

RULS-AD-1986-10

1/2/86

Plaintiff Hills' Supplemental Brief Regarding Motion  
to Modify Stay

pgs. 195

*Tricia*

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FILE NO. 3000-04-02

January 2, 1986

RULS - AD - 1986 - 10

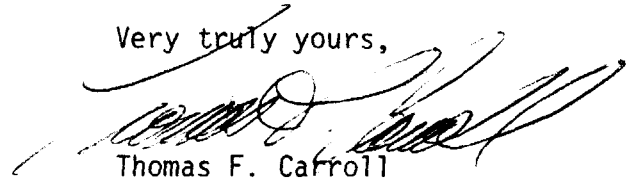
The Honorable Eugene D. Serpentelli  
Judge, Superior Court of New Jersey  
Ocean County Court House  
100 Washington Street  
Toms River, NJ 08753

RE: The Hills Development Company v. Tp. of Bernards et al.  
Docket No. L-030039-84 P.W.

Dear Judge Serpentelli:

Enclosed please find a Proof of Service concerning the service of a supplemental brief, affidavits and exhibits in the above referenced matter. I had originally intended to serve the documents on December 31, 1985 and the Proof of Service to that effect was prepared on that date. However, I was unable to serve the documents on that date and same were hand-delivered on this date. I neglected to amend the Proof of Service which was hand-delivered to Your Honor and counsel for defendants on this date along with the supplemental brief, affidavits and exhibits. The enclosed Proof of Service accurately depicts the mode of service of the aforementioned documents.

Very truly yours,



Thomas F. Carroll

TFC:klp

enclosure

CC: James E. Davidson, Esq.  
Arthur H. Garvin, III, Esq.

Attorney(s): Brener, Wallack & Hill  
Office Address & Tel. No.: 2-4 Chambers Street, Princeton, NJ 08540  
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Attorney(s) for Plaintiff

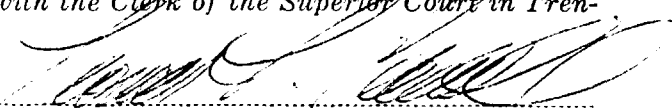
THE HILLS DEVELOPMENT COMPANY  
Plaintiff(s)  
vs.  
TOWNSHIP OF BERNARDS, et al.  
Defendant(s)

SUPERIOR COURT OF NEW JERSEY  
SOMERSET/OCEAN COUNTY  
LAW DIVISION  
Docket No. L-030039-84 P.W.  
CIVIL ACTION

A copy of the within Notice of Motion has been filed with the Clerk of the County of  
at New Jersey

Attorney(s) for

Affidavits have  
The original of the within ~~Notice of Motion~~ has been filed with the Clerk of the Superior Court in Tren-  
ton, New Jersey.

  
Thomas F. Carroll, Esq.  
Attorney(s) for Plaintiff

Service of the within

is hereby acknowledged this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Attorney(s) for

I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 4:6.

Attorney(s) for

PROOF OF MAILING: On January 2 19 86, I, the undersigned, mailed to  
James E. Davidson, Esq. and Arthur H. Garvin, III, Esq.

Attorney(s) for

at 43 Maple Avenue, Morristown, NJ and 9 DeForest Avenue, Summit NJ

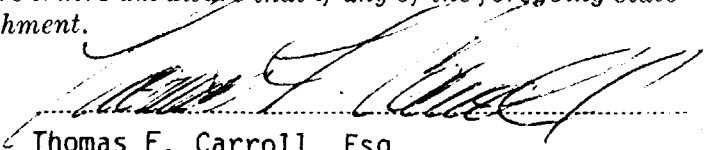
by hand-delivering ~~xxxxxx~~ the following:

supplemental brief, affidavits and exhibits in support of motion to modify stay

R. 1:5-3 The return receipt card is attached to the original hereof.

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

Dated: January 2 19 86.

  
Thomas F. Carroll, Esq.

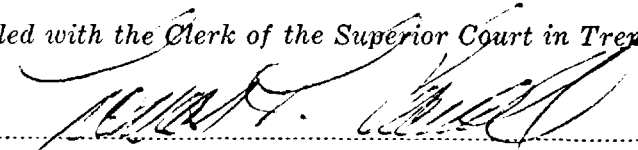
Attorney(s): Brener, Wallack & Hill  
Office Address & Tel. No.: 2-4 Chambers Street, Princeton, NJ 08540  
609-924-0808  
Attorney(s) for Plaintiff

THE HILLS DEVELOPMENT COMPANY  
*Plaintiff(s)*  
*vs.*  
TOWNSHIP OF BERNARDS, et al.  
*Defendant(s)*

SUPERIOR COURT OF NEW JERSEY  
SOMERSET/OCEAN COUNTY  
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Affidavits have  
The original of the within ~~Notice of Motion~~ has been filed with the Clerk of the Superior Court in Trenton, New Jersey.

Attorney(s) for  
  
Thomas F. Carroll, Esq.  
Attorney(s) for Plaintiff

Service of the within

is hereby acknowledged this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Attorney(s) for

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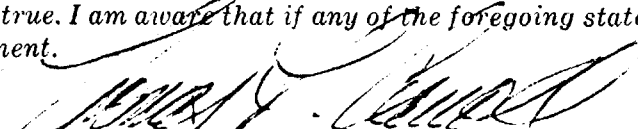
Attorney(s) for Defendants

at  
by Federal Express the following: supplemental brief, affidavits  
and exhibits in support of motion to modify stay

R. 1:5-3 The return receipt card is attached to the original hereof.

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.

Dated: December 31 19 85.

  
Thomas F. Carroll, Esq.

Let from  $\pi$   
to judge asking  
 $\Delta$  be enjoined  
from further  
modification of ordin.

1/2/86

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**ATTORNEYS AT LAW**

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FILE NO.

January 2, 1986

Honorable Eugene D. Serpentelli  
Ocean County Court House  
Toms River, NJ 08753

Re: The Hills Development Company v. Tp. of Bernards, et al;  
Docket No. L-030039-84 P.W.

Dear Judge Serpentelli:

As Your Honor will recall, Plaintiff, The Hills Development Company ("Hills"), has filed a motion to modify the stay entered in this matter. Said motion was granted insofar as Defendant Bernards Township ("Bernards") was enjoined from adopting an ordinance which would have the effect of divesting Hills of the development rights which would accrue upon approval of Hills' pending development application. Said development application was submitted pursuant to Section 707 of Bernards' land use ordinances which section is entitled "Submission of Applications for Conceptual Approvals of Development Plans for Residential Cluster Development and Planned Development."

The Court has requested that the parties submit supplemental briefs on the following issues: (1) whether Section 707 is an authorized enactment; and (2) whether and to what extent Hills and lower income households

would suffer harm if Bernards were permitted to apply to Hills a repealer of the Section 707 vesting provision. (Section 707(E)). On behalf of Hills, please accept this letter memorandum in lieu of a formal brief addressing said issues. Pursuant to the authority of the Order entered by the Supreme Court in this matter, Hills respectfully requests that Bernards be enjoined from applying any modification of Section 707(E) to Hills until such time as the Supreme Court renders its opinion and the issue addressed herein is resolved.

Oral argument is requested.

#### STATEMENT OF FACTS

##### A. Background of Section 707 Conceptual Approval

Bernards' ordinance Section 707 (Exhibit A) has been in effect since 1980. (See Guliet D. Hirsch affidavit submitted herewith). Since 1980, at least five (5) applicants in "planned development" zones (N.J.S.A. 40:55D-6) have received Section 707 conceptual approval authorizing a total of 2,700 units:

- (1) Spring Ridge (Zirinsky: Commonwealth at Basking Ridge): 1,220 units (November 6, 1980);
- (2) Two Brooks Farm: 132 units (November 14, 1983);
- (3) Coddington Farms: 71 units (April 24, 1984);
- (4) Hovnanian: 830 units (12% moderate) (August 28, 1984);
- (5) K&K Developers, Inc.: The Cedars (the "Kirby tract"): 440 units (20% low and moderate) (August 6, 1985);

(Resolutions of Section 707 approval for above developments are set forth at Exhibits B through F respectively).

As indicated, Section 707 approval of the K&K Developers (Kirby) tract was granted as recently as August 6, 1985 (Exhibit F).

On October 17, 1985, Hills filed a development application pursuant to Section 707. On November 12, 1985, Bernards Township Committee introduced Ordinance 746 on first reading (Exhibit G), for the purpose of amending Section 707(E). Section 707(E) presently provides that "conceptual approval shall confer upon the applicant the right to develop in accordance with those aspects of the conceptual plan approved ..." (Exhibit A). As amended, Section 707(E) would read: "Conceptual approval shall not confer any development rights upon the applicant." (Exhibit H).

As already submitted to this Court, Bernards induced and in fact demanded that Hills submit a concept application pursuant to Section 707 (See affidavit of Kenneth J. Mizerny, submitted herewith). Bernards was fully aware that Hills was preparing and intended to submit such an application. Bernards did not dissuade Hills from preparing such an application nor did Bernards advise Hills that it intended to delete the vesting language thereby rendering the application meaningless.

Upon Hills' application to this Court, Bernards was preliminarily enjoined from amending Section 707 in a manner which would apply to Hills' application. An Order to that effect was entered on December 16, 1985. Bernards thereafter introduced an amended Ordinance 746 which would amend Section 707(E) but be inapplicable to Hills' pending Section 707 application until such time as the Supreme Court renders its opinion on the Township's appeal. (Exhibit H). Said ordinance was adopted on December 26, 1985.

The issue of whether Section 707 is authorized was informally before this Court in the matter of Spring Ridge Associates v. Tp. Committee of Bernards, et al. In that matter, Bernards attempted to impose a set-aside



obligation on Spring Ridge despite the fact that Spring Ridge had received conceptual approval pursuant to Section 707. At that time, Bernards was "uncertain" as to whether Section 707 was a valid enactment. (See January 16, 1985 brief, Exhibit "E" to Bernards' November 21, 1985 submission to this Court at 2, n. 1). Despite this uncertainty, as recently as August 6, 1985, Bernards granted Section 707 conceptual approval to a 440 unit development. (Exhibit F). Extensive legal research by plaintiff has disclosed no published decision(s) since the passage of Section 707 in 1980 which might cause Bernards' uncertainty about this provision.

B. Public Purpose Served By Section 707 Conceptual Approval

In order to meet the twin goals of development flexibility and municipal control over future growth, a "concept" approval process which fixes the types of projected uses, the transportation network, dwelling types, open space and recreational system, grading, drainage and water and sewage facilities is required. Section 707 approval should be the first of a two-step process comprised of Section 707 approval in the first stage and preliminary/final approval in the second stage. Preliminary and final site plan approval would essentially be subparts of one stage for Hills' development since the Bernards Township Land Development Ordinance requires an almost identical level of detail for both preliminary and final approval. (Affidavit of Mizerny). The most expeditious way to proceed is thus to obtain "concept," i.e. Section 707 approval for the whole of the property and simultaneously apply for preliminary and final site plan approval for each section of the project which is ready to come on line.

The primary focus in Section 707 review is on the principal infrastructure improvements, the proposed location of dwelling unit types, commercial uses, major open space areas and the proposed phasing of the

development. Early attention to these basic details results in a more efficient application process which allows both the municipality and the developer to agree upon the "zoning" and phasing of the site before becoming enmeshed in the details of the site plan.

The most unique features of planned unit development ("PUD") are its complexity, relatively long time frame for accomplishment and enormous front-end investment. Successful PUD development always involves a large vacant tract of land under complete control of a single landowner, with the land costs being by far the largest single investment required by the PUD process. Even the most efficient planned unit development ordinance will still require a long sequence of negotiations with public agencies for a wide array of approvals, as well as intergovernmental cooperation, carefully scheduled expenditures for administrative overhead, planning, engineering, legal services and advertising. After planning approval is obtained, there are massive costs for clearing, grading and other site preparation as well as installation of roads, sewer lines, water facilities and recreational facilities.

Thus, given the nature and extent of the planning efforts necessary for a PUD, it may not be practical or wise for municipalities to attempt to pin a developer down to a very detailed site plan at the outset. Conversely, if massive engineering, planning and architectural review fees must be expended prior to approval of the basic development scheme, minor changes requested by the planning board will be resisted due to the high cost of modifications to the plan. It is thus clear that an orderly and least-cost process towards final approval of a large PUD requires "basic scheme" approval as provided by Section 707.\*

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\* Concept approval procedures for inclusionary developments have been adopted in Bedminster Township, Clinton Township, Old Bridge Township, Morris Township and other municipalities. (Affidavit of Guliet D. Hirsch submitted herewith).

Thus, Hills respectfully submits herein that there is but one logical and lawful way to process its application: (1) Hills' Section 707 application (which is as detailed as most conventional preliminary applications) should vest Hills' rights as with a conventional preliminary application and as permitted pursuant to Section 707; and (2) Hills should then file simultaneously for Section 708 "preliminary" and final approvals on individual phases of its planned development. As discussed below, such a process is authorized and, for a number of reasons, Bernards should not be permitted to legislate away the only feasible process for approving the development.

Hills therefore respectfully requests that this Court: (1) invalidate that portion of amended Ordinance 746 which would allow the repealer to apply to Hills;\* and (2) permanently enjoin Bernards from modifying Section 707(E) in a manner which would divest Hills of its rights.

## ARGUMENT

### POINT I

#### BERNARDS' DEVELOPMENT APPLICATION PROCESS IS AUTHORIZED BY THE MUNICIPAL LAND USE LAW.

Contrary to its position prior to Hills' submission of a Section 707 development application, Bernards now unequivocally asserts that Section 707(E) is ultra vires and must be repealed. As discussed below, the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("MLUL"), authorizes such an ordinance in the

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\* See Exhibit H, amended Ordinance 746. The "proviso to the proviso" contained therein is self-executing and, without judicial intervention, the relief already granted to Hills will be nullified upon issuance of the Supreme Court's opinion.

context of planned development applications. Moreover, despite its caption, Section 707 is actually a form of "preliminary" application, a procedure which is indisputably authorized for any type of residential development. Section 708 of the Township's ordinance, labeled "preliminary," in fact demands detail which is far more than "tentative." Bernard's final approval provision, Section 709, demands essentially nothing that is not required pursuant to preliminary approval in Section 708. To assert that Section 707 is not authorized because it is labeled "conceptual" is to urge a look at form over substance.

A. Tentative or "Conceptual" Approval of the PUD in the Planning Literature.

In the late 1950's and early 1960's, planners began to reach a consensus about the desirability of more innovative patterns of land development than that which was being encouraged by conventional "cookie-cutter" subdivisions and building bulk regulations. This pattern of development, they saw, was protected and perpetuated by "euclidean" zoning. With flexibility their war cry, these commentators and planners began advocating that large areas in single ownership should be comprehensively planned with a range of uses and that these uses should be "clustered" to preserve open space and bring down infrastructure costs. They turned to the ordinance drafters and lawyers for help and embryonic PUD ordinances began to appear. There was an explosion of technical literature on this new form of development.\*

All of the commentators agreed that an essential ingredient to any planned development approval process for larger projects was a tentative or concept approval. For example, Professor Krasnowiecki wrote that:

\* See Goldstein and Schewer, "Zoning of Planned Residential Development," Harvard Law Review, 241 (1959); Lovelace, "Zoning for Large-Scale Developments," 14 Zoning Digest 129 (May, 1962); Krasnowiecki, "Planned Unit Development; A Challenge to Established Theory and Practice of Land Use Control," 114 University of Pennsylvania Law Review 147 (1965).

"It is clear that an orderly process towards final approval on a larger project requires at least one intermediate step - the presentation at which the larger lines and more important features of the project can be settled, so that the developer knows what will be required of him on final approval before he embarks on further expenditures and the preparation of detailed plans. A tentative approval procedure is now incorporated in all of the better ordinances, and has been given recognition in a number of the enabling acts... The purpose of a tentative approval procedure, as I mentioned above, is to fix the broad outlines of the proposed project so that the developer may know where he stands before he undertakes substantial expenditures and commitments associated with the preparation of detailed plans. One of the reasons why developers find it necessary to proceed to final approval for a larger project by sections is that it enables them to limit the period during which substantial investments in the project are carried without a return. The proposal presented as tentative approval, therefore, cannot be required to contain all the detail which is required at final approval, otherwise much of the purpose of two-stage (tentative - final) approval procedure is compromised." Krasnowiecki, "Planned Unit Development: A Challenge to Established Theory and Practice of Land Use Control", 114 University of Pennsylvania Law Review 147 (1965). (emphasis added).

Another eminent commentator on planned unit developments, Frank A. Aloï, has also recommended greater flexibility in the preliminary site plan approval process. Mr. Aloï's comments are as follows:

"Simply by reason of the magnitude of the project, the developer may intend to proceed only with very limited portions in terms of the actual implementation in the foreseeable future after rezoning. For example, the developer may begin with single family and multifamily residences as well as certain recreational elements, leaving complete implementation of commercial or light industrial elements for later developments or staging. Under the circumstances it might be economically prohibitive to compel the developer to incur the substantial engineering and architects' fees necessary to complete detailed site plans for the entire projected PUD. Practically speaking, it may not be wise to pin a developer to a detailed site plan at the outset, since his experience in developing the initial stages might well dictate decisions on the remaining stages different from those projected at the outset... The intent of the

(preliminary site plan) provision is, as indicated, to permit the municipality and the developer to reach agreement on the basic design." Aloï, "Implementation of a Planned Unit Development", 2 Real Estate Law Journal, Number 2, page 523 (1973). (emphasis added).

As the above discussion indicates, much of the planning literature on planned developments indicates that a tentative site plan application process, under which the planning board focuses on a conceptual land use plan showing the broad outline or basic scheme of the development supported by engineering documents in tentative form for discussion purposes is necessary to make planned developments flexible and viable for development over a period of years. Bernards' Section 707 provides for just such a process; Section 708 does not.

B. Legislative Authorization For PUD Concept Approval.

1. History of Planned Development Provisions of Municipal Land Use Law.

A fair evaluation of the legislative intent behind the Municipal Land Use Law section requiring preliminary site plan applications to be submitted in "tentative form" and permitting variations from ordinance standards to provide "increased flexibility desirable to promote mutual agreement on the basic scheme" at the preliminary approval stage requires consideration of the history of planned development legislation in New Jersey.

The Municipal Planned Unit Development Act (L.1967 c.61, Section 14, eff. May 23, 1967) was the first state PUD enabling act of substantial scope and coverage.\* Although the Municipal Planned Unit Development Act closely followed the model PUD statute of the Urban Land Institute,\*\* the New Jersey

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\* G. Sternlieb, et al "Planned Unit Development: A Summary of Necessary Considerations", Urban Law Annual 71 (1975).

\*\* See Urban Land Institute Technical Bulletin No. 52. Jan Krasnowiecki is one of the authors of the model statute.

courts held that the New Jersey enabling act differed from the model statute by permitting non-residential uses in a PUD project beyond those which were needed for the residents of the planned community. Rudderow v. Township Committee, Mt. Laurel, 121 N.J. Super. 409 (App.Div. 1972).

The Municipal Planned Unit Development Act streamlined the approval process by substituting PUD tentative approval for preliminary and final site plan and subdivision procedures. (N.J.S.A. 40:55-59 (f)). The stated purpose of tentative approval was to provide: "an expeditious method for processing a plan for planned unit development...to avoid the delay and uncertainty which would arise if it were necessary to secure approval...by a multiplicity of local procedures". N.J.S.A. 40:55-59. Nine basic elements of the development including the location of common open space, the phasing schedule and density of proposed land uses were fixed and vested at tentative approval. When final plans for any development section showed deviations from tentative plans of no more than 5% from gross residential densities, 10% from non-residential floor areas or 5% from total ground coverage, the planning board was required to grant final approval. (N.J.S.A. 40:55-63). The Municipal Planned Unit Development Act thus encouraged procedural flexibility and early vesting of the basic elements of the development at the tentative approval stage.

## 2. The Issue of Enabling Under the Municipal Land Use Law

The MLUL does not set forth an exhaustive list of the powers granted to municipalities. It is an enabling act which permits municipalities to legislate for the purposes set forth in the act. The MLUL is to be construed liberally in order to effect the purposes of the act. N.J.S.A 40:55D-92.

Our Supreme Court has promulgated a three-part analysis to be applied in determining whether municipal legislation is authorized by the MLUL.

To be authorized by the MLUL, ordinances must: (1) bear a real and substantial relationship to the regulation of land; (2) advance one of the purposes specified in the MLUL; and (3) advance an authorized purpose in a manner permitted by the Legislature. State v. C.I.B. International, 83 N.J. 262, 271-272 (1980).

There is no question that Section 707 bears a real and substantial relationship to the regulation of land. Section 707 also advances a number of purposes specified in the MLUL, e.g. promoting the public welfare, encouraging planned unit developments which are most suitable for a particular site and, most importantly, legislating "with a view of lessening the cost of such development and to the more efficient use of land..." N.J.S.A. 40:55D-2, (a), (k) and (m). Conversely, the proposed amendment of Section 707 is in direct conflict with the purposes of the MLUL. See N.J.S.A. 40:55D-2(k) and (m).

Finally, as discussed below, Section 707 advances authorized purposes in a manner permitted by the Legislature. Section 707, including Section 707(E), sets forth a nearly ideal procedure for approving planned developments, a procedure which finds authority in the MLUL. See e.g. N.J.S.A. 40:55D-39c; 40:55D-48 and discussion infra. It is important to note that the MLUL grants some flexibility to municipalities in terms of municipal attempts to advance authorized purposes. Again, the act is not a menu of powers. It is an enabling act. Thus, our Supreme Court has found that, despite lack of express statutory authorization, it is within the municipal zoning power to impose mandatory setbacks. Mount Laurel II, 92 N.J. at 273-274. Moreover, the MLUL is "a procedural device. It did not interfere with the satisfaction of the constitutional duty." Id. at 320.

It is in this context in which Section 707 must be viewed. Section 707(E) unquestionably advances several legitimate purposes; its repeal does not.



Applying the appropriate principles of liberal construction, N.J.S.A. 40:55D-92, Hills respectfully submits that ample authority for Section 707(E) can be found in the MLUL.

3. Municipal Land Use Law Authorization.

In adopting the Municipal Land Use Law, the Legislature incorporated by reference many of the procedures, standards and policies of the old Municipal Planned Unit Development Act. In order to carry out the policy behind the new act of providing "one-stop shopping" for the developer, many of the PUD procedures are incorporated into the site plan and subdivision sections of the MLUL. The section permitting variations from ordinary standards for preliminary and final approval to provide increased flexibility to promote mutual agreement on the basic scheme of the development stage, N.J.S.A. 40:55D-39, provides more than sufficient authority for the PUD concept approval necessary to make large PUD's possible.\*

As discussed above, the requirements for preliminary site plan approval are contained in N.J.S.A. 40:55D-46a. This section of the MLUL permits municipalities to adopt site plan review ordinances which require the

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\* This appears to be an issue of first impression. The only analogous authority located by Hills is the Supreme Court's opinion in Crema v. N.J. Dept. of Environmental Protection, 94 N.J. 286 (1983). In Crema, at issue was the authority of the DEP to grant "conceptual approval" to a developer. The Court first compared the power to issue approvals under CAFRA with the municipal power to approve developments as per the MLUL and noted that the two sources of power were "generally analogous." Id. at 298. With respect to the issue of the DEP's implied power to issue conceptual approval, the Court held that "CAFRA is a comprehensive legislative scheme that encompasses land use regulation with respect to which the existence of such authority can reasonably be implied." Id. at 299. However, the DEP had not promulgated pertinent rules and the conceptual approval was therefore held invalid. Here, in an analogous situation, Bernards has clearly adopted appropriate "rules" i.e. Section 707.

developer to submit site plans and engineering documents in "tentative form for discussion purposes" for preliminary approval. Where architectural plans are required to be submitted, "preliminary" plans and elevations may be required. Municipalities are thus relatively free to define submission requirements for site plan approval with one proviso: that applicants not be required to submit site plans or other documents in other than tentative form.

Another section of the MLUL deals directly with procedural requirements for planned development preliminary site plan approval. This section, N.J.S.A. 40:55D-39c(1), authorizes municipal ordinances to set forth any variations from ordinary standards for preliminary and final approval in order to "provide the increased flexibility desirable to promote mutual agreement between the applicant and the planning board on the basic scheme of a planned development at the stage of preliminary approval." This language would be mere surplussage if construed to authorize no more for planned developments than regular preliminary approval procedures applicable to all other types of development under N.J.S.A. 40:55D-46.\* Section 707 is the very type of "basic scheme" provision authorized by N.J.S.A. 40:55D-39c.

C. Collateral Legal Issues

1. Informal Review Distinguished.

Section 707 must be distinguished from an "informal review"

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\* However, even this section of the Municipal Land Use Law, which also covers more conventional developments, requires "preliminary" site plan submission documents to be in "tentative form for discussion purposes". The municipal power to vary preliminary site plan approval standards under N.J.S.A. 40:55D-39c(1) for planned developments must be evaluated in light of the requirements of this section.

ordinance authorized by N.J.S.A. 40:55D-10.1. Bernards has provided for informal review in Section 703 (Exhibit A). As per the limits of N.J.S.A. 40:55D-10.1, Section 703 ("Pre-application Review") provides for informal review where a developer "intends to prepare and submit a development application", no fee is required and neither the applicant nor the planning board is bound by the plan informally reviewed. Informal review is available for any type of development, not just planned development.

By way of contrast, a Section 707 development application is, indeed, just that: a development application. As defined in the MLUL, an

"Application for development" means the application form and all accompanying documents required by ordinance for approval of a subdivision plat, site plan, planned development, conditional use, zoning variance or direction of the issuance of a permit pursuant to section 25 (C.40:55D-34) or section 27 (D.40:55D-36) of this act.  
N.J.S.A. 40:55D-3.

A Section 707 application would appear to be explicitly authorized by the language "application form...required by ordinance for approval of a...planned development." The phrase "planned development" would be meaningless and redundant, following as it does the discussion of subdivision and site plan applications, unless the Legislature intended to authorize special procedures for planned developments.

Additionally, an application fee is required, in this case, \$74,360.00. Section 707 expressly confers development rights upon approval, and only planned developments have the option of filing a Section 707 conceptual application.

2. Procedural Requirements

The Section 707 conceptual submission procedure itself and the approval time frames are in accord with the MLUL and Bernards' provision labeled "preliminary approvals," Section 708. As with Section 708, a Section 707 applicant must submit copies of the application documents to the administrative officer and the application is then forwarded to the Planning Board secretary who assigns to it an application number. In each case, a copy must be submitted for review by the county planning board and additional copies must be provided upon request for review by other agencies or entities. In each case, a ruling on completeness must be made within 45 days. In each case, the Planning Board has 95 days in which to approve or deny the application. N.J.S.A. 40:55D-46. Public hearings are required on both Section 707 and 708 applications. See, N.J.S.A. 40:55D-10a; Ordinance 704 (Exhibit I) and Section 303 E1 of Bernards' Ordinance.\*

3. Comparison With Section 708 "Preliminary"

Bernards has asserted that Section 707 cannot be viewed as a form of preliminary approval since Bernards has also enacted Section 708, a provision labeled "preliminary approval." This assertion is somewhat circuitous. As

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\* Bernards has argued that Section 707 cannot be "preliminary" or otherwise authorized in that the provision itself does not expressly call for public hearings. However, Ordinance 704, which expressly provides that an inclusionary developer may submit a Section 707 application, also expressly provides that the Planning Board must hold a public hearing. (Exhibit I). Even if this were not the case, silence with respect to hearings would not be dispositive. Pursuant to N.J.S.A. 40:55D-10a, the Planning Board must "hold a hearing on each application for development...." The Bernards Planning Board has, in fact, held public hearings on Section 707 development applications. (See, e.g., Exhibit F, where Planning Board held public hearings on Kirby application on July 16, 1985 and August 6, 1985 "of which public notice and notice by the applicant have been given as required by law.")

alleged in Hills' May 8, 1984 complaint (¶ 26(1), the Section 708 preliminary is ultra vires itself in that it requires far more detail than is permitted by N.J.S.A. 40:55D-46 (i.e. more than "tentative form for discussion purposes"). Hills also challenged the excessive detail required by Section 708 in its June, 1984 summary judgment motion. In response to the allegation, Mr. Marshall Frost, a Bernards consultant, acknowledged the excessive engineering required by Section 708 preliminary but noted that the Section 707 conceptual procedure rectified the problem. (Exhibit B to Hirsch affidavit submitted herewith, portion of July 6, 1984 Frost certification submitted to this Court). As stated by Mr. Frost, the Section 707 conceptual requirements are "more in line with the common definition of the word 'tentative.' " (Exhibit B to Hirsch affidavit, ¶(o)(iii)).

Mr. Frost concluded:

Consequently, while there is substance to Mr. Mizerny's statement that section 708 requires drawings to be "fully" engineered, it is my opinion that the Bernards Township Land Development Ordinance has adequately addressed the problems associated with approval on a preliminary basis by allowing the developer, at his option, to make a conceptual submission for approval, and also allows the developer to make maximum use of the engineering work at the earliest possible date.

Id., ¶(o)(vi)).

Thus, Bernards acknowledges that its true "preliminary" approval provision is Section 707; not Section 708. This has also been acknowledged by another Township consultant, Dr. Harvey Moskowitz.\* (See Exhibit A to Hirsch affidavit). As Dr. Moskowitz noted, the preliminary submission requirements for "preliminary" applications "are far in excess of what may be reasonably required

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\* Dr. Moskowitz, now a Township consultant, made these observations in a 1980 memorandum which was sent to Bernards Township.

of a planned development applicant at the preliminary stage." As Dr. Moskowitz further observed, the requirements are repetitive, not "tentative" in scope, cost-generative, burdensome to both the applicant and planning board and procedures which "serve neither the applicant nor the town in any way." Id.

In reality, Section 708 preliminary demands the "detailed drawings, specifications," etc. authorized by N.J.S.A. 40:55D-50 for final approval ordinances. With relatively slight exception, the Township's final approval provision, Section 709 (Exhibit A), requires no more information than Section 708 preliminary and is, in effect, a provision for little more than "rubber stamping" an approved Section 708 preliminary application. (Affidavit of Mizerny). Bernards should not be heard to argue that its illegal Section 708 preliminary renders Section 707 conceptual anything other than what it is: an authorized form of preliminary application.

#### 4. Legality of Ten-Year Vesting

Section 707E.1 provides that "[c]onceptual approval shall confer upon the applicant the right to develop in accordance with those aspects of the conceptual plan approved by the Board as set forth in Section 707C.3.a. above for a period of ten (10) years, except that all preliminary and final approvals shall be obtained within that ten (10) year period." Ten year vesting was granted by the Bernards Planning Board to the Commonwealth at Basking Ridge, Two Brooks Farm, Spring Ridge, and Coddington Farms developments.

Extended vesting of rights pursuant to preliminary approvals for large projects (over 50 acres) is authorized where the Planning Board considers it reasonable in light of the "number of units, economic conditions and comprehensiveness of the development". N.J.S.A. 40:55D-49d. The language of

Section 707E.1 implements this authorization of extended vesting, and represents the Township Committee's judgment as to the maximum time which the Planning Board, in its discretion, might vest a Section 707 conceptual approval. In prior approvals of Section 707 conceptual applications, the Planning Board recognized its discretion to vary the period of vesting. (See, resolutions of approval for Commonwealth at Basking Ridge, Two Brooks Farms, Spring Ridge and Coddington Farms which contain a finding of fact that: "the Board can grant approval for a ten year period.") (Exhibits B, C and D) (emphasis added).

Additional authority for a vesting period greater than three (3) years may be found in N.J.S.A. 40:55D-39c(1) which authorizes provisions for planned development "setting forth any variations from the ordinary standards for preliminary and final approval...". Furthermore, if the authorization of ten year vesting is somehow invalid, the provision may be severed without impairing the principal objective of Section 707 conceptual approval.\*

## POINT II

### **SECTION 707 IS ENCOURAGED AND AUTHORIZED BY MOUNT LAUREL II.**

Hills respectfully submits that there is sound reason to find that Section 707(E) is legislatively authorized. However, should the Court find that

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\* The Bernards Ordinance contains a severability clause (Section 103) which provides:

"If any section, subsection or paragraph of this Ordinance shall be declared to be unconstitutional, invalid or inoperative, in whole or in part, by a court of competent jurisdiction, such section, subsection or paragraph shall, to the extent that it is not unconstitutional, invalid or inoperative, remain in full force and effect, and no such determination shall be deemed to invalidate the remaining sections, subsections or paragraphs of this Ordinance."

the provision is not legislatively enabled, Hills respectfully submits that such an application procedure finds authorization and, indeed, encouragement in Mount Laurel II.

A fundamental holding running throughout the Mount Laurel opinions is that concerning the municipal obligation to remove cost-generative ordinance provisions. See e.g. 92 N.J. at 258-260. It is indisputable that Section 708 ("preliminary approvals") is extremely cost-generative. The Township's consultants have acknowledged the fact. In addition to the relatively certain and extremely expensive re-engineering which would result from a "cold" Section 708 application, such a procedure would also result in delay, in itself a costly consequence. (Affidavit of Mizerny). Indeed, avoidance of these consequences appears to be the very reason Section 707 was adopted. (Exhibit B to Hirsch affidavit). Bernards' attempted modification of Section 707 would clearly add immeasurable cost to Hills' inclusionary development. Assuming that Section 707 does not find express authorization in the MLUL, the provision is akin to other provisions which would, in the absence of the Mount Laurel mandate, be of dubious legality. For example, provisions dealing with "fast-tracking" of inclusionary development applications are, in fact, "contrary" to the MLUL. Nevertheless, such procedures are encouraged and now relatively "standard" in Mount Laurel ordinances. See e.g. Judge Smith's opinion in Urban League of Essex County v. Tp. of Mahwah, et al, \_\_\_\_\_ N.J. Super. \_\_\_\_\_ (Law Div. 1984), slip op. at 59-60.

Moreover, in a non-compliance context, a trial court is itself authorized to order applications approved. 92 N.J. at 286. In fact, in the Mahwah case Judge Smith imposed an entirely "unauthorized" review and approval process. That process involved creation of an "independent professional



technical review group" and a time frame, from date of submission to preliminary approval, of 95 days. Id., slip op. at 62-67.

Hills desires no such extraordinary relief. Hills merely wishes to have its application processed pursuant to Bernards' own ordinances under the terms heretofore applicable to the other applicants who have utilized the procedure. Hills respectfully submits that, in a Mount Laurel context, the Section 707 procedure is clearly authorized. The procedure immeasurably reduces both the expense and delay which would otherwise be incurred by the developer. Therefore, in the event that the Court does not find authorization for Section 707(E) in the MLUL, Hills respectfully submits that such a provision finds ample authorization in the Mount Laurel II opinion.

### POINT III

**BERNARDS SHOULD BE PERMANENTLY ENJOINED  
FROM MODIFYING SECTION 707 SO AS TO DIVEST  
HILLS OF THE DEVELOPMENT RIGHTS WHICH WOULD  
ACCRUE UPON APPROVAL OF HILLS' SECTION 707  
DEVELOPMENT APPLICATION.**

As discussed above, Bernards' ordinance Section 707 is authorized by both the MLUL and Mount Laurel II. Nevertheless, the "general rule" is that a municipality may adopt any ordinance it chooses and legal challenges to such an ordinance must be brought after the fact. Passaic Jr. Chamber of Commerce v. Passaic Housing Auth., 45 N.J. Super. 381, 392 (App. Div. 1957). However, for the following reasons, Hills respectfully submits that the "general rule" does not apply and Bernards should be permanently enjoined from modifying Section 707(E) insofar as such an amendment would purport to divest Hills of the development rights which would accrue upon approval of Hills' Section 707 development application. In addition, since the amended Ordinance 746 (Exhibit

H) contains a proviso which would nullify the preliminary relief already granted to Hills upon issuance of the Supreme Court's opinion on the Township's appeal, Hills requests that the proviso be invalidated.

- (a) **Modification of Section 707(E) would be in violation of the constitutional mandate discussed in Mount Laurel II, arbitrary, capricious and a denial of equal protection.**

Bernards' compliance ordinance, Ordinance 704, expressly states that an Ordinance 704 inclusionary developer may elect to submit its development application pursuant to Section 707. (Exhibit I; Ordinance 704, Article 1100, § 11.02 ¶ A.3.) Article 1100 (established in Ordinance 704), states as its purpose: "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 ..."

Representatives of Bernards have acknowledged the demanding nature of Section 708, the "preliminary" approval provision and have further acknowledged that Section 707 ("conceptual" approval) calls for review of application documents in "tentative" form. (See Exhibits A and B to Hirsch affidavit). In seeking to repeal the vesting language set forth at Section 707(E), Bernards advances the following in justification of the repeal: (1) the provision is ultra vires; and (2) the repeal is necessary in order to prevent Hills from acquiring vesting of its development rights. As submitted below, neither justification is valid and the repealer is therefore in violation of the Mount Laurel mandate, arbitrary and capricious.

