

RULS - 1986 - 100

3/7/86

Letter from Hills to Judge re: new Bernards
Ordinance

pg. 12

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540

(609) 924-0808

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

HARRY BRENER
HENRY A. HILL
MICHAEL D. MASANOFF**
ALAN M. WALLACK*
GERARD H. HANSON*
GULIET D. HIRSCH
J. CHARLES SHEAK**

EDWARD D. PENN.+
ROBERT W. SACSO, JR.+
MARILYN S. SILVIA
THOMAS J. HALL+
ROCKY L. PETERSON
MICHAEL J. FEEHAN
MARY JANE NIELSEN++
THOMAS F. CARROLL
MARTIN J. JENNINGS, JR.**
ROBERT J. CURLEY
EDDIE PAGAN, JR.
JOHN O. CHANG
JOSEPH A. VALES
DANIEL J. SCAVONE
MINDEY C. POSER*
DANIEL J. SHERIDAN
MATTHEW H. LUBART+
L. STEPHEN PASTOR**
GUY P. LANDER+
RUSSELL U. SCHENKMAN+

* MEMBER OF N.J. & D.C. BAR
** MEMBER OF N.J. & PA. BAR
* MEMBER OF N.J. & N.Y. BAR
* MEMBER OF N.J. & GA. BAR
* MEMBER OF PA. B
** MEMBER OF CONI
Δ CERTIFIED CIVIL

RUIS - AD - 1986 - 100

March 7, 1986

FILE NO.

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

RE: The Hills Development Company v. Tp. of Bernards

Dear Judge Serpentelli:

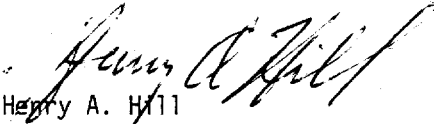
Since my letter to you of February 28, 1986, some of the issues raised therein have come into sharper focus. On March 6, 1986 the Township Committee of the Township of Bernards introduced an ordinance, a copy of which is enclosed, which would reduce the Hills zoning by 1,250 units and, according to the newspapers, the total compliance package of Bernards Township. I am enclosing for your information a copy of an article which appeared in the Bernardsville News dated March 6, 1986 which was telecopied to me on that date by the Hills together with a copy of the ordinance introduced by the Township Committee on the evening of March 6, 1986 which was given to me by the Township clerk.

In our letter of February 4, 1986 we listed five issues which we would like to bring before Your Honor "in a form that the Court deems appropriate" which issues are brought more sharply into focus by the Township's recent action.

We would like to suggest that the appropriate manner to bring the first four issues listed in our letter of February 24 before Your Honor would be through the filing of a new complaint alleging a binding agreement between the parties, equitable estoppel, rights accrued pursuant to the development application process, coupled with wrongful denials by Bernards, and finally the arbitrary and capricious nature of the Bernard's proposal to repeal the existing zoning through the introduction of this new ordinance, which was introduced on March 6, 1986. This procedure would allow you to transfer the existing Mount Laurel case and hear these collateral issues preserved by the Supreme Court.

We are looking forward to a case management conference on the issue of how this Court would like us to proceed and the proof issues listed by our earlier letter.

Respectfully submitted,



Henry A. Hill

HAH:k1p

enclosures

CC: Arthur H. Garvin, III, Esq. (w/enclosures)
James E. Davidson, Esq. (w/enclosures)
John Kerwin (w/enclosures)

RECEIVED

APR 1 1986

JUDGE SERPENTELLI'S CHAMBERS

REC a form from
Rago 4/2/86
Copies to:
T.C.
Admin.
Asst. Adm.
Engineers
J.T.

RESOLUTION

WHEREAS, Ordinance #704 of the Township of Bernards amended the Land Development Ordinance of the Township of Bernards by, among other things, adding to said Ordinance a new Article 1100; and

WHEREAS, Ordinance #704 was enacted in order to further ensure the actual construction and availability of a fair share of low and moderate income housing in the Township of Bernards; and

WHEREAS, Ordinance #704 was enacted pursuant to interpretations of Mount Laurel II [So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983)] prior to the adoption of the Fair Housing Act (L. 1985, c.222); and

WHEREAS, jurisdiction over Bernards' Township's compliance with its "fair share" obligation has been transferred to the Affordable Housing Council; and

