill, Jr., Esq.

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

Attorneys for Defendants/Appellants, Township of Bernards, et  
als.

|                                  |   |                                    |
|----------------------------------|---|------------------------------------|
| THE HILLS DEVELOPMENT COMPANY,   | : | SUPERIOR COURT OF NEW JERSEY       |
|                                  | : | APPELLATE DIVISION                 |
| Plaintiff/Respondent,            | : |                                    |
|                                  | : | Docket No.                         |
| 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 | : | Civil Action                       |
| PLANNING BOARD OF THE TOWNSHIP   | : |                                    |
| OF BERNARDS and the SEWERAGE     | : | NOTICE OF MOTION FOR               |
| AUTHORITY OF THE TOWNSHIP OF     | : | STAY OF THIS MATTER BEFORE         |
| BERNARDS,                        | : | BEFORE THE TRIAL COURT,            |
|                                  | : | PENDING DETERMINATION OF           |
| Defendants/Appellants.           | : | <u>MOTION FOR LEAVE TO APPEAL.</u> |
|                                  | : |                                    |

TO: Elizabeth McLaughlin, Clerk  
Appellate Division  
Superior Court of New Jersey  
Richard J. Hughes Justice Complex  
CN 006  
Trenton, New Jersey 08625

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

Henry A. Hill, Jr., Esq.  
BRENER, WALLACK & HILL  
2-4 Chambers Street  
Princeton, New Jersey 08540

PLEASE TAKE NOTICE that on Tuesday, November 12, 1985, at 10:30 a.m., the undersigned, Farrell, Curtis, Carlin & Davidson, and Kerby, Cooper, Schaul & Garvin, attorneys for defendants/appellants, will move before the Honorable Virginia Long, J.A.D., at the Hughes Justice Complex, Trenton, New Jersey, for an Order staying this matter before the trial court pending determination of the pending Motion for Leave to Appeal. Reliance shall be placed upon the enclosed Letter Brief and enclosed Affidavit of Arthur H. Garvin, III, Esq.

FARRELL, CURTIS, CARLIN & DAVIDSON  
Attorneys for Defendants/Appellants,  
Township of Bernards, Township  
Committee of the Township of  
Bernards and the Sewerage Authority  
of the Township of Bernards

By:

  
James E. Davidson, Esq.

KERBY, COOPER, SCHAUL & GARVIN  
Attorneys for Defendant/Appellant  
Planning Board of the Township  
of Bernards

By:

  
Arthur H. Garvin, III, Esq.

Dated: November 7, 1985

PROOF OF SERVICE

I certify that on November 7, 1985, I caused an original and four copies of this Notice of Motion and the accompanying

Letter Brief and Affidavit to be filed with the Clerk of the Appellate Division, and copies of same to be filed with the Honorable Eugene D. Serpentelli, J.S.C., and served upon Brener, Wallack & Hill, attorneys for plaintiff-respondent, The Hills Development Company, all by hand delivery by messenger.

  
James E. Davidson, Esq.

FARRELL, CURTIS, CARLIN & DAVIDSON  
 43 Maple Avenue  
 P.O. Box 145  
 Morristown, New Jersey 07960  
 (201) 267-8130  
 Attorneys for Defendants/Appellants, Township of Bernards, et  
 als.

|                                  |   |                                    |
|----------------------------------|---|------------------------------------|
| THE HILLS DEVELOPMENT COMPANY,   | : | SUPERIOR COURT OF NEW JERSEY       |
|                                  | : | APPELLATE DIVISION                 |
| Plaintiff/Respondent,            | : |                                    |
|                                  | : | Docket No.                         |
| vs.                              | : |                                    |
|                                  | : |                                    |
| THE TOWNSHIP OF BERNARDS in the  | : |                                    |
| COUNTY OF SOMERSET, a municipal  | : |                                    |
| corporation of the State of New  | : |                                    |
| Jersey, THE TOWNSHIP COMMITTEE   | : | Civil Action                       |
| OF THE TOWNSHIP OF BERNARDS, THE | : |                                    |
| PLANNING BOARD OF THE TOWNSHIP   | : |                                    |
| OF BERNARDS and the SEWERAGE     | : | LETTER BRIEF IN SUPPORT            |
| AUTHORITY OF THE TOWNSHIP OF     | : | OF MOTION FOR STAY                 |
| BERNARDS,                        | : | BEFORE THE TRIAL COURT             |
|                                  | : | PENDING DETERMINATION OF           |
| Defendants/Appellants.           | : | <u>MOTION FOR LEAVE TO APPEAL.</u> |
|                                  | : |                                    |