Legislation, including municipal ordinances, must not be arbitrary or capricious. Trombetta v. Atlantic City, 181 N.J. Super. 203, 226 (Law Div. 1981)

aff'd 187 N.J. Super. 351 (App. Div. 1982). Ordinances, including ordinance amendments, must be rationally related to a legitimate government interest. State v. Cameron, 184 N.J. Super. 66 (Law Div. 1982) aff'd 189 N.J. Super. 404 (App. Div. 1983). If an ordinance does not meet such standards, it is invalid legislation and may be struck down. With respect to the first proposed justification, Hills respectfully submits that Section 707(E) is indeed authorized (see discussion supra) and Bernards' attempt to repeal the provision cannot find a basis in this proposed justification.

To justify amendment of an ordinance there must "be some change in circumstances justifying it or some showing that experience has proved that the earlier provision was made in error." Ridgeview Co. v. Florham Park Bd. of Adj., 57 N.J. Super. 142, 152-153 (Law Div. 1959). Surely Bernards can point to no change in the law since August, 1985 when it granted its most recent Section 707 approval.

As to Bernards' second proposed justification, preventing Hills from acquiring vesting, this is an illegitimate purpose and one which does not justify the proposed repealer. Especially in the context of municipal responses to the Mount Laurel mandate, a municipality may not pass legislation which is enacted for the purpose of preventing vesting of rights which would accrue pursuant to valid, existing zoning. It is simply not legitimate for a municipality to enact a compliant ordinance in response to Mount Laurel II, and then enact legislation for the express purpose of frustrating development pursuant to that ordinance.

The parties agree that Section 707 fosters sound planning and comprehensive development applications. The illegality of Bernards' "preliminary" approval ordinance is relatively free from doubt. Yet, if Section 707(E) is modified as proposed, Hills will have no choice but to submit to the

preliminary approval process without any enforceable rights resulting from a Section 707 application. Thus, the effect of the proposed Section 707(E) would be to delay, increase the expense of and/or totally frustrate Hills' inclusionary development. Such a purpose and effect are contrary to the Mount Laurel mandate and same should find no recognition in the law. Moreover, since the proposed amendment of Section 707(E) serves no legitimate purpose, it is arbitrary and capricious and therefore invalid.

Finally, the attempted repeal of Section 707 (E) denies to Hills equal protection of the laws. As noted, Bernards has granted numerous Section 707 approvals over the course of years. The most recent of these was granted in August of 1985. For wholly illegitimate reasons, Bernards now seeks to treat Hills differently. "Persons situated alike shall be treated alike." Reid Development Corp. v. Parsippany - Troy Hills Tp., 10 N.J. 229, 233 (1952). While the proposed amendment is without a rational basis, a constitutional interest is involved herein and heightened scrutiny is therefore appropriate. Trombetta, supra, 181 N.J. Super. at 224-225. Hills submits that Bernards' proposed classification cannot survive equal protection scrutiny.

In sum, the modification of Section 707(E) is arbitrary, capricious, contrary to the Mount Laurel mandate, without a legitimate purpose and a denial of equal protection. Hills therefore respectfully requests that the modifying ordinance be declared invalid and that the requested injunctive relief be issued.

**(b) Bernards should be estopped from modifying Section 707(E) insofar as Hills would be affected by such a modification.**

There is a "strong recent trend towards the application of equitable principles of estoppel against public bodies where the interests of justice, morality and common fairness clearly dictate that course." Gruber v. Mayor and

Tp. Com. of Raritan Tp., 39 N.J. 1, 13 (1962) (course of conduct between developers and township officials could give rise, under principles of equitable estoppel, to vested development rights not subject to later zoning amendment).

"Municipalities, like individuals, are bound by principles of fair dealing." Palisades Properties, Inc. v. Brunetti, 44 N.J. 117, 131 (1965). "In simple language, estoppel will be applied against a municipality in the interest of equity and essential justice. Morality and common fairness clearly dictate that course." Hill v. Bd. of Adjust of Eatontown, 122 N.J. Super., 156, 164-165 (App. Div. 1972).

It is of the essence of equitable estoppel that one is precluded from taking a position inconsistent with that previously assumed and intended to influence the conduct of another, if such repudiation would not be responsive to the demands of justice and good conscience, in that it would effect an unjust result as regards the latter. Gitomer v. United States Casualty Co., 140 N.J. Eq. 531, 536 (Ch. 1947).

Of course, reliance is an essential element of estoppel. See e.g., Clark v. Judge 84 N.J. Super. 35 (Ch. Div. 1964) aff'd o.b. 44 N.J. 550 (1965).

The essential relevant facts are not in dispute. Over the course of the past year, Bernards has time and again represented to this Court and to Hills that it wished to voluntarily comply and settle this matter. To that end, the Township adopted a compliance ordinance. In return for its activities and representations, Bernards has been immunized from builder's remedy lawsuits for over one year. On June 12, 1985, Bernards unequivocally advised this Court that this matter was settled. Hills did not question the veracity of Bernards' representations to the Court and Hills. Bernards induced Hills to submit its development application pursuant to Ordinance 707. Hills would not have done so if Bernards had advised that such an application would be an exercise in

futility. (Affidavit of John H. Kerwin previously submitted to this Court). The application presently pending before the Planning Board cannot be submitted pursuant to Bernards' preliminary application provisions and the entire application would have to be abandoned. If Bernards were permitted to amend Ordinance 707, Hills would have expended some \$325,000.00 on a meaningless exercise. (Affidavit of Kerwin). In addition to the resources expended on the two plans prepared to date, Hills and the lower income people to be benefited would suffer the harm resulting from needless and inequitable delay of Hills' proposed development, i.e. increased carrying costs and delay in production of lower income housing. Prior to Bernards' decision to seek a transfer of this matter, Bernards never indicated that it would seek to render the application meaningless. For essentially this reason, Hills has never challenged Bernards' unlawful "preliminary" approval ordinance and Hills has proceeded with the Section 707 process. Despite the foregoing Bernards now takes the position that Hills' reliance was not "reasonable" and should not form the basis for an estoppel.

The facts and procedural history of this matter are most unusual. It is therefore difficult to "pigeonhole" the analysis into conventional "estoppel law." For example, ordinarily and without more, a developer is not entitled to an estoppel merely because a development application has been filed. See e.g. Donadio v. Cunningham, 58 N.J. 309, 322-323 (1971). However, there are at least two situations in which principles of equitable estoppel may prevent application of an amended ordinance to an applicant.

The first such situation is where a building permit is issued or other municipal authorization has been given and there has been substantial reliance upon the authorization. Gruber v. Raritan Tp., 39 N.J. 1 (1962). Equitable estoppel may also be applied where a court has entered judgment ordering

approval of a use and special equities militate against retroactive application of an amended ordinance. Kruvant v. Cedar Grove, 82 N.J. 435 (1980). In the instant case, the defendant municipality revised its ordinance in response to Hills' constitutional challenge. Based upon that rezoning and municipal representations, Bernards received certain extraordinary relief. Hills took Bernards at its word and ceased prosecution of this lawsuit. As encouraged by Bernards, Hills did not challenge Section 708 but, rather, prepared and submitted its Section 707 application. Bernards now proposes to legislate away the significance of the application.

No building permit has been issued to Hills. However, the municipality has certainly "authorized" Hills' development and its Section 707 application. In fact, it was this very authorization which entitled Bernards to the relief granted in the December 19, 1984 immunity order entered in this matter. There has also clearly been substantial reliance upon the municipal authorization, including comprehensive pre-development activities (see Hills' brief in opposition to motion to transfer at 24-26) and the application preparation itself.

A "judgment" has not yet been entered in this matter. However, the December 19, 1984 immunity order reflects the fact that Bernards had indeed adopted Ordinance 704 in response to its constitutional obligation. The concession of ordinance invalidity and adoption of a compliant ordinance was the quid pro quo for the relief granted to Bernards. The situation is, in fact, no different than if summary judgment had been entered with a direction to rezone. Hills respectfully submits that Bernards should not now be permitted to retroactively impose an ordinance amendment for the purpose of frustrating development pursuant to the compliance ordinance adopted under the above-

described circumstances. The special equities which militate against such retroactive application have been discussed above. Thus, the facts of this case present a situation quite analogous to that where a conventional "judgment" has in fact been entered. See Kruvant, supra.

In sum, the circumstances of this case are sufficiently unusual to warrant against any mechanistic application of equitable estoppel principles. The special equities involved lean entirely in Hills' favor. Bernards simply has absolutely no legitimate reason to frustrate Hills' development application. "There is no easy formula to resolve issues of this kind." Tremarco Corp. v. Garzio, 32 N.J. 448, 457 (1960). A balance must be struck. Ibid. Upon any balancing of equities, that balance tips heavily against application of a Section 707 amendment to Hills.

Bernards has argued that, as a matter of law, it cannot be estopped since, in Bernards' view, Section 707(E) is ultra vires in the "primary" sense and therefore "utterly beyond the jurisdiction of" Bernards. See e.g. Summer Cottages Ass'n of Cape May v. City of Cape May, 19 N.J. 493, 504(1955). First, as discussed above, Section 707 is not ultra vires at all; it is an authorized enactment which finds overwhelming support in sound planning theory. Therefore, the issue of whether Section 707 is ultra vires in the "primary" or "secondary" sense does not arise. However, even if Section 707 were not authorized, it is certainly not ultra vires in the primary sense. The MLUL clearly grants to Bernards the authority to review and approve development applications. If Section 707 is not expressly authorized, it calls for "the irregular exercise of a basic power under the legislative grant in matters not of themselves jurisdictional." Summer Cottages Ass'n, supra, 19 N.J. at 504 (irregular sale of land held within municipality's essential jurisdiction). See also



Vogt v. Borough of Belmar, 14 N.J. 195, 205 (1954) (estoppel in pais may apply where matter within realm of municipal general power and authority and especially where an irregularity or deficiency is largely technical or formal and not of the jurisdiction).

Indeed, if Section 707 is not expressly authorized, any deficiency is surely "largely technical." The Planning Board clearly has jurisdiction to review and approve development applications. Hills' estoppel argument is not foreclosed as a matter of law. Again, the essential facts are not in dispute. Bernards induced Hills to file a Section 707 application and to refrain from filing any preliminary applications. Thereafter, Bernards stood silently by while Hills thus expended its time and resources, a silence which should itself estop Bernards. Summer Cottages Ass'n supra, 19 N.J. at 504. "The repudiation of one's act done or position assumed is not permissible where that course would work injustice to another who, having the right to do so, has relied thereon." Ibid.

Conversely, if Bernards is estopped, no legitimate governmental activity will be impinged. The only effects of the ordinance modifying Section 707 would be to burden Hills with extraordinary expense and extensively delay construction of Hills' inclusionary development. Such effects serve no legitimate purpose. Therefore, Hills respectfully submits that Bernards should be equitably estopped from applying any amendment of Section 707 to Hills.

#### POINT IV

**APPLICATION OF AN AMENDMENT OF SECTION 707  
TO HILLS WOULD RESULT IN SEVERE AND  
IRREPARABLE HARM TO HILLS AND TO THE LOWER  
INCOME HOUSEHOLDS WHO ARE TO BENEFIT FROM  
HILLS' INCLUSIONARY DEVELOPMENT.**

The Court has requested that Hills supplement its prior recitation of the manner and extent to which Hills would be harmed by an amendment of Section 707(E). A description of such harm follows.

The most clear-cut aspect of the harm which would result is that of loss of vesting itself. As Section 707(E) now reads, approval of an application submitted pursuant to that section expressly confers development rights upon the applicant. Such vesting would effectively immunize Hills from any substantive zoning changes. As amended, Section 707(E) operates to divest Hills of the development rights which would otherwise accrue pursuant to approval of Hills' application. The harm to Hills and lower income households which would result from a zoning change is self-evident. Moreover, lack of vesting will subject Hills to any site plan/subdivision ordinance amendments thereby compelling Hills to re-design and re-engineer exceptionally expensive plans.

Similarly, in the absence of the vesting provision, the Planning Board would in no way be bound by any aspect of the Section 707 application "approved" by the Planning Board. Hence, when Hills submitted its Section 708 "preliminary" plans, Hills would have no enforceable rights as a result of its Section 707 approval and Hills would be compelled to accede to any change desired by the Planning Board. Due to the extraordinary nature of engineering detail required by Section 708, the cost of re-preparing and re-engineering the plans would be staggering. (Affidavit of Mizerny). Such a cost-generative process can be avoided only if a Section 707(E) amendment does not apply to Hills.

Bernards has suggested that there is no basis in the record for the notion that Bernards would not approve Hills' preliminary applications, despite a lack of vesting, if the plans are in conformance with an approved Section 707 application. In light of Bernards' recent activities (e.g. filing a motion to transfer, attempting to amend Section 707(E)), Hills believes there is overwhelming support for Hills' urgent need to acquire some legal rights upon

approval of its Section 707 application. More fundamentally, however, it bears noting that planning board memberships change over time. One board may approve the Section 707 application while a differently constituted board may review a Section 708 application. Likewise, different boards may review different Section 708 applications. In short, without vesting, Hills may be compelled to return to the drawing boards again and again only to be frustrated at every turn. To say the least, such a process would be extremely cost-generative. In fact, the process would likely be completely infeasible. (Affidavit of Mizerny).

Related to the above is the interminable delay which would result from the process. If, as provided by original Section 707(E), Hills' application is vested, construction may commence upon approval. Section 707(E)2.\* If such language is deleted, construction of improvements may not commence on any portion of the tract until a Section 708 application is approved for a section of the tract. As noted above, approval of a Section 708 application will be rendered exceedingly more difficult if Hills gains no rights upon approval of its Section 707 application. Thus, delay in construction would result and Hills' carrying costs and approval expenses would be multiplied accordingly. In fact, it is likely that an entire construction season would be lost. (Affidavit of Kerwin previously submitted to this Court). Correspondingly, construction of lower income housing would be delayed for at least one year, all to the detriment of those who would benefit from such housing.

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\* The right to commence improvements construction upon Section 707 approval is within the discretion of the Planning Board. Section 707(E). However, the discretionary right to develop is totally removed by the modification of Section 707(E). Thus, if Section 707(E) is modified, construction of improvements could not commence until Section 708 approvals were obtained regardless of the circumstances.

Another tangible effect of loss of vesting is loss of marketing flexibility. If a Section 707 application is vested the overall plan parameters are fixed yet Hills retains a degree of flexibility to alter the mix of unit types in order to respond to a change in the market. If an overall Section 708 application were feasible and could be approved, such flexibility would be lost due to the prohibitive cost of re-engineering such an application. (Affidavit of Mizerny).

Finally, it must again be stressed that, in the absence of vesting pursuant to Section 707(E), there is no feasible way, cost-generative or otherwise, for Hills to process its development application. As acknowledged by Township representatives, Bernards' "preliminary" approval ordinance, Section 708, is far too demanding for a planned development of any magnitude. (Exhibits A and B to Hirsch affidavit; See also Affidavit of Mizerny). A Section 708 application for Hills' entire development would be prohibitively expensive and, as the Township has acknowledged, incomprehensible to the Board. Further, without binding agreement on the overall parameters of the development, the already prohibitively expensive overall Section 708 application would almost certainly have to be re-drafted and re-engineered.

Similarly, "piecemeal" Section 708 applications are not feasible and are in the interest of no one. The Planning Board would certainly not wish to approve any such applications without knowing what the entire development will entail. While any one particular board might be satisfied with overall design as depicted on a non-vested Section 707 approved application, there is no assurance that a reconstituted board will likewise find the plan attractive. If Hills' rights are confined to those resulting from Section 708 applications, the desires of the planning board(s) would likely change over time and Hills would be compelled to draft and re-draft numerous and perhaps conflicting Section 708 applications. Again, this scenario serves the legitimate interest of no one.

There is only one feasible and equitable solution: Bernards should not be permitted to apply an amendment of Section 707(E) to Hills. Short of revamping Bernards' entire approval process, there is simply no other alternative. Prior to Hills' submission of a Section 707 application, Bernards itself recognized that reality. Hills and lower income households would be gravely harmed by an amendment of Section 707(E) and Bernards cannot seriously contend to the contrary. Since application of the proposed amendment to Hills would advance no legitimate interest, Hills respectfully requests that Bernards' attempt to frustrate Hills' inclusionary development be declared unlawful.

**CONCLUSION**


For the aforementioned reasons, Hills respectfully requests that this Court: (1) declare the proviso contained in amended Ordinance 746 to be invalid; and (2) permanently enjoin Bernards from enacting any future ordinance which would have the effect of divesting Hills of the development rights which would otherwise accrue upon approval of a Section 707 development application submitted by Hills.

Respectfully submitted,

BRENER, WALLACK & HILL  
Attorneys for Plaintiff - The  
Hills Development Company

By: 

Guliet D. Hirsch

  
Thomas F. Carroll

Dated: January 2, 1986

REC'D. & FILED  
SUPERIOR COURT  
OF NEW JERSEY

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M.V. 8  
JOHN M. MAYSON  
CLERK

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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  
:  
: AFFIDAVIT IN SUPPORT  
: OF MOTION TO MODIFY TERMS  
: OF STAY  
:  
:  
:

STATE OF PENNSYLVANIA )  
                                  ) ss:  
COUNTY OF PHILADELPHIA)

Kenneth J. Mizerny, of full age, having been duly sworn according to law upon his oath deposes and says:

1. I am a professional planner certified by the State of New Jersey and a member of the firm of Sullivan & Arfaa which is a planning and architectural firm located at 2314 Market Street,

Philadelphia, Pennsylvania. I am on the faculty of the Department of Architecture, at Drexel University where I teach site planning, and am the principal planning expert for The Hills Development Company ("Hills") in the above-captioned case.

2. This Affidavit is submitted in support of Hills' motion to modify the terms of a stay entered in this matter, i.e. to enjoin Bernards Township from amending Section 707(E) of the Township's Land Use Ordinances in a manner which would divest Hills of the development rights which would otherwise accrue upon approval of Hills' Section 707 development application.
3. As part of my responsibilities as a planner, I have reviewed many land use ordinances including, in New Jersey, the ordinances of the Townships of Bedminster, Princeton, Old Bridge, Morris, Gloucester, Franklin, Eastampton and the Town of Clinton and, in many cases, my review has been for the purpose of determining whether said ordinances contain provisions which have an exclusionary and/or cost-generative impact.
4. Land use control in Bernards Township is exercised by virtue of the administration and enforcement of the Township of Bernards Land Development Ordinance, as amended and supplemented.
5. I have carefully reviewed Article 700 of the Bernards' Land Development Ordinance. Article 700 contains all requirements for development applications.
6. Sections 708 and 709 of Article 700 of the ordinance outline the requirements for preliminary and final approvals, respectively.
7. Sections 702C and 707 of Article 700 of the ordinance provide for "conceptual approval" of development plans for "planned



development" including "cluster residential development", "planned residential developments", and "planned employment developments", as such terms are defined in the ordinance. "Ordinance #704", which authorizes "planned residential developments" including a 20% setback within the R-5 and R-8 zones, provides that applicants with 10 or more acres may elect to submit an application for approval pursuant to Section 707 of Bernards' ordinance.

8. Section 707 requires that a conceptual approval application must include: a key map (at scale of 1 inch equals 2000 ft.), title block, owners of record, applicant's signature, scale, revision box, project constraints map, conceptual development plan, conceptual circulation plan, conceptual utility plan, conceptual drainage plan, an environmental assessment as per Section 708 and a staging plan.
9. The plans, studies and documents required by Section 707 are comprehensive in scope and sufficient to qualify as application documents "in tentative form for discussion purposes".
10. Over the course of the past year, I have been involved in numerous meetings attended by representatives of Bernards and Hills at which the appropriate development application procedure for Hills was discussed. It was generally agreed that Hills should file a Section 707 development application due to the magnitude of the proposed inclusionary development (approximately 501 acres). In fact, representatives of Bernards consistently advised that "piecemeal" Section 708 (preliminary) applications covering portions of Hills' tract would not be seriously

entertained since Bernards was concerned with ascertaining the scope of the overall development plan.

11. The President of Hills, John H. Kerwin, authorized Sullivan & Arfaa to oversee preparation of an overall Section 707 application. Sullivan & Arfaa prepared some of the application documents and studies itself and coordinated the preparation of other application documents and studies by various consultants retained by Hills.
12. On October 17, 1985, a complete Section 707 application was submitted to Bernards for its review.
13. Section 707 represents the advanced view of the appropriate method of processing applications for large planned developments. The section demands little in the way of engineering detail yet provides the planning board with thoroughly adequate data upon which the planning board may make an informed decision as to whether the overall development plan conforms with general ordinance requirements and is appropriate from an environmental standpoint. If the board desires certain changes in the plan, such changes can be made at tolerable expense to the developer. Upon approval of the plan, the developer and planning board have fixed all major areas of concern and individual "preliminary" (Section 708) applications can then be prepared and submitted accordingly.
14. Section 707 permits a developer to gain approval of a development plan with relatively modest up-front expenditures. For example, in the case of Hills, I am advised by Hills that the preliminary estimate of the cost of preparing Hills' Section 707 application

is approximately \$250,000.00. On a "per unit" basis (3,023 total units), the cost of a Section 707 application is approximately \$82.69/unit. Even if changes to the Section 707 plan are required, the cost is still relatively modest since no detailed re-engineering need be performed.

15. The other theoretically available mode of attempting to acquire development approvals in Bernards is an application submitted pursuant to Section 708 of the ordinance. This section, although described as "preliminary", unquestionably requires fully engineered drawings which are far beyond that which are properly considered to be in "tentative form for discussion purposes." In fact, a complete preliminary application pursuant to Section 708 would contain essentially all engineering and planning documentation necessary for final approval (Section 709), with the exception of certain architectural elevations, "as-builts" of streets and other public improvements and mathematical computations for lots, buildings and improvements.
16. The generally accepted figure for preliminary applications is approximately \$500.00 per unit. Accepting this figure for the moment, a Section 708 application for Hills' 3,023 units would cost approximately \$1,511,500.00. Due to the excessive requirements of Section 708, this figure is likely conservative. If the planning board does not find a comprehensive Section 708 plan desirable, the plan would have to be re-engineered. Such re-engineering could easily cost Hills well over \$1,000,000.00. If a vested Section 707 application has been approved and vested, such unnecessary re-engineering will be avoided and the overall

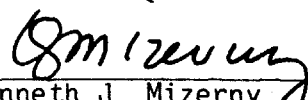
cost of the development is lowered dramatically. In addition, vesting of a Section 707 application would permit Hills to retain some marketing flexibility with respect to the type of units which may be constructed. Since the nature of the market tends to change over time, this is an important economic consideration from a developer's point of view. A vested Section 708 application, if ultimately secured, would not provide such flexibility since the expense and time attendant to re-engineering such a plan would be prohibitive.

17. In my experience before planning boards, it is not uncommon for boards to "change their minds" concerning the desirability of a development plan. Thus, if the overall parameters of a plan are not vested, a developer may believe that a plan is acceptable to the board and engineer accordingly only to find that, for whatever reason, the board ultimately finds the plan to be flawed and the plan must be re-engineered.
18. Of greater concern with large planned developments, the constructions of which is phased over a period of years, is the ever-changing composition of planning boards. While one board may find an overall development plan desirable, a successive board may not. In such a case, if the overall plan is not vested, insurmountable problems may arise. Again, a change of view requires a developer to re-engineer plans at exceptional cost. Since one or more sections of the development may then be under construction, demanded plan changes for the balance of the development will not necessarily be consistent with the portions under construction. For example, a road designed to bear a

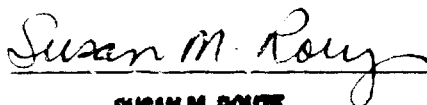
certain number of vehicles may, due to a change of plans, ultimately have to bear a lesser or greater number of vehicles. Again, if the overall plan is not vested, extremely serious planning concerns may arise and jeopardize the sound planning of the entire development.

19. In addition to the poor planning and enormous application expenses which would occur in the absence of a non-vested Section 707 application, additional expense would result from a delay in construction of the development. As per Section 707(E), the Planning Board may permit construction of on and off-site improvements prior to submission of Section 708 "preliminary" applications. BY permitting site clearance, grading, road and sewer/water line installation prior to "preliminary" approval, site preparation time is greatly reduced and carrying costs thus limited.

20. Bernards' ordinances are structured in such a way that a large planned development application can be feasibly processed only if the vested Section 707 procedure is available to an applicant. There is no doubt that, in the absence of a vested Section 707 procedure, Bernards' application process would, at best, be extremely cost-generative and foster poor planning.

  
Kenneth J. Mizerny

Sworn to and subscribed  
before me this 31<sup>st</sup> day  
of December, 1985.



**SUSAN M. ROLZE**  
A Notary Public of New Jersey  
My Commission Expires March 18, 1990

Attorney(s): Brener, Wallack & Hill  
Office Address & Tel. No.: 2-4 Chambers Street, Princeton, NJ 08540  
609-924-0808

Attorney(s) for Plaintiff

THE HILLS DEVELOPMENT COMPANY  
Plaintiff(s)  
vs.  
TOWNSHIP OF BERNARDS, et al.  
Defendant(s)

SUPERIOR COURT OF NEW JERSEY  
SOMERSET/OCEAN COUNTY  
LAW DIVISION

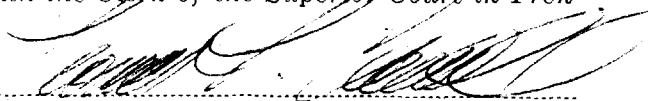
Docket No. L-030039-84 P.W.

CIVIL ACTION

A copy of the within Notice of Motion has been filed with the Clerk of the County of  
at New Jersey

Attorney(s) for

Affidavits have  
The original of the within Notice of Motion has been filed with the Clerk of the Superior Court in Trenton, New Jersey.

  
Thomas F. Carroll, Esq.  
Attorney(s) for Plaintiff

Service of the within

is hereby acknowledged this \_\_\_\_\_ day of \_\_\_\_\_ 19 \_\_\_\_\_

Attorney(s) for

I hereby certify that a copy of the within Answer was served within the time prescribed by Rule 4:6.

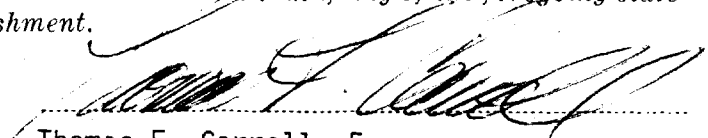
Attorney(s) for

PROOF OF MAILING: On January 2 19 86, I, the undersigned, mailed to  
James E. Davidson, Esq. and Arthur H. Garvin, III, Esq.  
Attorney(s) for  
at 43 Maple Avenue, Morristown, NJ and 9 DeForest Avenue, Summit NJ  
by hand-delivering ~~xxxxxx~~ the following:  
supplemental brief, affidavits and exhibits in support of motion to modify stay

R. 1:5-3 The return receipt card is attached to the original hereof.

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.

Dated: January 2 19 86.

  
Thomas F. Carroll, Esq.



drafts prepared by Bernards Township during the period of 1980 through 1983.

2. In preparation for this Affidavit, I have reviewed the extensive land development ordinance files retained by this firm in connection with the earlier litigation between the Allan-Deane Corporation (The Hills Development Company) and the Township of Bernards.
3. Our files reflect that one of the earliest versions of the proposed Bernards Township Land Development Ordinance as prepared by the Township's consultant, Marshall Frost, was dated June 2, 1980. This version of the ordinance did not contain a vested conceptual approval section, but did contain preliminary and final approval sections which are virtually identical to those contained in the current Bernards Township Land Development Ordinance.
4. The proposed land development ordinance, dated June 2, 1980, was reviewed by the Allan-Deane Corporation's planning consultant (at the time), Harvey S. Moskowitz. Mr. Moskowitz prepared a memorandum dated August 18, 1980 criticizing the June 2, 1980 Land Development Ordinance draft. This memorandum states in pertinent part: "The Bernards Township Land Development Ordinance contains a lengthy list of submission requirements necessary for preliminary plan approval. These submission requirements include such items as building footprints, landscape, lighting and parking plans, engineering for all drainage improvements, etc. All plans must be submitted for all development applications including planned development options. These burdensome



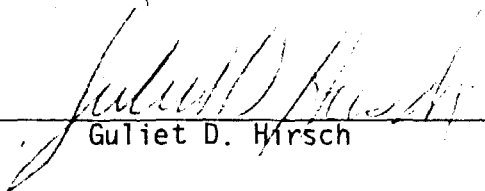
submission requirements mandate that all architectural, landscaping and other technical details of phased-planned developments will be absolutely and unalterably fixed in this preliminary stage. All design and construction flexibility, authorized and encouraged by the Municipal Land Use Law, is thereby lost due to this procedural requirement." (see pages 1-2 of August 18, 1980 memorandum, Appendix A to this Affidavit). "This amount of detail only serves to unduly prolong preparation of a preliminary subdivision and, for most preliminary subdivision applications, would be totally unnecessary. The requirements delays projects and are cost generative" (see page 24 of Appendix A). This memorandum was submitted to Bernards Township, along with letters from this firm criticizing the lack of a conceptual preliminary approval.

5. The next draft of the Bernards Township Land Development Ordinance contained in our files is dated October 7, 1980 and was also prepared by Marshall Frost. It appears that this ordinance draft was adopted sometime in late 1980 with only the most minor revisions. The October 7, 1980 draft does contain the concept approval section which appears in the current ordinance. Thus, the vested concept approval section which Bernards now claims to be unauthorized by the Municipal Land Use Law was adopted and became effective sometime in late 1980 and has thus been in place for approximately five years.
6. Our files also contain a certification of Marshall Frost, dated July 6, 1984 and prepared in opposition to The Hills Development Company's motion for summary judgment. That certification

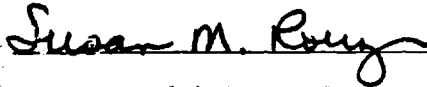
defends the vested concept approval option with the following language: "While the Municipal Land Use Law does not allow a municipality to require a conceptual or sketch plat submission, Bernards Township does provide the applicant the option of preparing plans in a 'tentative' manner to be reviewed on a conceptual basis by the Board. Consequently, as set forth in the requirements of Section 707, the applicant may, if he wishes, provide the Township with a 'conceptual' plan which is more in line with the common definition of the word 'tentative'. During the review of the conceptual plan, major concerns relating to development of site are addressed and, further, approval of the conceptual plan confers upon the applicant the right to development in accordance with that approval for a period of time beyond that normally associated with preliminary and final approval." (see pages 47-48 of Certification of Marshall Frost attached as Appendix B to this Affidavit).

7. Thus, as early as 1980, Bernards Township provided for an optional vested concept approval for all planned developments, and as late as July 6, 1984, the Township's consultant defended the importance of this provision to efficient planned development.
8. A number of municipalities which authorize planned developments have ordinances which authorize an optional concept approval similar to Bernards Ordinance Section 707. To my knowledge, at least two municipalities have obtained judgments of compliance on the basis of ordinances which contain concept approval provisions: Morris Township in Morris County and Bedminster

Township in Somerset County. Other municipalities which authorize vested concept approval are: Clinton Township (Hunterdon County), Old Bridge Township, Monroe Township and East Brunswick Township (Middlesex County).

  
Guliet D. Hirsch

Sworn to and subscribed before me this  
31<sup>st</sup> day of December, 1985

  
\_\_\_\_\_

SUSAN M. ROUZE  
A Notary Public of New Jersey  
My Commission Expires March 18, 1990



## APPENDIX A

TO: Henry Hill, Esq.  
RE: Review of Bernards Township Land Development Ordinance  
DATE: August 18, 1980

## I. INTRODUCTION

Pursuant to your request, I have reviewed the adopted Land Development Ordinance (dated 6/2/80) of Bernards Township in order to ascertain what provisions of the Ordinance violate the provisions of the final judgment in the suit between the Allan-Deane Corporation and the Township of Bernards. This final order, dated March 18, 1980, set forth certain requirements that the revised Land Development Ordinance was required to meet. This memorandum contains my findings.

## II. SUMMARY OF FINDINGS

A. Excessive Submission Requirements

The Bernards Township Land Development Ordinance contains a lengthy list of submission requirements necessary for preliminary plan approval. These submission requirements include such items as building footprints; landscape, lighting and parking plans; and engineering for all drainage improvements; etc. All plans must be submitted for all development applications including planned development options. These burdensome submission requirements mandate that all architectural, landscaping and other technical details of phased plan developments will be absolutely and unalterably fixed in this preliminary stage. All design and construction flexibility,

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authorized and encouraged by the Municipal Land Use Law, is thereby lost due to this procedural requirement.

B. Excessive Submission Procedures

The Ordinance requires four steps or submission stages. These include: (1) Preliminary Development Plan; (2) Final Development Plan; (3) Construction Plans; and (4) As Built Plans.

These requirements are excessive and unduly cost generating. The same community planning objectives could be achieved with procedures which comply with the two step process mandated by the Municipal Land Use Law.

C. Excessive Preliminary Development Application Procedures

While there is the necessity for a reasonable amount of documentation to enable the Planning Board to make an intelligent and informed decision regarding any application, the submission requirements for the preliminary development plan application are far in excess of what may be reasonably required of a planned development applicant at the preliminary stage. Additionally, many of the requirements are repetitive. It is important to note that documents required to be submitted at the preliminary approval phase are required only to be in "tentative form" by the Municipal Land Use Law (N.J.S.A. 40:55D-46a). If the requirements contained in the Ordinance are literally followed, the result would be the production of a premature construction document, perhaps several thousand pages in length at a considerable expense to the applicant. The Planning Board, in turn, will also find that it may not properly and completely review the documents within the time limits mandated by the Municipal Land Use Law. Clearly, excessive preliminary

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application procedures serve neither the applicant nor the town in any way.

D. Net Density Limits Which Violate the Court Order

Contrary to the Court Order, and the letter agreement between the parties, there are numerous provisions which impose restrictions on net densities. These include (but are not limited to): (1) Minimum lot sizes; (2) Minimum lot dimensions; (3) Yard requirements; (4) Required distances between buildings; and (5) Maximum number of units per building. These provisions not only limit achievable densities below densities ordered by the Court on the Allan-Deane properties, but also limit design flexibility in violation of the Municipal Land Use Law.

E. The Variance Requirement for All Design Regulations

One of the most significant and cost generative requirements contained in the design regulation of Article 500 is the requirement for a variance to permit any modification to said regulation. Most of the requirements of Section 500 of the Ordinance are in fact design or performance standards which the Municipal Land Use Law (N.J.S.A. 40:55D-38) requires to be administered through the subdivision and site plan process, with waivers available without going through the prolonged use or bulk variance application process. To place these requirements in the zoning section of the Ordinance and to require a variance therefrom not only violates the intent and spirit of the Municipal Land Use Law and generally accepted land use standards, but is also cost generative and eliminates any flexibility in the development process. The requirement for variances from design regulations should be entirely eliminated.

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F. Excessive Fees

Fees mandated by this Ordinance are excessive and unduly cost generative. For example, if the required fee schedule is applied to the Allan-Deane Development, the developer would have to pay approximately \$130,000.00 in application fees for about 1,300 units. In Bedminster Township, by comparison, the fee for about 2,000 units is approximately \$25,000.00. The fees contained in the proposed Bernards Township Ordinance do not recognize economics of scale in the review of planned developments and should instead be graduated downward as the size of the project increases; i.e., per unit fees should go down as the size of the project goes up. Additionally, the inspection fee of 7 percent is excessive and is in fact higher than the total engineering fees necessary to design and supervise construction of the entire project.

G. Other Provisions Contrary to the Court Order

The Ordinance contains numerous other provisions which are contrary to the Court Order. Some of these include: (1) Inflexible standards; (2) Excessive road widths; (3) The requirement for parking; and (4) Other cost generating submission requirements. A detailed list of the specific provisions of the Land Development Ordinance which are in violation of the Final Judgment follows.

III. DETAILED FINDINGS

A. Article 200, Definition of Terms

1. Page 200.1, definition 5, ADVERSE EFFECT - This definition, which is used as a guide in the review of applications for development, uses such terms as "impractical, unsafe or unsatisfactory



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conditions, improper circulation and drainage, inadequate drainage, unsuitable street grade, insufficient street widths, unsuitable street locations, and danger to health or peril from flood, fire, erosion."

Comment: These are extremely vague terms and offer no specific standards upon which the Planning Board could review an application. It could result in unduly delay in an application and unnecessary costs.

2. Page 200.5, definition 47, DATE OF DECISION - This definition establishes the date of decision as the date of adoption of a resolution memorializing an action by the Board.

Comment: This appears to be in violation of the Municipal Land Use Law (N.J.S.A. 40:55D-10) which establishes certain limits as to the time that a board can act.

3. Page 200.7, definition 68, FINAL DEVELOPMENT PLAN - This requires the final map of a development plan to be filed with the county recording officer. ✓

Comment: This is a violation of the N.J. Municipal Land Use Act which only provides for subdivisions to be filed with the county recording officer.

4. Page 200.13, definition 137, OFF-TRACT IMPROVEMENT - This definition defines an off-tract improvement to include all improvements.

Comment: This appears to be in violation of the Municipal Land Use Law which permits only street, water, sewage and drainage improvements to be required as off-tract improvements.

