

RULS-AD-1986-120

3/21/86

Correspondence on 6/6/85 meeting

Pgs. 16

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^ CERTIFIED CIVIL TRIAL ATTORNEY

March 21, 1986

FILE NO. 3000-004

RULS - AD - 1986 - 120

Mr. George Raymond
Raymond, Parish, Pine & Weiner
555 White Plains Road
Tarrytown, NY 10591

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

Dear George:

As I advised you on the telephone, Hills Development Company is bringing a motion before Judge Serpentelli to enforce a settlement which they believe was reached in the Bernards case. In connection with that motion, it would be helpful to the court, we believe, to know what occurred at a meeting which you attended with the Township Committee of Bernards Township and Planning Board officials on June 6, 1985 in your role as Court-appointed Master. Specifically, we would like to know the following:

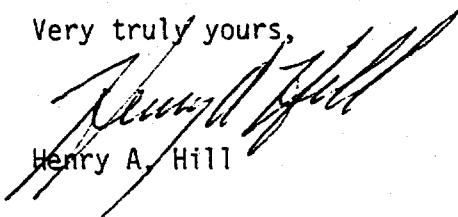
1. Who attended the meeting?
2. What was the purpose of the meeting and did you at that meeting have occasion to explain to the Township Committee any or all of the terms of the settlement; or in the alternative, the terms which you felt at that time were still under discussion between the parties?
3. To the best of your recollection, what were the terms of the settlement which were still in dispute at that time or which you explained?
4. Did the public officials present indicate in any manner what their position was with respect to those terms?
5. How did they indicate their assent or dissent with the issues presented?

6. What was your impression with respect to any consensus reached at that meeting and the status of the issues at the end of the meeting?

I am enclosing for your information, a copy of a letter sent to the court by James Davidson, the attorney for Bernards Township, on June 12, 1985 in which he states to the court that a settlement has been reached between The Hills Development Company and Bernards Township. To put my questions in context, we would like to document to the court, to the best of our ability, that Mr. Davidson's statement to the effect that a settlement was reached sometime prior to June 12, 1985 is accurate and would like any assistance you may give as to which, if any, remaining issues were resolved at the meeting of June 6, 1985.

If you could state your recollection in a letter addressed to both myself and James Davidson, we may be able to avoid a formal affidavit with respect to that meeting on June 6, 1985, and agree to the presentation of this letter to the court.

Very truly yours,



Henry A. Hill

HAH:klp

enclosures

CC: James E. Davison, Esq. (w/o enclosure)
Honorable Eugene D. Serpentelli (w/o enclosure)

EDWARD J. RYBCZYK

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

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

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

RECEIVED

MAR 25 1986
 March 25, 1986

JUDGE SERPENTELLI'S CHAMBERS

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

Re: Hills Development Co. v.
Township of Bernards

Dear Henry:

In response to your letter dated March 21, 1986, please be advised as follows:

On June 6th, 1985, at my request, I attended a meeting of the Township Committee of Bernards Township. The meeting was attended by, I believe, all the members of the Committee as well as James E. Davidson, Esq. and Mr. H. Steven Wood, the Township Administrator. If there were any others, I have no recollection.

My purpose in requesting such a meeting was to help firm up the Township's compliance package. As you know, the Township had already enacted an essentially complying ordinance (Ordinance #704) on November 12, 1984. My principal concern, therefore, was with the Town's acceptance of the need to accommodate a number of low- and moderate-income units sufficient to satisfy its fair share.

At the June 6 meeting I presented to the Township Committee the compliance package which I ultimately recommended for approval to the Court in my report dated June 12, 1985. There was considerable discussion of my proposal, but at the end the Mayor polled the Committee and, if my recollection serves, received approval from all but one member. I left the meeting fully convinced that a solution had been officially arrived at which, I hoped, would be satisfactory to the Court.

My impression that the compliance package which had been favorably, though informally, voted on by the Township Committee was acceptable seems to have been shared by Mr. Davidson. In his letter dated June 12, 1985 to Judge Serpentelli (which is

Handwritten notes: HFF, JAH/RS, and other illegible scribbles.

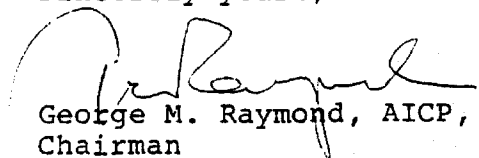
enclosed), Mr. Davidson indicates a collective belief that "we have reached an understanding which is satisfactory to Mr. Raymond and the municipality" (emphasis supplied). Since I have not known Mr. Davidson to use the royal "we" when referring to himself, I assumed that the "we" in the preceding quote referred to all parties involved in arriving at a settlement, including the Township.