WHEREAS, the Affordable Housing Council is in the process of considering the adoption of regulations and criteria to govern the construction and availability of low and moderate income housing throughout the State and such regulations will include, among other things, the determination of regions, the

determination of prospective need, the determination of methods of calculating fair share of low and moderate income housing in municipalities throughout the State and other significant issues and criteria; and

WHEREAS, the Fair Housing Act requires that such regulations and criteria be adopted prior to August 1, 1986; and

WHEREAS, the Fair Housing Act requires participating municipalities to adopt a housing element to their master plans within five (5) months of the adoption of the aforesaid regulations and criteria; and

WHEREAS, the aforesaid regulatory criteria relating to the housing element, calculations of fair share, regulations, and other matters are unknown at this time; and

WHEREAS, Ordinance #704 was adopted pursuant to criteria and based upon assumptions no longer in effect and not in accordance with the Fair Housing Act; and

WHEREAS, the present Land Use Plan Element and Housing Plan Element of the Master Plan of the Township of Bernards, as they relate to low and moderate income housing, were formulated with reference to such criteria and assumptions which are no longer in effect and not in accordance with the Fair Housing Act; 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 reflect these changes in circumstance and so as to assure that development during this interim period prior to adoption of

regulations and criteria of the Affordable Housing Council and the housing element of the Master Plan of the Township of Bernards, when adopted; and

WHEREAS, it is found to be in the best interests of the Township to enact such amendment at this time in order that superseded criteria and assumptions not control the development of low and moderate income housing in the Township of Bernards;

NOW, THEREFORE, be it RESOLVED by the Township Committee of the Township of Bernards that for the reasons stated above, Ordinance #764-A of the Township of Bernards, amending the Land Development Ordinance of the Township of Bernards, be adopted even though it is or may be inconsistent with the Land Use Plan Element and/or the Housing Plan Element of the Master Plan of the Township of Bernards.

Bernards Twp.

ORDINANCE #784A

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS AMENDING THE LOW AND MODERATE INCOME HOUSING PROVISIONS AND THE ZONING MAP OF 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, Ordinance #704 of the Township of Bernards amended the Land Development Ordinance of the Township of Bernards by, among other things, adding to said Ordinance a new Article 1100; and

WHEREAS, Ordinance #704 was enacted in order to further ensure the actual construction and availability of a fair share of low and moderate income housing in Township of Bernards; and

WHEREAS, Ordinance #704 was enacted pursuant to interpretations of Mount Laurel II (So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983)) prior to the adoption of the Fair Housing Act (L. 1985, c. 222); and

WHEREAS, jurisdiction over Bernards' Township's compliance with its "fair share" obligation has been transferred to the Affordable Housing Council; and

WHEREAS, the Affordable Housing Council is in the process of considering the adoption of regulations and criteria to govern the construction and availability of low and moderate income housing throughout the State and such regulations will include, among other things, the determination of regions, the determination of prospective need, the determination of methods of calculating fair share of low and moderate income housing in municipalities throughout the State and other significant issues and criteria; and

WHEREAS, the Fair Housing Act requires that such regulations and criteria be adopted prior to August 1, 1986; and

WHEREAS, the Fair Housing Act requires participating municipalities to adopt a housing element to their master plans within five (5) months of the adoption of the aforesaid regulations and criteria; and

WHEREAS, the aforesaid regulatory criteria relating to the housing element, calculations of fair share, regulations, and other matters are unknown at this time; and

WHEREAS, Ordinance #704 was adopted pursuant to criteria and based upon assumptions no longer in effect and not in accordance with the Fair Housing Act; 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 reflect this change in circumstances and so as to assure that development during this interim period prior to adoption of regulations and criteria of the Affordable Housing Council and the housing element of the Master Plan of the Township of Bernards, when adopted.

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

(1) Section 1104, "Minimum Tract Size and Gross Density", is deleted in its entirety and replaced with the following:

Section 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 thirty (30) acres.

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

R-5, PRD-2: 5.5 dwelling units/acre on lands defined as drylands in Article 200 and 1.0 dwelling unit/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: 3.0 dwelling units/acre up to a maximum of 1500 dwelling units in the zone.

(2) Section 1110, "Lower Income Housing Requirements", Paragraph A, is deleted in its entirety and replaced with the following:

1110. Lower Income Housing Requirements

A. Number of Lower Income Dwelling Units Required.

1. All developments on contiguous parcels of land totalling thirty (30) acres or more as of March 6, 1986 in the R-5 zone 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.

a. 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.

b. 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).