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6. Page 200.16, definition 169, RETAIL SALES AND SERVICE -  
This particular definition is so unclear and vague as to permit  
great latitude in terms of interpretation of to what stores may  
be permitted. ✓

7. Page 200.16, definition 174, SHOPPING CENTER - This  
definition defines regional shopping centers as ". . . a shopping  
center designed to accommodate a regional market containing at  
least one building with a gross leasable floor area in excess  
of 40,000 square feet." It further goes on to prohibit regional  
shopping centers in all zones.

Comment: This particular definition appears to violate  
the court order which allows Allan-Deane to have 50,000 square feet  
of commercial uses on the property. The court order makes no mention  
that such commercial uses only be devoted to non-regional markets.  
In addition, the Land Development Ordinance fails to define a  
regional market. This permits an arbitrary denial of an application.

8. Page 200.18, definition 189, STREET - This defines,  
under subparagraph a, ARTERIAL STREETS, ". . . are those which  
accommodate high volumes of through traffic."

Comment: No definition of "high volume" is included.

B. Article 300, Planning Organization and Procedures

1. Article 302L3, page 300.9 - This provision requires  
the Board of Adjustment, in reviewing an application for approval  
of a use variance which would include site plan and/or subdivision  
to "follow the same procedures required of the Planning Board  
by the terms of this Ordinance." ✓

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Comment: This appears to restrict the authority and operation of the Zoning Board of Adjustment and violates the Municipal Land Use Law.

2. Article 302N, page 300.9 - This section requires the Board of Adjustment to ". . . refer any applications requiring interpretations of this Ordinance and of the Zoning Map to the Planning Board for comment."

Comment: This appears to violate the Municipal Land Use Law which provides for the Board of Adjustment to interpret the Ordinance and Zoning Map. It further unduly restricts the Board of Adjustment in considering any such matters.

3. Article 303D, page 300.11 - This paragraph provides that "Fees for the rendering of any service by the Planning Board or Zoning Board of Adjustment or any member of their administrative staffs which is not otherwise provided by ordinance may be provided for and adopted as part of the rules of the Board and copies of the said rules and separate fee schedule shall be available to the public."

Comment: It is our understanding that all fees have to be spelled out in the ordinance. This would allow the Planning Board or Board of Adjustment to adopt fee schedules monthly without any need for public hearings, etc.

C. Article 400, Zoning

1. Article 402E, page 400.2 - This requires that public utility buildings or structures including private schools shall not be located in any zone unless approved by the Planning Board as a conditional use.

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Comment: This appears to run counter to several cases which indicate that no zoning distinction can be made between private and public schools. One of the provisions also requires that the building, structure, etc., be designed and arranged so as not to detract from the value of adjoining property. That might be quite difficult to do with respect to a sewer plant or utility substation.

2. Article 402H, page 400.2 - This paragraph requires that where the Board of Adjustment grants a use variance for a use not allowed in the zone but where the use is allowed in other zones in the Township, the density, required conditions, design standards and FAR and coverage for the zone in which the use is allowed shall apply to the use variance.

Comment: This appears to violate the Municipal Land Use Law and unduly restricts the authority of the Board of Adjustment to grant use variances and establish reasonable development standards with respect thereto.

3. Article 403E4, page 400.9 - This indicates that actual development may be less than that determined by the actual density depending on the configuration of the tract or depending on the area of land required for streets, detention basins, or land classified as "severely restricted" which shall not be developed unless found to be suitable for development by the Board.

Comment: This provision which restricts development on land as "severely restricted" unless "found to be suitable for development by the Board" places great authority with the Board to actually

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restrict development in areas which may in fact be suitable for such development. There are no standards to guide the Planning Board. This requirement is repeated in all zones of the Township.

4. Article 403H4, page 400.15, and Article 403H5, page 400.17 -Both of these sections refer to Article 500 and require that single-family development, including attached twins and duplexes on individual lots shall be designed in accordance with the applicable sections of Article 500. Those applicable sections are summarized in Table 504 of Article 500 which establishes minimum lot sizes, lot widths, coverage, frontage, etc.

Comment: This particular provision appears to violate the court order in attempting to regulate maximum net densities and coverage requirements. The court order applies to all development on the Allan-Deane property. While it is the intent of Allan-Deane to develop under the PRD provisions at this time, the restrictions relating to standard single-family development, flag lots and clustered single-family which are contained in Table 401 do in fact establish minimum lot areas and in Tables 501, 502 and 503 establish minimum lot width, yards, frontage and coverage. Again, in violation of the court order.

5. Article 405B, page 400.20 - This section deals with conditional uses. Under the general requirements the Board must find that the proposed use will "not be detrimental to the health, safety and general welfare of the community" and the Board must find that the exterior design of any proposed buildings and the proposed development of the site as a whole shall conform as much as possible

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to surrounding buildings and to such development as permitted by right within this zone.

Comment: These are extremely vague standards. Conditional uses are permitted uses by definition and consequently must be assumed to be nondetrimental to the health, safety, and general welfare of the community. Moreover, the requirement that the proposed development conform as much as possible to surrounding buildings suggests an arbitrary architectural design control not sanctioned by the Municipal Land Use Law.

6. Article 405C6, page 400.24 - This particular provision regulates retail sales and service and professional offices in the PRD-4 zone. The standard allows for a maximum of 30,000 square feet of gross leasable floor area for the first 600 dwelling units and 1,000 square feet of gross leasable floor area for each additional 20 dwelling units thereafter. In addition, the paragraph requires that; (1) the proposed nonresidential use shall not be detrimental to other retail sales and service and professional office uses in the Township; and (2) that the total proposed nonresidential development shall not be of such magnitude to be detrimental to the aggregate retail sales and service and professional office development in the Township; and finally that the proposed nonresidential uses singularly and in combination serve a local and not a regional market. It further establishes maximum gross floor area for single buildings and couples the CO's to a certain percentage of dwelling units occupied.

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Comment: The provisions relating to retail sales and service and professional offices in the PRD-4 zone, when computed, give Allan-Deane a maximum of 40,000 square feet of commercial space which violates the court order which permits 50,000 square feet. Moreover, the standard by which the Planning Board must approve retail spaces are so vague and general as to actually be no standard whatsoever. For example, how does one determine that nonresidential uses shall not be detrimental to other retail sales and services and other professional office uses in the Township. Does this mean that a doctor desiring to locate in a PRD office could not do so if there is a doctor having the same specialty in another part of the Township?

The other requirement that nonresidential development not be detrimental to the aggregate retail sales and service in the Township clearly is an attempt to control competition and prohibit new uses from coming in which would be in competition with established uses. Finally, the requirement that it serve a local as opposed to a regional market is impossible to monitor and to govern. Attorneys, for example, which have out-of-state clients or out-of-community clients might fall under this particular provision.

In short, the conditional use requirements set forth for these uses in the PRD-4 zone bear no relationship to legitimate community concerns. It can be used as a method for denying an applicant the right to construct such uses in the PRD zone.

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7. Article 405C2g, page 400.21 - This provision regulating home offices requires that the conditional use approval terminate with any change in the ownership of the property.

Comment: The Municipal Land Use Law does not provide for termination of conditional uses. Moreover, it appears to us to be a somewhat arbitrary requirement.

8. Article 405C10, page 400.27 - This section permits apartments within single-family residences but it restricts the occupants to be the mother, father, son or daughter of one of the principal occupants of the residence and further requires that if the apartment becomes unoccupied or the principal occupant who is the relative of the occupant no longer lives on the premises, the conditional use approval shall terminate. ✓

Comment: The restriction on the occupant appears to run counter to public policy and certain recent court decisions. Moreover, we question whether or not a time limit can be placed on a conditional use.

D. Article 500, Development Regulations

1. Article 502, page 500.1 - This paragraph requires that no certificate of occupancy may be issued until documentation is submitted with respect to a particular occupant and the ultimate use is found to be in conformity with the general performance regulations.

Comment: This imposes a requirement which provides an unlawful means of control over the occupancy of a building, which under any circumstances has to meet the ordinance requirement.



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2. Article 502B, C, F and G, page 500.1 and 500.2 - These paragraphs all cover performance standards.

Comment: They are so vague and consequently offer no guidance whatsoever. For example, par. G speaks in terms of "excessive heat or odor" without attempting to define them.

3. Article 503A, B and C, page 500.3 - This paragraph establishes standards for development in lands classified as severely restricted, wetlands and floodplains.

Comment: These restrictions allow the Planning Board, with no standards whatsoever, to prohibit development in areas so designated.

4. Article 505B, page 500.9 - This paragraph regulates fences and walls and requires that "Fences or walls shall be symmetrical in appearance; shall have posts or columns separated by identical distances; and shall consist of material conforming to a definite pattern or size. . . ."

Comment: This unduly restricts the design of fences or walls.

5. Article 505B5, page 500.9 - This section allows the construction code official to require a survey to show the proposed location of the fence or wall with respect to the existing property lines,

Comment: This is unduly cost-generating.

6. Article 508D2, page 500.17 - This provision regulates trailers in connection with site construction and mandates that such trailers shall not be moved onto a construction site until the date when construction actually commences.

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Comment: Actually, the provision does not define when construction actually begins but it is usually customary to place such a trailer on the site before the actual date of construction.

7. Article 509A, page 500.18 - This provision regulates the design of multi-family units. It calls for each dwelling unit in a combined complex of dwelling units shall have "a compatible architectural theme with variations in design to provide attractiveness, etc."

Comment: This is vague and unclear and provides no guidance whatsoever to the Planning Board. It appears to be a provision which is not mandated by the Municipal Land Use Law, could be unduly cost generative and would allow the Planning Board to act in an arbitrary and capricious manner.

8. Article 512, page 520.21 - This establishes parking standards for various types of uses. Multi-family residential uses of more than one bedroom or one bedroom and den require 2½ spaces.

Comment: This is unduly restrictive and cost generative.

9. Article 512A2b, page 500.23 - This does not permit parking for single-family detached dwellings on lots of 30,000 square feet or more to be located in a front yard.

Comment: This conflicts with definition 142, PARKING SPACE, which states: "Nothing shall prohibit private driveways for detached dwelling units from being considered off-street parking areas." There is no planning reason for not permitting parking on a driveway leading to a garage and is cost generative.

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10. Article 513A5, page 500.25 - This paragraph deals with drainage and requires the applicant to secure approval from "the appropriate municipal, county, state and federal agencies and offices prior to or as a condition of preliminary approval."

Comment: The Municipal Land Use Law states that the Board may condition its approval upon subsequent applications to other agencies. It makes no mention of requiring it to secure the approval prior to the preliminary approval.

11. Article 513C, page 500.25 - This requirement deals with the design of storm sewers, open channels, etc., and permits the Township Engineer to determine what design capacity shall be used for open channels.

Comment: Again, with no standards this could prove to be unnecessarily cost generative.

12. Article 514C, page 500.26 - This paragraph is concerned with package plants. This provision establishes standards for package plants and requires they be discontinued when public sewers become available and the project tied into the public system. However, Section 514C2 notes that prior to the issuance of the CO the package plant must be turned over to, and owned, maintaine/, and operated by the Bernards Township Sewage Authority. It also requires that all costs associated with the operation and maintenance of the plant shall be paid for by its users. ✓

Comment: There appears to be a conflict in those provisions. Since the plant will be turned over to the Sewer Authority, obviously they will make the final decision to terminate the plant and tie it in with the public system.

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13. Article 517C, page 500.29 - This requires that the developer provide the Township with at least four (4) copies of final "as built plans" showing the installed location of all utilities.

Comment: This is unduly cost generative. Why not just one copy?

14. Article 518A, page 500.29 - This section deals with grading and topsoil removal. It prohibits any topsoil in excess of four (4) inches to be removed from any lot unless certified as excess by the Township Engineer and it further provides any topsoil so removed shall be placed elsewhere within Bernards Township.

Comment: No standards are established to indicate when such topsoil shall be declared surplus. Furthermore, a question of where it should be located is really up to the developer.

15. Article 518B2, page 500.29 - This notes that all areas shall be graded to insure that surface water flows away from buildings and pedestrian walkways and into streets and drainage facilities.

Comment: Unduly cost generating. It also might be desirable and less expensive to direct the drainage flow onto adjacent open space if that was the original natural flow.

16. Article 520A, page 500.32 - This section deals with the removal of trees and prohibits any tree from being removed if located a distance greater than 25 feet from any construction unless approved by the Board. It also requires that all areas of tree removal shall be indicated on the development plan.

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Comment: This appears to be unduly restrictive and inflexible. The intent may be desirable, but obviously certain trees may be dead or old with limited lifespans. Selective weeding could improve the survival of the remainder of the trees. To require the Planning Board to approve the removal of any tree is unduly cost generative.

Under Section B of this article, it notes that whenever grading results from fill being placed around the base of any tree that is to remain, a replacement tree shall be provided, etc.

Comment: Unduly cost generating. This provision suggests that even the slightest amount of fill will adversely affect a tree. There is no evidence to this effect. Standards should be developed so that excessive fill (6 inches or more) would require a replacement tree.

17. Article 521B, page 500.33 - This requires shade trees at least every 50 feet along each side of all streets in any development.

Comment: This is arbitrary, unnecessary, and cost generating, particularly where there may be existing trees or the applicant desires to establish clumps of trees at designated intervals.

18. Article 522B, page 500.33 - This section deals with buffers and requires buffering between PRD's and existing residential developemnt. It further provides that no construction shall occur within the buffer area except drainage improvements, underground utilities, pedestrian and bicycle paths.

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Comment: The provision seems to imply that PRD's require buffering because of inherent adverse characteristics. It might make some planning sense to provide buffering between divergent housing types, but it certainly doesn't when single-family abuts single-family. Moreover, driveways may need to cut through the buffer to provide access from a street. It is also not clear whether or not the buffer can be included as part of any minimum yard or perimeter setback requirements.

19. Article 523A, page 500.34 - This requires that any open space not deeded to the Township shall be owned and maintained by an association.

Comment: This is a legal question, and in fact under a condominium association they do not own the open space.

E. Article 600, Design Standards

1. Article 601A, page 600.1 - The introductory paragraph suggests the design standards set forth in this article as being "benchmarks" with the Board given the right to waive them where the applicant meets four standards.

Comment: Two of the standards; (1) that the resulting change will not have an adverse effect on the occupants of the proposed development; and (2) that the resulting change will not have an adverse effect on the Township or surrounding area, are so broad and vague as to not constitute an enforceable or definable standard. A review of the definition of adverse effect provides no additional assistance since this is equally as vague.

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2. Article 602A, page 600.1 - This requires that improvements must be located on land classified as least restricted.

Comment: This may be unduly cost generative and certain improvements such as sewers and water lines may have to go through other types of lands.

3. Article 602C, page 600.1 - This regulates commercial and office development and requires each building shall have separate access to a public street.

Comment: This may be unnecessarily cost generative to require separate access. It might be effectively handled with joint access for two or more buildings.

4. Article 604A, page 600.2 - This section requires improvements on individual lots to be on land classified as least restrictive.

Comment: It may be necessary to pass through other types of lands to service the lot.

5. Article 604C, page 600.2 - This section establishes the maximum floor area as 20 times the lot width for residential cluster.

Comment: Part of the Allan-Deane lands can be used for residential cluster. This provision violates the court order which prohibits any minimum floor areas to be established. Moreover, there is no basis for establishing the maximum floor area as a function of lot width.

6. Article 605B, page 600.3 - This particular provision regulates single-family development in PRD's and establishes minimum buffers related to the size of the lots on adjacent property.

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Comment: There is no valid planning reason for establishing such variable buffers. This is unnecessarily cost generative.

7. Article 605D, page 600.3 - This section restricts the number of dwelling units in any building to eight.

Comment: This is unduly cost generative.

8. Article 605E, page 600.4 - This clause prescribes a maximum bedroom mix.

Comment: This violates the court order which specifically prohibits this type of requirement.

9. Article 606, page 600.5 - This section deals entirely with the design of streets, etc., and it establishes standard widths, curbing, etc.

Comment: The pavement width of arterial streets is required to be 40 feet violates the court order which establishes a maximum of 30 feet. Moreover, many of the standards appear excessive in terms of the amount of traffic which would be generated by the development. In addition, the requirement that all local streets have granite block curbs is unduly cost generative.

10. Article 608A, page 600.10 - This section lists parking requirements and refers back to Article 5. However, it notes, ". . . the Board may require that parking spaces, in addition to those specified in Section 512A1 be shown on the development plan but not necessarily constructed.

Comment: Violates the Municipal Land Use Law. This leaves the Board the authority to require parking in addition to what is required in the ordinance.



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11. Article 608C2c(1), page 600.12 - This clause requires that the applicant "demonstrate to the Board that ingress and egress will not adversely affect the flow on Township roadways."

Comment: This is an impossible standard since even one driveway with one car entering or exiting could adversely affect the flow of traffic.

12. Article 610A3, page 600.14 - This establishes standards for drainage structures. The specific paragraph notes, "In areas where high water table . . . is anticipated, the Board shall require the applicant to provide adequate subsurface drainage facilities, etc."

Comment: Without any standard, the Board could act in an arbitrary manner and thus would be unnecessarily cost generative.

13. Article 611A, page 600.15 - This requires that a landscaping plan shall be prepared by a professional in the field as defined by the American Society of Landscape Architects.

Comment: There is no such requirement in the Municipal Land Use Law, and obviously one does not have to be a professional architect as defined by the American Society of Landscape Architects to prepare and develop substantive and meaningful landscape plans. This is unnecessarily cost generative.

14. Article 611A3m, page 600.16 - This notes that if soil is to be removed or brought to the site, the quantity, method of transportation and steps to be taken to protect public streets shall be described.

Comment: There is no indication as to what is meant by "protect public streets." There is an implication here that the

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applicant may be required to use smaller trucks than is customary or undertake other work to protect public streets. This could be seriously cost generative.

15. Article 615A, page 600.17 - This section provides and regulates open space. It requires that "The recreation facilities provided should be suitable for use by the anticipated occupants of the development and should augment and not duplicate existing Township recreation facilities in the vicinity of the tract."

Comment: This is not a legitimate standard nor is it reasonable, per se. If there are local tennis courts nearby, the applicant may still desire to provide tennis courts for the residents of the development.

Further, subsection 3 of this section requires that open space in a development shall be located "such that they will be contiguous to existing and planned open space areas off-tract to insure continuity throughout the Township."

Comment: The common open space is designed for the use of the residents and owners of the development. This particular clause unduly restricts the carrying out of that provision.

F. Article 700, Development Application Review Procedures

1. Article 704A4, page 700.3 - This allows the technical coordinating committee to schedule the review of development applications and schedule necessary public hearings.

Comment: This gives undue authority to the technical coordinating committee. This is a responsibility of the Planning Board. When left to the TCC, the applicant has no recourse for

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appeal, and no record upon which to appeal. Moreover, no public discussion is permitted in the TCC meeting (704C1) so an applicant could not object.

2. Article 704D, page 700.4 - This indicates the responsibilities of the TCC. There is no requirement that if the TCC presents technical data or technical support at the meeting, that a representative of the TCC be there in order to be subject to questioning where necessary.

3. Article 705B, page 700.4; Article 706A, page 700.10; and Article 707A, page 700.36 - All of these articles establish a very narrowly defined "window" within which applications may be submitted.

Comment: This particular requirement can be used to effectively thwart and unduly delay an applicant's need for expeditious review of actual submissions and any requested changes. As such it is unduly cost generative. While it may be desirable to establish a minimum time before a meeting that an applicant may submit an application, the requirement for a maximum time should be eliminated.

4. Article 705E, page 700.8, and Article 706D, page 700.18 - These relate to the same provision which permits an applicant to request a waiver of submission requirements but that no application requesting such waiver shall be considered complete.

Comment: The problem, of course, is that without a complete application the Planning Board or Board of Adjustment has no time constraints and could, in considering the request for waivers, unduly delay a developer.

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5. Article 706C, beginning page 700.11 - This establishes details required for preliminary plans.

Comment: The extent of detail required for preliminary plans is extraordinary. For example, it calls for typical street cross sections, centerline profiles, tentative grades and details of all proposed streets (Item #34). It also calls for preliminary elevations and plans for all buildings and structures showing windows, doors, architectural treatment, roof treatment, roof appurtenances, etc. (Item #41).

Other items required as part of preliminary approval (Section F) calls for a natural features report, open space planning report, land coverage and drainage plan report, sedimentation and erosion control planning report, sewer and water planning report, circulation plan and traffic report, utilities plan and report, development schedule plan and report, Township environmental impact assessment.

The latter report includes aesthetic and socio-economic analysis, which includes the estimated changes in tax receipts and fiscal outlay for municipal services, the estimated number and type of jobs to be provided, the number of school children to be produced and any addition to existing municipal services which will be rendered by the project.

This amount of detail only serves to unduly prolong preparation of a preliminary subdivision and for most preliminary subdivision applications would be totally unnecessary. The requirements delays projects and are cost generative.

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6. Article 706H, page 700.33 - This section calls for findings by the Board which includes "the relationship, beneficial or adverse, of the proposed development to the neighborhood and the manner in which the design does or does not further the amenities of light, air, etc."

Comment: These findings bear no relationship to any specific requirements of the ordinance nor are they capable of being objectively analyzed. They can result in undue delay in considering any project or rejecting an otherwise sound project on vague generalities.

7. Article 707B3a, page 700.36 - This paragraph requires an architect's rendering of a typical building showing front, side and rear elevations.

Comment: Unduly cost generating. This information may not be known, even at the time of final approval.

8. Article 707B4i, page 700.39 - This paragraph requires a statement from the technical coordinating committee that it is in receipt of a map showing all utilities in exact location and elevation, that it has examined the drainage plan and found that the interests of the Township and of neighboring properties are adequately protected, and that it has identified those portions of any utilities already installed and those to be installed.

Comment: This delegates to the technical coordinating committee authority which is nonexistent in the Municipal Land Use Law. There is no right of appeal of the action of the TCC nor is there any time limit imposed. It could be used as a device to delay an application.

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9. Article 707B4j, page 700.39 - This paragraph requires a statement from the TCC that all improvements installed prior to application for final approval have been inspected and that such improvements meet the requirements of the Township.

Comment: This delegates to the TCC authority which is not provided in the Municipal Land Use Law.

H. Article 800, Standards for Submission of Design Documents for Public Improvements

1. Article 801, page 800.1 - The last paragraph in this general introductory statement indicates that the documents submitted at the time of preliminary submission should represent graphical solutions and those submitted for final approval or prior to beginning construction shall represent complete plans and specifications.

Comment: There is no indication as to what constitutes graphical solutions, and it may result in the need to submit much more detailed submissions at the time of preliminary than the Municipal Land Use Law requires.

I. Article 900, Fees, Guarantees, Inspections and Off-Tract Improvements

1. Article 901A4, page 900.1 - This paragraph requires that the applicant for preliminary or final subdivision or site plan approval must agree in writing to pay all reasonable costs for professional review and for inspection of improvements.

Comment: This is an open-ended agreement with no appropriate checks on the amount of money that an applicant could be required to pay. Clearly cost generating.

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2. Article 901B1, page 900.1 - This paragraph requires that the subdivider pay for the entire cost of each inspection.

Comment: Same comment as above.

3. Article 901B2, page 900.2 - This paragraph requires that a sum equal to 7 percent of the amount of the performance guarantee shall be deposited in an escrow account.

Comment: The 7 percent cost of inspection does not appear to be based on what the actual inspection costs will be, particularly for a large project.

4. Article 904D, page 900.9 - This paragraph, dealing with off-tract improvements, requires that if the improvements have not been started within 10 years after the date all other development improvements are completed, money deposited shall be transferred to the Municipal Capital Improvements Fund.

Comment: There is no authorization in the Municipal Land Use Law for transferring of the funds to the Municipal Capital Improvements Program.

5. Article 904F, page 900.9 - This paragraph requires that when the off-tract improvement is completed, the cost is recalculated and if the costs have increased, the subdivider or developer shall pay the increase. If the costs have decreased, the applicant or subdivider receives the difference.

Comment: This is an extraordinary clause in view of the fact that the community has 10 years in which to begin construction. By this time the original subdivider and developer may be long gone. It is unworkable and totally unreasonable.





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impossible for the planning board to respond to many of these questions and it is impossible for the technical staff to provide guidance to the Planning Board based upon plans that do not have specific engineering information. Further, it is commonly accepted that the applicant is only required to produce for final approval those items shown on the approved preliminary site plans. It is, from a practical standpoint, therefore necessary to address all of the various technical questions in a very specific manner, and it is necessary to address technical questions in a definitive manner at the time the preliminary approval is received.

(iii) Bernards Township, through its Land Development Ordinance, attempts to address this particular problem and at the same time maximize the value of the work done at the time of preliminary approval. While the Municipal Land Use Law does not allow a municipality to require a conceptual or sketch plat submission, Bernards Township does provide the applicant the option of preparing plans in a "tentative" manner to be reviewed on a conceptual basis by the Board.

Consequently, as set forth in the requirements in section 707, the applicant may, if he wishes, provide the Township with a "conceptual" plan which is more in line with the common definition of the word "tentative". During the review of the conceptual plan, major concerns relating to development of the

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site are addressed and, further, approval of the conceptual plan confers upon the applicant the right to develop in accordance with that approval for a period of time beyond that normally associated with preliminary and final approval.

(iv) Recognizing that the work effort involved in preparing the plans for preliminary approval is significant, the Township provides the applicant with the opportunity to make use of the preliminary approval to initiate construction thereby reducing the total time on the development of the project.

While the drawings may still require additional engineering at the time of preliminary approval, the applicant has the opportunity, and numerous applications have taken advantage of this opportunity, to complete the plans to the satisfaction of the Township Engineer and proceed with construction of site improvements, such as roads, drainage, etc.

(v) While most conceptual plans are not engineered to a sufficient degree, the ordinance even allows, in section 707.E.2., for site improvements to be constructed from conceptual plans if specifically approved by the Planning Board.

(vi) Consequently, while there is substance to Mr. Mizerny's statement that section 708 requires drawings to be "fully" engineered, it is my opinion that the Bernards Township Land Development Ordinance has adequately addressed the problems

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SUPPLEMENTAL EXHIBITS IN SUPPORT OF MOTION TO MODIFY STAY  
Submitted on behalf of The Hills Development Company

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## ARTICLE 700: DEVELOPMENT APPLICATION REVIEW PROCEDURES

### 701. JURISDICTION OF RESPONSIBILITY DURING DEVELOPMENT APPLICATION REVIEW

The Planning Board and Zoning Board of Adjustment have the powers specified in Article 300 of this Ordinance. Certain of the respective powers of the Planning Board and Zoning Board of Adjustment overlap in order to expedite the review of development applications. The overlapping powers are as follows:

- A. Planning Board. The Planning Board shall have the power to act in lieu of the Zoning Board of Adjustment and subject to the same extent and restrictions of the Zoning Board of Adjustment on the following matters pursuant to N.J.S.A. 40:55D-60. Whenever relief is requested pursuant to this Section, the public notice shall include reference to the request for a variance or direction for issuance of a permit, as the case may be.
  1. Grant variances pursuant to N.J.S.A. 40:55D-57c and grant modifications and exceptions pursuant to Article 300 of this Ordinance.
  2. Direct pursuant to N.J.S.A. 40:55D-34 the issuance of a permit for a building or structure in the bed of a mapped street or public drainageway, flood control basin or public area reserved pursuant to N.J.S.A. 40:55D-44.
  3. Direct pursuant to N.J.S.A. 40:55D-35 the issuance of a permit for a building or structure not related to a street.
- B. Zoning Board of Adjustment.
  1. The Zoning Board of Adjustment shall have the power to grant, to the same extent and subject to the same restrictions as the Planning Board, site plan, subdivision or conditional use approval when reviewing an application for approval of a variance pursuant to N.J.S.A. 40:55D-70d, including any variances pursuant to N.J.S.A. 40:55D-70c and modifications and exceptions pursuant to Article 300 of this Ordinance which may be incidental to the request for "d" variance approval.
  2. Should the developer elect to submit a separate application for the variance and a subsequent application for approval of a site plan, subdivision, and/or conditional use, the approval of the variance shall be conditioned upon grant of all required subsequent approvals by the Zoning Board of Adjustment and such conditional approval of the variance shall stipulate a reasonable time period within which an application for preliminary or final approval of the Development Plan shall be submitted before the conditional approval of the variance shall expire. At the request of the applicant, the Zoning Board of Adjustment may grant an extension of the previously stipulated period for submission for up to twelve (12) additional months but not more than one (1) such extension shall be granted.

3. Whenever the Zoning Board of Adjustment is reviewing an application for preliminary approval of a site plan, subdivision or conditional use in connection with an application for variance pursuant to N.J.S.A. 40:55D-70d, whether simultaneously or subsequently, public notice shall be required and shall include reference to the variance.

## 702. REQUIRED APPLICATIONS

- A. Subdivision Review. All subdivisions are subject to the review procedures specified herein.
- B. Site Plan Review. Except as hereinafter provided, no construction permit shall be issued for the erection of or addition to any structure or for the creation of any parking spaces on residential, business and industrial properties or for the addition of driveways and/or paving on commercial business and industrial properties until a site plan has been reviewed and approved by the Planning Board or Zoning Board of Adjustment, as the case may be, except that the approval of a site plan shall not be necessary for the construction of or any addition to a detached single or two-family dwelling unit used solely for residential purposes and its customary accessory building(s) nor for the construction of an addition to an existing structure in any zone which construction does not require the issuance of a construction permit.
- C. Planned Development. All applications for Cluster Residential Developments, Planned Residential Developments or Planned Employment Developments as permitted in Article 400 shall be subject to the review procedures specified herein, except that, where appropriate, and where development of the entire tract is to be phased, the Board may grant conceptual plan approval of the entire project prior to the granting of preliminary approval on any phase in accordance with Section 707 hereinbelow.
- D. Form of Ownership. Prior to any change in the form of ownership of a project, such as from an individual to a condominium or homeowners association, the Planning Board shall review and approve new Maintenance and Open Space Agreements, and shall comment on any Planned Unit Development documents.

## 703. PRE-APPLICATION REVIEW

Development applications shall be filed with the appropriate Board as set forth herein. However, the applicant may, and is encouraged to, meet with the Technical Coordinating Committee for informal review prior to formalizing any application. In this manner, the applicant may be advised on the Township's procedures, be advised of design problems related to the development application, and avoid unnecessary engineering costs. Consequently, the applicant is encouraged to utilize the Technical Coordinating Committee to the fullest, even prior to the development of conceptual plans for the application.

## 704. TECHNICAL COORDINATING COMMITTEE

### A. Composition.

The Technical Coordinating Committee shall have as members the following Township officials or their designated representatives:

Township Administrator

Township Engineer

Construction Code Enforcement Official

Zoning Officer

Health Officer

In addition, the Township Administrator may appoint such other staff members, municipal officials or consultants to the Township or any of its agencies as may be desirable, providing that the membership of the TCC does not exceed nine (9).

### B. Meetings.

1. All TCC meetings are open to the public but are not open to public comment.
2. Minutes of TCC meetings may be taken, but no testimony shall be offered or accepted.
3. The TCC shall meet once each month, which meeting shall generally be held on the second weekday of the month for the purpose of advising the Administrative Officer as to the completeness of applications for development; any additional meetings shall be held at the discretion of the Administrative Officer.

### C. Responsibilities.

1. The TCC shall review each development application for completeness and shall advise the Administrative Officer of any deficiencies.
2. The TCC shall review each development application for compliance with the Township's zoning requirements, development regulations and design standards and shall advise the applicant, the Administrative Officer and the Board of its findings in writing.

The findings of the TCC shall in no way be construed to relieve the applicant of the responsibility for complying with zoning requirements, development regulations and design standards and shall not be binding on either the Board or the applicant.

3. The TCC shall advise the Administrative Officer as to the current status of applications and as to the timely scheduling of public

hearings and reviews of development applications by the Board(s). The TCC shall also advise both the Administrative Officer and the Board(s) of the need for special meetings which shall be scheduled by the Administrative Officer at the direction of the chairman of either Board.

4. The TCC shall, at the request of either Board, provide technical support at meetings of the Board which support may include the presentation of supplementary technical information or independent studies in addition to the written comments resulting from its review.
5. The TCC shall coordinate the review process when both the Planning Board and Zoning Board of Adjustment are involved.
6. The TCC shall provide applicants or prospective applicants with the opportunity for informal discussion prior to the submission of a complete application for development and offer a forum for informal review and technical advice.

#### 705. WAIVERS

On request of the applicant, the Board may waive any of the requirements of Section 706.C and D, Section 707C or Section 708D and F. The applicant shall first submit the request for waiver(s) to the Technical Coordinating Committee. The Technical Coordinating Committee shall review the request for waiver(s) and forward a report to the applicant and the Board. If the TCC is of the opinion that the application can be reviewed technically without the information covered by the request for waiver(s), the application will be declared complete. If the TCC is of the opinion that the information is required, the applicant can either submit the required information and have the application declared complete, or ask the Board for a decision on the need for the information.

- A. If the application has been declared complete, the Board will process the application. However, as part of the process, the applicant shall request and the Board shall provide a formal decision as to the waiver(s) requested. If the request for waiver(s) is granted, action on the application by the Board shall occur within the time limit established in this Ordinance. If the request for waiver(s) is denied, action by the Board shall occur within the time limits established by this Ordinance, except that, if necessary, the time limit shall be so extended that the Board has thirty (30) days in which to act after the submission of the information covered by the request for waiver(s).
- B. If the application has been declared incomplete because the Technical Coordinating Committee is of the opinion that information covered by the request for waiver(s) is required, the Board will proceed with the review of the application as if it were a complete application containing requests for waiver(s). If, as part of that review, the Board takes action to grant the waiver(s) requested, the time limit for action by the Board shall start at the time the Technical Coordinating Committee declared the application incomplete. If, however, the Board denies the request for waiver(s), the application shall be deemed incomplete until the material covered by the request for waiver(s) has been submitted.

- C. As part of any application containing a request for waiver(s), the applicant shall agree in writing to extend the time period as necessary, in accordance with Section 705.A. and B. above.

706. SUBMISSION OF APPLICATIONS FOR FINAL APPROVAL OF MINOR SUBDIVISIONS AND MINOR SUBDIVISIONS/FLAG LOTS

- A. General. The procedures and details set forth below constitute the only submission requirements for final approval of minor subdivisions and minor subdivisions/flag lots unless otherwise provided for in this Ordinance.

B. Procedure for Submitting Applications for Final Approval of Minor Subdivisions and Minor Subdivisions/Flag Lots.

1. The applicant shall submit to the Administrative Officer after the 15th day of the calendar month preceding the first regularly scheduled monthly meeting of the Board but not later than the first day of the calendar month in which such meeting is to be held, fourteen (14) copies of the plat in accordance with Section 706C hereinbelow for purposes of classification, preliminary discussion and appropriate action; four (4) copies of the completed application forms; and the fee in accordance with Section 901 of this Ordinance. The Administrative Officer shall first process the application through the TCC and certify the application as complete or notify the applicant in writing of any deficiencies within forty five (45) days of the submission. If the application has been found to be complete, the Administrative Officer shall forward it to the appropriate Board secretary who shall issue an application number. Once an application has been assigned a number, such number shall appear on all papers, maps, plats, and other documents submitted for processing in conjunction with the application. If the application has been found to be incomplete, it shall be returned to the applicant who may submit an appropriately revised application as in the first instance.
2. The appropriate Board secretary shall forward one copy of the submission to the County Planning Board for review and action.
3. Additional copies of the submission may be requested from the applicant to be forwarded to other individuals, offices and agencies for information, review and comment.

C. Details Required for Final Approval of Minor Subdivisions and Minor Subdivisions/Flag Lots.

No plat shall be classified and approved as a minor subdivision unless drawn by a Professional Engineer or Land Surveyor licensed to practice in the State of New Jersey. The plat submitted for final approval of minor subdivisions and minor subdivisions/flag lots shall be based on tax map information or some other similarly accurate base and drawn at a scale of not more than 50 feet to the inch on one of the following standard size sheets: 8½ x 13 inches, 15 x 21 inches or 24 x 36 inches, to enable the entire tract to be shown on one sheet unless an alternate



size is approved by the Township Engineer. The plat shall show or include the following information:

1. A key map of the proposed development superimposed on a map of a section of the Township showing all roads and streets within one-half mile of the proposed development boundaries at a scale of one inch equals not more than 2,000 feet.
2. Title Block.
  - a. Name of development, municipality and county.
  - b. Name and address of developer.
  - c. Scale.
  - d. Date of preparation.
  - e. Development application number.
  - f. Name and address of person(s) preparing the application, and signature, date, seal, and license number.
3. Name and address of owner or owners of record, and the authorized agent, if any.
4. Signature of the applicant, and, if the applicant is not the owner, the signed consent of the owner.
5. Graphic scale and north arrow.
6. Revision box and date of each revision.
7. Existing block and lot number(s) of the lot(s) to be developed as they appear on the municipal tax map.
8. A map of the entire tract or property showing the location of that portion to be divided therefrom, giving all distances and showing all roads abutting or transversing the property. Development boundaries shall be clearly delineated.
9. The name of all adjoining property owners as disclosed by the most recent Township tax records.
10. Any municipal limits within 200 feet of the development and the names of the adjoining municipalities.
11. The location of existing and proposed property lines, streets, buildings (with an indication as to whether existing buildings will be retained or removed), parking spaces, loading areas, driveways, water courses, railroads, bridges, culverts, drain pipes, and any natural features and treed areas, both within the tract and within five hundred feet of its boundary.