Sat Below:

Hon. Eugene D. Serpentelli

TO: The Honorable Judges of the Appellate Division

PROCEDURAL HISTORY

This is a Mt. Laurel action. This action was commenced on  
 May 8, 1984. Answers were filed by defendants on June 5,

1984. Discovery was commenced by service of Interrogatories in June, 1984. No depositions have been taken and discovery has not been completed. No trial on any issue has been held. (See discussion below of Order dated December 19, 1985).

Cross-Motions for Summary Judgment were heard in July, 1984 and were denied by Order of the Court dated August 3, 1984.

On November 12, 1984 defendant, Township of Bernards, adopted an ordinance (Ordinance 704) which amended the Township's Land Development Ordinance in order to better insure the construction of lower income housing which meets the standards and guidelines set forth in So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) (Mt. Laurel II), and to provide a realistic opportunity for the construction of a variety of housing types and for a variety of income levels in the township.

Subsequent to the adoption of Ordinance 704, and at the request of all the parties, the Trial Court entered an Order dated December 19, 1984 which order stayed the matter and appointed George Raymond as the "Court appointed expert." A subsequent order dated July 17, 1985 extended the stay until the Court has passed upon the compliance package of the Township of Bernards. The Court appointed expert submitted his report dated June 12, 1985, in which he reviews Ordinance 704 and makes certain recommendations to the Court regarding Bernards Township's fair share and proposed compliance package. Such



report is based on various concepts (i.e., the "consensus methodology" for determining a municipality's fair share) which existed prior to the adoption of the "Fair Housing Act" (L. 1985, c.222).

The Fair Housing Act was adopted on July 2, 1985. Pursuant to §16 of the Fair Housing Act a motion to transfer this matter to the Council on Affordable Housing was filed on September 13, 1985. The matter was argued on October 4, 1985 and the Court entered an Order on October 16, 1985 denying the motion. A motion requesting leave to appeal the denial of the motion to transfer was filed in the Appellate Division on October 31, 1985. A motion to the trial court for a stay pending determination of the motion for leave to appeal was denied on November 1, 1985. The reasons for the trial court's denial of the stay are summarized in the enclosed Affidavit of Arthur H. Garvin, III, Esq.

#### STATEMENT OF FACTS

Plaintiff (hereinafter referred to as "plaintiff" or "Hills") is the owner of tract of land in excess of 1000 acres in the Township of Bernards. It has owned the property since prior to 1976 at which time the property was located in a low density zone (1 unit for every 3 acres). Prior litigation under Mt. Laurel I resulted in a settlement which provided increased density, greater flexibility and removal of cost

generating features. The zoning ordinance of the Township of Bernards was amended accordingly. Notwithstanding the prior settlement, no housing of any kind be it Mt. Laurel I or other housing has been constructed on plaintiff's property.

This action was commenced on May 8, 1984. The action involves the same property which was the subject of the earlier litigation and demands a five-fold increase in density, and is based on the dictates of Mt. Laurel II, So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983).