2. All developments on contiguous parcels of land totalling thirty (30) acres or more as of March 6, 1986 in the R-8 zone shall be developed in accordance with the PRD requirements and shall be required to provide fifteen (15) percent of all dwelling units to be affordable for lower income households.

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.

(3) Section 1110, "Lower Income Housing Requirements" subparagraph 1 of Paragraph F is deleted in its entirety and replaced with the following:

F. Phasing of Lower Income Housing

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

Percentage of building permits for market housing	Percentage of certificates of occupancy for lower income units
up to 24%	0
25 to 49%	25%
50 to 74%	100%
75%	—

(4) This Ordinance shall take effect immediately upon final passage and publication in accordance with law.

The foregoing amended ordinance, having been re-introduced and passed on first reading by the Township Committee of the Township of Bernards in the County of Somerset on March 23, 1986 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, Collyer Lane, Basking Ridge, N.J. in said Township on April 8, 1986 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
4/3/86

Thursday

March 9, 1986

Township prepares to reduce Hills zoning by 1,250 units

By DAVID POLAKIEWICZ
Staff Writer

BERNARDS TWP. — A rezoning ordinance that would decrease the total number of homes allowed on the Hills Development property by 1,250 units is expected to be introduced tonight (Thursday) by the Township Committee.

If adopted in the coming weeks, the ordinance would rezone a 511-acre piece of the Hills property in the Raritan Basin to allow 1,500 units, including 226 affordable Mount Laurel II homes. The tract is zoned for 2,750 units including 550 affordable homes.

An adjacent 500-acre piece of Hills property in the Passaic Basin is zoned for 273 units and would remain at that density under the proposed ordinance.

According to Planning Board Chairman Harry Dunham, township

officials have been working on the rezoning of the Hills property in private sessions for several weeks in anticipation that the township's Mount Laurel II case would be transferred to the state's Affordable Housing Council. That transfer was approved by the state Supreme Court two weeks ago.

Dunham said Tuesday night that Hills Development officials had not been notified of the proposed change. John Kerwin, president of the development firm, could not be reached for comment on Tuesday night.

Prior to the transfer, the township's Mount Laurel II dispute with Hills was being handled by state Superior Court Judge Eugene Serpentelli.

Township officials said they believe the transfer to the housing council will result in a lower "fair share" or number of Mount Laurel II homes

that Bernards will have to provide and the proposed ordinance reflects that.

Township planning consultant Harvey Moskowitz, had calculated the township's fair share at more than 1,200 units two years ago. But officials had planned on providing only 900 to 1,100 Mount Laurel II housing units because of various credits it has.

Under the housing council's methods, Moskowitz believes the township's obligation may be lowered to about 750 units.

Township officials have planned to include Mount Laurel II housing in several developments. But under the proposed ordinance, Hills is the only development where the township is seeking a reduction in units.

Under the proposed new ordinance, there would be 226 Mount Laurel II (Please see Township on page 2.)

Township to reduce Hills housing units

Continued from Page 1
units at the Hills. The rest of the 1,250-unit reduction in the Hills Development would be in market-priced units.

If the governing body approves the ordinance it would bring the Hills property back to a density more closely resembling its pre-Mount Laurel II zoning.

It would also be the first tangible evidence that the township may realize some benefit from the 1985 Fair Housing Act passed by the state Legislature and signed into law by Gov. Thomas Kean last year.

The law was adopted as a means of limiting the effects of the Supreme Court's 1983 Mount Laurel II decision which often gave developers a "builder's remedy" or right to build extra market-priced homes along with affordable housing.

Prior to the Mount Laurel II zoning that was adopted in November 1984, Hills Development's approximately 1,100 acres of township property was zoned for a total of 1,275 units.

That was changed in 1984 to 3,023 units. The new ordinance would permit Hills Development to construct a total of 1,773 homes.

Hills Development filed suit against the township in May 1984 claiming local zoning did not provide for affordable housing. Hills offered to include 1,100 Mount Laurel II homes (750,000 sq ft) on 1,100 acres of township property. The township board was rejected to allow a total of 3,023 units.

The two sides have appeared before Serpentelli numerous times and filed several motions since the rezoning was adopted in November 1984.

The latest session was last Friday to hear a proffer Hills filed in January after the planning board rejected a conceptual plan for the Ramapo Summit. Hills claims that through the denial the township was trying to take away certain development rights.