12. Area in square feet of all existing and proposed lots.
13. Bearings and distances of all sides and indication of any existing reference corners in the tract. (Bearings to the nearest 30 seconds, distance to the nearest 100th of a foot, error of closure 1/10,000 minimum.) All bearings shall be in the New Jersey Plane Coordinate System.
14. Sufficient elevations or contours to determine the general slope and natural drainage of the land and the high and low points. Use should be made of the Township Topographic Maps and all elevations shall be based upon USC & GS datum.
15. All streets as shown on the Official Map or Master Plan whenever they lie within the development or within 200 feet of it.
16. The location and width of all existing and proposed utility and drainage easements. Where a proposed or potential new building site is to be established, plans for water supply, sewage disposal and storm drainage shall be submitted. When an individual water supply and/or sewage disposal system is proposed, the plan for such system must be approved by the appropriate local, County or State agency. When a public sewage disposal system is not available, the developer shall have percolation tests made and shall have such tests approved by the Board of Health and shall submit the results of such approved tests with the minor subdivision plat.
17. Zone district boundaries.
18. Proposed buffer and landscaped areas, including types and sizes of plantings and planting, staking and mulching details.
19. Delineation of flood plain and wetlands areas in accordance with Article 500 of this Ordinance.
20. A copy of any protective covenants or deed restrictions applying to the lands being developed.
21. A sketch of the proposed layout or disposition of remaining lands, if any.
22. For plats involving a corner lot or lots, the required sight triangle easement(s).

23. If the applicant intends to file by deed(s) record of the approved subdivision with the County Recording Officer, the following signature block shall be provided on the deed(s):

**APPROVED BY THE BERNARDS TOWNSHIP PLANNING BOARD**

\_\_\_\_\_  
Planning Board Chairman

\_\_\_\_\_  
Date

\_\_\_\_\_  
Planning Board Secretary

\_\_\_\_\_  
Date

24. If the applicant intends to file the plat as record of the approved subdivision with the County Recording Officer, the plat shall be prepared in compliance with the "Map Filing Act" P.L.1960,C.141 (C.46.2309.9 et seq.) and bear the signature block noted in Section 706C.23. above.
25. No application shall be deemed complete unless all fees required at the time of submission shall have been paid.

**D. Additional Details Required Prior to Classification and Approval of a Minor Subdivision/Flag Lot.**

No plat shall be classified and approved as a minor subdivision/flag lot unless it shows:

1. All details specified in Section 706.C. above.
2. Existing and proposed contours at two foot intervals.
3. The location and species of all existing trees or groups of trees having a diameter in excess of six (6) inches (D.B.H.). The location of all wooded areas and the approximate number of trees per acre shall be shown when the tree count is more than 25 trees per acre.
4. An erosion and sedimentation control plan as specified in Article 500.
5. A plan and profile of the proposed driveway.
6. The elevation of the first floor of any existing and proposed building(s).
7. The location of proposed and existing septic systems and wells, if applicable, on both the flag and remainder.
8. The location of all existing and proposed improvements on the flag, remainder, and adjoining properties.

**E. Action by the Township.**

1. The Board shall take action on minor subdivisions and minor subdivisions/flag lot applications within forty-five days after the certification by the Administrative Officer of the submission of a complete application or within such further time as may be consented to in writing by the applicant. Failure of the Board to act within the prescribed time period shall constitute approval.
2. Any proposed development plan, determined by the Board to be creating, imposing, aggravating or leading to the possibility of an adverse effect upon either the property in question or upon adjacent properties, may be required to be revised to remove such adverse effect(s) prior to further review, classification or approval by the Board, providing that the time period required for action by the Board is not extended unless such extension is consented to in writing by the applicant. Where the remaining portion of the original tract is of sufficient size to be developed further, the applicant may be required to submit a sketch of the entire remaining portion of the tract to indicate a feasible plan whereby the Development Plan under review, together with any subsequent Development Plans that may be submitted, will not create, impose, aggravate or lead to any such adverse effect.
3. If an application for development is approved as a minor subdivision or minor subdivision/flag lot, a notation to that effect, including the date of decision, shall be made on the master copy of the plat. At least eight (8) copies and one reverse sepia of the plat shall be signed by the chairman and secretary of the Board (or the acting chairman or secretary where either or both may be absent). No further approval of the application shall be required. In the event the same is disapproved by the Board, the secretary of the Board shall, within seven days of the adoption of a resolution memorializing the disapproval, notify the applicant in writing of such disapproval and the reasons therefor. In acting on the application, the Township shall consider a report received, in writing, from the County Planning Board within thirty days after their receipt of the plat. If a reply is not received from the County Planning Board within thirty days, the plat shall be deemed to have been approved by them.
4. Within 190 days from the date of decision approving a minor subdivision or a minor subdivision/flag lot, a plat map drawn in compliance with the Map Filing Act P.L. 190c.141 (C.46:23-9.9 et seq.) and/or deed description(s) shall be filed by the applicant with the County Recording Officer. Unless filed within the 190 days, the approval shall expire and the plat will require Board approval as in the first instance. The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor subdivision approval was granted, shall not be changed for a period of two years after the date of minor subdivision approval by the Board, provided that the approved Development Plan shall have been duly recorded as provided in this section. The zoning requirements and general terms and

conditions for a minor subdivision/flag lot shall not be changed at any time providing that the approved Development Plan shall have been duly recorded. A copy of the recorded instrument shall be given to the secretary of the Planning Board or Zoning Board of Adjustment, as the case may be.

5. If the application is classified as a major subdivision, or if it is determined that variance action will be necessary, the Board shall deny the application for minor subdivision approval and shall so notify the applicant in writing within seven days of the date of decision.

F. Distribution of Approved Plat. The secretary of the Board shall forward copies to each of the following within ten (10) days of the date of decision:

Applicant (2)

Municipal Engineer (1)

Construction Official or Zoning Officer (1)

Tax Assessor (1)

County Planning Board (1)

Health Officer (1)

707. SUBMISSION OF APPLICATIONS FOR CONCEPTUAL APPROVALS OF DEVELOPMENT PLANS FOR RESIDENTIAL CLUSTER DEVELOPMENT AND PLANNED DEVELOPMENT

A. General.

At the applicant's option, a conceptual Development Plan for a Residential Cluster Development or Planned Development may be submitted for review and approval by the Board prior to any preliminary Development Plan submission.

B. Procedure for Submitting Application for Conceptual Approval.

1. The applicant may submit to the Administrative Officer, after the 15th day of the calendar month preceding the first regularly scheduled monthly meeting of the Board, but not later than the first day of the calendar month in which such meeting is to be held, six (6) copies of the plat in accordance with Section 707C. hereinbelow for purposes of classification, discussion and appropriate action; four (4) copies of the completed application form; and the fee in accordance with Section 901 of this Ordinance. The Administrative Officer shall first process the application through the TCC and certify the application as complete or notify the applicant in writing of any deficiencies within forty-five (45) days of the submission. If the application has been found to be complete, the Administrative Officer shall forward it to the

appropriate Board secretary, who shall issue an application number. Once an application has been assigned a number, such number shall appear on all papers, maps, plats, and other documents submitted for processing in conjunction with the application. If the application has been found to be incomplete, it shall be returned to the applicant who may submit an appropriately revised application as in the first instance.

2. The appropriate Board secretary shall forward one copy of the submission to the County Planning Board for review and comment.
3. Additional copies of the submission may be requested from the applicant to be forwarded to other individuals, offices, and agencies for information, review and comment.

C. Information Required for Conceptual Approval.

1. General. The conceptual review is intended to provide the applicant with a review and discussion by the Board of major areas of concern such as traffic circulation, access, drainage, environmental impacts, methods of providing utilities, water and sewerage, intensity of development, and project scheduling. Additionally, by providing a review of these items, preliminary and final Development Plan submissions for each of the phases of the development can address site-oriented problems within a previously established framework encompassing the development of the entire tract.
2. Specific Submission Requirements.
  - a. A key map of the tract superimposed on a map of a section of the Township showing all roads and streets within one-half mile of the proposed development at a scale of one inch equals not more than 2,000 feet.
  - b. Title Block
    1. Name of development, municipality and county.
    2. Name and address of developer.
    3. Scale.
    4. Date of preparation.
    5. Development application number.
    6. Name and address of person(s) preparing the application and the signature, date, seal, and license number.
  - c. Name and address of the owner or owners of record, and authorized agent, if any.
  - d. Signature of the applicant and, if the applicant is not the owner, the signed consent of the owner.
  - e. Graphic scale and north arrow.
  - f. Revision box and date of each revision.

- g. **A project constraints map showing wetlands, flood plains, slopes in excess of fifteen percent (15%), buffer areas (including areas of landscape screening) and treed areas.**
- h. **A conceptual Development Plan indicating the total number of dwelling units; buffer areas (including areas of landscape screening); if housing types are shown, the set back of the housing units from roads, alternate housing types and existing development; anticipated recreation areas, anticipated type(s) of accessory buildings and, if applicable, retail development. The plan should reflect the scope and type of development and probable areas of development. Detailed information is not required. However, sufficient information should be provided to show that the level of anticipated development can be accomplished on the tract in accordance with the provisions of this Ordinance.**
- i. **A conceptual circulation plan indicating the proposed location of roadways providing circulation through the site, typical roadway sections, locations of access to the site and anticipated improvements to existing on-tract roadways, as well as off-tract roadway improvements, if required. The roadways should be shown in sufficient detail to establish their locations, and ensure that grades and curvature are satisfactory for the volumes of traffic anticipated. Additionally, pedestrian and bicycle circulation should be addressed.**
- j. **A conceptual utility plan indicating how water, gas , electricity, telephone, CATV, and if applicable, sewerage will be provided for the development. The plan should show the general utility pattern throughout the proposed development and should address the locations and required crossings of improvements that will be installed prior to any submissions for preliminary approval of individual phases of the development.**
- k. **A conceptual drainage plan indicating the size and location of detention (or retention) facilities, drainage patterns and major stream crossings. Information shall be provided in sufficient detail to ensure that the storm water management system provided will be adequate for the site and that it will allow the anticipated level of development to take place.**
- l. **An environmental assessment in accordance with Section 708 reflecting total development of the tract. Once submitted and reviewed, the assessment will form the basis for preliminary submission(s). Only when modifications occur on individual Development Plans for each phase, which may, in the opinion of the Board, result in a change to the overall impacts examined in the original environmental assessment, will revisions to the original environmental assessment be required at the time of the preliminary submission(s). Those portions of the environmental assessment dealing with site specific information may be submitted as an addendum to the**

environmental assessment at the time of preliminary submission.

- m. A staging plan showing anticipated stages of construction, relating the sequence of construction of on-tract and off-tract improvements, accessory structures, recreation facilities, etc. to the sequence of construction of the principal buildings.
- n. If, during the course of review, the Board finds that additional information is required prior to acting on the application, such information may be requested of the applicant.

D. Action by the Township

- 1. The Board shall take action on conceptual plans within 95 days after the certification by the Administrative Officer of the submission of a complete application. Failure by the Board to act within the prescribed time period shall constitute approval.
- 2. Prior to taking action on any conceptual plan, the Board shall set forth the reasons for such action, with or without conditions, or for the denial. The Board shall address whether the conceptual plan would or would not be in the public interest, including, but not limited to, findings of fact based on the following:
  - a. That the total number of dwelling units is allowed under this Ordinance and that, after reviewing the conceptual plan, the constraints map, and other documentation submitted by the applicant, there is a reasonable expectation that the number of dwelling units shown can be constructed.
  - b. That the amount of non-residential development is in accordance with this Ordinance, and the location, if shown, is reasonable to service the project, and the surrounding community.
  - c. That the circulation pattern established by the conceptual plan adequately services the project, and, based upon the information submitted by the applicant, can be constructed to the regulations and standards set forth in this Ordinance.
  - d. That the utilities plan submitted by the applicant shows that adequate utilities will be available for the project, and the general location and pattern of installation of these utilities will adequately service the conceptual plan.
  - e. That the drainage plan submitted by the applicant adequately addresses storm water management, and the drainage structures shown are of sufficient size to be reasonably expected to accommodate the necessary storm water detention.
  - f. That the staging plan submitted by the applicant will result in the construction of the project in an orderly manner, with a minimum impact to adjacent development.





construction may occur, but only within the sequence indicated on the staging plan and only after all plans and specifications have been submitted to and approved by the Township Engineer in accordance with the provisions of this Ordinance and only when all guarantees have been posted in accordance with the requirements of this Ordinance.

F. Modifications to an Approved Conceptual Plan.

1. The applicant may, at any time, submit a revised conceptual plan as in the first instance for review and action by the Board. Based upon the revisions requested, the Board may waive some or all of the supporting documentation at the request of the applicant. If the revised conceptual plan is not approved by the Board, the original conceptual plan shall remain in effect. If the revised conceptual plan is approved by the Board, such approval shall not extend the period for which the conceptual approval was originally granted as set forth in 707D hereinabove.
2. The Board may request that the applicant consider the submission of a revised conceptual plan. The applicant shall be under no obligation to accept the suggested revisions. If the applicant agrees to the revisions, and submits the revised conceptual plan, there shall be no additional fee for review of the conceptual plan and the Board may extend the time period for which the conceptual plan approval is in effect.

708. SUBMISSION OF PRELIMINARY PLATS AND PRELIMINARY PLANS

A preliminary submission is required for all subdivisions classified as major subdivisions and of all development proposals requiring site plan review.

A. Procedure for Submitting Preliminary Plats and Preliminary Plans.

1. Submit to the Administrative Officer after the 15th day of the calendar month preceding the first regularly scheduled monthly meeting of the Board but not later than the 1st day of the month in which said meeting is to be held, (14) copies of the preliminary Development Plan in accordance with Section 708C. through F. below; 4 copies of any protective covenants or deed restrictions applying to the lands to be subdivided or developed; 3 copies of the completed application form; and the fee in accordance with Section 901 of this Ordinance. The Administrative Officer shall first process the application through the Technical Coordinating Committee and certify the application as complete or notify the applicant in writing of any deficiencies within forty-five days of the submission. If the application has been found to be complete, the Administrative Officer shall forward it to the appropriate Board secretary who shall issue an application number. Once an application has been assigned a number, such number shall appear on all papers, maps, plats and other documents submitted for processing in conjunction with the application. If the application has been found to be incomplete, it shall be returned to the applicant who may submit an appropriately revised application as in the first instance.

2. The appropriate Board secretary shall forward two copies of the submission to the County Planning Board for review and action.
3. Additional copies of the submission may be requested from the applicant to be forwarded to other individuals, offices and agencies for information, review and comment.

**B. Transfer of Ownership of Land Within a PRD**

1. A portion of land within a PRD which has received conceptual approval may receive Preliminary and Final Subdivision approval from the Board.
2. The application shall meet the requirements of Section 706 and shall incorporate by reference the approved conceptual plan.
3. The approval shall be subject to such conditions as the Board deems necessary to ensure that development will occur in accordance with all aspects of the approved conceptual plan.

**C. Format for Preliminary Development Plans.**

1. Each submission shall be at a scale of 1" equals 50' for a tract up to forty acres in size; 1" equals 100' for a tract over forty acres in size. Each submission shall be on one of three of the following standard sheet sizes: 8½ x 13 inches, 15 x 21 inches, or 24 x 36 inches unless an alternate sheet size is approved by the Township Engineer. If one sheet is not sufficient to contain the entire tract, the map may be divided into sections to be shown on separate sheets of equal sizes, with reference on each sheet to the adjoining sheet.
2. The application shall be submitted in bound sets of drawings. Each set of drawings shall be broken down according to the following criteria:
  - a. Title sheet
  - b. Site survey and layout plan
  - c. Clearing, grading and drainage plan
  - d. Landscape plan
  - e. Lighting, signing and striping plan
  - f. Erosion and sedimentation control plan
  - g. Utilities plan
  - h. Building plans and elevation
  - i. Township standard details

- j. **Public improvement construction documents.** Two sets of construction plans (and specifications) shall be submitted as separate documents in addition to being part of the complete submission. Drawings shall be at a scale of 1" = 30', in the format set forth in Article 800. The degree of completeness required at the time of preliminary submission will depend upon the implementation schedule. If the applicant plans to construct public improvements prior to submission for final approval, the plans should show sufficient detail to allow a thorough engineering review. If, however, the applicant does not plan to construct the improvements prior to submission for final approval, the plans may be graphical, giving typical sections, center line geometry, typical details, limits of construction, general drainage structures, etc.

D. Details Required for Preliminary Development Plans.

1. A key map showing the entire tract and its relation to the surrounding areas, at a scale of one inch equals not less than 2,000 feet.
2. Title block:
  - a. Name of development, municipality and county.
  - b. Name and address of developer.
  - c. Scale.
  - d. Date of preparation.
  - e. Name, address, signature and license number of the professional engineer and other professionals who prepared the drawing.
  - f. Application number.
3. Certification that the applicant is the owner or purchaser under contract for the land.
4. Name and address of the attorney representing parties, if any, giving the name of each client represented.
5. Graphic scale and north arrow.
6. Revision box.
7. Signature block.  
(See Signature Block on following page.)

Signature Block. (Section 707.C.7)

- a. Plan (or plat) of.....  
Lot..... Section..... Map..... Zone.....  
Date ..... Scale .....
- b. Application.....  
I consent to the filing of this Development Plan with the Planning Board/Zoning Board of Adjustment (only include appropriate Board) of the Township of Bernards.  
.....  
Owner ..... Date .....
- c. I hereby certify that I have prepared this Development Plan and that all dimensions and information are correct.  
.....  
Name ..... Title & License No. ....
- d. I have reviewed this Development Plan and certify that it meets all codes and ordinances under my jurisdiction.  
.....  
Township Engineer ..... Date .....
- e. To be signed before the issuance of a construction permit: I hereby certify that all the required improvements have been installed or a bond posted in compliance with all applicable codes and ordinances.  
(If improvements installed)  
.....  
Township Engineer ..... Date .....
- (If bond posted)  
.....  
Township Clerk ..... Date .....
- f. Approved by the Planning Board/Zoning Board of Adjustment(only include appropriate Board).  
Preliminary/Final(Circle one).....  
.....  
Chairman ..... Date .....
- .....  
Secretary ..... Date .....

8. All existing tract boundary or lot lines with lengths of courses to 100ths of a foot and bearings to half minutes, the error of closure not to exceed 1 to 10,000. The tract boundary or lot lines shall be clearly delineated. All bearings shall be in the New Jersey Plane Coordinate System.
9. Existing block and lot number(s) of the lot(s) to be developed as they appear on the municipal tax map.
10. Name and address of the owner or owners of record and the names and addresses of all property owners within 200 feet of the extreme limits of the tract as shown on the most recent tax list prepared by the Township Tax Assessor. Lot and block number of each bordering lot.
11. Municipal boundaries within 200 feet of the tract and the names of the adjoining municipalities.
12. Zoning district boundaries affecting the tract.
13. The location of any portion which is to be developed in relation to the entire tract.
14. Acreage of the tract to be developed to the nearest tenth of an acre.
15. Existing contours at two foot intervals where slopes are less than 15% and at five foot intervals when 15% or more; referred to a known datum and indicated by a dashed line. All contours shall be based upon U.S.C. & G.S. datum.
16. Locations of all existing structures showing front, rear and side yard setback distances, and an indication of whether the existing structures and uses will be retained or removed.
17. The locations and dimensions of all existing railroad rights-of-way, bridges, culverts, water and sewer mains, gas transmission lines and light tension power lines within the tract and within 200 feet of its boundaries.
18. The locations and extent of all existing easements or rights-of-way, whether public or private, affecting the tract, including a statement of the limits and purpose of the easement rights.
19. The names, exact location and width along the property line of all existing streets, recorded streets, or streets shown on an official map or Master Plan of the Township within the tract and within 200 feet of it.
20. The locations and species of all existing trees or groups of trees having a diameter in excess of six (6) inches (D.B.H.). The location of all wooded areas and the approximate number of trees per acre shall be shown when the tree count is more than 25 trees per acre.

21. All existing water courses, including lakes and ponds, and drainage rights-of-way within the tract or within 200 feet thereof.
22. Unique natural features or historic sites or structures within the tract and within 200 feet thereof. The applicant should refer to the Township's Natural Resources Inventory.
23. A copy of all existing protective covenants or deed restrictions of every nature affecting the premises sought to be developed or any part thereof and including a statement as to whether such deeds or covenants are of record. A copy or abstract of the deed or deeds or other instruments by which title is derived with the names of all owners shall also be presented with the application.
24. The boundaries and dimensions of any proposed new lot(s), proposed block and lot numbers as provided by the Township Engineer upon written request, and the area of each proposed lot in square feet.
25. A sketch of the proposed layout or disposition of remaining lands, if any.
26. All public property and property proposed to be dedicated in the tract, accurately outlined and described with existing or proposed uses designated.
27. The location and use of all property to be reserved by covenant in the deed for the common use of all property owners or otherwise.
28. All proposed easements or rights-of-way, whether private or public, the limits and purpose of the easement rights being definitely stated on the plan.
29. Proposed grading at two foot intervals, where slopes are less than 15%, and at five foot intervals when slopes are 15% or more; referred to a known U.S.C. and G.S. datum and indicated by a solid line.
30. For site plans, the location of all proposed buildings, structures, signs and lighting facilities, together with all dimensions necessary to confirm conformity to this Ordinance.
31. For site plans, the location and design of any off-street parking areas or loading areas, showing size and location of bays, aisles, and barriers.
32. All means of vehicular access and egress to and from the tract or site onto public streets, showing the size and location of drive-ways and curb cuts, including the possible utilization of traffic signs, signals, channelization, acceleration and deceleration lanes, additional width and any other devices necessary to prevent a difficult traffic situation.

33. Plans, typical cross sections, centerline profiles, tentative grades and details of all streets which are proposed to be improved, both within, abutting, and off the tract, including curbing, sidewalks, storm drains, and drainage structures. Sight triangles, the radius of curblines and street sign locations shall be clearly indicated at intersections.
34. Plans of proposed improvements and utility layouts including sewers, storm drains, water, gas, telephone and electricity showing feasible connections to any proposed utility systems. If private utilities are proposed, they shall comply fully with all local, county and state regulations. If service will be provided by an existing utility company, a letter from that company stating that service will be available before occupancy will be sufficient. When individual on-site water supply or sewerage disposal is proposed, the system shall be designed in accordance with Article 500 and shall be accompanied by the necessary approvals. If on-site septic systems are proposed, the results of percolation tests shall be submitted with the application along with the approval of the Board of Health.
35. The application shall include plans and computations for any storm drainage systems including the following:
  - a. The size, profile and direction of flow of all existing and proposed storm sewer lines within or adjacent to the tract and the location of each catch basin, inlet, manhole, culvert and headwall with the invert elevations of each.
  - b. The location and extent of any proposed dry wells, ground water recharge basins, detention basins or other water or soil conservation devices.
36. When a stream is proposed for alteration, improvement or relocation or when a drainage structure or fill is proposed over, under, in or along a running stream, evidence of approval or of the request for approval, required modifications, or lack of jurisdiction over the improvement by the New Jersey Division of Water Policy and Supply shall accompany the application. In addition, the following documentation shall be submitted to the Township:
  - a. Cross-sections of water courses and/or drainage swales to scale showing the extent of flood plain, top of bank, normal water levels and bottom elevations at the following locations:
    - 1) At any point where a water course crosses a boundary of the tract.
    - 2) At fifty foot intervals for a distance of 300' upstream and downstream of any point of juncture of two or more water courses within the tract and within 1,000 feet downstream of the tract.





- 4) Existing and proposed contours and site clearance and grading limits.
  - 5) Limits of excavation, haul roads, stockpile areas, staging areas and the temporary and ultimate landscaping of each.
  - 6) Areas with special soils or slope conditions (existing and/or proposed).
  - 7) Specifications for proposed topsoiling, seeding, soil amendment and mulching.
  - 8) Proposed planting schedule:
    - a) Proposed plantings shall be shown on the landscape plan by symbols appropriately scaled to represent the sizes at the time of planting (beds shall be shown in outline).
    - b) A schedule shall be provided giving scientific and common plant names (re: Standard Plant Names, J. Horace McFarland Co., publishers), sizes at the time of planting (American Association of Nurserymen increments), quantities of each kind of plant and proposed planting dates.
  - 9) For site plans, the plan shall show paths, steps, handrails, lighting, signs, site furniture and play equipment, mail boxes, refuse storage devices, fences, retaining walls, surface drainage courses and inlets, and utilities to be located at or above-ground.
  - 10) Details, cross sections, materials, surface and finished grade elevations as necessary for review and evaluation by the Board.
  - 11) Notes regarding special maintenance requirements during the period of establishment and the limits of any such special maintenance areas.
  - 12) Notes regarding permanent or temporary site maintenance commitments.
  - 13) If soil is to be removed or brought to the site, the quantity, method of transportation and steps to be taken to protect public streets shall be described.
39. The proposed location, direction of illumination, power, and type of proposed outdoor lighting, with isolux lines drawn on a copy of the site plan.
40. For a site plan, preliminary elevations and plans of all buildings and structures, showing windows, doors, architectural treatment,

roof treatment, roof appurtenances and screening, floor elevations and proposed methods of energy conservation and the locations, dimension and legend(s) of all proposed signs. The Board may request that architectural renderings of the building(s) and sign(s) be provided to show and document the proposed architectural treatment. For a subdivision, the approximate basement and first floor elevation for each house.

41. Proposed permanent monuments.
  42. A Soil Erosion and Sediment Control Plan as specified in Section 515.
  43. The Board reserves the right to require additional information before granting preliminary approval when unique circumstances affect the tract and/or when the application for development poses special problems for the tract and surrounding area. However, the need for such additional information shall not affect the determination of the completeness of the submission of the application for development.
  44. No application shall be deemed complete unless all fees required at the time of submission have been paid.
- E. Corporate Disclosure. Any corporation or partnership applying for permission to subdivide a parcel of land into six (6) or more lots or applying for a variance to construct a multi-family dwelling of twenty-five (25) or more units or applying for approval of a site to be used for commercial purposes shall submit to the Board a list of the names and addresses of all stockholders or individual partners owning at least 10% of its stock of any class or at least 10% of the interest in the partnership, as the case may be. If another corporation or partnership owns 10% or more of the stock of the applicant corporation, or 10% or greater interest in the applicant partnership, as the case may be, that corporation or partnership shall list the names and addresses of its stockholders or individual partners holding 10% or more of its stock or 10% or greater interest in the partnership, as the case may be, and this requirement shall be followed by every corporate stockholder or partner in a partnership, until the names and addresses of the non-corporate stockholders and individual partners exceeding the 10% ownership criterion have been listed.
- F. Support Documentation. Each application not classified as a minor subdivision or minor subdivision/flag lot shall be accompanied by a Project Report. This report shall include the various items listed hereafter and shall be accompanied by the necessary maps, exhibits, etc. Where maps or exhibits have been submitted to fulfill the requirements of Section 708D above, they may be referenced in the Project Report.
1. Project Description and Statistics Report. A written statement describing the application, the intended use, the total area of land involved, any transfers of development rights, the total floor area proposed, a schedule comparing the minimum requirements for

parking and coverage set forth in this Ordinance with the proposed development, and including, as well:

- a. A report describing the number of residential units by type to be constructed.
- b. The anticipated sales price of each unit type.
- c. The acreage of Open Space.
- d. The square footage of non-residential construction and its value.
- e. The anticipated age characteristics of the population in the following categories:
  - Pre-school - 0 to 6 years
  - Elementary school children - 6 to 12 years
  - Secondary school children - 13 to 18 years
  - Young adults - 19 to 35 years
  - Primary adults - 36 to 54 years
  - Mature adults - 55<sup>+</sup> years
- f. The relationship of the proposed development to the Township's Master Plan and the location of any parks, playgrounds, school sites, Open Space or other public areas which are so designated on the Master Plan or Official Map of the Township and which lie within the area proposed to be developed.

2. Land Classification map and report containing the following:

- a. Environmentally restricted lands as defined in Article 200 of this Ordinance.
- b. Restricted lands as defined in Article 200 of this Ordinance.
- c. Unrestricted lands as defined in Article 200 of this Ordinance.
- d. A slope map of the site with minimum contour intervals of five feet, showing the following gradients:
  - 25% or greater
  - 15% to 25%
  - 10% to 15%
  - 0% to 10%

- e. A soils map based on soil conservation data and/or developed from detailed on-site testings. If the latter method is utilized, a detailed description with supporting documentation shall be submitted.
  - f. A vegetation and special features map showing all woodlands, individual trees in excess of 6" (DBH), significant tree masses, existing buildings, roads and trails, and flowing streams, drainageways and ponds.
3. A Natural Features Report. This report shall include:
- a. A report summarizing the natural features and constraints of the site as related to the proposed land development.
  - b. The number of acres and the percent of the total site each classification enumerated represents.
  - c. A determination of how the site planning for the site has integrated the natural features in order to minimize adverse impacts on the natural systems, and how areas for common open space were selected to minimize such impacts.
  - d. An identification of unavoidable adverse impacts (if any) and the steps to be taken to minimize those impacts.
4. Open Space Plan and Report. This submission shall include the following:
- a. An open space plan. This shall consist of a map showing all areas of the site to be designated as Open Space and the designation of each area according to its potential use - active recreation, passive recreation or environmental protection. The map shall also show the size of each of the designated areas in acres and its percentage relationship to the site as a whole. It shall show all proposed buildings, facilities, or other forms of development in such Open Space.
  - b. An open space report. This report shall include:
    - 1) An evaluation of the Open Space Plan and how it relates to the Township's standards for Open Space and how the plan is integrated into the overall Development Plan as well as its relationship to both the pedestrian and vehicular circulation plan and how it integrates those identified sensitive areas in the Natural Resources Inventory.
    - 2) A statement relating the Open Space Plan to any existing or proposed Township Open Space and/or recreational facilities.
    - 3) A description of the form of organization proposed to own and maintain the common Open Space; a substantive

representation of the Master Deed, where applicable; summaries of the substance of covenants relating to the Open Space itself and to the maintenance organization; and an estimated schedule of fees to be charged.

5. **Land Coverage and Drainage Plan report.** This submission shall include the following:
  - a. All parts of the site which will be covered by paving, building roofs or other impervious cover. Each category shall be denoted on the map legend as to the number of acres involved and the percent of the total site it represents.
  - b. All parts of the site in which tree cover shall be altered and, in the map legend, the acres to be altered and a notation as to the percentage this represents of the total treed area of the site.
  - c. The sub-drainage areas of the site and the points at which storm drainage leaves the site. This shall be performed for the site prior to as well as after improvement. The acreage of each area shall be noted in the map legend.
  - d. All drainage improvements, including retention/detention ponds and basins, dams, major drainage swales, culverts, and storm water pipes in excess of 6" in diameter.
  - e. A drainage impact evaluation defining the current storm water discharge on the unimproved site by drainage area and for the total site for a 100 year storm of 24 hour duration, using Somerset County procedures; the acres in cover types (i.e., trees, lawn, impervious) after improvement; the storm water discharge after improvements; the total increase in storm water drainage for the total site, as well as for each of its subdrainage areas; and a description of all improvements proposed to control the additional storm water discharge to meet the Township's standards such that improvement of the land shall not increase peak runoff over that which presently exists. If alternate standards, methods, and factors are utilized, they must be in addition to those required and shall include a clear, concise explanation in the report submitted.
6. **Erosion and Sedimentation Control Plan and Report.** This submission shall include the following:
  - a. Calculations of the estimated soil loss from the site in an unimproved state, and calculations of the estimated soil loss during construction based upon Soil Conservation Service data or alternate data acceptable to the Board.
  - b. A plan showing the general location of any structure or device that is intended to minimize soil erosion and control sedimentation.

- c. **An erosion and sedimentation control report. This report shall include:**
  - 1) **A clear, concise explanation of structures, devices and techniques to be utilized during and after construction to minimize soil erosion and control sedimentation.**
  - 2) **An evaluation of the effectiveness of the proposals.**
7. **Sewer and Water Plan and Report. This submission shall include the following:**
  - a. **A sewer and water plan. This shall consist of a map showing the proposed location of major collection and distribution lines serving the proposed development, how and where these lines will tie into existing sewer and water systems, or, the location of an on-site sewage disposal facility or water processing facility (if applicable).**
  - b. **A sewer and water report. This report shall include:**
    - 1) **An explanation of plans to tie into existing sewer or water facilities and information on the status of efforts to have such tie-ins approved by the appropriate authorities; a description of any proposed sewage treatment and water processing facilities to be built on the site. Where a Federal, State, County, or regional agency must approve any such facility before it can be built, a copy of the application to each such agency should also be submitted along with an outline of all approvals by non-Township agencies which are required for the erection and operation of such a plant.**
    - 2) **Calculations of water demands and sewage generation resulting from the proposed development.**
    - 3) **A statement of existing sewer and/or water systems to determine their capacity, documented by a letter from appropriate agency. This evaluation shall state the capacities, if any, of existing systems and relate these capacities to projected demands and generations to determine what, if any, adverse impacts are to be expected.**
    - 4) **If the projected sewage generation and/or water demand will exceed the identified capacities of the available systems, then a detailed report describing what improvements shall be implemented to provide the necessary sewerage and/or water for the project.**
    - 5) **If an independent, on-site, interim sewage treatment facility is proposed, then a description and analysis of the projected quality of the water discharged from the system and an analysis of the impact of that discharge**

on any stream or underground aquifer likely to be affected by it, together with a description of how the applicable requirements of Article 500 will be complied with.

- 6) Data and methods for calculating sewage generation and water demand for the capacity/demand evaluation.
8. Circulation Plan and Traffic Report. This submission shall include the following:
- a. A circulation plan. This shall consist of a map showing streets, roads, parking areas and pedestrian/bicyclic pathways. The cartway and right-of-way width for all streets, roads and pathways shall be shown on the map. The dimension and capacities of parking areas shall also be shown on the map. The map shall also show landscaped areas in or immediately adjacent to any part of the proposed circulation system.
  - b. A circulation and traffic report. This report shall include:
    - 1) An evaluation of the internal circulation plan and how it relates to the anticipated traffic volumes, how layout relates to the terrain, and any proposed deviation from the standards of this Ordinance.
    - 2) An evaluation of the external circulation systems and the impacts of the traffic to be generated by the proposed development.
    - 3) A designation as to what intersection(s) the generated traffic will affect. If traffic is projected to flow to more than one intersection, then a traffic study performed by a Professional Engineer, indicating the flows of the anticipated traffic to the multiple intersections shall be undertaken. This study shall clearly and concisely define the standards and methods utilized to document this analysis.
    - 4) Calculations of the number of motor vehicle trips expected to enter and leave the site for the peak hour (PHT) and on a daily basis (ADT), and the number of trucks.
    - 5) Calculation and analysis of the impact of the traffic to be generated by the development on the identified intersections.
    - 6) Data, methods and factors for calculating traffic generation for the capacity/demand evaluation.
    - 7) A description of the adverse impacts, and steps to be taken to minimize these impacts.



9. **Utilities Plan and Report.** This submission shall include the following:
  - a. **A map showing any and all easements and lands subject to covenants for the purpose of providing natural gas, electricity, oil, telephone or CATV.**
    - 1) A portion of the submission may be shown as a separate map or may be included as part of the Sewer and Water Plan submission (Article 708.F.7).
    - 2) A typical cross section of the common utility easement and trench, if applicable, shall be shown on the Utilities Plan.
  - b. **A utilities report. This report shall include:**
    - 1) Arrangements and written statements from each utility company or distribution service serving the area stating its ability to provide the service or commodity in the quantity necessary to adequately service the development.
    - 2) A written statement from all utilities willing to share a common easement.
10. **Development Schedule Plan.** If project construction is extended over more than one year, a map showing the location of the first phase of the development and the anticipated location of each successive phase shall be submitted and shall include:
  - a. **The number by type of dwelling units and, where applicable, other uses, indicating gross leasable areas for each type of use in each phase.**
  - b. **The amount and location of Open Space.**
  - c. **The location and type of community structures and facilities.**
  - d. **The location of all public improvements or other improvements necessary to completely define the Development Plan.**
11. **Variances, Exceptions and Modifications.** This report shall describe any modifications proposed from the standards set forth in Article 600, any exceptions requested from the regulations of Article 500 and any variances applied for from the requirements of Article 400 of this Ordinance. For each modification, exception or variance request, detailed substantiation shall be submitted.
12. **Easements and Covenants.** This report shall contain the substance of any easements or covenants to be imposed upon the use of the land, structures or other improvements within the development which are not presented elsewhere in the application.