As noted earlier, in November, 1984 the defendant, Township of Bernards, adopted Ordinance 704 which provides for increased density in two zones within the township and contains other provisions intended (a) to insure the construction of lower income housing which meets the standards and guidelines set forth in Mt. Laurel II, and (b) to provide a realistic opportunity for the construction of a variety of housing types and for a variety of income levels in the township. (Article 1101, Ordinance 704)

Subsequent to the adoption of Ordinance 704 the property owners in one of the zones which permits and requires Mt. Laurel housing proceeded with various development applications in order to obtain approval of their projects which include Mt. Laurel housing. One applicant has received final approval of a development which will provide 100 units of Mt. Laurel housing which is now under construction. A second applicant has

received conceptual approval of a development which will provide 90 units of Mt. Laurel housing. The application process and the development of the zone (including the Mt. Laurel housing) is continuing at the present time. (Certification of Peter Messina, Da 139a)<sup>1</sup>

The other zone in which Mt. Laurel housing is permitted and required is all within the tract of land owned and controlled by plaintiff. Since the enactment of Ordinance 704 (in November, 1984), plaintiff has filed no application for subdivision, site plan, or otherwise relating to that part of its property upon which Mt. Laurel housing is required.<sup>2</sup> The only relevant document submitted was a proposed conceptual plan which plaintiff discussed, in March 1985, with the Planning Board's Technical Coordinating Committee (TCC), as to which the TCC raised a number of serious design questions. (See Ferguson Certification, Da 144a)

With the Fair Housing Act having been enacted, with other Mt. Laurel development applications proceeding properly and expeditiously, and with plaintiff not having taken any

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<sup>1</sup> The Facts stated herein and the citations to appendix and transcript are referenced in the motion papers, brief, appendix and transcript previously submitted to the Appellate Division in support of Defendants-Appellants motion for leave to appeal which was filed on October 31, 1985.

<sup>2</sup> We are informed that Hills has filed for conceptual approval for the development of its property since the trial court's denial of the motion to transfer.

significant steps toward developing its property or toward producing Mt. Laurel housing, the Township elected, pursuant to the provisions of the Act, to apply to the court for transfer of this matter to the Council on Affordable Housing in accordance with the Act.

The Court denied the motion. As noted earlier a motion for leave to appeal was filed on October 31, 1985 and a motion to the trial court for a stay was denied on November 1, 1985. (See Davidson Certification)

The trial court has set down Monday, November 18, 1985 at 10:00 a.m. as the time for a "compliance hearing" in this matter. (See Davidson Certification) At the compliance hearing it is expected that substantial evidence will be taken relating to the Mt. Laurel "fair share" of the Township of Bernards, and to an analysis of Ordinance 704, in order to determine whether the Township of Bernards complies in fulfilling its Mt. Laurel II obligation. It is difficult to estimate the amount of litigant and court time that will be necessary in order to present the evidence of the case. Subsequent to the presentation of evidence it is expected that the court will determine whether or not the Township of Bernards, in fact, has fulfilled its Mt. Laurel II obligation in accordance with the law as the trial court understands it.

On defendants' motion for leave to appeal, the only issue involves the interpretation of §16 of the Fair Housing Act, L.

1985, c.222, and whether the trial court erred in refusing to transfer this case to the Council on Affordable Housing, pursuant to said §16. If the defendants' interpretation is correct and if the matter should be transferred, then the court in question lacks jurisdiction to hold a compliance hearing and to make a determination relating to the Township of Bernards' fair share and compliance package. If the hearing is held prior to the time that the Appellate Division determines the application for leave to appeal, the defendants will suffer prejudice in the following areas:

1. The status quo will not be preserved pending determination of the Township's motion for leave to appeal.

2. The Township will be subjected to development based upon an improperly determined fair share number. The Township's fair share number should be determined by the Council on Affordable Housing pursuant to the statutory guidelines of the Act and the Council's regulations, rather than by the trial court pursuant to (as the court has indicated) the so-called "consensus" methodology (Tr. 29, Da 31a). The consensus methodology is in direct conflict with some of the statutory guidelines, including number of counties in the region, definition of prospective need, and use of overrides above the need actually attributable to the individual municipality. The Township believes that the statutory criteria will yield a lower fair share number for this particular Township, yet if the trial

court proceeds (in the manner it has indicated), Bernards Township will be bound -- at least pending an appeal -- by a higher "consensus" fair share number, which in turn will determine the number of Mt. Laurel and market units which the Land Development Ordinance must allow to be built. Any developer who obtains preliminary approval under the ordinance during that period will lock in the right to construct such higher numbers of units, N.J.S.A. 40:55D-49, even if subsequent reversal of the trial court results in referral to the Council and/or a lower, statutory fair share number.