Dunham said Serpentelli adjourned last Friday's session and a new date has not been scheduled.

Last week, Kerwin said that regardless of the outcome of that motion, Hills will continue to try to prove in court that a settlement of some sort was reached with the township last summer.

No written document was ever signed but Kerwin says conversations and court papers will prove that the township was ready to proceed with an agreement.

BERNARDS TOWNSHIP

ORDINANCE # 764

AN ORDINANCE OF THE TOWNSHIP COMMITTEE
OF THE TOWNSHIP OF BERNARDS BEING AN
INTERIM ORDINANCE AMENDING THE LOW AND
MODERATE INCOME HOUSING PROVISIONS AND
THE ZONING MAP OF 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, Ordinance #704 of the Township of Bernards amended the Land Development Ordinance of the Township of Bernards by, among other things, adding to said Ordinance a new Article 1100; and

WHEREAS, Ordinance #704 was enacted in order to further ensure the actual construction and availability of a fair share of low and moderate income housing in Township of Bernards; and

WHEREAS, Ordinance #704 was enacted pursuant to interpretations of Mount Laurel II [So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158 (1983)] prior to the adoption of the Fair Housing Act (L. 1985, c.222); and

WHEREAS, jurisdiction over Bernards' Township's compliance with its "fair share" obligation has been transferred to the Affordable Housing Council; and

WHEREAS, the Affordable Housing Council is in the process of considering the adoption of regulations and criteria to govern the construction and availability of low and moderate income housing throughout the State and such regulations will include, among other things, the determination of regions, the determination of prospective need, the determination of methods of calculating fair share of low and moderate income housing in municipalities throughout the State and other significant issues and criteria; and

WHEREAS, the Fair Housing Act requires that such regulations and criteria be adopted prior to August 1, 1986; and

WHEREAS, the Fair Housing Act requires participating municipalities to adopt a housing element to their master plans within five (5) months of the adoption of the aforesaid regulations and criteria; and

WHEREAS, the aforesaid regulatory criteria relating to the housing element, calculations of fair share, regulations, and other matters are unknown at this time; and

WHEREAS, ~~the existing~~ Ordinance #704 was adopted pursuant to criteria and based upon assumptions no longer in effect and not in accordance with the Fair Housing Act; 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 reflect this change in circumstances and so as to assure that development during this interim period prior to adoption of

the Council's regulation and criteria will not conflict with the regulations and criteria of the Affordable Housing Council and the housing element of the Master Plan of the Township of Bernards, when adopted.

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

(1) Section 1104, "Minimum Tract Size and Gross Density", is deleted in its entirety and replaced with the following:

Section 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 ~~twenty-five (25)~~ acres. *S/R 30 ACRES*

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

R-5; PRD-2: 5.5 dwelling units/acre on lands defined as drylands in Article 200 and 1.0 dwelling unit/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: 3.0 dwelling units/acre up to a maximum of 1500 dwelling units in the zone.

(2) Section 1110, "Lower Income Housing Requirements", Paragraph A, is deleted in its entirety and replaced with the following:

1110. Lower Income Housing Requirements

A. Number of Lower Income Dwelling Units Required.

1. All developments on contiguous parcels of land totalling thirty (30) acres or more as of March 6, 1986 in the R-5 zone shall be developed in accordance with the PRD requirements and shall be required to provide twenty

*WAS
25 ACRES*

(20) percent of all dwelling units to be affordable for lower income households except as provided below.

a. 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.

b. 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).

2. All developments on contiguous parcels of land totalling thirty (30) acres or more as of March 6, 1986 in the R-8 zone shall be developed in accordance with the PRD requirements and shall be required to provide fifteen (15) percent of all dwelling units to be affordable for lower income households.

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s/B 1110
(3) Section ~~110~~, "Lower Income Housing Requirements" subparagraph 1 of Paragraph F is deleted in its entirety and replaced with the following:

F. Phasing of Lower Income Housing

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

<u>Percentage of building permits for market housing</u>	<u>Percentage of certificates of occupancy for lower income units</u>
up to 24%	0
25 to 49%	25%
50 to 74%	100%
75%	-

(4) This Ordinance shall take effect immediately upon final passage and publication in accordance with law. This is an interim Ordinance adopted pursuant to N.J.S.A. 40:550-90 and the provisions of this Ordinance shall expire one (1) year from its effective date unless repealed or modified prior to that time.