13. **Township Environmental Impact Assessment.** The reports described in Article 708.F.1 through 12 may be submitted separately or as part of the Township Environmental Impact Assessment. The applicant is encouraged to submit each report as a separate chapter in the Environmental Impact Assessment and, as a final chapter, present the information described in Section 708F.13c and d. If this procedure is used, repetitious information described below may be deleted if no loss in clarity or continuity occurs.

a. The Board shall require for all Development Plans (other than a minor subdivision or minor subdivision/flag lot) that an Environmental Impact Assessment be submitted as set forth in this Article. This requirement shall also apply to all public or quasi-public projects unless such are exempt from the requirements of local law by supervening County, State or Federal law. The Board may, at the request of the applicant, waive the foregoing requirement if sufficient evidence is submitted to support a conclusion that the proposed application will have a slight or negligible environmental impact. Portions of the foregoing requirement may also be waived upon a finding that a complete report need not be prepared in order to evaluate adequately the environmental impact of a particular application.

b. **Filing requirements -** The Environmental Impact Assessment requirements of this Ordinance cover the most complex cases and the entire contents may not be applicable to less complex projects. Therefore, an outline with discussion shall be submitted to the Board prior to the preparation of an Environmental Impact Assessment. The outline will address briefly the items described in Article 708.F.13.c. and d. below and discuss which of these items are environmentally significant with regard to the proposed project. The discussion shall describe the depth of study for these items and how their environmental impacts will be evaluated. Additionally, those items upon which the proposed project will have insignificant or no environmental impact shall also be discussed with the request that such items need not be addressed in the Environmental Impact Assessment. The approval of the outline does not relieve the applicant from the responsibility for evaluating additional area of potential environmental impact which may be revealed during the review of the Environmental Impact Assessment, nor does it prevent the Board from requesting the inclusion of additional items as necessary at a later date.

An Environmental Impact Assessment shall be submitted prior to the issuance of soil removal permits and prior to preliminary approval of all Development Plans but shall not be required for a minor subdivision or a minor subdivision/flag lot.

c. **Contents -** The Environmental Impact Assessment shall include the following:

- 1) **Plan and description of the Development Plan.** A description, complete with site plans, which shall specify **the purpose of the proposed project, including products and services, if any, being provided, the regional, municipal and neighborhood setting, including buildings, roads, grading and regrading, adjacent natural streams and utility lines.**
- 2) **Inventory of existing natural resources.** An inventory of existing natural resources at the site and in the affected region which shall describe air quality, water quality, geological character, soil characteristics, land form, hydrological features, wildlife, aquatic organisms, noise characteristics and levels, land use, history and archeology. Said inventory shall be referenced to applicable subject matter in the Township Natural Resources Inventory. Air and water quality shall be described with reference to standards promulgated by the Department of Environmental Protection of the State of New Jersey and soils shall be described with reference to the Somerset County Soil Survey and the criteria contained in the Somerset-Union Soil Conservation District Standards and Specifications.
- 3) **Assessment of environmental impact.** An assessment supported by environmental data of the environmental impact of the project upon the factors described in c.2) above. It shall also include an evaluation of: water use and depletion; the effects of projected liquid and solid wastes on quality and quantity of surface and ground water; air quality; traffic; and aquatic and terrestrial wildlife. The assessment shall also include an evaluation of the loss of open space and the social and economic effects on the community, including schools, parks, roads, police, fire, etc.
- 4) **Unavoidable adverse environmental impacts.** A discussion of any adverse environmental impacts and damages to natural resources which cannot be avoided with particular emphasis upon: air or water pollution; damage to plants, trees or wildlife systems; displacement of existing farms; increase in sedimentation and siltation.
- 5) **Steps to minimize environmental damage.** A description of steps to be taken to minimize adverse environmental impacts during construction, operation and completion both at the project site and in the affected region. Such description is to be accompanied by necessary maps, schedules and other explanatory data as may be needed to clarify and explain the actions to be taken.
- 6) **Alternatives.** A discussion of alternatives to the proposed project which might avoid some or all of the adverse environmental effects. The discussion should

include the reasons for the acceptability or nonacceptability of each alternative.

**d. Details and matters to be evaluated**

**1) Sewerage Facilities.** A description of the sewerage facilities that will be utilized including the following:

- a) If disposal is to be on-site: data on underlying geology, water table, depth to bedrock, soils analysis, soil stratification for every sewage disposal site; topography, location and depth of aquifers, and depth, capacity, type of construction and location of all wells which have been recorded or can be obtained from interviews with adjacent property owners within 500 feet of the site; soil logs and percolation tests for each disposal site as witnessed by the Health Officer, and any other pertinent data.
- b) If sewage disposal will utilize an interim on-site treatment facility: documentation as to methodology, quality of effluent and status of approvals in addition to the data.
- c) If disposal is to be off-site: projected sewage discharges stated in average daily flows (gallons per day) for the initial phase of development and five year projections of same for each of the following land use categories: (1) residential discharges and (2) industrial/commercial discharges. Industrial-commercial discharges shall be described as follows: type of process; projected daily flows; physical characteristics, including temperature; biological characteristics; and chemical characteristics, including description of toxic components.
- d) If treatment is to be by public facility: name of public facility, point of connection, and description of interconnecting facilities.
- e) If project is to include treatment facilities discharging into a stream or watercourse in the Township: location of treatment facilities; receiving stream and data on stream classification; water quality; seven day low flow at 10 year frequency; description of treatment facilities and proposed effluent quality; and evaluation of initial and future deleterious effects on use of stream for water supply, recreation and aquatic and terrestrial wildlife. Evaluation shall include projected effects of nutrients on downstream ponds and lakes.
- f) Compliance with all State and local health requirements.

2) **Water Supply.** A description of the water supply that will be utilized, including the following:

a) **If supply is from on-site sources:** location of water supply source(s); description of water supply facilities, including type, depth, and pumping rates; location and depth of all private and public water supplies and septic systems within 500 feet of the proposed water sources; and geologic evaluation of subsurface conditions including statements on the following:

Long term evaluation of the adequacy of the supply to serve the project (in terms of both quantity and quality);

Evaluation of possible interference with existing private and public water supplies within the same aquifer, and;

Evaluation of water table conditions and aquifer recharge capability.

b) **If supply is from public facilities off-site:** name of public facility; point(s) of interconnection and description of interconnecting facilities; pressure requirements; and projected water usage stated in average daily usage (gallons per day), peak daily usage (gallons per day) and peak hourly usage (gallons per hour). Water usage shall also be projected for the initial phase of development and for 5 and 10 year periods for each of the following:

Residential usage (excluding lawn sprinkling);

Lawn sprinkling and irrigation;

Industrial/commercial usage (to include discharge to treatment facilities, discharge to streams without treatment, and other uses) and

Fire protection requirements.

c) Compliance with all State (including Department of Environmental Protection, Division of Water Resources) requirements and local health regulations.

3) **Storm Water.** The following data and documentation:

a) Peak rates and volumes of storm water runoff from the undeveloped site and projected to be generated by the site after the proposed development including rates for 10, 15, 25, 50 and 100 year storm frequencies using Somerset County procedures.

- b) Data on landscaping, including a vegetation map showing tree and ground cover existing on the site as compared with that proposed.
  - c) Changes in peak rates and volumes of storm water runoff and runoff coefficients expected to be caused by changes in land use and whether or not there will be any increased incidence of flooding caused by increased storm water runoff due to the proposed project.
  - d) Submission of plans showing the disposition of storm water and attempts to delay the time of concentration by the use of detention basins or other acceptable methods.
  - e) Submission of an erosion and sediment control plan in accordance with the requirements of Article 500.
- 4) Stream Encroachments. Evidence that a stream encroachment permit from the New Jersey Department of Environmental Protection, Division of Water Resources, for fill or diversion of a water channel, alteration of a stream, repair or construction of a bridge, culvert, reservoir, dam, wall, pipeline or cable crossing, has been applied for and/or obtained, if applicable.
  - 5) Flood Plains. Description of potential flood damage including a summary of flood stages from the Flood Maps (see Section 502.C).
  - 6) Solid Waste Disposal. A plan for disposal by means of a facility operating in compliance with Federal, State, regional, County and local requirements.
  - 7) Air Pollution. A description of any changes in air quality to be produced by the proposed development, including the amounts or degree of smoke, heat, odor or substances to be created and added to the atmosphere by heating, incineration and processing operations.
  - 8) Traffic. A determination of the present traffic volumes and capacities of the road(s) serving the project and the nearest major intersections, and the projected impacts of the completed project on them. Also, a determination of any additional air pollution and noise to be caused by traffic from the completed project.
  - 9) Social/Economic. An analysis of the factors affecting the finances of the Township, including the estimated changes in tax receipts and fiscal outlay for municipal services; the estimated number and types of jobs to be provided; the number of school age children to be

produced; and any addition to existing municipal services which will be required by the project.

- 10) **Aesthetics.** A discussion of how the natural or present character of the area will be changed as a result of the proposed action.
- 11) **Licenses, permits, etc.** A list of all licenses, permits and other approvals required by municipal, County or State law and the status of each.
- 12) A copy of the Development Plan and application form.

**G. Action by the Township.**

1. Except for the County Planning Board, all individuals, offices and agencies to which copies of the submission were forwarded shall submit their comments and recommendations to the Planning Board or Zoning Board of Adjustment, as the case may be, within fourteen (14) days of their receipt of the submission. The Board shall distribute a copy of the Environmental Impact Assessment to the Environmental Commission for its review and may also distribute copies of the report to such other governmental bodies and consultants as it may deem appropriate. Any comments and advisory reports resulting from such review shall be submitted to the Board within 30 days of the distribution of the Environmental Impact Assessment to the Environmental Commission, other governmental body or consultant.
2. Upon the certification of the completeness of an application for a site plan involving 10 acres or less and 10 dwelling units or less or a subdivision containing 10 lots or less, the Planning Board shall grant or deny preliminary approval within 45 days of the date of such certification or within such further time as may be consented to in writing by the applicant. Upon the certification of the completeness of an application for a site plan involving more than 10 acres or more than 10 dwelling units or a subdivision containing more than 10 lots, or whenever an application includes a request for Conditional Use approval or for relief pursuant to Section 701.A. of this Ordinance, the Planning Board shall grant or deny preliminary approval within 95 days of the date of such certification or within such further time as may be consented to in writing by the applicant. Otherwise, the Planning Board shall be deemed to have granted preliminary approval.
3. Upon the certification of the completeness of an application for a variance pursuant to N.J.S.A.40:55D-70d involving a site plan, subdivision and/or Conditional Use approval pursuant to Section 701 B. of this Ordinance, the Zoning Board of Adjustment shall grant or deny preliminary approval within 120 days of the date of such certification or within such further time as may be consented to in writing by the applicant. Should the applicant elect to submit a separate application requesting approval of the variance and a subsequent application requesting approval of the

site plan, subdivision and/or Conditional Use, the 120 day period shall apply only to the application for approval of the variance and the time period for granting or denying the subsequent approval(s) shall be as otherwise provided in this Ordinance for approvals by the Planning Board.

4. All hearings held on applications for preliminary approval shall require public notice of the hearing in accordance with Article 300.
5. The recommendations of the County Planning Board and those of all other agencies and officials to whom the preliminary Development Plan is submitted for review shall be given careful consideration in the Board's decision on the application. If the County Planning Board or the Township Engineer approves the preliminary submission, such approval shall be noted on the Development Plan. If the Board acts favorably on the preliminary Development Plan, the chairman and the secretary of the Board (or the acting chairman and secretary where either or both may be absent) shall affix their signatures to at least ten copies and a reverse sepia of the Development Plan with a notation that it has been approved. The applicant shall furnish the copies and reverse sepia to the Board for signing.
6. Should minor revisions or additions to the Development Plan be deemed necessary, the Board may grant preliminary approval subject to specified conditions and the receipt of revised plans within 30 days from said approval. If the Board, after consideration and discussion of the preliminary Development Plan, determines that it is unacceptable or that major revisions are required, a notation to that effect shall be made on the Development Plan by the chairman of the Board (or the acting chairman in his absence) and the resolution memorializing such action shall set forth the reasons for rejection. One copy of the Development Plan and said resolution shall be returned to the applicant within 7 days of the date of decision. The Board shall reject the proposed project on an environmental basis only if it determines that the proposed project (a) will result in significant, long term harm to the natural environment and/or (b) has not been designed with a view toward the protection of natural resources.



## H. Findings on the Application for Preliminary Approval.

**I. Resolution of Memorialization.** The memorialization of the granting or denial of preliminary approval by written resolution shall include not only conclusions but also findings of fact related to the specific proposal, and shall set forth the reasons for the grant, with or without conditions, or for the denial. Said resolution of memorialization shall set forth with particularity in what respects the plan would or would not be in the public interest, including but not limited to findings of fact and conclusions on the following:

- a. Specific findings - The Board shall make the following findings:
  - 1) In what respects the plan is or is not consistent with the Township Master Plan.
  - 2) To what degree the plan respects the natural features of the site. The Board shall take note of:
    - a) The degree to which severely restricted lands have been encroached upon.
    - b) The degree to which stands of trees have been respected. Particular emphasis will be directed toward the preservation and integration into the plan of prime or unique tree stands and specimen trees.
    - c) The degree to which unique or sensitive natural features have been integrated into the common open space system to minimize adverse impact.
  - 3) Whether storm water runoff has been controlled on the site to meet the Township standard that no additional peak runoff shall be discharged during a 100 year storm of 24 hour duration.
  - 4) Whether the sewage effluent generated by the development can be disposed of in a manner that will not exceed the capacities of public systems or, if an on-site or interim facility is to be utilized, whether the sewage effluent generated will degrade any flowing stream or underground water resource.
  - 5) To what degree potable water demands generated by the development can be met from existing public or private systems. If a new on-site system is proposed, whether or not it will meet the demands of the development.
  - 6) To what degree the internal circulation system is able to handle the traffic generated by the development. To what degree the existing external circulation system is

capable of handling the traffic generated from the development.

- 7) The extent to which the plan departs from the provisions of Articles 400, 500 and 600 otherwise applicable to the subject property, including but not limited to density, bulk and use and the reasons why such departures are or are not in the best public interest.
  - 8) Whether the proposed Open Space system meets the standards of the Township and whether or not the proposals for maintenance and conservation of common Open space is reliable, and whether or not the amount, location and purpose of the Open Space are adequate.
  - 9) Whether general utilities are available to meet the demands of the development.
  - 10) Whether the development program meets the guidelines of the Township's Fair Share Housing Allocation as defined in the Master Plan.
  - 11) To what degree the erosion and sedimentation control plan addresses the need to minimize on-site erosion and provides adequate sedimentation control to minimize off-site as well as on-site adverse impacts.
- b. Additional findings for Residential Cluster. When considering applications for approval of any of this form of development, the Board shall further consider:
- 1) The physical design of the plan and the manner in which said design does or does not further the amenities of light and air, recreation and visual enjoyment.
  - 2) The relationship, beneficial or adverse, of the proposed development to the neighborhood in which it is to be established.
  - 3) In the case of a plan which proposes development over a period of years, the sufficiency of the terms and conditions intended to protect the interests of the public and of the residents and owners of the development in the implementation of the plan as submitted.
- c. Additional findings for Planned Residential and Planned Employment Development. When considering these forms of development, the Board shall make the following findings of fact and conclusions:
- 1) That departures by the proposed development from zoning regulations otherwise applicable to the subject property conform to this Ordinance.

- 2) That the proposals for maintenance and conservation of the common open space are reliable, and the amount, location and purpose of the common open space area adequate.
  - 3) That provision through the physical design of the proposed development for public services, control over vehicular and pedestrian traffic, and the amenities of light and air, recreation and visual enjoyment are adequate;
  - 4) That the proposed planned development will not have an unreasonably adverse impact upon the area in which it is proposed to be established;
  - 5) In the case of a proposed development which contemplates construction over a period of years, that the terms and conditions intended to protect the interests of the public and of the residents, occupants and owners of the proposed development in the total completion of the development are adequate.
2. Environmental Impacts. The steps to be taken to minimize adverse environmental impacts during construction and operation (See Section 708F.13.c.5.) and the alternatives which may be approved by the Board (See Section 708F.13.c.6) shall constitute conditions of the approval, together with such other conditions as the Board may impose. No Certificate of Occupancy shall be issued until compliance shall have been made with such conditions.
  3. Timing of Applications for Final Approval. In the event a Development Plan is granted preliminary approval, with or without conditions, the Board shall set forth in the resolution of memorialization the maximum time period within which an application for final approval of the Development Plan shall be filed or, in the case of a Development Plan which provides for development over a period of years, the sequence in which application for final approval of each part thereof shall be filed and the maximum time period within which all applications shall be filed. The resolution shall further set forth any specific drawings, specifications, covenants, easements and other information required to be included in the application for final approval in addition to those items set forth in Section 709B. The resolution may also set forth the form of performance guarantee(s) to be submitted at the time of the application for final approval(s).
- I. Effect of Preliminary Approval. Preliminary approval shall confer upon the applicant the following rights for a three-year period from the date of the preliminary approval:
    - I. That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to: use requirements; layout and design standards for streets, curbs and sidewalks; lot size; yard dimensions and off-tract improvements.

2. That the applicant may submit for final approval, on or before the expiration date of preliminary approval, the whole or a section or sections of the preliminary Development Plan.
3. That the applicant may apply for and the Board may grant extensions on such preliminary approval for additional periods of at least one year, but not to exceed a total extension of two years, provided that if the provisions of Article 600 of this Ordinance have been revised, such revised provisions may govern.
4. In the case of a subdivision or site plan involving fifty (50) acres or more, the Board may grant the rights associated with preliminary approval for such period of time, longer than three (3) years, as it shall deem reasonable considering the number of dwelling units and nonresidential floor area permissible under preliminary approval, economic conditions, and the comprehensiveness of the development. The applicant may thereafter apply for and the Board may thereafter grant an extension to preliminary approval for such additional period of time as shall be determined by the Board to be reasonable considering the number of dwelling units and nonresidential floor area permissible under preliminary approval, the potential number of dwelling units and nonresidential floor area of the section or sections awaiting final approval, economic conditions, and the comprehensiveness of the development; provided that if any of the provisions of Article 600 of this Ordinance have been revised, such revised provisions may govern.

J. Distribution of Preliminary Development Plan. The secretary of the Board shall forward copies to each of the following within ten (10) days from the date of decision:

Applicant (2)

Municipal Engineer (2)

Construction Official or Zoning Officer (2)

Tax Assessor (1)

County Planning Board (1)

Health Officer (1)

## 709. SUBMISSION OF FINAL DEVELOPMENT PLANS

A final submission is required of all Development Plans approved at the preliminary submission stage.

### A. Procedure for Submitting Final Plans and Final Plans.

1. Within three years after the date of preliminary approval, the applicant shall submit to the Administrative Officer after the

15th day of the calendar month preceding the first regularly scheduled monthly meeting of the Board which granted preliminary approval, but not later than the 1st day of the calendar month in which such meeting is to be held, 14 copies of the final plat or final plan; 4 copies of any protective covenants or deed restrictions applying to the lands being subdivided or developed; 4 copies of the completed application form, and the fee in accordance with Article 900 of this Ordinance.

2. The Administrative Officer shall first process the application through the TCC and certify the application as complete or notify the applicant in writing of any deficiencies within forty-five (45) days of the submission. If the application has been found to be complete, the Administrative Officer shall forward it to the appropriate Board secretary who shall forward two copies of the submission to the County Planning Board for review and action. If the application has been found to be incomplete, it shall be returned to the applicant who may submit an appropriately revised application as in the first instance.
3. At the direction of the Planning Board or the Zoning Board of Adjustment, or at the suggestion of the Technical Coordinating Committee, additional copies of the submission may be forwarded to other individuals, offices and agencies for information, review and comment.

**B. Details Required for Final Plats and Final Plans.**

1. All details stipulated in Article 708.D. of this Ordinance except those which were specifically waived by the Board at the time of the preliminary submission.
2. All additional details required at the time of preliminary approval and/or set forth as a requirement for final approval in the resolution memorializing the preliminary approval.
3. Detailed architectural and engineering data including:
  - a. An architect's rendering of each building and sign, or of a typical building and signs, showing front, side and rear elevations.
  - b. Final cross sections, profiles and established grades of all streets, aisles, lanes and driveways, and construction documents (plans and specifications or reference to specifications) for all public improvements.
  - c. Final plans and profiles of all storm and sanitary sewers and water mains.
  - d. All dimensions of the exterior boundaries of any subdivision, balanced and closed to a precision of 1 to 10,000 and the dimensions of all lot lines to within 1 to 20,000. All dimensions, angles and bearings must be tied to at least two

permanent monuments not less than 300 feet apart and all information shall be indicated on the plat. At least one corner of the subdivision shall be tied to U.S.C. and G.S. benchmarks with data on the plat as to how the bearings were determined.

4. The final submission shall be accompanied by the following documents:
  - a. A final application comparison report - This report shall define the Development Plan for the phase being submitted for approval and include the following, stating any differences between the final Development Plan and the Development Plan receiving preliminary approval.
    - 1) The total number of dwelling units to be constructed.
    - 2) The number by type of dwelling units to be constructed.
    - 3) The amount of square feet of nonresidential uses to be constructed.
    - 4) The number by type of community facilities and/or structures to be constructed.
    - 5) The amount of Open Space to be preserved.
    - 6) The nature and cost of public improvements to be provided.
    - 7) The anticipated value of residential and nonresidential construction.
    - 8) A comparison to the Development Schedule Report as approved in the preliminary Development Plan for the applicable phase. This comparison shall note any changes or variations from the approved submission and indicate the scope of the changes. If applicable, a report documenting the nature and reasons for the changes shall also be submitted.
  - b. Organization documents - These documents shall include, if applicable:
    - 1) Articles of incorporation for any homeowner's association, condominium association or other organization to maintain the common Open Space or community facilities.
    - 2) By-laws and membership rules and regulations of any such organization, defining its rights, duties and responsibilities.
    - 3) A copy of the Master Deed detailing the rights and privileges of individual owners of common property.

- 4) A copy of all materials submitted to the Department of Community Affairs as required by the New Jersey Planned Real Estate Development Full Disclosure Act - Regulations and evidence of the status of acceptance of and/or approval by the Department of Community Affairs. Review by the Board of these materials shall be for informational purposes only and is not intended to imply approval or acceptance, which shall be the full responsibility of the State of New Jersey.
  - 5) Final approval may be conditioned upon submission of Items 1 through 4 above for review and comment by the Board or, if items 1 through 3 above are to be used as a guarantee for the maintenance of common elements, final approval may be conditioned upon approval of the applicable portions of these documents by the Board.
  - 6) Covenants or easements restricting the use of the common Open Space or elements.
  - 7) Covenants or agreements requiring homeowners or residents to pay the organization for the maintenance of the common Open Space and/or community facilities. This shall include a proposed schedule of membership fees for at least the first three years of operation.
- c. Other covenants and easements. These documents shall include any easements or covenants affecting any land in the development.
  - d. Maintenance agreements. If there is to be no homeowners association, condominium association, open space organization, or similar arrangement for the maintenance of common facilities, the developer shall furnish an agreement under which private roads and other facilities will be maintained, refuse collected and other supplementary services provided, and the same shall be submitted to and approved by the Board.
  - e. Offer of dedication - Any offer of dedication shall include all legal requirements for valid dedication to the Township, or where appropriate, to another governmental body, of roads or other improvements intended for public ownership.
  - f. Performance Guarantee - Unless improvements are completed prior to final approval, a performance guarantee shall be posted in the amount and in the form required by the Township as set forth in Article 900 of this Ordinance.
  - g. Certification from the Tax Collector that all taxes are paid to date.
  - h. Certification that the applicant is the owner of the land or the owner's authorized agent, or that the owner has given consent under a option agreement.

- i. Certification from the Administrative Officer that all fees required at the time of filing have been paid.
  - j. A copy of a letter to the Technical Coordinating Committee requesting a statement that it is in receipt of a map showing all utilities in exact locations and elevations; that it has examined the drainage plan and found that the interests of the Township and of neighboring properties are adequately protected; and that it has identified those portions of any utilities already installed and those to be installed. The applicant shall certify in writing to the Board that he has:
    - 1) Installed all improvements in accordance with the requirements of this Ordinance; and/or
    - 2) Posted a performance guarantee in accordance with Article 900 of this Ordinance.
  - k. A copy of a letter to the TCC requesting a statement that all improvements installed prior to application for final approval have been inspected as provided in Article 900 of this Ordinance, and that such improvements meet the requirements of the Township. Any improvements installed prior to application for final approval that do not meet or exceed Township standards shall be factored into the required performance guarantee.
5. The applicant shall provide, at a scale of 1 inch = 100 feet, a mylar showing all proposed topographic features, including contours at two foot intervals according to the New Jersey Plans Coordinate System Grid, prior to the release of any performance guarantees. Said mylar may be a photographic reproduction of the approved Development Plan, showing building location, site grading, site drainage and public and private roadway pavement.

C. Action by the Township.

1. Except for the County Planning Board, all individuals, offices and agencies to which copies of the submission were forwarded shall submit their comments and recommendations to the Planning Board or Board of Adjustment, as the case may be, within fourteen (14) days of their receipt of the submission.
2. Upon the certification by the Administrative Officer of the completeness of an application for final approval, the Board shall grant or deny final approval within 45 days of the date of such submission or within such further time as may be consented to in writing by the developer. Failure of the Board to act within 45 days or such further time as agreed to in writing by the applicant shall constitute final approval. In such case, the Administrative Officer shall certify the submission date of the complete application and the failure of the Board to act within the specified time period, and this certification shall be sufficient in lieu of formal action by the Board.



3. If the Board acts favorably on the final submission, the chairman and the secretary of the Board (or acting chairman and secretary where either or both may be absent) shall affix their signatures to at least eight copies and a reverse sepia of the Development Plan with a notation that it has been approved. The applicant shall furnish such copies and reverse sepia to the Board for signing. In the case of final subdivisions only, the applicant shall also include at least two mylar copies of the approved Development Plan. In all cases, the applicant shall furnish a mylar original of all drawings submitted for preliminary and final approval.

4. After approval of the final plat or plan by the Board, copies of the signed plat or plan shall be furnished by the secretary of the Board to each of the following within ten (10) days from the date of decision:

Administrative Officer

Construction Official

Zoning Officer

Township Engineer (mylar)

Tax Assessor

Board files (mylar)

Applicant

Such other municipal, County or State agencies or officials as directed by the Board.

5. In the case of a subdivision, within 95 days of the date of decision the developer shall file a copy of the approved final Development Plan with the County Clerk. In the event of failure to file within said 95 days, the approval of the subdivision shall expire and further proceedings shall require the filing of a new Development Plan as in the first instance. The Board, for good cause shown, may extend the time for filing for an additional 95 days.

6. If the Board, after consideration and discussion of the final submission, determines that it is unacceptable, a notation shall be made by the chairman of the Board (or acting chairman in his absence) to that effect on the Development Plan and the resolution of memorialization shall set forth the reasons for such rejection. One copy of the Development Plan and the resolution shall be returned to the applicant within seven (7) days of the date of decision.

D. Effect of Final Approval. Final approval of a Development Plan shall confer upon the applicant the following rights for a two-year period from the date of final approval:

1. The zoning requirements applicable to the preliminary approval first granted and all other rights conferred upon the developer, whether conditionally or otherwise, shall not be changed.
2. If the developer has followed the standards prescribed for final approval, the Board may extend the protection for periods of one year each, not exceeding three such extensions.
3. In the case of a subdivision or site plan for a planned development involving fifty (50) acres or more or for a conventional subdivision or site plan involving 150 acres or more, the Board may grant the rights associated with final approval for such period of time, longer than two (2) years, as it shall deem reasonable considering the number of dwelling units and nonresidential floor area permissible under final approval, economic conditions, and the comprehensiveness of the development. The applicant may thereafter apply for and the Board may thereafter grant an extension of final approval for such additional period of time as shall be determined by the Board to be reasonable considering the number of dwelling units and nonresidential floor area permissible under final approval, the number of dwelling units and nonresidential floor area remaining to be developed, economic conditions and the comprehensiveness of the development.



KASTNER - Minor Subdivision - Block 138, Lot 8

Mr. Messina presented a revised plan which has been submitted by the applicant subdividing Block 94, Lot 17 into two lots rather than the three lots previously submitted.

The variances requested are for yard frontage, lot area and rear yard. These variances will all be required on the lot on which there is an existing house.

It was pointed out that there are changes which must be made on the plans prior to the public hearing which is to be held on December 9, 1980.

Consulting Engineer Marshall Frost arrived.

THE COMMONWEALTH - Conceptual Approval - Resolution

Attorney Garvin read the following proposed resolution:

APPLICATION  
CONCEPTUAL SITE PLAN APPROVAL  
THE COMMONWEALTH AT BASKING RIDGE

WHEREAS, the applicant, Lawrence Zirinsky, is the purchaser under contract of Lots 18, 20, 23, 28, 33, 61 and 65, Block 182 as shown on the tax map of Bernards Township; and

WHEREAS, the owners of record of the aforesaid property have consented to this application; and

WHEREAS, the applicant has applied for conceptual site plan approval for the said property all as shown on plans entitled "The Commonwealth at Basking Ridge" project no. DP-80-00IP prepared by Cahill/Prato/McAneny A.I.A. Architects/Planners and dated March 12, 1980, with later additions, consisting of four unnumbered pages, pages PI-P4, CI-C5 and Sk1-Sk10; and

WHEREAS, the Planning Board of Bernards Township has conducted public hearings on the said application at its meetings held on October 28, 1980 and November 6, 1980, of which public notice and notice by the applicant have been given.

WHEREAS, the Planning Board after considering the application, documents and testimony has made the following findings of fact:

1. The property which is the subject of this application is known as Lots 18, 20, 23, 28, 33, 61 and 63, Block 182 on the tax map of Bernards Township.
2. The property is located in the R-5 zone.
3. The documents which constitute this application are as follows:

- (a) "The Commonwealth at Basking Ridge" project no. DP-80-00IP prepared by Cahill/Prato/McAneny A.I.A. Architects/Planners and dated March 12, 1980, with later additions, consisting of four unnumbered pages, pages P1-P4, C1-C5 and Sk1-Sk10;
  - (b) 326 Property Development Environmental Impact Assessment prepared by Raymond A. Ferrara, Ph.D. dated July, 1980, consisting of 283 pages.
  - (c) Memo from TCC reviewing the application and dated October 24, 1980.
  - (d) Memo from TCC relating to the Environmental Assessment and dated November 4, 1980.
  - (e) Memo from the Environmental Commission relating to the Environmental Assessment and dated October 28, 1980.
  - (f) Memo from Richard Chapin, Township resident, relating to the Environmental Assessment and dated October 31, 1980.
  - (g) Memo from the TCC setting forth recommended conditions if approval is granted, dated October 27, 1980 and revised November 7, 1980
  - (h) Leter from Passaic River Coalition to Bernards Township Planning Board dated November 11, 1980, enclosing 88 questions re: Commonwealth at Basking Ridge (336 Property).
4. That the total number of dwelling units, 1220, is allowed under the Township's Land Development Ordinance and that, after reviewing the conceptual plan and other documentation submitted by the applicant, there is a reasonable expectation that the number of dwelling units can be constructed.
  5. That the circulation pattern established by the conceptual plan adequately services the project, and, based upon the information submitted by the applicant, can be constructed to the regulations set forth in the Township's Land Development Ordinance. However, further consideration must be given to circulation as it relates to stage construction.
  6. That the general location and pattern of utilities shown on the utilities plan submitted by the applicant will service the project.
  7. That the storm water management plan submitted by the applicant can reasonably be expected to accommodate the Township's design storms and satisfy the requirement for no increase in the rate of storm water runoff.
  8. That the staging plan submitted by the applicant will result in the construction of the property in an orderly manner, with a minimum impact on adjacent properties.

9. That the environmental assessment, as submitted, is incomplete in that it does not meet the requirements of the Township's Land Development Ordinance.

10. That the Board can grant approval of the conceptual plan as it relates to:

1. The total number of units - 1220.
2. The circulation pattern as it relates to total development.
3. The utility plan as it relates to on-site utilities.
4. The drainage plan as it relates to storm water management and retention/detention.
5. Critical areas that will not be developed; those lands classified as wetlands by the Township's ordinances.
6. The staging plan, except that the question of a through road during stage construction requires further study.

11. Further, the Board can grant approval for a ten year period, except that all preliminary and final approvals must be obtained within ten years of adoption of this resolution.

**NOW, THEREFORE, be it RESOLVED by the Planning Board of Bernards Township on this 11th day of November, 1980, that the action taken by the aforesaid Planning Board on November 6, 1980, in approving the application of Lawrence Zirinsky for conceptual site plan approval for the Commonwealth at Basking Ridge, Lots 18, 20, 23, 28, 33, 61 and 63, Block 182 on the tax map of Bernards Township and as shown on the aforesaid plans is hereby AFFIRMED and MEMORIALIZED subject, however, to the following conditions:**

1. Any application for Preliminary approval shall be designed in accordance with the Township's ordinance, unless specific relief is granted by the Board, except that, Type A units may contain 10 units per building and the building spacing between Type C buildings may average 30 feet in accordance with the conceptual plans submitted, is approved.
2. Environmental Impact Assessment. Prior to any action on a Preliminary Submission, the applicant shall resubmit a revised EIA. The revised EIA should reflect the approved conceptual plans and should set forth, in detail, recommendations for construction of this project. Further, the EIA should indicate how the Preliminary Submission incorporates those recommendations.
  - a. The applicant, at the time of Preliminary, shall address the problem of solid waste recycling and separation to the satisfaction of the Board.
  - b. The applicant, at the time of Preliminary, shall address the problem of ground water recharge to the satisfaction of the Board.

3. **Off-tract Improvements.** Prior to any action on a Preliminary Submission, the applicant shall revise the traffic portion of the EIA. Based on this information, a determination of the requirements for off-tract improvements for roadways shall be made.
4. While the conceptual plan shows that adequate parking can be provided, the actual location of parking will be reviewed at the time of Preliminary Submission.
5. While the typical landscaped buffer is shown on the conceptual plan, the type of trees to be included in the landscape screen (buffer) will be reviewed at the time of Preliminary Submission, as will the density of the buffer adjacent to less developed areas.
6. While the conceptual plan shows a pool and tennis courts, the size of the pool, location of the tennis courts, and adequacy of parking will be reviewed at Preliminary Submission.
7. The project is conditioned on adequate utilities being available.
8. The project is conditioned on sewage treatment being available, and at such time as the Township's plant is expanded, on connection to the Township's system.
9. The approval is conditioned on the roads designated as A, B, C, C-1, C-2, D and E being public roads. Sidewalks adjacent to those roadways shall be concrete in accordance with the Township's specifications, except that all bicycle paths shown on the plan shall be bituminous concrete, six feet in width. All right of ways for these roads shall be 50 feet, except that the east-west collector shall be a minimum of 80 feet, and may be required to be wider based upon review at time of Preliminary Submission. Additionally, roadway sections shall be designed in accordance with Township Specifications.
10. No basements or cellars shall be provided in the A type units, or in the twin houses located on the "islands" south of the main portion of the project.
11. Staging shall be in accordance with the staging plan submitted, except that;
  - a. Landscape buffers shall be graded, seeded, and landscape materials planted within 60 days of start of work on that phase.
  - b. In the case of landscaping associated with retention facilities, a detailed planting schedule shall be approved as part of the retention facility design.
  - c. At the time of Preliminary, further consideration shall be given to providing a through roadway connection for Phase IA and a possible modification to the Road A alignment at Acken Road.
12. A determination of the ownership of open space shall be made at the time of Preliminary Submission.

13. The project shall be developed under a Master Association, or if an alternate is provided, additional maintenance facilities may be required.
14. The project is conditioned on County approval at the time of Preliminary.
15. The project is conditioned on the applicant obtaining all necessary approvals and permits for such regulatory agencies who may have jurisdiction. Copies of all submissions and correspondence for said approvals and permits shall be submitted to the Board.
16. The project is conditioned upon all taxes for the property being paid in full through the fourth quarter of 1980.
17. At the time of Preliminary Submission for the units located on the "islands", the applicant shall demonstrate to the Board's satisfaction that the proximity of the flood hazard area shall not endanger the health, safety and welfare of the occupants of those units.
18. At the time of Preliminary Submission the applicant shall demonstrate to the Board's satisfaction that the location of all units adequately addresses the preservation of existing vegetation.
19. The payment of all fees required by the Bernards Township Zoning Ordinance.
20. Compliance with all laws and/or regulations applicable to the property.

Moved by Kunna that the resolution be approved as read.  
Seconded by Hankinson.

Mr. Dunham informed the Board that at 6:30 this evening a list of 88 questions was delivered to his home from the Passaic River Coalition and shortly thereafter he received a telephone call from the Citizens Committee asking that these questions be answered.

Mr. Frost advised that Board that these questions could be answered later as it is covered by the condition that the EIA is incomplete.

Roll Call: Kunna-yes, Hankinson-yes, Mann-yes, Beckman-yes, Hoare-yes, Hillestad-yes, Dunham-yes, Holmes-yes.  
Motion carried.