3. The Township may not have any effective way to challenge a court-determined fair share number after it has been determined. If the trial court proceeds, declares the Township's fair share number, and as its legal holding declares that Township's ordinance #704 complies with Mt. Laurel II, then it is at least arguable that (a) the Township will be deemed to have prevailed below, because of the holding that it is in compliance, and (b) as a prevailing party, the Township will have no way to appeal from the finding as to fair share, even though the Township might believe the finding to be erroneously high. Such finding could then (at least arguably) collaterally estop the Township if it amended its ordinance to reflect a lower fair share number and then was sued for alleged failure of the new ordinance to satisfy the court-declared fair share. This would be avoided if the trial court proceeding is stayed

pending an appellate decision on transfer of this case to the Council, which would be bound to determine fair share according to the statutory standards.

4. If the Township's motion for leave to appeal is granted, and the appeal is successful, jurisdiction of this case would be in the Council and no longer with the trial court. Proceeding to trial before a court which we believe lacks jurisdiction is a waste of both the court's and the parties' time and resources.

## ARGUMENT

THE PROCEEDINGS IN THE TRIAL COURT  
SHOULD BE STAYED PENDING DETERMINATION  
OF DEFENDANTS/APPELLANT'S MOTION FOR  
LEAVE TO APPEAL.

Until the fundamental issue currently before the Appellate Division is finally determined the status quo of the subject of the litigation must be maintained. Zaleski v. Local 401, United Elec., etc. Workers of America, 6 N.J. 109, 115 (1951); Christiansen v. Local 680 of the Milk Drivers &c., 127 N.J. Eq. 215, 220, (1939). The extent to which the opposing parties' rights would be materially infringed must also be considered in determining whether to grant a stay. Christiansen v. Local 680 of the Milk Drivers & C., supra. at 220. At the compliance hearing it is expected that the merits of this action will be determined including a determination of the fair share number of the Township of Bernards and whether or not its existing ordinance, Ordinance 704, complies with and fulfills the Township's obligation to provide housing for low and moderate income families. Such a determination will be binding on the parties.

In its prior motion before the court and in its motion for leave to appeal in the Appellate Division the Township contends that pursuant to Section 16(b) of the Fair Housing Act, L. 1985, c.222., this matter should be transferred to the Council on Affordable Housing pursuant to the intent and purposes of the



Fair Housing Act. Thus, it is contended that the court does not have jurisdiction to make the determinations at the scheduled compliance hearing. The court below has before it a methodology for determining fair share and compliance which the defendants contend is contrary to the Fair Housing Act. Notwithstanding this, the court has indicated that it intends to determine this matter pursuant to that methodology (Tr 29, Da 31a). The result of using that methodology is that the determination of the municipality's fair share and compliance package will be made by a court not having jurisdiction under an inapplicable standard.

It is recognized that in a normal situation this set of circumstances is appealable upon the conclusion of the matter. However, that is not where the problem arises. Under Mt. Laurel II, So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983) there is no appeal as of right until the court issues a judgment of compliance which includes modification of the existing ordinance in accordance with the court's decision arrived at at the compliance hearing. The result of this is that the ordinance that the court reviews must either remain in effect or be modified and placed in effect before an appeal as of right exists. Such ordinance must provide the applicable fair share as decided by the court whether or not it is the correct fair share or (consequently) the correct compliance ordinance. Thereafter, the municipality's options include

appealing the judgment of compliance while the ordinance is in effect or moving for a stay of the effectiveness of the ordinance during the appeal.