AMENDED CONCEPTUAL SITE PLAN APPROVAL  
SPRING RIDGE ASSOCIATES

Mount Laurel  
Development  
need Pl. Ord.  
resolution  
from minutes

WHEREAS, the owner applicant Spring Ridge Associates has applied for an amended conceptual site plan approval for Lots 18, 20, 23, 28, 33, 61 and 63, Block 182 as shown on the Tax Map of Bernards Township all as shown on and in accordance with plans entitled "Alternate C Conceptual Site Plan Spring Ridge, Bernards Township, Somerset Co., N.J." prepared by Cahill/Prato/McAneny A.I.A. Architects and Planners dated July 25, 1983, consisting of sheets SK1 through SK9; and

WHEREAS, the Planning Board of Bernards Township has conducted public hearings on the said application at its meetings held on July 12th and 15th, 1983, of which public notice and notice by the applicant have been given as required by law; and

WHEREAS, the Planning Board after considering the application, documents, testimony and argument of counsel has made the following findings of fact:

1. The property which is the subject of this application was the subject of a law suit known as Theodore S. Lorenc, et als., v. The Township of Bernards, et al. initiated in 1974. The case was a "Mount Laurel" law suit. The litigation ended in 1979 with a court ordered judgment.
2. The present zoning of the applicant's property reflects the court's decision as to what the zone's density should be under the then line of "Mount Laurel" cases. As a result of the Lorenc case the zone's density changed from under two (2) units per acre to greater than three (3) units per acre on the gross site.
- ★ 3. By action of this Board on November 6, 1980, memorialized by resolution of November 11, 1980, the then applicant and purchaser under contract, Lawrence Zirinsky, received Conceptual Site Plan Approval for a project called The Commonwealth at Basking Ridge for the property the subject of this application. The "Commonwealth" conceptual approval together with a modification thereof approved on November 24, 1981 (East Shore Associates, Inc. was the applicant) and memorialized by resolution of December 15, 1981, were in conformance with and consistent with the court's judgement in the Lorenc case.
4. This applicant proposed in addition to Alternate C, a plan known as Alternate A and a plan known as Alternate B, both of which were reviewed by the Planning Board. The Planning Board has agreed to the amended plan, Alternate C, proposed by the applicant for the reason that the Board believes it to be a better plan for the development of the applicant's property than the "Commonwealth" plan.
5. Initially the applicant proposed a reduction in the single family and twin units. The Planning Board indicated that such a plan was not in the spirit of the Lorenc case decision. A table illustrating the location of the types of units within the project by each of the four plans is set forth hereafter:

	<u>Common- Wealth</u>	<u>Spring Ridge A</u>	<u>Spring Ridge B</u>	<u>Spring Ridge C</u>
Upper Area				
Multi-Family	1064	1092	1024	1052
Single attached	30	54	52	80
Single detached	62	24	24	30
Islands				
Multi-Family	-0-	-0-	120	-0-
Single attached	64	50	-0-	58
Single detached	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
	1220	1220	1220	1220

6. The applicant's plan complies with the Lorenc decision's requirement for no more than sixty-five (65%) per cent of the site to be used for multi-family units. The applicant's plan complies with the requirement for twenty-five (25%) per cent open space on the dry land.
7. The property which is the subject of this application is shown as Lots 18, 20, 23, 28, 33, 61 and 63 Block 182 on the Tax Map of Bernards Township.
8. The property is located in the R-5 zone.
9. The proposed conceptual plan is shown on and in accordance with plans entitled "Alternate C Conceptual Site Plan Spring Ridge, Bernards Township, Somerset Co., N.J." prepared by Cahill/Prato/McAneny A.I.A. Architects and Planners dated July 25, 1983, consisting of sheets SK1 through SK9.
10. The documents which constitute this application are set forth on Schedule A attached hereto.
11. The total number of dwelling units, 1220, is allowed under the Township's Land Development Ordinance and that, after reviewing the conceptual plan and other documentation submitted by the applicant, there is a reasonable exception that the number of dwelling units can be constructed.
12. That the circulation pattern established by the conceptual plan adequately services the project, and, based upon the information submitted by the applicant, can be constructed to the regulations set forth in the Township's Land Development Ordinance.
13. That the general location and pattern of utilities shown on the utilities plan submitted by the applicant will serve the project. The project is in an area proposed for service by public water and public sewer facilities.
14. That the storm water management plan submitted by the applicant can reasonably be expected to accommodate the Township's design storms and satisfy the requirement for no increase in the rate of storm water runoff.
15. That the staging plan submitted by the applicant will result in the construction of the property in an orderly manner, with a minimum impact on adjacent properties.

16. That the environmental assessment, as submitted, is complete in that it does meet the requirements of the Township's Land Development Ordinance.

17. That the Board can grant approval of the conceptual plan as it relates to:

- a. The total number of units - 1220.
- b. The circulation pattern as it relates to total development.
- c. The utility plan as it relates to storm water management and retention/detention.
- d. The drainage plan as it relates to storm water management and retention/detention.
- e. Critical areas that will not be developed; those lands classified as lowlands by the Township's ordinances.
- f. The staging plan.

18. Further, the Board can grant approval for a ten year period, except that all preliminary and final approvals must be obtained within ten years of adoption of this resolution.

19. The applicant is aware of the Bernards Township off-tract improvement ordinance in that a consideration of a contribution in compliance with same was a part of the resolution for preliminary approval for Phases IA and IB of the "Commonwealth" application. No information has been submitted by the applicant indicating any proposed alternative to the contribution formula within the Township off-tract improvement ordinance.

20. Pursuant to Section 707E.2. of the Bernards Township Land Development Ordinance, the applicant requested that on-tract improvements be constructed prior to the submission of preliminary development plans within the sequence indicated on the staging plan and only after all plans and specifications have been submitted to and approved by the Township Engineer and only when all guarantees have been posted in accordance with the said Development Ordinance. The Planning Board agreed to the applicant's request.

21. The proposed development conforms to and is consistent with the zoning ordinance standards of Bernards Township for conceptual site plan approval. The proposal for maintenance and conservation of the amount of common open space and the purposes of same is adequate. The physical design of the proposed development for public service control over vehicular and pedestrian traffic, amenities of light and air, recreation and visual enjoyment are adequate. The proposed development will not have an unreasonably adverse impact on the area in which it is proposed and the application can be granted approval without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

22. The Township's Master Plan indicates that this zone wherein the applicant's property is situated should include 10,000 square feet of retail shopping.

NOW THEREFORE, be it RESOLVED by the Planning Board of Bernards Township on this 18th day of August, 1983, that the action taken by the aforesaid Board on July 25, 1983, in approving the application of Spring Ridge Associates for conceptual site plan approval for Spring Ridge, Lots 18, 20, 23, 28, 33, 61 and 63, Block 182 on the Tax Map of Bernards Township and as shown on and in accordance with the aforesaid plans is hereby AFFIRMED and MEMORIALIZED subject, however, to the following conditions:

1. Any application for Preliminary Approval shall be designed in accordance with the Township Ordinances unless specific relief is granted by the Board, except that those buildings shown on the Conceptual plan as containing 12 units are approved. All other buildings shall conform to the Ordinance as to the number of units unless an approval is granted by the Board at the time of Preliminary approval.
2. The applicant has proposed that certain buildings be located at a distance of less than 30' from adjacent buildings in order to develop an architectural theme for the project. While the Board approves the reduction of the space between the buildings, such an approval is conditioned upon detailed review of the architectural drawings of the buildings to insure the privacy of the occupants as well as a detailed review of the proposed construction between the buildings all at the time of Preliminary Approval.
3. A determination of required Off Tract Improvements and the funding thereof shall be made at the time of Preliminary Approval.
4. While the Conceptual plan shows that adequate parking can be provided, the actual location of parking shall be reviewed at the time of Preliminary Approval. Particularly, the road south of Road "D" may require revision by the Board after further review.
5. The Conceptual plan indicates that landscaped buffers will be constructed at the time of Phase IA. However, landscaping along the proposed detention basin adjacent to Acken Road is not included within the buffer areas. At the time of submission of Preliminary Approval, landscaping along Acken Road shall be reviewed by the Planning Board, and to the extent practical shall be constructed during Phase IA.
6. While the Conceptual Plan includes a pool and tennis courts, the size of the pool, details as to parking location and the adequacy of pedestrian access will be reviewed at the time of Preliminary Approval.
7. The approval is conditioned on adequate utilities being available, including public sewers.
8. All roadways, public and private, shall be constructed in accordance with the Township's standards. Concrete sidewalks shall be provided as shown on the Conceptual plan, and a bicycle path paralleling the collector boulevard shall be constructed of bituminous concrete to a width of 6'.
9. No basement or cellars shall be provided for any single or twin houses located on the "islands" south of the main portion of the project.

10. Staging shall be in accordance with the plan submitted except that:
  - (a) All landscaping buffers shall be graded, seeded and planted with landscaping material within 120 days of the start of work on Phase IA.
  - (b) Prior to the issuance of any building permit in Phase IC, the collector boulevard shall be completed from King George Road to Acken Road.
11. A determination of the ownership of the open space shall be made prior to Final Approval.
12. At the time of any submission of Preliminary Approval, the applicant shall provide the Township with a structure of the association(s) that will manage the project after development. Based upon its review of this material, a determination of on-site maintenance facilities will be made by the Planning Board.
13. At the time of preliminary application the Planning Board shall consider imposing limitations for the daily hours of construction.
14. The Township Engineer shall be copied on any submissions and all correspondence relating to said approvals and permits and shall be provided with minutes of any meetings that take place.
15. At the time of Preliminary submission for the units located on the "islands" the applicant shall demonstrate to the Board's satisfaction that the proximity of the Flood Hazard Area shall not endanger the health, safety and welfare of the occupants of those units.
16. At the time of Preliminary submission, the applicant shall demonstrate to the Board's satisfaction that the design and location of the buildings and related improvements preserve existing vegetation to the extent practical.
17. Prior to the start of any phase, the property to be developed for single family or twin houses that has not been built during the prior phase shall be regraded, topsoiled and seeded to the satisfaction of the Township Engineer so as to insure proper drainage and eliminate the visual impact of any construction that may have taken place on those lots.
18. The applicant has submitted a letter to the Planning Board dated July 15, 1983, clarifying their position regarding the construction of single family and twin houses. This approval is conditioned upon the applicant adhering to the information set forth in that letter and further that the applicant shall not at a later date request that any or all of the single family or twin houses be eliminated from the project and multi-family housing units be substituted in their place either within the areas currently shown for single family houses or currently shown as multi family houses.
19. Approval is conditioned on all taxes on the property being paid in full through the third quarter of 1983.
20. Approval is conditioned on the payment of all fees required by the Bernards Township Land Development Ordinance.

21. At the time of Preliminary Approval, the Township Engineer may require additional details relating to drainage for the entire project. Should redesign and/or reconstruction of the approved detention facility be required in such a manner that the size of the detention basin must be enlarged and should such enlargement preclude ultimate development of the 1220 units given as part of this Conceptual approval, the project shall be reduced in scope to insure compliance with the Township's Land Development Ordinance unless variances, exceptions or modifications are granted by the Planning Board or the Zoning Board of Adjustment.
22. Access to the site shall be as shown on the Conceptual plan and all construction vehicles and/or other vehicles associated with the construction of the project shall only have access to the site along Pitney Boulevard from King George Road.
23. At the time of Preliminary approval, the applicant shall provide facilities for solid waste recycling.
24. Preliminary approval shall include landscaping plans in general conformance to those plans previously approved by the Board at the time of Final approval of "The Commonwealth."
25. No pedestrian paths shall be constructed in the buffer areas to the rear of any single family or twin houses.
26. Approval is conditioned on the applicant receiving approval from any and all boards, authorities, including the Bernards Township Sewerage Authority and Board of Health, agencies or departments whether Federal, State, County or local of whatsoever nature which shall be required by law in connection with this application.
27. This conceptual plan is approved subject to any future requirement(s) as may be determined by the Township, and set forth by Ordinances relating to "Mount Laurel II".
28. If at the time of application for preliminary approval the Board shall deem it necessary to require further input with regard to the project's impact on the environment from the applicant and the Township Environmental Commission because of any aspect of the design of the preliminary application, the applicant shall do so.
29. Pursuant to Section 707E.2. of the Bernards Township Land Development Ordinance, the applicant may, prior to the submission of preliminary development plans, commence work on the roadways, landscape buffer, sedimentation control, detention and drainage throughout the project provided that same be within the sequence indicated on the staging plan and only after all plans and specifications have been submitted to and approved by the Township Engineer and only when all guarantees have been posted in accordance with the said Development Ordinance.

## SPRING RIDGE

### Conditions of Approval

1. Any application for Preliminary Approval shall be designed in accordance with the Township Ordinances unless specific relief is granted by the Board, except that those buildings shown on the Conceptual plan as containing 12 units are approved. All other buildings shall conform to the Ordinance as to the number of units unless an approval is granted by the Board at the time of Preliminary approval.
2. The applicant has proposed that certain buildings be located at a distance of less than 30' from adjacent buildings in order to develop an architectural theme for the project. While the Board approves the reduction of the space between the buildings, such an approval is conditioned upon detailed review of the architectural drawings of the buildings to insure the privacy of the occupants as well as a detailed review of the proposed construction between the buildings all at the time of Preliminary Approval.
3. A determination of required Off Tract Improvements and the funding thereof shall be made at the time of Preliminary Approval.
4. While the Conceptual plan shows that adequate parking can be provided, the actual location of parking shall be reviewed at the time of Preliminary Approval. Particularly, the road south of Road "D" may require revision by the Board after further review.
5. The Conceptual plan indicates that landscaped buffers will be constructed at the time of Phase IA. However, landscaping along the proposed detention basin adjacent to Acken Road is not included within the buffer areas. At the time of submission of Preliminary Approval, landscaping along Acken Road shall be reviewed by the Planning Board, and to the extent practical shall be constructed during Phase IA.
6. While the Conceptual Plan includes a pool and tennis courts, the size of the pool, details as to parking location and the adequacy of pedestrian access will be reviewed at the time of Preliminary Approval.
7. The approval is conditioned on adequate utilities being available, including public sewers.
8. All roadways, public and private, shall be constructed in accordance with the Township's standards. Concrete sidewalks shall be provided as shown on the Conceptual plan, and a bicycle path paralleling the collector boulevard shall be constructed of bituminous concrete to a width of 6'.
9. No basement or cellars shall be provided for any single or twin houses located on the "island" south of the main portion of the project.
10. Staging shall be in accordance with the plan submitted except that:
  - (a) All landscaping buffers shall be graded, seeded and planted with landscaping material within 120 days of the start of work on Phase IA.

(b) Prior to the issuance of any building permit in Phase IC, the collector boulevard shall be completed from King George Road to Acken Road.

11. A determination of the ownership of the open space shall be made prior to Final Approval.

12. At the time of any submission of Preliminary Approval, the applicant shall provide the Township with a structure of the association(s) that will manage the project after development. Based upon its review of this material, a determination of on-site maintenance facilities will be made by the Planning Board.

13. The project is conditioned on the applicant obtaining all necessary approvals and permits from all regulatory agencies who may have jurisdiction.

14. The Township Engineer shall be copied on any submissions and all correspondence relating to said approvals and permits and shall be provided with minutes of any meetings that take place.

15. At the time of Preliminary submission for the units located on the "islands" the applicant shall demonstrate to the Board's satisfaction that the proximity of the Flood Hazard Area shall not endanger the health, safety and welfare of the occupants of those units.

16. At the time of Preliminary submission, the applicant shall demonstrate to the Board's satisfaction that the design and location of the buildings and related improvements preserve existing vegetation to the extent practical.

17. Prior to the start of any phase, the property to be developed for single family or twin houses that has not been built during the prior phase shall be regraded, topsoiled and seeded to the satisfaction of the Township Engineer so as to insure proper drainage and eliminate the visual impact of any construction that may have taken place on those lots.

18. The applicant has submitted a letter to the Planning Board clarifying their position regarding the construction of single family and twin houses. This approval is conditioned upon the applicant adhering to the information set forth in that letter and further that the applicant shall not at a later date request that any or all of the single family or twin houses be eliminated from the project and multi-family housing units be substituted in their place either within the areas currently shown for single family houses or currently shown as multi family houses.

19. Approval is conditioned on all taxes on the property being paid in full through the third quarter of 1983.

20. Approval is conditioned on the payment of all fees required by the Bernards Township Land Development Ordinance.



21. At the time of Preliminary Approval, the Township Engineer may require additional details relating to drainage for the entire project. Should redesign and or reconstruction of the approved detention facility be required in such a manner that the size of the detention basin must be enlarged and should such enlargement preclude ultimate development of the 1220 units given as part of this Conceptual approval, the project shall be reduced in scope to insure compliance with the Township's Land Development Ordinance unless variances, exceptions or modifications are granted by the Planning Board or the Zoning Board of Adjustment.
22. Access to the site shall be as shown on the Conceptual plan and all construction vehicles and/or other vehicles associated with the construction of the project shall only have access to the site along Pitney Boulevard along King George Road.
23. At the time of Preliminary approval, the applicant shall provide solid waste disposal.
24. Preliminary approval shall include landscaping plans in general conformance to those plans previously approved by the Board at the time of Final approval of "The Commonwealth"
25. No pedestrian paths shall be constructed in the buffer areas to the rear of any single family or twin houses.
26. Approval is conditioned on the applicant receiving approval from any and all boards, authorities, including the Bernards Township Sewerage Authority and Board of Health, agencies or departments whether Federal, State, County or local of whatsoever nature which shall be required by law in connection with this application.

**FINAL MAJOR SUBDIVISION APPROVAL  
SPRING RIDGE ASSOCIATES  
24 SINGLE FAMILY LOTS; 2 VILLAGES  
PHASES IA & IB**

WHEREAS, the owner applicant Spring Ridge Associates has applied for final major subdivision approval for 24 single family lots and for two additional lots containing one village each within Phases IA and IB of the entire Spring Ridge project comprised of Lots 18, 20, 23, 28, 33, 61 and 63, Block 182 as shown on the Tax Map of Bernards Township; and

WHEREAS, the proposed subdivision is all as shown on and in accordance with plans entitled "Final Map of Spring Ridge, Phases Ia & Ib, Township of Bernards, Somerset County, New Jersey, dated February 28, 1984, revised March 1, 1985, prepared by James P. Deady, N.J.L.S.; and

WHEREAS, this Planning Board granted this applicant preliminary major subdivision approval for the lots proposed for subdivision by this application by action of March 8, 1985; and

WHEREAS, the Planning Board after considering the application and documents has made the following findings of fact:

1. The property which is the subject of this application is shown as Lots 18, 20, 23, 28, 33, 61 and 63, Block 182 on the Tax Map of Bernards Township and is located in the R-5 zone.

2. The proposed subdivision is all as shown on and in accordance with plans entitled "Final Map of Spring Ridge, Phases Ia & Ib, Township of Bernards, Somerset County, New Jersey, dated February 28, 1984, revised March 1, 1985, prepared by James P. Deady, N.J.L.S.

3. The proposed subdivision contains 24 single family lots and two additional lots containing one village each within Phases IA and IB of the entire Spring Ridge project.

4. The proposed subdivision will be serviced by public sewer and water facilities.

5. All lots proposed for subdivision will have road frontage on the interior roadways within the overall project and as shown on the aforesaid plans.

6. The applicant's proposed subdivision constitutes a major subdivision and is in conformance with the standard of the Bernards Township Land Development Ordinance.

NOW THEREFORE, be it RESOLVED by the Planning Board of Bernards Township on this 27th day of June, 1985, that the action taken by the aforesaid Board on May 16, 1985, in approving the application of Spring Ridge Associates as aforesaid for Lots 18, 20, 23, 28, 33, 61 and 63, Block 182 on the Tax Map of Bernards Township and as shown on and in accordance with the aforesaid plan is hereby AFFIRMED and MEMORIALIZED subject, however, to the following conditions:

1. Approval from any and all boards, authorities, including the Bernards Township Sewerage Authority and Board of Health, agencies or departments whether Federal, State, County or local of whatsoever nature which shall be required by law in connection with this application.

2. The payment of all fees required by the Bernards Township Land Development Ordinance.

3. Proof shall be submitted by the applicant that all real estate taxes have been paid in full.


4. Compliance with all laws and/or regulations applicable to the property.

5. That the applicant shall enter into a developer's agreement with the Township covering all improvements to be completed by the applicant in form satisfactory to the Township.

6. The applicant shall enter into an agreement with the Township to pay an amount of money to the Township for off-tract transportation improvements as required by law and pursuant to Section 904 of the Bernards Township Land Development Ordinance. Said payment shall be on account of the improvement of the following which have a rational nexus to and will be impacted by the traffic generated by the development proposed by this applicant.

- 1) King George Road
- 2) Acken Road
- 3) Spring Valley Boulevard
- 4) King George Road & Valley Road Intersection

I hereby certify that this is a true copy of a resolution passed by the Bernards Township Planning Board at a special meeting held on June 27, 1985.

  
\_\_\_\_\_  
Nancy C. Ferguson  
Planning Board Secretary

AMENDED CONCEPTUAL SITE PLAN APPROVAL  
SPRING RIDGE ASSOCIATES

WHEREAS, the owner applicant Spring Ridge Associates has applied for an amended conceptual site plan approval for Lots 18, 20, 23, 28, 33, 61 and 63, Block 182 as shown on the Tax Map of Bernards Township all as shown on and in accordance with plans entitled "Alternate C Conceptual Site Plan Spring Ridge, Bernards Township, Somerset Co., N.J." prepared by Cahill/Prato/McAneny A.I.A. Architects and Planners dated July 25, 1983, consisting of sheets SK1 through SK9; and

WHEREAS, the Planning Board of Bernards Township has conducted public hearings on the said application at its meetings held on July 12th and 15th, 1983, of which public notice and notice by the applicant have been given as required by law; and

WHEREAS, the Planning Board after considering the application, documents, testimony and argument of counsel has made the following findings of fact:

1. The property which is the subject of this application was the subject of a law suit known as Theodore S. Lorenc, et als., v. The Township of Bernards, et al. initiated in 1974. The case was a "Mount Laurel" law suit. The litigation ended in 1979 with a court ordered judgment.
2. The present zoning of the applicant's property reflects the court's decision as to what the zone's density should be under the then line of "Mount Laurel" cases. As a result of the Lorenc case the zone's density changed from under two (2) units per acre to greater than three (3) units per acre on the gross site.
3. By action of this Board on November 6, 1980, memorialized by resolution of November 11, 1980, the then applicant and purchaser under contract, Lawrence Zirinsky, received Conceptual Site Plan Approval for a project called The Commonwealth at Basking Ridge for the property the subject of this application. The "Commonwealth" conceptual approval together with a modification thereof approved on November 24, 1981 (East Shore Associates, Inc. was the applicant) and memorialized by resolution of December 15, 1981, were in conformance with and consistent with the court's judgement in the Lorenc case.
4. This applicant proposed in addition to Alternate C, a plan known as Alternate A and a plan known as Alternate B, both of which were reviewed by the Planning Board. The Planning Board has agreed to the amended plan, Alternate C, proposed by the applicant for the reason that the Board believes it to be a better plan for the development of the applicant's property than the "Commonwealth" plan.
5. Initially the applicant proposed a reduction in the single family and twin units. The Planning Board indicated that such a plan was not in the spirit of the Lorenc case decision. A table illustrating the location of the types of units within the project by each of the four plans is set forth hereafter:

	<u>Common- Wealth</u>	<u>Spring Ridge A</u>	<u>Spring Ridge B</u>	<u>Spring Ridge C</u>
Upper Area				
Multi-Family	1064	1092	1024	1052
Single attached	30	54	52	80
Single detached	62	24	24	30
Islands				
Multi-Family	-0-	-0-	120	-0-
Single attached	64	50	-0-	58
Single detached	-0-	-0-	-0-	-0-
	1220	1220	1220	1220

6. The applicant's plan complies with the Lorenc decision's requirement for no more than sixty-five (65%) per cent of the site to be used for multi-family units. The applicant's plan complies with the requirement for twenty-five (25%) per cent open space on the dry land.
7. The property which is the subject of this application is shown as Lots 18, 20, 23, 28, 33, 61 and 63 Block 182 on the Tax Map of Bernards Township.
8. The property is located in the R-5 zone.
9. The proposed conceptual plan is shown on and in accordance with plans entitled "Alternate C Conceptual Site Plan Spring Ridge, Bernards Township, Somerset Co., N.J." prepared by Cahill/Prato/McAneny A.I.A. Architects and Planners dated July 25, 1983, consisting of sheets SK1 through SK9.
10. The documents which constitute this application are set forth on Schedule A attached hereto.
11. The total number of dwelling units, 1220, is allowed under the Township's Land Development Ordinance and that, after reviewing the conceptual plan and other documentation submitted by the applicant, there is a reasonable exception that the number of dwelling units can be constructed.
12. That the circulation pattern established by the conceptual plan adequately services the project, and, based upon the information submitted by the applicant, can be constructed to the regulations set forth in the Township's Land Development Ordinance.
13. That the general location and pattern of utilities shown on the utilities plan submitted by the applicant will serve the project. The project is in an area proposed for service by public water and public sewer facilities.
14. That the storm water management plan submitted by the applicant can reasonably be expected to accommodate the Township's design storms and satisfy the requirement for no increase in the rate of storm water runoff.
15. That the staging plan submitted by the applicant will result in the construction of the property in an orderly manner, with a minimum impact on adjacent properties.

16. That the environmental assessment, as submitted, is complete in that it does meet the requirements of the Township's Land Development Ordinance.
17. That the Board can grant approval of the conceptual plan as it relates to:
  - a. The total number of units - 1220.
  - b. The circulation pattern as it relates to total development.
  - c. The utility plan as it relates to storm water management and retention/detention.
  - d. The drainage plan as it relates to storm water management and retention/detention.
  - e. Critical areas that will not be developed; those lands classified as lowlands by the Township's ordinances.
  - f. The staging plan.
18. Further, the Board can grant approval for a ten year period, except that all preliminary and final approvals must be obtained within ten years of adoption of this resolution.
19. **The applicant is aware of the Bernards Township off-tract improvement ordinance in that a consideration of a contribution in compliance with same was a part of the resolution for preliminary approval for Phases IA and IB of the "Commonwealth" application. No information has been submitted by the applicant indicating any proposed alternative to the contribution formula within the Township off-tract improvement ordinance.**
20. Pursuant to Section 707E.2. of the Bernards Township Land Development Ordinance, the applicant requested that on-tract improvements be constructed prior to the submission of preliminary development plans within the sequence indicated on the staging plan and only after all plans and specifications have been submitted to and approved by the Township Engineer and only when all guarantees have been posted in accordance with the said Development Ordinance. The Planning Board agreed to the applicant's request.
21. The proposed development conforms to and is consistent with the zoning ordinance standards of Bernards Township for conceptual site plan approval. The proposal for maintenance and conservation of the amount of common open space and the purposes of same is adequate. The physical design of the proposed development for public service control over vehicular and pedestrian traffic, amenities of light and air, recreation and visual enjoyment are adequate. The proposed development will not have an unreasonably adverse impact on the area in which it is proposed and the application can be granted approval without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.
22. The Township's Master Plan indicates that this zone wherein the applicant's property is situated should include 10,000 square feet of retail shopping.

NOW THEREFORE, be it RESOLVED by the Planning Board of Bernards Township on this 18th day of August, 1983, that the action taken by the aforesaid Board on July 25, 1983, in approving the application of Spring Ridge Associates for conceptual site plan approval for Spring Ridge, Lots 18, 20, 23, 28, 33, 61 and 63, Block 182 on the Tax Map of Bernards Township and as shown on and in accordance with the aforesaid plans is hereby AFFIRMED and MEMORIALIZED subject, however, to the following conditions:

1. Any application for Preliminary Approval shall be designed in accordance with the Township Ordinances unless specific relief is granted by the Board, except that those buildings shown on the Conceptual plan as containing 12 units are approved. All other buildings shall conform to the Ordinance as to the number of units unless an approval is granted by the Board at the time of Preliminary approval.
2. The applicant has proposed that certain buildings be located at a distance of less than 30' from adjacent buildings in order to develop an architectural theme for the project. While the Board approves the reduction of the space between the buildings, such an approval is conditioned upon detailed review of the architectural drawings of the buildings to insure the privacy of the occupants as well as a detailed review of the proposed construction between the buildings all at the time of Preliminary Approval.
3. A determination of required Off Tract Improvements and the funding thereof shall be made at the time of Preliminary Approval.
4. While the Conceptual plan shows that adequate parking can be provided, the actual location of parking shall be reviewed at the time of Preliminary Approval. Particularly, the road south of Road "D" may require revision by the Board after further review.
5. The Conceptual plan indicates that landscaped buffers will be constructed at the time of Phase IA. However, landscaping along the proposed detention basin adjacent to Acken Road is not included within the buffer areas. At the time of submission of Preliminary Approval, landscaping along Acken Road shall be reviewed by the Planning Board, and to the extent practical shall be constructed during Phase IA.
6. While the Conceptual Plan includes a pool and tennis courts, the size of the pool, details as to parking location and the adequacy of pedestrian access will be reviewed at the time of Preliminary Approval.
7. The approval is conditioned on adequate utilities being available, including public sewers.
8. All roadways, public and private, shall be constructed in accordance with the Township's standards. Concrete sidewalks shall be provided as shown on the Conceptual plan, and a bicycle path paralleling the collector boulevard shall be constructed of bituminous concrete to a width of 6'.
9. No basement or cellars shall be provided for any single or twin houses located on the "islands" south of the main portion of the project.

10. Staging shall be in accordance with the plan submitted except that:
  - (a) All landscaping buffers shall be graded, seeded and planted with landscaping material within 120 days of the start of work on Phase IA.
  - (b) Prior to the issuance of any building permit in Phase IC, the collector boulevard shall be completed from King George Road to Acken Road.
11. A determination of the ownership of the open space shall be made prior to Final Approval.
12. At the time of any submission of Preliminary Approval, the applicant shall provide the Township with a structure of the association(s) that will manage the project after development. Based upon its review of this material, a determination of on-site maintenance facilities will be made by the Planning Board.
13. At the time of preliminary application the Planning Board shall consider imposing limitations for the daily hours of construction.
14. The Township Engineer shall be copied on any submissions and all correspondence relating to said approvals and permits and shall be provided with minutes of any meetings that take place.
15. At the time of Preliminary submission for the units located on the "islands" the applicant shall demonstrate to the Board's satisfaction that the proximity of the Flood Hazard Area shall not endanger the health, safety and welfare of the occupants of those units.
16. At the time of Preliminary submission, the applicant shall demonstrate to the Board's satisfaction that the design and location of the buildings and related improvements preserve existing vegetation to the extent practical.
17. Prior to the start of any phase, the property to be developed for single family or twin houses that has not been built during the prior phase shall be regraded, topsoiled and seeded to the satisfaction of the Township Engineer so as to insure proper drainage and eliminate the visual impact of any construction that may have taken place on those lots.
18. The applicant has submitted a letter to the Planning Board dated July 15, 1983, clarifying their position regarding the construction of single family and twin houses. This approval is conditioned upon the applicant adhering to the information set forth in that letter and further that the applicant shall not at a later date request that any or all of the single family or twin houses be eliminated from the project and multi-family housing units be substituted in their place either within the areas currently shown for single family houses or currently shown as multi family houses.
19. Approval is conditioned on all taxes on the property being paid in full through the third quarter of 1983.
20. Approval is conditioned on the payment of all fees required by the Bernards Township Land Development Ordinance.



21. At the time of Preliminary Approval, the Township Engineer may require additional details relating to drainage for the entire project. Should redesign and/or reconstruction of the approved detention facility be required in such a manner that the size of the detention basin must be enlarged and should such enlargement preclude ultimate development of the 1220 units given as part of this Conceptual approval, the project shall be reduced in scope to insure compliance with the Township's Land Development Ordinance unless variances, exceptions or modifications are granted by the Planning Board or the Zoning Board of Adjustment.
22. Access to the site shall be as shown on the Conceptual plan and all construction vehicles and/or other vehicles associated with the construction of the project shall only have access to the site along Pitney Boulevard from King George Road.
23. At the time of Preliminary approval, the applicant shall provide facilities for solid waste recycling.
24. Preliminary approval shall include landscaping plans in general conformance to those plans previously approved by the Board at the time of Final approval of "The Commonwealth."
25. No pedestrian paths shall be constructed in the buffer areas to the rear of any single family or twin houses.
26. Approval is conditioned on the applicant receiving approval from any and all boards, authorities, including the Bernards Township Sewerage Authority and Board of Health, agencies or departments whether Federal, State, County or local of whatsoever nature which shall be required by law in connection with this application.
27. This conceptual plan is approved subject to any future requirement(s) as may be determined by the Township, and set forth by Ordinances relating to "Mount Laurel II".
28. If at the time of application for preliminary approval the Board shall deem it necessary to require further input with regard to the project's impact on the environment from the applicant and the Township Environmental Commission because of any aspect of the design of the preliminary application, the applicant shall do so.
29. Pursuant to Section 707E.2. of the Bernards Township Land Development Ordinance, the applicant may, prior to the submission of preliminary development plans, commence work on the roadways, landscape buffer, sedimentation control, detention and drainage throughout the project provided that same be within the sequence indicated on the staging plan and only after all plans and specifications have been submitted to and approved by the Township Engineer and only when all guarantees have been posted in accordance with the said Development Ordinance.

Moved by Feitner that the resolution be approved as read.

Seconded by Howell.

Roll Call: Howell-yes, Beckman-yes, Hankinson-yes, Feitner-yes, Kunna-yes, Hoare-yes, Hillestad-yes.

Motion carried.

THE COMMONWEALTH - Resolution - Phases IA & IB

Mr. Frost read the following proposed resolution of approval:

MODIFICATION OF CONCEPTUAL APPROVAL  
AND PRELIMINARY SITE PLAN AND SUBDIVISION APPROVAL

THE COMMONWEALTH - PHASES IA & IB

WHEREAS, the applicant East Shore Associates, Inc. a New York Corporation, is the purchaser under contract of Lots 18, 20, 23, 28, 33, 61 and 65, Block 182 as shown on the tax map of Bernards Township and located in the Southwesterly portion of Bernards Township bounded by Valley Road to the North, King George Road to the East, the Dead River to the South and Acken Road to the West; and

WHEREAS, the owners of record of the aforesaid property have consented to this application; and

WHEREAS, the applicant was granted Conceptual Site Plan approval by action of the Bernards Township Planning Board on November 6, 1980, and memorialized by resolution dated November 11, 1980; and

WHEREAS, the applicant has applied for a modification of conceptual approval and Preliminary Site Plan and Subdivision Approval for Phases IA and IB of the project all as shown on plans entitled "The Commonwealth at Basking Ridge, A Planned Residential Neighborhood of 255 Dwelling Units (Phases IA & IB) Bernards Township, Somerset County, New Jersey" prepared by Cahill/Prato/McAneny A.I.A. Architects/Planners dated August 31, 1981, consisting of sheets S1 through S36, CD1 through CD12 and A1 through A7; and

WHEREAS, the Planning Board of Bernards Township has conducted public hearings on the said application at its meetings held on September 29 and November 24, 1981 of which public notice and notice by the applicant have been given as required by law; and

WHEREAS, the Planning Board after considering the application, documents, testimony and argument of counsel has made the following findings of fact:

1. The property which is the subject of this application for Phases IA & IB is known as Lots 18, 20, 23, 28 and 33, Block 182 on the tax map of Bernards Township.

2. The property is located in the R-5 zone.

3. The documents which constitute this application are as set forth on Schedule A attached hereto.

4. The proposed development is pursuant to the PRD-2 Planned Residential Neighborhoods portion of the Bernards Township Land Development Ordinance, Section 403.H.3.

5. Phases IA & IB consist of 65.5 acres out of the project's total acreage of 135.4; the site utilizes 224 multi-family units and 31 single-family units; the multi-family units will be in 28 buildings, each consisting of 8 units.

6. The gross density will be 3.9 units per acre.

7. There will be 2.5 parking spaces per unit: 286 garages, 240 driveway spaces, 112 guest spaces for a total of 638 spaces. The proposed parking scheme is adequate and complies with the Bernards Township Land Development Ordinance.

8. The three tennis courts located on the aforesaid plans in the central portion of the project will be in later phases of the project, except that the applicant agrees to bond said tennis courts to ensure their construction should the remainder of the project not be constructed.

9. A letter from the Somerset County Planning Board dated November 13, 1981, was received and reviewed by the Planning Board.

10. A memorandum from Richard Browne Associates dated October 16, 1981, dealing with the proposed stormwater collection system, detention basins and stormwater management systems was received and reviewed by the Planning Board.

11. The applicant's revised Environmental Impact Assessment which was submitted, reflects the approved Conceptual Plan and adequately incorporates recommendations for construction of the project into this application.

12. The proposed development is in an area proposed for service by public sewer and water facilities.

13. The applicant's plans for grading, utilities, lighting, landscaping, soil erosion and sewerage are adequate and in conformity with the Bernards Township Land Development Ordinance.

14. The proposed development conforms to and is consistent with the zoning ordinance standards of Bernards Township. The proposal for maintenance and conservation of the amount of common open space and the purposes of same is adequate. The physical design of the proposed development for public service control over vehicular and pedestrian traffic, amenities of light and air, recreation and visual enjoyment are adequate. The proposed development will not have an unreasonably adverse impact on the area in which it is proposed and the application can be granted approval without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

15. The application proposes modification to the conceptual approval heretofore granted in the following areas:

- a. The building design and layout of the Type "B" multi-family units has been modified to more adequately reflect the existing topography and preserve to the extent possible existing vegetation; and

b. The alignment of Road "A" at its intersection with Acken Road has been modified to minimize the impact of the westerly extension of Road "A" on existing property owners.

c. The staging plan was so modified as indicated on the site plan. Except for the modifications proposed, the application is in conformance with the Conceptual Approval previously granted by the Planning Board, and is in accordance with the conditions established at the time of Conceptual Approval. As such it is part of the approved Conceptual Plan and any Site Plan or Subdivision Approval shall not result in a reduction in the development potential of the remaining portion of the tract, assuming that the approved Conceptual Plan, as amended herein is complied with.

NOW THEREFORE, be it RESOLVED by the Planning Board of Bernards Township on this 15th day of December, 1981, that the action taken by the aforesaid Planning Board on November 24, 1981, in approving the application of East Shore Associates, Inc. for Preliminary Site Plan and Subdivision Approval for Lots 18, 20, 23, 28, 33, Block 182, on the tax map of Bernards Township and as shown on and in accordance with the aforesaid plan is hereby AFFIRMED and MEMORIALIZED subject, however, to the following conditions:

1. The payment of all fees required by the Bernards Township Land Development Ordinance.

2. Approval from any and all boards, authorities, including the Bernards Township Sewerage Authority and Board of Health, agencies or departments whether Federal, State, County or local of whatsoever nature which shall be required by law in connection with this application.

3. Proof shall be submitted by the applicant that all real estate taxes have been paid in full.

4. Compliance with all laws, and/or ordinances or regulations applicable to the property.

5. Off-tract Improvements - The applicant shall be responsible for funding off-tract roadway improvements in conjunction with this approval for 31 single-family and 224 multi-family dwelling units. The current cost for these improvements is estimated as \$224,150.00. The final cost and method of funding shall be determined at the time of final approval.

At the current time it is anticipated that the off-tract improvements associated with the total project as defined by the conceptual approval shall include:

- a. The construction of Acken Road.
- b. The improvements of King George Road from I-78 to Valley Road.
- c. The improvement of Valley Road from King George Road to Stonehouse Road.
- d. The improvement to the intersection of Stonehouse Road and Valley Road.
- e. The improvement to the intersection of Valley Road and King George Road.

Any costs associated with County roadway improvements shall be considered a credit against the requirements for off-tract improvements. Additionally, as determined by the Township Engineer, the incremental increase in cost of Road "A" over the cost of a standard 30 foot municipal roadway shall be considered as a credit against the requirements for funding of off-tract improvements.

Since the final requirement for off-tract improvements will be made at the time of submission for final approval, both the Township and the applicant shall review these requirements at that time.

6. Sewer Construction - The Conceptual Plan as originally approved and amended locates multi-family housing within the proposed right of way for the Bernards Township Sewerage Authority interceptor. Since the conceptual plan developed as part of the court order did not locate housing units within this right-of-way, the need to relocate the interceptor sewer is a direct result of the plan prepared by the applicant. The Bernards Township Sewerage Authority plans to construct the interceptor sewer in 1982. This approval is conditioned upon:

- a. The dedication to the Township within 60 days of an easement within the right of way of Road "A" for the construction of the interceptor sewer and
- b. Either the construction of the sewer in accordance with plans and specifications approved by the Sewerage Authority on or before September 1, 1982 or the applicant arranging for or providing the funds for the cost of construction of the interceptor as determined by the Bernards Township Sewerage Authority at such time as determined by the Sewerage Authority.

7. Tennis Courts - The application does not include construction of recreational facilities. As presently planned, the recreational facilities will be constructed as part of future applications for the project. The approval is conditioned on the applicant posting with the Township a surety equal to 120% of the estimated cost of design and construction of these tennis courts prior to the issuance of any building permits. Such surety shall insure that the tennis courts are completed within two years of the issuance of any Certificate of Occupancy within Phase IA or IB, whichever occurs first.

8. Maintenance Facilities - The total project includes a maintenance building to be constructed during other phases. Approval is conditional on:

- a. One Type "B" unit and its garage being made available to the Association(s) for use by the Association(s) in maintenance of the facility. This unit, while ownership shall remain with the developer, shall not be included in any determination of when the developer passes control of the project to the Association and this shall be reflected in the Master Deed and By-Laws.
- b. The applicant posting a surety with the Township for the construction of a maintenance facility of at least 400 square feet, with utilities at a location determined by the Planning Board. Said surety shall be equal to 120% of the estimated design and construction cost to ensure the construction of a maintenance facility, should the proposed maintenance facility at the westerly end of the project not be available within 5 years of the issuance of the first building permit for either Section IA or IB.

9. Landscaping - Approval is conditional on:

- a. Additional landscaping being provided along the south side of Road "A" from King George Road for a distance of 500+ feet to the west and to fill in those areas where a landscape screen was not provided.
- b. All landscaping shall be installed within all buffer areas within 4 months of the start of any construction, except that no landscaping is required to be

installed prior to April 1 of any calendar year and a minimum of three months shall be given for installation of such landscaping.

10. Drainage - Approval is conditional as follows:

- a. The proposed pond shown in the center of the Type "B" units is approved if the applicant can demonstrate at the time of submission for final approval that sufficient inflow into the pond will exist to ensure that the pond will remain at a reasonable surface elevation. If this can be demonstrated, the Township will review proposed drainage and drainage structures into and out of the pond. If this cannot be demonstrated, the Planning Board will review alternate grading, drainage, landscaping and use of the area.
- b. At the time of submission for final approval the Township Engineer may require additional information relating to drainage for the total project. In any case, should redesign of the proposed retention basins be required to construct the entire 1220 units which received Conceptual Approval, such redesign and reconstruction shall be undertaken by the applicant. Further should the design and location of the detention facilities proposed as a part of Sections I-A and I-B in conjunction with other detention facilities required for a zero increase in the rate of runoff result in an inability to construct 1220 dwelling units within the requirements of the Township's Land Development Ordinance, then the project will have to be reduced to ensure compliance with the detention requirements.
- c. At the time of submission for final approval, or when final contract documents are submitted to the Township for approval, the Township Engineer shall review said documents to determine if any modifications in the drainage layout is required.

11. Review at time of submission for final approval. The Board reserves the right to review at the time of submission for final approval the following:

- a. Fire hydrant locations (each hydrant shall provide 1000 gpm)
- b. Lighting locations and fixtures.
- c. Soil Erosion and Sedimentation Control Plans.
- d. Vertical roadway geometry.

12. Should the applicant wish to proceed with construction of site work (public roads, private roads, utilities and drainage) prior to submission for final approval, all plans shall be submitted to the satisfaction of the Township Engineer.

13. Prior to submission for Final Approval. The applicant shall submit the public offering statement to the Planning Board and any and all Association documents relating to the project. The Master Deed and By-Laws shall include the language contained in Section 517D2 of the Township's Land Development Ordinance and the Master Deed and By-Laws shall clearly indicate that this condition cannot be amended without the consent of the Township.

14. Pedestrian Paths - No pedestrian paths shall be constructed in the buffer areas to the rear of any single family houses.

15. All construction access shall be from King George Road along the proposed alignment of Road "A". Construction staging shall be located to the west of the main detention basin, immediately north of proposed Road "A".

16. The applicant shall determine whether the proposed name of the project is in violation of any laws or regulations and shall so inform the Planning Board at the time of submission for Final Approval.

17. Provisions for solid waste recycling shall be provided within 5 years of the issuance of the first building permit or at the time of construction of a permanent maintenance facility.

18. If the project does not have common water paid for by the Association(s), then separate water and faucets shall be provided for use by and paid for by the Association. Access to such common water shall be from all sides of all buildings.

19. All grading and drainage plans are conditional upon acceptance by any agency, local, state or federal, who has jurisdiction.

Moved by Feitner that the resolution be approved as read.

Seconded by Kunna.

Roll Call: Holmes-yes, Howell-yes, Beckman-yes, Feitner-yes, Kunna-yes, Hoare-yes, Hillestad-yes.

Motion carried.

#### A COUNTRY PLACE - Public Hearing & Resolution

At the Planning Board Meeting held on November 24, 1981, the applicant informed the Board that an agreement had been reached with the cemetery association regarding the buffer area and emergency access road which had been previously discussed. The Board felt that they needed to see more complete plans and these were submitted on December 11, 1981. Mr. David Keller went over these plans.

The plans show the buffer area which the applicant has purchased from the Cemetery Association, the emergency access which has been negotiated with the cemetery and the relocation of the recreation area away from possible development on Pill Hill Road.

Mr. Hoare asked if the final sale of the buffer property had been completed and asked if the Board has seen documentation of this.

Mr. Frost said that the map which has been filed showed the inclusion of the buffer.

Mr. Messina suggested that the island in the access roadway have breaks in it for emergency purposes. He also asked about the location of mailboxes.

Mr. Keller indicated that they would be distributed throughout the project.

Mr. Messina pointed out that road details, lighting details, etc. will be handled at final.

Mr. Kunna questioned the size of the outlet pipe on the detention basin and asked if the size of that pipe is adequate to control the dam.

Mr. Kunna said that he was concerned about the Homeowner's Association maintaining the detention basin and the surrounding area.

Mr. Kunna also said that he would like it noted that the length of the entrance road exceeds Township Standards.

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7. The execution of a developer's agreement by the applicant covering all improvements to be completed by the applicant in form satisfactory to the Township.

8. The applicant shall submit 30 scaled drawings of all improvements for review and approval by the Township Engineer before each phase of development commences construction.

9. The applicant shall make a contribution to the Township pursuant to Township Ordinance in the amount of \$16,318.50 for off-site transportation improvements or the applicant may elect to proceed as set forth in the resolution memorializing preliminary approval; determination shall be made, however, prior to the start of any construction.

Moved by Hoare that the resolution be approved as read.

Seconded by Holmes.

Roll Call: Beckman-yes, Harris-yes, Hoare-yes, Holmes-yes, Kunna-yes, Lind-yes, Wiley-yes, Dunham-yes.

Motion carried.

Two Brooks Farm - Sakele - Major Subdivision - Conceptual Resolution

Attorney Garvin read the following resolution of approval.

RESOLUTION  
CONDITIONAL SUBDIVISION APPROVAL  
TWO BROOKS FARM

WHEREAS, the owner applicant, Sakele Brothers Company, has applied for conceptual subdivision approval for Lots 31 & 61, Block 106 as shown on the Tax Map of Bernards Township all as shown on and in accordance with plans entitled "Two Brooks Farm, Bernards Township, Somerset County" prepared by Kinzler/Ritter dated June, 1983, consisting of six sheets; and

WHEREAS, the Planning Board of Bernards Township has conducted public hearings on the said application at its meetings held on September 13 and October 11, 1983 of which public notice and notice by the applicant have been given as required by law; and

WHEREAS, the Planning Board after considering the application, documents, testimony and argument of counsel has made the following findings of fact:

1. The property which is the subject of this application is shown as Lots 31 & 61, Block 106 on the Tax Map of Bernards Township.

2. The property consists of approximately 152 acres and is located in the R-4 zone.

3. The application is made pursuant to the residential cluster provisions of the Bernards Township Land Development Ordinance and proposes 132 lots for the development of detached single family residences with additional land set aside for common open space and four detention basins.

4. The proposed conceptual plan is shown on and in accordance with plans entitled "Two Brooks Farm Bernards Township, Somerset County" prepared by Kinzler/Ritter dated June 1983, consisting of six sheets.

5. The documents which constitute this application are set forth on Schedule A attached hereto.

6. The total number of developable lots proposed, 132, is allowed under the Bernards Township Land Development Ordinance and after reviewing the conceptual plan and other documentation submitted by the applicant, there is reasonable expectation that the number of lots proposed for such detached single family development can be provided.

7. The circulation pattern established by the conceptual plan adequately services the project, and based upon the information submitted by the applicant, can be constructed to the regulations set forth in the Township's Land Development Ordinance.

8. The general location and pattern of utilities shown on the utilities plan submitted by the applicant will serve the project. The project is in an area proposed for service by public water and public sewer facilities.

9. The storm water management plan submitted by the applicant can reasonably be expected to accommodate the Township's design storms and satisfy the requirement for no increase in the rate of storm water runoff.

10. The staging plan submitted by the applicant will result in the construction of the project in an orderly manner, with a minimum impact on adjacent properties.

11. The environmental impact assessment, as submitted, is complete in that it does meet with requirements for the Bernards Township Land Development Ordinance.

12. The Planning Board can grant approval of the conceptual plan as it relates to:

- a. The total number of developable lots - 132;
- b. The circulation pattern as it relates to total development;
- c. The utility plan as it relates to on-site utilities;
- d. The drainage plan as it relates to storm water management and retention/detention;
- e. Critical areas that will not be developed; those lands classified as low lands by the Township's Ordinances; and
- f. The staging plan.

13. Further, the Planning Board can grant approval for a ten year period, except that all preliminary and final approvals must be obtained within ten years of adoption of this resolution.

14. The proposed development project conforms to and is consistent with the zoning ordinance standards of Bernards Township for conceptual site plan approval. The proposal for maintenance and conservation of the amount of common open space and the purposes of same are adequate. The physical design of the proposed development for public service control over vehicular and pedestrian traffic, amenities of light and air, recreation and visual enjoyment are adequate. The proposed development will not have an unreasonably adverse impact on the area in which it is proposed and the application can be granted approval without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

**NOW THEREFORE, be it RESOLVED by the Planning Board of Bernards Township on this 14th day of November, 1983, that the action taken by the aforesaid Planning Board on October 11, 1983, in approving the application of Sakele Brother company for conceptual subdivision approval for Two Brooks Farm, Lots 31 & 61, Block 106 on the Tax Map of Bernards Township and as shown on and in accordance with the aforesaid plans is hereby AFFIRMED and MEMORIALIZED subject, however, to the following conditions:**

1. Any application for Preliminary Approval shall be designed in accordance with the Township Ordinances unless specific relief is granted by the Board.

2. A determination of Off-Tract Improvements and the funding thereof shall be made at the time of Preliminary Approval. Part or all of the money received for Off-Tract Improvements shall be used at the intersection of Lake Road and South Finley Avenue and other such improvements as may be determined necessary.

3. This approval is conditioned on adequate utilities being available, including public sewers.

4. All roadways, public and private shall be constructed in accordance with the Township's standards.

a. The roadway from proposed Grist Mill Drive extending in a Northwesterly direction to provide for a future connection to Lake Road shall be constructed to a 30' width and a sidewalk shall be constructed on the Southwesterly side.

b. All remaining 24' cartways shall be constructed with a sidewalk on one side of the road, the location to be determined at the time of Preliminary Approval.

5. At the time of any submission of Preliminary Approval, the applicant shall provide the Township with a structure of the association(s) that will manage the project after development.

6. The project is conditioned on the applicant obtaining all necessary approvals and permits from all regulatory agencies who may have jurisdictions.

7. The Township Engineer shall be copied on any submissions and all correspondence relating to said approvals and permits and shall be provided with minutes of any meetings that take place.

8. Approval is conditioned on all taxes on the property being paid in full through the third quarter of 1983.

9. Approval is conditioned on the payment of all fees required by the Bernards Township Land Development Ordinance.

10. At the time of Preliminary Approval, the Township Engineer may require additional details relating to drainage for the entire project. Should redesign and/or reconstruction of the approved detention facility be required to satisfy the requirements of the Township's ordinances as they relate to this tract, in such a manner that the size of the detention basins must be enlarged and should such enlargement affect ultimate development of 132 units given as part of this conceptual approval, the project may be reduced in scope to insure compliance with the Township's Land Development Ordinance

unless variances, exceptions or modifications are granted by the Planning Board or the Zoning Board of Adjustment.

11. Approval is conditioned on the applicant receiving approvals from any and all boards, authorities, including the Bernards Township Sewerage Authority and Board of Health, agencies or departments whether Federal, State, County or local of whatsoever nature which shall be required by law in connection with this application.

12. The lots located at the cul-de-sac on Normandy court and the cul-de-sac design shall be such that privacy is maintained for the adjacent property owners and existing vegetation is maintained to the degree practicable.

13. At the time of the application for Preliminary and/or Final Subdivision Approval for Section I of the project, the Planning Board reserves the right to then further investigate and review the location of another connection from the project onto Lake Road.

14. The project shall be constructed in accordance with the staging plan submitted as part of the application for conceptual approval. To insure adequate circulation through and between the local neighborhoods the cul-de-sac to be constructed in Phase 4, located opposite Jeffrey Court, shall be extended to connect with Jeffrey Court and the building lots redesigned accordingly. Further, as part of Phase 4, Gerard Avenue shall be constructed between the temporary cul-de-sac just north of Marilyn Street to Grist Mill Drive East, all within the existing right-of-way. Any construction cost in excess of those normally associated with roadway construction necessitated by the crossing of the Algonquin gas line shall be a credit against any required contribution for off-tract improvements as set forth above. Finally, the Township shall investigate the potential need for construction of sidewalks along Gerard Avenue and Lyons Place and also shall examine the design of the intersection of Gerard Avenue and Lyons Place.

15. In the construction of Phase 5, the roadway providing for a future connection from Grist Mill Drive East to Lake Road shall be graded and seeded. Additionally, the sidewalk on the southerly side of this future extension shall be constructed up to the tract boundary line.

16. The portion of the tract located in the Southeast corner between the pond and Lyons Place, which area of land is connected to the lot containing the existing home, shall be precluded from further subdivision. This shall be accomplished by the filing of an appropriate document running in favor of the Township limiting development on that entire lot to those principal and accessory uses allowed under the Bernards Township Land Development Ordinance for a single lot and shall be accomplished at the time of final approval for Section 4 of the project.

17. A determination of the ownership of open space shall be made prior to Final approval. Further, a determination of the need for the individual access shown on the conceptual plan, typically at the end of cul-de-sacs, will be re-examined by the Planning Board at the time of the submission of Preliminary approval. In those instances where the open space consists of a 50' buffer strip between a proposed lot and the tract boundary, and where that buffer strip does not form part of a significant open space area, the lot lines shall be extended to the tract boundary and a conservation easement placed running in favor of the Township precluding construction and the removal of vegetation.

Exhibit D



March 22, 1984 - Closed

Moved by Alexander that the minutes be approved as submitted.  
Seconded by Lindsey.  
All members were in favor with Harris and Wiley abstaining.  
Motion carried.

March 27, 1984

Page 9 - Last line change "plans" to "plant".

Moved by Lind that the minutes be approved as amended.  
Seconded by Wiley.  
All members were in favor with Mr. Hoare abstaining.  
Motion carried.

April 5, 1984

Moved by Lind that the minutes be approved as submitted.  
Seconded by Alexander.  
All members were in favor with Harris and Hoare abstaining.  
Motion carried.

Coddington Farms - Block 190, Lot 28  
major subdivision - Conceptual Resolution

Attorney Garvin read the following proposed resolution of approval:

CONCEPTUAL SUBDIVISION APPROVAL  
CODDINGTON FARMS

WHEREAS, the owner applicant, John F. Willits and Enterprises Partnership, have applied for conceptual subdivision approval for Lot 28, Block 190 on the Tax Map of Bernards Township, the property being situated at the southwesterly corner of Martinsville Road and Mountain Road; and

WHEREAS, the proposed subdivision shall be as shown on and in accordance with a conceptual plan entitled "Proposed Coddington Farms, Block 190, Lot 28, Bernards Township Somerset County, New Jersey" prepared by Johnson Engineering, Inc., dated December 21, 1983, consisting of three sheets; and

WHEREAS, the Planning Board of Bernards Township has conducted public hearings on this application at its meetings held on January 24, 1984 and March 27, 1984, of which public notice and notice by the applicant have been given as required by law; and

WHEREAS, the Planning Board after considering the application, documents, testimony and argument of counsel has made the following findings of fact:

I. The property which is the subject of this application is known as Lot 28, Block 190 on the Tax Map of Bernards Township, consists of 143 acres and is located in the R-3 zone.

2. The proposed conceptual plan is shown on and in accordance with a plan entitled "Proposed Coddington Farms, Block 190, Lot 28, Bernards Township, Somerset County, New Jersey" prepared by Johnson Engineering, Inc., dated December 21, 1983, consisting of three sheets.

3. The subdivision proposes nine standard residential lots each approximating three acres and 62 clustered residential lots each in excess of 20,000 square feet.

4. The applicant submitted an environmental assessment which is complete in that it does meet the requirements of the Township's Land Development Ordinance for conceptual approval. The applicant's environmental assessment was submitted to the Bernards Township Environmental Commission and the applicant and its experts appeared before same. The Environmental Commission commented to the Planning Board by memorandum of February 28, 1984.

5. Public water shall be provided within the portion of the subdivision being clustered; the nine standard three-acre lots shall be serviced by individual wells.

6. The subdivision shall not be serviced by public sewer but by a community septic system as proposed.

7. The applicant testified that 8 to 10 trees shall be provided per lot.

8. A storm water retention basin will be located in the northwestern portion of the property.

9. The project shall be developed in a single stage.

10. The Planning Board can grant approval of the conceptual plan as it relates to: clustered dwelling houses are allowed under the Township's Land Development Ordinance and after reviewing the conceptual plan there is reasonable expectation that the number of lots proposed can be developed.

11. The circulation pattern established by the conceptual plan adequately services the project and, based upon information submitted by the applicant, can be constructed to the regulations set forth in the Township's Land Development Ordinance.

12. The general location and pattern of utilities shown on the utilities plan submitted by the applicant will serve the project.

13. The storm water management plan submitted by the applicant can reasonably be expected to accommodate the Township's design storms and satisfy the requirement for no increase in the rate of storm water runoff.

14. The Planning Board can grant approval of the conceptual plan as it relates to:

- a) The total number of single family lots to be developed - 71.
- b) The circulation plan as it relates to the total development.
- c) The utility plan as it relates to storm water management and retention/detention, electric and telephone, cable TV and water.
- d) The drainage plan.

- e) Critical areas that will not be developed.
- f) The staging plan.

15. The Planning Board can grant approval for a ten year period except that all preliminary and final approvals must be obtained within ten years of the adoption of this resolution.

16. The proposed development conforms to and is consistent with the zoning ordinance standards of Bernards Township for conceptual subdivision approval. The proposal for maintenance and conservation of the amount of common open space and the purposes of same is adequate. The physical design of the proposed subdivision for public service control over vehicular and pedestrian traffic, amenities of light and air, recreation and visual enjoyment are adequate. The proposed subdivision will not have an unreasonably adverse impact on the area in which it is proposed and the applicant can be granted approval without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

NOW THEREFORE, be it RESOLVED by the Planning Board of Bernards Township on this 24th day of April, 1984, that the action taken by the aforesaid Planning Board on March 24, 1984, in approving the application of John F. Willits and Enterprises Partnership for conceptual subdivision approval for Coddington Farms, Lot 28, Block 190 on the Tax Map of Bernards Township and as shown on and in accordance with the aforesaid plans is hereby AFFIRMED and MEMORIALIZED subject, however, to the following conditions:

1. Approval from any and all boards, authorities, including specifically the Bernards Township Sewerage Authority and Board of Health, agencies or departments whether Federal, State, County or local of whatsoever nature which shall be required by law in connection with this application.

2. The payment of all fees required by the Bernards Township Land Development Ordinance.

3. Proof shall be submitted that all real property taxes have been paid in full.

4. Compliance with all laws and/or regulations applicable to the property.

5. That with the applicant's consent, no further application for preliminary approval shall be made prior to the applicant receiving all approvals required by the Bernards Township Board of Health in connection with the applicant's proposed community septic system.

6. That the applicant shall not engage in the disturbance of the land or construction of any nature pursuant to and as provided under Subsection 707E.2 prior to approval by the Bernards Township Board of Health as to the proposed community septic system and preliminary approval by this Planning Board.

7. That at the time of the application for preliminary subdivision approval, the applicant shall demonstrate that Mountain Road can accommodate heavy construction vehicles and if not, sole ingress and egress for construction of the 9 three-acre lots shall be from Martinsville Road. Construction access for the clustered portion of the project shall be from Martinsville Road exclusively.



8. That at the time of submission for preliminary subdivision approval the applicant shall submit a complete environmental impact statement pursuant to the Township's Land Development Ordinance.

9. That prior to final approval of this project a determination shall be made as to the ownership of open space.

10. That at the time of submission for preliminary subdivision approval any off-tract contributions required by Township ordinances shall be determined.

Moved by Wiley that the resolution be approved as submitted.

Seconded by Hoare.

Roll Call: Hoare-yes, Wiley-yes, Lindsey-yes, Dunham-yes.

Motion carried.

Dr. Tangora - Home Office Use - Block 139, Lot 3

Attorney Garvin swore in Anthony A. Tangora, Jr., D.C., applicant.

Mr. Messina explained this as an application for a home office for the practice of Chiropractic. Mr. Messina questioned Dr. Tangora regarding items required under the ordinance and all items meet the requirements.

Parking spaces will be provided on the side of the house and will be screened with 4' - 5' evergreens.

Mr. Hoare questioned Dr. Tangora about the possibility of patients parking in the front yard of the house as there is a driveway. Dr. Tangora assured the Board he would not allow this to happen.

Chairman Dunham opened the public hearing and as there was no public comment, the hearing was closed.

Moved by Lindsey that the application be approved.

Seconded by Lind.

Roll Call: Alexander-yes, Chapin-yes, Harris-yes, Hoare-yes, Lind-yes, Wiley-yes, Lindsey-yes, Dunham-yes.

Motion carried.

Ridge Corporation - Site Plan - Block 83, Lot 17

Attorney Arthur Garvin swore in applicant, Salvatore Bracchitta who was represented by Attorney Paul Loeffler.

Mr. Bracchitta said he was the owner of Ridge Corporation and the site plan for this building is part of an overall scheme whereby he will donate all of the parking lots in the complex to the Township.

Attorney Garvin briefly explained the subdivision of the various properties which would allow this common parking but explained that the application to be considered tonight was for preliminary and final approval of Lot 17 only. The Board is not ready to discuss the subdivision at this time as there are variances required which must be advertised.

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Exhibit E

Page 4 - change happen to happen.

Page 6 - para 7 - change area to are.

Page 8 - para 2 - change dely to delay and not to now.

Page 14 - change to "had not put". - Roll call - change Dunham vote to no.

Moved by lindsey that the mintues be approved as amended.

Seconded by Sisk.

Roll Call: Sisk-yes, Lind-yes, Harris-yes, Hoare-yes, Lindsey-yes, Dunham-yes.

Motion carried.

Society Hill - K. Hovnanian Companies of New Jersey, Inc.

Attorney Garvin read the following resolution of approval:

CONCEPTUAL SITE PLAN APPROVAL  
K. HOVNANIAN COMPANIES OF NEW JERSEY, INC.  
SOCIETY HILL AT BERNARDS

WHEREAS, the purchaser under contract and applicant K. Hovnanian Companies of New Jersey, Inc. has applied for conceptual site plan approval for Lots 13, 14 and 23, Block 178 as shown on the Tax Map of Bernards Township and all as shown on and in accordance with plans entitled "Society Hill at Bernards, Bernards Township, Somerset County, New Jersey" prepared by Najarian & Assoc., Inc. dated June 28, 1984, consisting of eleven sheets; and

WHEREAS, the owners Bonnie Brae School and Robert and Jane Hartlein have consented to this application; and

WHEREAS, the applicant requires variances, exceptions and modifications, respectively, for the number of units per building, dwelling unit mix, maximum multi-family residential area, curb design, paving standards, number of parking stalls per unit, size of stalls, lighting of private roadways and sidewalk width; and

WHEREAS, the Planning Board of Bernards Township has conducted public hearings on the said application at its meetings held on July 31st and August 14, 1984, of which public notice and notice by the applicant have been given as required by law; and

WHEREAS, the Planning Board after considering the application, documents, testimony and argument of counsel has made the following findings of fact:

1. The property which is the subject of this application is shown as Lots 13, 14 and 23, Block 178 on the Tax Map of Bernards Township, consists of approximately 265.9 acres and is located in the R-5 zone.

2. The proposed conceptual plan is as shown on and in accordance with plan entitled "Society Hill as Bernards, Bernards Township, Somerset County, New Jersey" prepared by Najarian & Associates, Inc., dated June 28, 1984, consisting of eleven sheets.

3. The documents which constitute this application are as follows:

a. **Report: Soils and Foundation Investigation prepared by Melick-Tully and Associates, Inc., dated September 6, 1983;**

b. Memorandum Re: Population Multipliers prepared by Richard B. Reading Associates dated August 10, 1984;

c. Traffic Study prepared by Goodkind & O'Dea, Inc., dated June 22, 1984;

d. Environmental Impact Assessment prepared by Raymond A. Ferrara, PH.D. dated June, 1984;

e. Community Impact Statement prepared by Richard B. Reading Associates dated June, 1984

4. The applicant's proposal for development is pursuant to the Planned Residential Development - 2 provisions of the Bernards Township Land Development Ordinance for 812 units with 18 single family one half acre lots.

5. The total number of dwelling units, 830, is permitted under the Bernards Township Land Development Ordinance and after reviewing the conceptual plan and other documentation submitted by the applicant, there is a reasonable expectation that the number of dwelling units proposed can be constructed.

6. The circulation pattern established by the conceptual plan appears to adequately service the project and based upon the information submitted by the applicant, can be constructed to the standards set forth in the Township's Land Development Ordinance or as specifically modified for this applicant.

7. The general location and pattern of utilities shown on the utilities plan submitted will service the project. The project will be serviced by public sewer and water facilities.

8. The storm water management plan submitted can reasonably be expected to accommodate the Township's standards for stormwater management and satisfy the requirement for no increase in the rate of storm water run-off.

9. The staging plan submitted will result in the construction of the property in an orderly manner and with a minimum impact on adjacent properties.

10. The environmental impact assessment as submitted is complete in that it meets the requirements of the Township's Land Development Ordinance.

11. The Planning Board can grant approval of the applicant's conceptual plan as it relates to:

a. The total number of units - 830;

b. The circulation pattern as it relates to total development.

c. The utility plan as it relates to storm water management and retention/detention;

d. The drainage plan as it relates to storm water management and retention/detention;

e. **Critical areas that will not be developed; subject to review and approval by the appropriate authorities.**

12. Further, the Planning Board can grant approval for a ten-year period, except that all preliminary and final approvals must be obtained within ten years of the effective date of the approval of this conceptual application.

13. The proposed development conforms to and is consistent with the zoning ordinance standards of Bernards Township for conceptual site plan approval. The proposal for maintenance and conservation of the amount of common open space and the purposes of same is adequate. The physical design of the proposed development for public service control over vehicular and pedestrian traffic, amenities of light and air, recreation and visual enjoyment are adequate. The proposed development will not have an unreasonably adverse impact on the area in which it is proposed and the application can be granted approval without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

14. The applicant's proposal incorporates a 12 percent set aside for moderate income housing units pursuant to the New Jersey Supreme Court's Mount Laurel II decision. These units will be located in the twenty unit building of which there are eight located throughout the project including six such buildings proposed for phase one of the development.

15. At the request of the Planning Board, the applicant determined that a 12 percent moderate income set aside could be provided in the project without the need for any increase in the applicant's number of market units if the applicant were to receive "fast tracking" of all applications and the cost reductions as set forth on Schedule A attached hereto.

16. The Planning Board was of the opinion that the applicant's property and the entire PRN zone as planned should not be changed from its existing density considering the quality of the land for development in terms of dry land and "wet" and "low" land, and its location within the Township in terms of infrastructure support including off-site transportation network to service development within the zone.

17. In addition, the Planning Board specifically found that the applicant's multi-family market units, designed for sale currently at less than \$80,000.00 per unit, constituted least cost housing. The inclusion of 712 of such least cost housing units (as projected by this conceptual application) in this project constitute an additional reason why the Planning Board determined to accept a 12 percent moderate income housing unit set aside for this project.

18. The applicant has demonstrated that a 12 percent moderate income housing unit set aside can be accomplished within this project as aforesaid and that approval for such can be incorporated herein.

19. The applicant specifically testified that the 18 single family housing units to be developed on one-half acre lots would be built in phase one of the project which was acceptable to the Planning Board.

20. The applicant's total proposal for development conforms to the provisions and standards of the Bernards Township Land Development Ordinance for the R-5 zone and PRD-2 development except that the applicant requires the following variances, exceptions and modifications, respectively:

- a. Modification from Subsection 605D for 10 and 20 unit buildings;
- b. Modification from Subsection 605E for greater than 65% two-bedroom units;
- c. Variance from Table 403 for greater than 65% multi-family residential area;
- d. Modification from Subsection 607E for curb design on private roadways;
- e. Modification from Subsection 607C for paving standards for the private roadways;
- f. Exception from Subsection 510A for the number of parking stalls per unit;
- g. Modification from Subsection 610A for the size of parking stalls;
- h. Modification from Subsection 612B for height and separation of lighting devices along the private roadways.
- i. Modification from Subsection 607F for the sidewalk width;
- j. All Township fees set forth in Land Development Ordinance as applied to moderate income housing units.

21. The variances requested by this applicant can be granted for the reason that the applicant has demonstrated that the purposes of the Municipal Land Use Law and the Bernards Township Land Development Ordinance would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation substantially outweigh any detriment. The variances requested can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

22. The Planning Board is of the opinion that the requested exceptions should be granted as same will result in an improvement in the layout of the development plan when compared to the layout which would result from the strict application of Article 500 regulations. The resulting layout of the site plan is reasonable and fulfills the general purpose and intent of the regulations. The exceptions can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

23. Further, the Planning Board is of the opinion that the modifications sought should be granted for the reason that the applicant has demonstrated that the resulting change will satisfy the intent of the standard, be designed in accordance with acceptable engineering and/or architectural practices, not have an adverse impact on the Township or the surrounding area, not reduce the useful life of the improvement nor increase the cost of maintenance.

24. The granting of the variances, exceptions and modifications herein are specifically designed to enable the applicant to provide 12 percent moderate income housing in accordance with Mt. Laurel II.

NOW THEREFORE, be it RESOLVED by the Planning Board of Bernards Township on this 28th day of August, 1984, that the action taken by the aforesaid Planning Board on

August 14, 1984, in approving the application of the K. Hovnanian Companies of New Jersey, Inc. for conceptual site-plan approval together with all variances, exceptions and modifications sought for property shown as Lots 13, 14 & 23, Block 178 on the Tax Map of Bernards Township and as shown on and in accordance with the aforesaid plans is hereby **AFFIRMED and MEMORIALIZED** subject, however, to the following conditions:

1. The payment of all fees required by the Bernards Township Land Development Ordinance, except as applied to the 12 per cent moderate income housing units.

2. Approval from any and all boards, authorities including specifically the Bernards Township Sewerage Authority and Board of Health, agencies or departments whether federal, State, County or local which shall be required by law in connection with this application.

3. Proof shall be submitted by the applicant that all real estate taxes have been paid in full through the third quarter of 1984.

4. Compliance with all laws and or regulations applicable to the property.

5. The completion of all dedications and improvements shown on the plan.

6. The applicant shall pay to the Township an amount of money equal to its required contribution to the Township's off-tract roadway/transportation improvement program as required by law and in the manner provided by ordinance except for the 12 per cent moderate income housing units.

7. Any plan for Preliminary Approval shall be designed in accordance with the Township Ordinances unless specific relief has been herein or is granted by the Board.

8. The approval is conditioned on adequate utilities being available, including public sewers.

9. All roadways, public and private, shall be constructed in accordance with the Township's standards, except as modified herein.

10. A determination of the ownership of the open space shall be made prior to Final Approval.

11. At the time of any submission for Preliminary Approval, the applicant shall provide the Township with a structure of the association(s) that will manage the project after development. Based upon its review of this material, a determination of onsite maintenance facilities and the maintenance and conservation of the common open space will be made by the Planning Board.

12. The Township Engineer shall be copied on any submissions and all correspondence relating to said approvals and permits and shall be provided with minutes of any meetings that take place.

13. At the time of Preliminary submission, the applicant shall demonstrate to the Board's satisfaction that the design and location of the buildings and related improvements preserve existing vegetation to the extent practical.

14. At the time of any preliminary application, a resolution of the historical concerns and aspects of the Hartlein house and any area found to contain historical artifacts on the site shall be made to the satisfaction of the Planning Board.

15. At the time of any preliminary applications, the applicant shall discuss with the Planning Board what recreational facilities shall be provided on site and a determination as to same shall be made at that time to the satisfaction of the Planning Board.

16. The single family detached housing portion of the project shall be developed in the phase indicated by the applicant herein.

17. The applicant shall set aside 12 percent of the total number of units approved for development as moderate income housing units in accordance with Mt. Laurel II decision of the New Jersey Supreme Court; the said moderate income units shall be developed in the manner and phasing indicated by the applicant herein.

18. At the time of any preliminary application, the applicant and the Township shall determine how the sale and resale, and administration of the moderate income units shall be administered consistent with Mt. Laurel II.

19. The applicant shall forthwith revise and resubmit its plans to show:

- a. The bikeway shall be relocated to the north side of the boulevard.
- b. Revise the typical pavement section on the boulevard to Township standards.
- c. The comments of a drainage report submitted by the RBA Group dated July 23, 1984.
- d. The addition of two tennis courts.