The result of these alternatives is that the ordinance (if the post-judgment stay is granted) would not be operative. This, of course, would preclude any developer from developing Mt. Laurel housing during the period of the stay because (a) incentive provisions would not be in effect, and (b) mandatory set-aside provisions would not be in effect. Since Bernards Township's current ordinance includes both incentives and set-asides, if Bernards Township has to seek such a post-judgment stay it would be taking a step backward from its existing voluntary actions in furtherance of Mt. Laurel II.

The alternative, if the stay is denied, is that the developer would construct the housing in a manner contrary to the proper interpretation of Mt. Laurel II and the Fair Housing Act.

Thus either no Mt. Laurel housing would be built or, in the second instance, housing would be built in a manner and in numbers contrary to the proper interpretation of the law. The first option results in a slowing of Mt. Laurel housing construction and would appear to be in nobody's best interest. The second option causes irrevocable harm to the municipality if the municipality is correct.

The requested stay at this juncture solves that problem at least over the immediate time period. If the matter is not heard by the trial court housing for low and moderate income families which is currently being produced will presumably continue to be produced and, therefore, the adverse result of the first option discussed above will be avoided. In addition, the municipality would not be faced with the situation of having a determination made prior to the time that the court determines which court has jurisdiction and would not be left in a situation in which housing must be built even though the same may result in being contrary to law.

Neither the actual party to this litigation (Hills) nor the persons purportedly represented by that party (lower income families) will suffer prejudice by this application. The application requests a stay only for the period ending at the time that the Appellate Division determines whether or not to grant defendant's motion for leave to appeal. It is our understanding that answering papers are due in less than a week, and the matter can be decided soon thereafter.

Plaintiff has before the Township an application for conceptual approval of its project. This application will continue before the Township Planning Board in accordance with law. No delay in that process will occur because the stay is granted at this time in this matter. (In that regard subsequent to receiving conceptual approval plaintiff will necessarily have

to apply for preliminary approval, presumably both as to site plan and subdivision. This process has not even started.) Thus, no delay will occur to the plaintiff because of the granting of this application for a stay.

Lower income families will not suffer prejudice because the existing ordinance which has been in effect since November 12, 1984 has been providing lower income housing in Bernards Township which is now being constructed. A stay in this matter will not affect such construction.

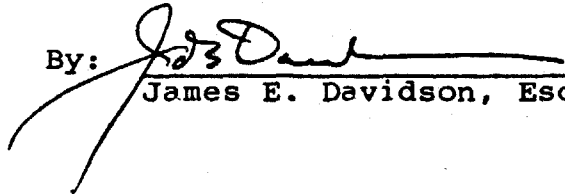
CONCLUSION

For the reasons stated above, the stay should be granted until the motion for leave to appeal is decided by the Appellate Division.

Respectfully submitted,

FARRELL, CURTIS, CARLIN & DAVIDSON  
Attorneys for Defendants/Appellants,  
Township of Bernards, Township  
Committee of the Township of  
Bernards and the Sewerage Authority  
of the Township of Bernards

By:



---

James E. Davidson, Esq.

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

Attorneys for Defendants/Appellants, Township of Bernards, et  
als.

THE HILLS DEVELOPMENT COMPANY, : SUPERIOR COURT OF NEW JERSEY  
Plaintiff/Respondent, : APPELLATE DIVISION

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/Appellants. :

Docket No. :

Civil Action

CERTIFICATION OF  
JAMES E. DAVIDSON

I, JAMES E. DAVIDSON, certify as follows:

1. I am an attorney-at-law of the State of New Jersey and  
am a partner in the law firm of Farrell, Curtis, Carlin &  
Davidson responsible for the representation of the defendants/

appellants in this matter. I am personally familiar with this matter and make this certification for the above captioned purposes.

2. A compliance hearing in this matter is scheduled before the Honorable Eugene D. Serpentelli on Monday, November 18, 1985 at 10:00 a.m.

3. Attached is a copy of an Order of the Trial Court in this matter denying defendants/appellants notice for a stay at the trial level.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are wilfully false, I am subject to punishment.

  
\_\_\_\_\_  
JAMES E. DAVIDSON

Dated: November 7, 1985

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

---

|   |                              |
|---|------------------------------|
| THE HILLS DEVELOPMENT COMPANY :           | SUPERIOR COURT OF            |
| Plaintiff :                               | NEW JERSEY                   |
| vs. :                                     | LAW DIVISION-                |
| THE TOWNSHIP OF BERNARDS in the :         | SOMERSET COUNTY/OCEAN COUNTY |
| COUNTY OF SOMERSET, a municipal :         | (Mt. Laurel II)              |
| corporation of the State of New Jersey, : | Docket No. L-030039-84 P.W.  |
| THE TOWNSHIP COMMITTEE OF THE :           | CIVIL ACTION                 |
| TOWNSHIP OF BERNARDS, THE :               | ORDER                        |
| PLANNING BOARD OF THE TOWNSHIP :          |                              |
| OF BERNARDS and the SEWERAGE :            |                              |
| AUTHORITY OF THE TOWNSHIP :               |                              |
| OF BERNARDS :                             |                              |
| Defendants :                              |                              |

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This matter having been opened to the Court by Farrell, Curtis, Carlin & Davidson, attorneys for Defendants, Township of Bernards, Township Committee of the Township of Bernards and the Sewerage Authority of the Township of Bernards, James E. Davidson, Esq. appearing, and Kerby, Cooper, Schaul & Garvin, attorneys for Defendant Planning Board of the Township of Bernards, Arthur H. Garvin, III, Esq. appearing, in the presence of Brener, Wallack & Hill, attorneys for Plaintiff -The Hills Development Company, Thomas F. Carroll, Esq. appearing, and the Court having reviewed the Defendants' motion for a stay of all trial court proceedings and the



moving certification and the responding letter memorandum submitted and having considered the arguments of counsel;

IT IS on this   1   day of November, 1985

ORDERED that Defendants' motion for a stay of all trial court proceedings be and the same hereby is denied in all respects.



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

**KERBY, COOPER, SCHAUL & GARVIN**

9 DE FOREST AVENUE

SUMMIT, NEW JERSEY 07901

(201) 273-1212

ATTORNEYS FOR Defendant, The Planning Board  
of the Township of Bernards

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

*Plaintiff*

THE HILLS DEVELOPMENT COMPANY

vs.

Docket No. L-030039-84

*Defendants*

THE TOWNSHIP OF BERNARDS in the COUNTY  
OF SOMERSET, a Municipal Corporation of  
the State of New Jersey, THE COMMITTEE OF  
THE TOWNSHIP OF BERNARDS, THE PLANNING  
BOARD OF THE TOWNSHIP OF BERNARDS and  
the SEWERAGE AUTHORITY OF THE TOWNSHIP  
OF BERNARDS

**CIVIL ACTION**  
CERTIFICATION OF  
ARTHUR H. GARVIN, III  
RE: THE HONORABLE  
EUGENE D. SERPENTELLI'S  
DECISION DENYING A STAY  
OF PROCEEDINGS AT THE  
TRIAL COURT IN THIS  
MATTER

STATE OF NEW JERSEY:

: ss

COUNTY OF SOMERSET :

ARTHUR H. GARVIN, III, of full age, hereby  
certifies as follows:

1. I am an Attorney-at-Law of the State of  
New Jersey and a partner in the firm of Messrs. Kerby, Cooper,  
Schaul & Garvin. I am responsible for the representation of

the defendant, Planning Board of Bernards Township in this matter and am personally familiar with same.

2. On October 25, 1985, I filed a Notice of Motion For a Stay of all proceedings at the trial Court level on short notice and returnable on Friday, November 1, 1985.

(The application further sought protection precluding a third party Mt. Laurel II lawsuit seeking a builder's remedy against Bernards Township).