20. The following fees shall be waived for the 12% moderate income units:

- a. Off site Transportation Contribution Fee
- b. Planning Board Application Fee
- b. Building Permit Fee
- d. Plumbing Fee
- e. Certificate of Occupancy Fee
- f. Engineering Inspection Fee
- g. Sewer connection fee, as approved by the Bernards Township Sewerage Authority.

21. The Planning Board shall recommend to the appropriate Township agencies including specifically the Bernards Township Sewerage Authority, that the latter waive permit approval/connection fees for Mt. Laurel II housing units.

After discussion of various conditions in the resolution it was moved by Hoare that the resolution be approved.

Seconded by Lindsey.

Roll Call: Harris=yes, Hoare=yes, Lindsey=yes, Sisk=yes, Dunham=yes.

Motion carried.



## PLANNING BOARD

Minutes of the Bernards Township Planning Board meeting held March 19, 1985.

Roll Call: Seebohm, Lindsey, Wicks, Hoare, Lind, Clifford, Dunham.

Late: Perry.

Absent: Alexander, Appar.

Attorney Arthur Garvin and Engineer Peter Messina were also present.

Chairman Dunham called the meeting to order at 7:35 p.m. and read the following open meeting and procedural statements:

"In accordance with the requirements of the Open Public Meetings Law of 1975, notice of this special meeting of the Planning Board of the Township of Bernards was posted on the bulletin board in the reception hall of the Municipal Building, Collyer Lane, Basking Ridge, was mailed to the Bernardsville News, Bernardsville, the Courier News, Bridgewater and the Daily Record, Morristown, all on March 1, 1985 and was mailed to all those people who have requested individual notice and paid the required fee. While such notice is adequate to meet the requirements of the Open Public Meetings Law, it in no way is intended to satisfy any special notice requirements which are required by law to be made by applicants appearing before this Board."

"The following procedure has been adopted by the Bernards Township Planning Board. There will be no new cases heard after 11 p.m., no new witnesses heard after 11:15 p.m. and additional meetings will be held for the completion of unfinished business."

### K. Hovnanian Companies - Society Hill - Resolution

A shorthand reporter was present for the applicant.

Mr. Seebohm questioned the amount of the height variance which is being discussed and the number of buildings which would require a variance.

Mr. Messina explained there were 20 buildings whose height exceeded 35' as defined in our present ordinance. Staff has discussed changing the definition of height and feels the BOCA Code should be the guideline for the height requirement.

Mr. Seebohm said he would like to see something that under the BOCA Code no variance would be required.

Mr. Messina explained that the 35' height restriction would remain but the method of measuring that height would be according to the BOCA Code. This has been a problem on other applications as well.

Mr. Perry arrived.

Mr. Clifford asked why we are allowing builders to exceed the height limitations and Mr. Messina explained building which takes place on slopes. He also said that by allowing other units on the downhill side, it helps decrease the number of units.

After much discussion, Mr. Messina said that in working with the ordinance over the years, he has found 75 items which should be changed; this is one of them.

It was felt the wording from the BOCA Code should be used but with a 35' height.

There was then discussion of the mean roof height and other items included in the resolution.

Mr. Hoare asked if new plans had been submitted and Mr. Messina and Mr. Hunt said they were in the process of being prepared and would be delivered as soon as possible. It was pointed out that on other applications, approval is granted subject to the submission of the revised plans.

Sale and administration of the Mt. Laurel units was discussed and Attorney Garvin advised this process should be put in motion as soon as possible.

Mr. Clifford asked if this was a matter to be dealt with by the Township Committee and Mr. Kurland said the plan has to be approved by them and others will also be involved. He indicated that the applicant would work with the Township as much as necessary.

An adjoining property owner has had discussion with Hovnanian regarding his privacy, etc. and it has been established that Lot 14.01 will be deed restricted to open space and conveyed to Mr. Gombar. Mr. Clifford felt Mr. Gombar would get another house and Mr. Kurland said it has been made very clear that this property will not be built on.

Moved by Wicks that the application be approved with conditions as discussed by the Board.

Seconded by Lind.

Mr. Seebohm again questioned the height regulation.

Mr. Hoare asked the height of the first building as you come into the Countryside project as he did not feel that was at all unreasonable.

Mr. Messina said he did not know the height but would check into it before the meeting of March 27th when ordinance changes will be discussed.

Roll Call: Clifford-yes, Lind-yes, Perry-yes, Seebohm-yes, Wicks-yes, Sisk-yes, Dunham-yes.

Motion carried.

PRELIMINARY AND FINAL SUBDIVISION  
AND PRELIMINARY AND FINAL SITE PLAN APPROVAL  
K. HOVNANIAN COMPANIES OF NEW JERSEY, INC.  
SOCIETY HILL AT BERNARDS

WHEREAS, the purchaser under contract and applicant K. Hovnanian Companies of New Jersey, Inc. has applied for preliminary and final subdivision and preliminary and final site plan approval for Lots 13, 14, 23 and 31, Block 178 as shown on the Tax Map of Bernards Township and all as shown on and in accordance with plans entitled "Society Hill at Bernards, Bernards Township, Somerset County, New Jersey" prepared by Najarian & Assoc., Inc. dated November 30, 1984, consisting of seventy-nine sheets revised to February 19th, 1985; and

WHEREAS, the owners Bonnie Brae School and Robert and Jane Hartlein have consented to this application; and

WHEREAS, the applicant received conceptual site plan approval by action of the Planning Board on August 14, 1984, memorialized by Resolution of August 28 1984; and

WHEREAS, the applicant requires variances, exceptions and modifications, respectively, for number of units per building, dwelling unit mix, maximum multi-family residential area, curb design, paving standards, number of parking stalls per unit, size of stalls, lighting of the private roadway and sidewalk width all of which were granted at the time of the aforesaid conceptual site plan approval; and

WHEREAS, the applicant requires a variance for building height from Table 401 of the Bernards Township Land Development Ordinance for a greater than 35 foot height for a number of the buildings; and

WHEREAS, the Planning Board of Bernards Township has conducted public hearings on the said application at its meeting held on February 28, 1985, of which public notice and notice by the applicant have been given as required by law; and

WHEREAS, the Planning Board after considering the application, documents, testimony and argument of counsel has made the following findings of fact:

1. The property which is the subject of this application is shown as Lot 13, 14, 23 and 31, Block 178 on the Tax Map of Bernards Township, consists of approximately 265.9 acres and is located in the R-5 zone.

2. The proposed development plan is as shown on and in accordance with plan entitled "Society Hill at Bernards, Bernards Township, Somerset County, New Jersey" prepared by Najarian & Assoc., Inc., dated November 30, 1984, consisting of seventy-nine sheets revised to February 19, 1985.

3. The documents which constitute this application are as follows:

- a. Report: Soils and Foundation Investigation prepared by Melick-Tully and Associates, Inc., dated September 6, 1983;
- b. Memorandum Re: Population Multipliers prepared by Richard B. Reading Associates dated August 10, 1984;
- c. Traffic Study prepared by Goodkind & O'Dea, Inc., dated June 22, 1984;
- d. Environmental Impact Assessment prepared by Raymond A. Ferrara, Ph.D. dated June, 1984;
- e. Community Impact Statement prepared by Richard B. Reading Associates, dated June, 1984.

4. The applicant's proposal for development is pursuant to the Planned Residential Development - 2 provisions of the Bernards Township Land Development Ordinance for 812 multi-family units with 18 single family one half acre lots.

5. The total number of dwelling units, 830 is permitted under the Bernards Township Land Development Ordinance.

6. The internal circulation plan established by the applicant's plan adequately services the project and is in conformance with the standards set forth in the Township's Land Development Ordinance or as specifically modified for this applicant.

7. The general location and pattern of utilities shown on the utilities plan submitted adequately services the project. The project will be serviced by public sewer and water facilities.

8. The storm water management plan submitted conforms to the Township's standards for storm water management and satisfies the requirement for no increase in the rate of storm water run-off. The Planning Board, however, expressed concern over the treatment proposed by the applicant for the six retention ponds. The applicant and its expert agree that a pond maintenance plan should be submitted and that a two year period for evaluating the pond's performance was reasonable.

9. The staging plan submitted will result in the construction of the property in an orderly manner and with a minimum impact on adjacent properties.

10. The environmental impact assessment as submitted is complete in that it meets the requirements of the Township's Land Development Ordinance.

11. The proposed development conforms to and is consistent with the master plan of Bernards Township. The proposal for maintenance and conservation of the amount of common open space and the purposes of same is adequate. The physical design of the proposed development for public service control over vehicular and pedestrian traffic, amenities of light and air, recreation and visual enjoyment are adequate. The development plan does not show encroachment on severely restricted areas and the developer intends to deed restrict any such unique natural features or convey same to the Township. The erosion and sediment control plan is consistent with Township standards at present and should minimize on-site erosion and provide adequate sedimentation control to minimize off-site and on-site adverse impacts. The proposed development will not have an unreasonably adverse impact on the area in which it is proposed and the application can be granted approval without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

12. The applicant's proposal incorporates a 12 percent set aside for Mt. Laurel II moderate income housing units pursuant to the Bernards Township Land Development Ordinance. These units will be located in the twenty unit buildings of which there are ten located throughout the project including six such buildings proposed for Village "A" of the development.

13. In addition, the Planning Board specifically found that the applicant's multi-family market units are designed for sale at less than \$100,000.00 per unit, (in 1983 dollars) and constitute least cost housing to the developer.

14. The applicant testified that the 18 single family housing units to be developed on one-half acre lots would be built in phase three of the project.

15. The applicant's total proposal for development conforms to the provisions and standards of the Bernards Township Land Development Ordinance for the R-5 zone and PRD-2 development except that the applicant requires the following variances, exceptions and modifications, respectively, which were granted at the time of conceptual site plan approval.

- a. Modification from Section 605 D for 10 and 20 unit buildings;
- b. Modification from Section 605 E for greater than 65% two-bedroom units;
- c. Variance from Table 403 for greater than 65% multi-family residential area;
- d. Modification from Section 607 E for curb design on private roadways;
- e. Modification from Section 607 C for paving standards for the private roadways;
- f. Exception from Section 510 A for the number of parking stalls per unit;
- g. Modification from Section 610 A for the size of parking stalls;
- h. Modification from Section 612 B for height and separation of lighting devices along the private roadways;
- i. Modification from Section 607 F for the sidewalk width from the townhouse buildings; and
- j. All Township fees set forth in Land Development Ordinance as applied to moderate income housing units;

16. The applicant's present application requires variance from Table 401 for a greater than 35 foot height for a number of the buildings (as shown on the plans) as a result of the varied topography of the property and the applicant's desire to minimize the cut and fill over the property.

17. The variances requested by this applicant can be granted for the reason that the applicant has demonstrated that the purposes of the Municipal Land Use Law and the Bernards Township Land Development Ordinance would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation substantially outweigh any detriment. The variances requested can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

18. By specific agreement between the applicant and Bernards Township, the applicant shall make a voluntary contribution to the Township's off-site transportation improvement program in the amount of \$730,000.00. The foregoing sum shall be paid as provided by specific condition hereafter in this resolution.

19. The granting of the variances, exceptions and modifications at the time of conceptual site plan approval and herein are specifically designed to enable the applicant to provide a 12 percent moderate income housing set aside in accordance with Mt. Laurel II and the Bernards Township Land Development Ordinance.

20. The applicant's proposal for subdivision constitutes a major subdivision under the Bernards Township Land Development Ordinance.

NOW, THEREFORE, be it RESOLVED by the Planning Board of Bernards Township on this 19th day of March, 1985, that the action taken by the aforesaid Planning Board on March 19, 1985, in approving the application of the K. Hovnanian Companies of New Jersey, Inc. for preliminary and final major subdivision and site-plan approval together

with variances for building height for a number of the proposed buildings sought for property shown as Lots 13, 14, 23 and 31, Block 178 on the Tax Map of Bernards Township and as shown on and in accordance with the aforesaid plans is hereby AFFIRMED and MEMORIALIZED subject, however, to the following conditions:

1. The payment of all fees required by the Bernards Township Land Development Ordinance, except as applied to the 12 percent moderate income housing units.

2. Approval from any and all Boards, authorities including specifically the Bernards Township Sewerage Authority and Board of Health, agencies or departments whether Federal, State, County or local which shall be required by law in connection with the application.

3. Proof shall be submitted by the applicant that all real estate taxes have been paid in full.

4. Compliance with all laws and or regulations applicable to the property.

5. The completion of all dedications and improvements shown on the plan as amended.

6. The applicant shall pay to the Township the sum of \$730,000.00 for off-tract roadway/transportation improvements or make in kind construction improvements for the applicant's market units, but which does not include the 12 percent moderate income housing units. Payment shall be made as follows: \$1,000.00 for each market unit at the time of the issuance of a building permit and \$1,000.00 when a certificate of occupancy is issued for that particular unit. The applicant may pay any portion of the entire \$730,000.00 in advance and receive an appropriate credit against future market units for which certificates of occupancy are sought at a later time.

7. This approval is conditioned on adequate utilities being available, including public sewers.

8. All roadways, public and private, shall be constructed in accordance with the Township's standards, except as modified herein.

9. The Township Engineer shall be copied on any submissions and all correspondence relating to State and/or County approvals and permits and shall be provided with minutes of any meetings that take place.

10. The single family detached housing portion of the project shall be developed in phase three of the project. All building permits for the 18 single family lots shall be applied for before the applicant seeks any building permits for Village "B".

11. The following fees have been or shall be waived for the 12% moderate income units.

- a. Offsite Transportation Contribution Fee
- b. Planning Board Application Fee
- c. Building Permit Fee
- d. Plumbing Fee
- e. Certificate of Occupancy Fee
- f. Engineering Inspection Fee
- g. Sewer connection fee, as approved by the Bernards Township Sewerage Authority.

12. As soon as reasonably possible hereafter, the applicant and the Township shall determine how the sale and resale and administration of the moderate income units shall be administered consistent with Mt. Laurel II.

13. The applicant shall forthwith notify the Bernards Township Historical Society of the applicant's taking title to the Hartlein property. The Historical Society shall have 45 days from said notice to remove the Hartlein dwelling house and any out buildings still remaining from the property. The applicant shall provide reasonable access through its property to facilitate the removal of the buildings. The applicant shall provide the same security for the said house and out buildings which it provides for the construction site.

14. Should excavation of the applicant's site encounter a dump, Indian Village site or other historically significant area, the Historical Society shall be given notice of same forthwith and shall have 14 days from such notice to conduct whatever reasonable investigation it's members may choose to perform. Any artifacts, relics or items of historical value shall be the property of the Historical Society as among the applicant, the Hartleins and the Historical Society.

15. Prior to the application for a building permit for any building proposed in Village "B" of the project, the applicant shall submit a plan for the maintenance of all retention ponds proposed on the development site and to the satisfaction of the Township's stormwater management experts. From the date of completion of the last of the retention ponds located on the applicant's development site the performance of the said retention ponds shall be evaluated for a two year period. The applicant shall co-operate with the Township in the event that modification to a retention pond's functioning is required after the performance evaluation. The approved method of maintenance shall be bonded for a period of two years.

16. The completion of all revisions recommended by the Township Engineer in a memo dated March 11, 1985.

17. The completion of all revisions and recommendations concerning stormwater design to be approved by the RBA Group.

18. Lands of this applicant located in the flood plain shall be dedicated to the Township.

19. Proposed new Lot 14.01, Block 178 shall not be deed-restricted open space but shall be conveyed by the applicant to the owner of contiguous Lot 24, Block 178.

20. No building which has had its height varied herein shall have a building height greater than 35 feet as measured vertically from the finished grade of ground level six feet from the said building line to a point which is the mean level of the highest gable.

Moved by Lind that the resolution be approved as read.  
Seconded by Wicks.

Roll Call: Clifford-yes, Lind-yes, Perry-yes, Seebohm-yes, Wicks-yes, Sisk-yes, Dunham-yes.  
Motion carried.

Mr. Greenbaum thanked the board for all of the work they have put into this approval and praised the professional staff.



Exhibit F



**CONCEPTUAL SITE PLAN APPROVAL  
K & K DEVELOPERS, INC.  
THE CEDARS**

WHEREAS, the purchaser under contract and applicant K & K Developers, Inc. has applied for conceptual site plan approval for Lots 11 & 12, Block 178 as shown on the Tax Map of Bernards Township all as shown on and in accordance with plans entitled "The Cedars, Bernards Township, Somerset County, New Jersey" prepared by the Cahill Partnership, dated March 20, 1985, consisting of six sheets and a revised site plan "B" dated August 6, 1985; and

WHEREAS, the owner Fred M. Kirby, II, has consented to this application; and

WHEREAS, the applicant requires a variance from Table 403 of the Bernards Township Land Development Ordinance for the minimum single family and maximum multi-family residential area of drylands over the entire site; a modification from Section 605E for bedroom mix; and a modification from Section 605K.2 for setback of 150 feet from the zone line boundary along the westerly side line of the property as same abuts the property of the Bonnie Brae School; and

WHEREAS, the Planning Board of Bernards Township has conducted a public hearing on the said application at its meetings held on July 16, 1985 and August 6, 1985 of which public notice and notice by the applicant have been given as required by law; and

WHEREAS, the Planning Board after considering the application, documents, testimony and argument of the public and counsel has made the following findings of fact:

1. The property which is the subject of this application is shown as Lots 11 & 12, Block 178 on the Tax Map of Bernards Township, consists of approximately 199.37 acres and is located in the R-5 (PRD-2) zone.
2. The proposed conceptual plan is shown on plans entitled "The Cedars Bernards Township, Somerset County, New Jersey" prepared by The Cahill Partnership, dated March 20, 1985 consisting of six sheets and a revised Site Plan "B" dated August 6, 1985.
3. The other documents which also constitute part of this application are as follows:
  - a. Fiscal Impact Analysis for Windmill Pond, a Planned Residential Development in Bernards Township Somerset County, New Jersey prepared by Richard B. Reading Associates, dated March, 1985;
  - b. Environmental Constraints Report, K & K Developers, Inc. Bernards Township New Jersey prepared by Thonet Associates, dated March 1985.
4. The applicant's proposal for development is pursuant to the Planned Residential Development - 2 provisions of the Bernards Township Land Development Ordinance for 440 units of which 88 will be set aside for Mt. Laurel low and moderate housing.
5. The total number of dwelling units 440, is permitted under the Bernards Township Land Development Ordinance and after reviewing the conceptual plan and other documentation submitted by the applicant, there is a reasonable expectation that the number of dwelling units proposed can be constructed.

- a. Modification from Subsection 605 K.2 for setback of 150 feet from the zone line boundary along the westerly side line of the property as same abuts the Bonnie Brae School;
- b. Modification from Subsection 605E for greater than 65% two-bedroom units;
- c. Variance from Table 403 for greater than 65% multi-family residential area; and minimum single family area of drylands over the entire site.

15. The variance requested by this applicant can be granted for the reason that the applicant has demonstrated that the purposes of the Municipal Land Use Law and the Bernards Township Land development Ordinance would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation substantially outweigh any detriment. The variances requested can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.

16. Further, the Planning Board is of the opinion that the modifications sought should be granted for the reason that the applicant has demonstrated that the resulting change will satisfy the intent of the standard, be designed in accordance with acceptable engineering and/or architectural practices, not have an adverse impact on the Township or the surrounding area, not reduce the useful life of the improvement nor increase the cost of maintenance.

NOW THEREFORE, be it RESOLVED by the Planning Board of Bernards Township on this 6th day of August, 1985, that the action taken by the aforesaid Planning Board on August 6, 1985, in approving the application of the K & K Developers, Inc. for conceptual site plan approval together with variance and modifications sought for property shown as Lots 11 & 12, Block 178 on the Tax Map of Bernards Township and as shown on and in accordance with the aforesaid plans is hereby AFFIRMED and MEMORIALIZED subject, however, to the following conditions:

- 1. The payment of all fees required by the Bernards Township Land Development Ordinance.
- 2. Approval from any and all boards, authorities including specifically the Bernards Township Sewerage Authority and Board of Health, agencies or departments whether Federal, State, County or local which shall be required by law in connection with this application.
- 3. Proof shall be submitted by the applicant that all real estate taxes have been paid in full.
- 4. Compliance with all laws and regulations applicable to the property.
- 5. The completion of all dedications and improvements shown on the plan.
- 6. The applicant shall enter into an agreement with the Township to pay an amount of money to the Township for off-tract transportation improvements as required by law and pursuant to Section 904 of the Bernards Township Land Development Ordinance. Said payment shall be on account of the improvement of the following which have a rational nexus to and will be impacted by the traffic generated by the development proposed by this applicant:

King George Road  
Valley Road  
**Intersection of King George and Valley Roads**  
Intersection of Valley and Stonehouse Roads

7. Any plan for Preliminary Approval shall be designed in accordance with the Township Ordinances unless specific relief has been herein or is granted by the Board.
8. The approval is conditioned on adequate utilities being available, including public sewers.
9. All roadways, public and private, shall be constructed in accordance with the Township's standards, except as modified herein.
10. A determination of the ownership of the open space shall be made prior to Final Approval.
11. At the time of any submission for Preliminary Approval, the applicant shall provide the Township with a structure of the association(s) that will manage the project after development. Based upon its review of this material, a determination of the adequacy of onsite maintenance facilities and the maintenance and conservation of the common open space will be made by the Planning Board.
12. The Township Engineer shall be copied on any submissions and all correspondence relating to said approvals and permits and shall be provided with minutes of any meetings that take place.
13. At the time of Preliminary submission, the applicant shall demonstrate to the Board's satisfaction that the design and location of the buildings and related improvements preserve existing vegetation to the extent practical.
14. The single family detached housing portion of the project shall be developed in the phase indicated by the applicant on a phasing plan to be submitted at the time of preliminary.
15. The applicant shall set aside 20 percent of the total number of units approved for development as low and moderate income housing units in accordance with Mt. Laurel II decision of the New Jersey Supreme Court; the said low and moderate income units shall be developed in the manner and phasing indicated by the applicant on a phasing plan to be submitted at the time of preliminary.
16. At the time of any preliminary application, the applicant and the Township shall determine how the sale and resale, and administration of the low and moderate income units shall be administered consistent with Mt. Laurel II, if an appropriate municipal ordinance governing same is not in effect. At the time of preliminary the Board shall consider a request by the applicant, if needed, to change the ratio of low and moderate units from 44 & 44 to 50 & 38.
17. The applicant shall forthwith revise and resubmit its plan to show:
  1. All roadway and flood plain dedications to Bernards Township.
  2. Phasing plan.
  3. 6' wide bikepath on the boulevard.
  4. Acceleration and deceleration lanes on Valley Road.

5. Acceleration and deceleration lanes on the Boulevard.
6. Pavement section thicknesses.
7. Typical solid waste disposal areas.
8. Location of recycling area.
9. Reverse center circular island in clusters to a 10' radius.
10. Typical landscape buffer areas.

Moved by Sisk that the minutes be approved.

Seconded by Lindsey.

Roll Call: Hoare-yes, Lindsey-yes, Perry-yes, Sisk-yes, Apgar-yes, Dunham-yes.

Motion carried.

#### Custom Living Communities - Final

Present for the applicant was Attorney David Soloway.

Mr. Messina explained that this application is for Final Approval of Section Two of Two Brooks Farm and the plan conforms to the preliminary approval. He did indicate that the lot numbers will have to be revised before the maps are filed.

It was also pointed out that a decision will have to be made on what the road will be named when Grist Mill Drive and Quincy Road connect. This matter will have to be addressed by the Township Committee.

Mr. Hoare asked for a review of the conditions which will be carried from preliminary approval and also suggested that the Board may want to see some progress before any further sections are approved in order to see orderly development.

Moved by Hoare that the application be approved with the necessary conditions carried.

Seconded by Lindsey.

Roll Call: Clifford-yes, Hoare-yes, Lind-yes, Lindsey-yes, Perry-yes, Sisk-yes, Apgar-yes, Dunham-yes.

Motion carried.

Mr. Soloway questioned the off-tract improvements and how they would be calculated. This matter will be discussed by the applicant and Mr. Messina.

#### Oeckinghaus - Conditional Use - Home Office - Block 183, Lot 8

Mr. Messina explained this as an application for a home office for a laboratory on Haas Road.

Mr. Oeckinghaus, when questioned, said he would be testing chemicals in the lab.

Mr. Lind asked what would be done with these chemicals after testing and Mr. Oeckinghaus indicated they would either be sent back to the supplier or destroyed.

Mr. Lind questioned if this type of operation should be allowed in a residential zone and questioned the disposal of the chemicals. He did not feel this is an appropriate use in the zone.

Mr. Moskowitz said he did not feel this is a customary home use and should be before the Board of Adjustment.



ORDINANCE 746

AN ORDINANCE OF THE TOWNSHIP COMMITTEE  
OF THE TOWNSHIP OF BERNARDS AMENDING  
SECTION 707 OF THE LAND DEVELOPMENT  
ORDINANCE WHICH PROVIDES FOR THE  
CONCEPTUAL APPROVAL OF DEVELOPMENT PLANS  
FOR RESIDENTIAL CLUSTER DEVELOPMENT  
AND PLANNED DEVELOPMENT.

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WHEREAS, Section 707(E) of the Land Development Ordinance of the Township of Bernards is contrary to the statutory approval procedures for preliminary and final subdivision and site plan approvals.

NOW, THEREFORE BE IT ORDAINED that Section 707(E) of the Land Development Ordinance is hereby deleted and repealed and is replaced with the following:

"E. Conceptual approval shall not confer any development rights upon the applicant."

2. This ordinance shall take effect immediately upon final passage and publication in accordance with law.

Exhibit H

## Bernards Twp.

### AMENDED ORDINANCE #746

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS AMENDING SECTION 707 OF THE LAND DEVELOPMENT ORDINANCE WHICH PROVIDES FOR THE CONCEPTUAL APPROVAL OF DEVELOPMENT PLANS FOR RESIDENTIAL CLUSTER DEVELOPMENT AND PLANNED DEVELOPMENT

WHEREAS, Section 707(E) of the Land Development Ordinance of the Township of Bernards is contrary to the statutory approval procedures for preliminary and final subdivision and site plan approvals

NOW, THEREFORE BE IT ORDAINED that Section 707(E) of the Land Development Ordinance is hereby deleted and repeated and is replaced with the following:

"E Conceptual approval shall not confer any development rights upon the applicant; PROVIDED, HOWEVER, that on November 22, 1985, a judge of the Superior Court of New Jersey, Law Division, entered an order which directs that this clause, and the repealer effected by Township of Bernards Ordinance #746, shall not be applicable to a certain application for conceptual approval submitted by Hills Development Company and pending as of November 22, 1985, said order to remain in effect until such time as either (a) the Supreme Court of New Jersey has rendered its opinion in the pending appeal in the case of Hills Development Company v. Township of Bernards, et al., Docket No. A-122, or (b) a period of 95 days from November 12, 1985, is about to expire in which event, if the Supreme Court has not yet spoken, the Township of Bernards shall have leave on or after the 90th day of such period to apply to the Superior Court of New Jersey, Law Division for further review of such order; and PROVIDED FURTHER that the foregoing proviso shall be of no force or effect and shall be deemed to have never been of any force or effect, immediately upon the occurrence of any one or more of the following events, without need for further legislation: (i) reversal, vacating, or modification of said order by any court of competent jurisdiction; or (ii) issuance by the Supreme Court of its opinion in said pending appeal."

2. This ordinance shall take effect immediately upon final passage and publication in accordance with law

The foregoing ordinance, having been introduced and passed on first reading by the Township Committee of the Township of Bernards in the County of Somerset on November 26, 1985 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 the Municipal Building, Collier Lane, Basking Ridge, N.J. in said Township on December 10, 1985 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.

By order of the Township Committee  
James T. Hart  
Township Clerk  
12/5/85





**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:

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, Rental Sales and Service, the following new Subsection:

180.A Renting 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:

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.

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-back, 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.

**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 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 impose 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-48.1 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 GOP 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: 6.8 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**

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

**1106. Schedule of Area, Bulk and Yard Requirements**

Permitted Use	Minimum Lot Area (sq. ft.)	Minimum Lot Width	Minimum Yard Sides			Maximum Building Coverage	Maximum Height
			Front	one/both	Rear		
Dwelling, One-Family Townhouse	5,000	80'	25'	10'/15'	25'	20%	35'
Dwelling, Two-Family (horizontally separated)	N/A	18'	25'	N/A	20'	60%	35'
Dwelling, Two-Family (vertically separated)	6,000	80'	25'	10'/15'	25'	40%	35'
Dwelling, Multi-Family	3,000	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 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 for less: 1.5 spaces
  - Dwelling unit with two (2) bedrooms or more: 2.0 spaces
2. An additional ten (10) percent (of that computed in #1 above) off-street parking shall be provided for visit....
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-6 zones shall be developed in accordance with the PRD requirements and shall be required to provide twenty (20) percent of all dwelling units to be affordable for lower income households, except as provided below:

1. A minimum of 15 percent moderate income housing only shall be required in developments which have received conceptual approval prior to July 1, 1984, and which have not received preliminary or final approval.

2. A minimum of 12 percent moderate income housing only shall be required in developments where the maximum sales price of any housing unit will not exceed \$100,000 per unit (in 1983 dollars).

As used in this Section A, a parcel is considered "contiguous" even though it is traversed by one or more roadways, so long as the land on both sides of the roadway is in common ownership. Lands acquired after 10/2/84 may not be combined to form a new contiguous parcel and may not be added to, or considered a part of, a contiguous parcel which existed on or before that date.

**B. Eligibility Standard**

1. Except as provided above, one-half of all lower income units shall meet HUD Section 8, or other assisted housing programs, eligibility requirements for very low income and one-half shall meet HUD eligibility requirements for lower income.

2. Applicant may substitute alternate comparable standards (other than HUD) where appropriate and to the satisfaction of the Planning Board.

**C. Housing Cost Component**

In computing the eligibility of purchasers or renters for sales or rental housing, not more than 30 percent of family income may be used for rent and not more than 28 percent of family income may be used for purchase of sales housing. The following costs shall be included:

Rental Units: Gross Rent

Sales Unit: Principal and Interest

Insurance

Taxes

Condominium or homeowners association fees

**D. Subsidies**

Government subsidies may be used at the discretion of the applicant to fulfill the requirements of the section. The lack of said subsidies shall in no way alter or diminish the lower income requirements of this ordinance.

**E. Sale and Resale and Rental of Lower Income Housing**

1. All lower income dwelling units shall be required to have covenants running with the land to control the sale or resale price of units or to employ other legal mechanisms which shall be approved by the Planning Board Attorney and will, in his opinion, ensure that such housing will remain affordable to persons of lower income.

2. The owner of all rental units shall provide legal documentation to be approved by the Planning Board Attorney to assure that rental units will remain affordable to persons of lower income.

3. In the event no low or moderate income purchaser is found within 60 days from the day a unit is offered for sale or resale, the low income unit may be sold to a moderate income purchaser or, if none is available, to any interested purchaser, and the moderate income unit, to any interested purchaser at a price which meets the eligibility requirements as described above. Resale controls shall remain in effect for any subsequent resales.

4. The Township and the applicant may develop reasonable qualifications for occupants of lower income housing. Selection procedures shall be directed and administered by a Township official appointed each year as the Housing Administrator by the Township Committee. The Township Committee may arrange for third party administration of resale, and tenant selection of lower income housing.

5. The developer shall formulate and implement a written affirmative marketing plan acceptable to the Planning Board. The affirmative marketing plan shall be realistically designed to ensure that lower income persons of all races and ethnic groups are informed of the housing opportunities in the development, feel welcome or seek or buy or rent such housing, and have the opportunity to buy or rent such housing. It shall include advertising and other similar outreach activities.

6. Sales prices and rents may be increased in accordance with the annual Metropolitan New York Regional Consumer Price Index for Housing of the Department of Labor plus reimbursements for documented monetary outlays for reasonable improvements and reasonable costs incurred in selling the unit.

7. Rental units may be converted to condominium units after 15 years, but the 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:

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.

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

**G. Waiver of Fees**

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

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

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

**1111. Common Open Space Requirements**

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

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

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

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 the Ordinance.

**C. Sanitary Sewers**

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

**D. Streets**

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

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

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

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

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

a. 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 #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.

Passed on first reading October 2, 1984.

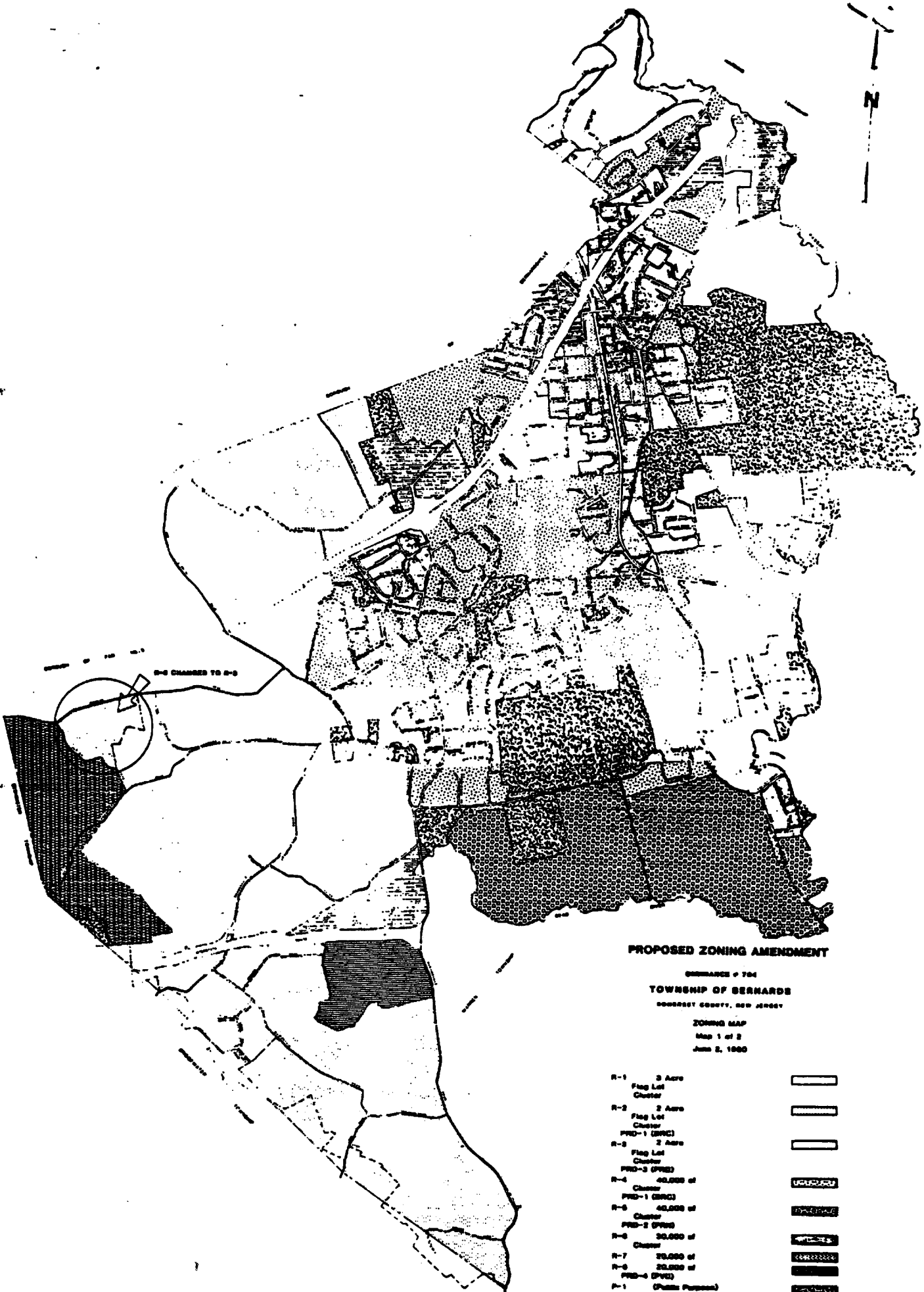
**PUBLIC NOTICE**

Notice is hereby given that the above ordinance was duly read and passed on final reading and adopted at a meeting of the Township Committee of the Township of Bernards in the County of Somerset, held on the 12th day of November one thousand nine hundred and eighty four.

Bernards Township Committee  
William B. Wahl  
Mayor

Attest:  
James T. Hart  
Township Clerk

11/22/84



**PROPOSED ZONING AMENDMENT**

ORDINANCE # 704  
**TOWNSHIP OF BERNARDS**  
 SOMERSET COUNTY, NEW JERSEY

ZONING MAP  
 Map 1 of 2  
 June 2, 1980

R-1	3 Acre Flag Lot Cluster	[Symbol]
R-2	2 Acre Flag Lot Cluster	[Symbol]
PRD-1 (SRIC)	2 Acre Flag Lot Cluster	[Symbol]
R-3	2 Acre Flag Lot Cluster	[Symbol]
R-4	40,000 of Cluster PRD-1 (SRIC)	[Symbol]
R-5	40,000 of Cluster PRD-2 (SRIC)	[Symbol]
R-6	30,000 of Cluster	[Symbol]
R-7	20,000 of Cluster	[Symbol]
R-8	20,000 of Cluster PRD-4 (SRIC)	[Symbol]
P-1	(Public Purpose) Non Residential	[Symbol]