3. The application was considered and oral argument heard by the Honorable Eugene D. Serpentelli, A.J.S.C. on November 1, 1985. I appeared as the attorney representing the interests of the defendants. The Court decided the defendant's application for a stay of the trial Court proceedings (but indicated that as far as the Court was concerned, Bernards Township's immunity from a third party lawsuit seeking a builder's remedy would continue until the trial Court proceedings were concluded).

4. The Court stated its reasons for denying defendants application for the stay in an oral opinion rendered from the bench. They were as follows:

a) For all of the reasons set forth by the Court in its oral opinion delivered from the bench in the afternoon session of the Court on October 4, 1985 in the Court's decision denying the defendants' application for a transfer of this matter to the Affordable Housing Council.

b) That a denial of the defendants' application for a stay would not defeat the purpose of the defendants' appeal to the Appellate Division seeking a reversal of the trial Court's Order denying transfer.

c) That there is no need to unnecessarily delay the proceedings at the trial Court level which can be concluded with one more hearing (the presently scheduled compliance hearing of November 18, 1985) and that same will be of no great inconvenience to the defendants.

d) That the conclusion of this matter in the trial Court will leave the defendants in a legal position where they may appeal any or all of the adjudications made by the trial Court.

e) That the defendants were unable to show that a denial of their application for a stay of the trial Court proceedings would result in prejudice to them.

5. Attached hereto is a copy of the Court's Order denying defendants' application for a stay of the trial Court proceedings.

6. I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

  
ARTHUR H. GARVIN, III

Dated: November 7, 1985

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

---

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

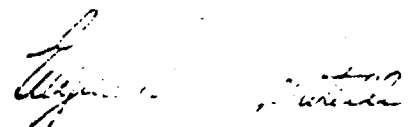
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This matter having been opened to the Court by Farrell, Curtis, Carlin & Davidson, attorneys for Defendants, Township of Bernards, Township Committee of the Township of Bernards and the Sewerage Authority of the Township of Bernards, James E. Davidson, Esq. appearing, and Kerby, Cooper, Schaul & Garvin, attorneys for Defendant Planning Board of the Township of Bernards, Arthur H. Garvin, III, Esq. appearing, in the presence of Brener, Wallack & Hill, attorneys for Plaintiff -The Hills Development Company, Thomas F. Carroll, Esq. appearing, and the Court having reviewed the Defendants' motion for a stay of all trial court proceedings and the

moving certification and the responding letter memorandum submitted and having considered the arguments of counsel;

IT IS on this 1 day of November, 1985

ORDERED that Defendants' motion for a stay of all trial court proceedings be and the same hereby is denied in all respects.

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

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

Attorneys for Defendants/Appellants, Township of Bernards, et  
als.

|                                  |   |                              |
|----------------------------------|---|------------------------------|
| THE HILLS DEVELOPMENT COMPANY,   | : | SUPERIOR COURT OF NEW JERSEY |
|                                  | : | APPELLATE DIVISION           |
| Plaintiff/Respondent,            | : |                              |
|                                  | : | Docket No.                   |
| 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 | : | Civil Action                 |
| PLANNING BOARD OF THE TOWNSHIP   | : |                              |
| OF BERNARDS and the SEWERAGE     | : |                              |
| AUTHORITY OF THE TOWNSHIP OF     | : |                              |
| BERNARDS,                        | : | <u>ORDER</u>                 |
|                                  | : |                              |
| Defendants/Appellants.           | : |                              |
|                                  | : |                              |

This matter having been brought before the Court for  
hearing by Farrell, Curtis, Carlin & Davidson, attorneys for  
Defendants/Appellants (James E. Davidson, Esq. appearing) for an  
Order staying this matter before the trial court pending

determination of the pending Motion for Leave to Appeal, and for good cause shown,

IT IS on this            day of November, 1985,

ORDERED that pending the determination of the Motion for Leave to Appeal entered in this matter on October 31, 1985, a Stay is hereby granted.

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