Mr. Davidson's letter of transmittal to me of the same date also contained the enclosed draft of a proposed judgement which, while incomplete in some respects, did detail the compliance package components which accorded with the numbers that I thought had been agreed on June 6.

I wish to emphasize that, at that juncture, I was particularly anxious to bring about basic municipal compliance with Mt. Laurel II. I was aware of other unresolved issues between the parties (such as off-tract improvements, etc.) and had participated in meetings intended to solve them. None of these were discussed at the June 6 meeting. I can state emphatically that the then existing zoning of the Raritan Basin portion of the Hills property was not represented to me as being in dispute.

I hope that the above will help bring about a meeting of the minds between Hills Development Company and the Township.

Sincerely yours,



George M. Raymond, AICP, AIA
Chairman

GMR:kfv

Encs.

cc: James E. Davidson, Esq.
Hon. Eugene D. Serpentelli, J.S.C.

FARRELL, CURTIS, CARLIN & DAVIDSON

ATTORNEYS AT LAW

43 MAPLE AVENUE

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LISA J. POLLAK

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OF COUNSEL

FRANK J. VALBERTI, JR.

171 NEWKIRK STREET

JERSEY CITY, N. J. 07306

(201) 795-4227

June 12, 1985

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

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

Dear Judge Serpentelli:

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

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

Honorable Eugene D. Serpentelli
Page Two
June 12, 1985

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

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

Respectfully submitted,

FARRELL, CURTIS, CARLIN & DAVIDSON

By:

James E. Davidson

JED/sjm

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

FARRELL, CURTIS, CARLIN & DAVIDSON

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OF COUNSEL

FRANK J. VALGENTI, JR.

June 12, 1985

Mr. George Raymond
Raymond, Parish, Pine & Weiner
555 White Plains Road
Tarrytown, New York 10591-5179

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

Dear George:

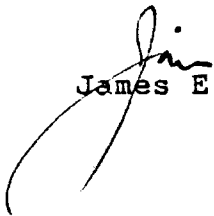
Enclosed please find an incomplete (and rough) draft of a proposed Judgment in the above matter. The references to the zoning ordinance changes (Exhibit A) are those previously provided by Harvey Moskowitz together with an application fee (Planning Board) waiver and 95-day review period. The references to the memorandum of Agreement between the parties will follow the substance of the Order drafted by Tom Hall as modified by our discussions.

You will note that the fair share number, 1066 units, is determined after taking account of the available credits. My reading of Judge Serpentelli's Opinion in Allan Deane v. Bedminster, decided May 1, 1985, is that the credits (if any) should be part of the fair share determination rather than the compliance package.

I am also enclosing a copy of my letter to Judge Serpentelli to be sure that my references to your report are accurate.

Please call me upon receipt of this letter.

Best regards,


James E. Davidson

JED/sjm

Encl.

cc: Tom Hall, Esq.

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

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

THE HILLS DEVELOPMENT COMPANY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	SOMERSET/OCEAN COUNTIES
-vs-	:	Docket No. L-030039-84
THE TOWNSHIP OF BERNARDS in the	:	Civil Action
COUNTY OF SOMERSET, a municipal	:	
corporation of the State of New	:	
Jersey, THE TOWNSHIP COMMITTEE OF	:	<u>ORDER OF JUDGMENT</u>
THE TOWNSHIP OF BERNARDS, THE	:	
PLANNING BOARD OF THE TOWNSHIP OF	:	
BERNARDS and the SEWERAGE AUTHORITY:	:	
OF THE TOWNSHIP OF BERNARDS,	:	
Defendants.	:	

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

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

And the Court having considered the report of the Master, George Raymond, and the Land Development Ordinance of the Township of Bernards, Ordinance #704 which amends the Land Development Ordinance of the Township of Bernards, a report of Harvey Moskowitz, Planner for the TOWNSHIP of Bernards, affidavit of H. Steven Wood, Administrator of the Township of Bernards, [INSERT LISTING OF ALL REPORTS, AFFIDAVITS, AND OTHER DOCUMENTS THAT WILL BE SUBMITTED TO THE JUDGE BY BOTH SIDES] and the Court having held a hearing on _____ 1985, and the Court having heard and considered the arguments of counsel;

And based on the above submission the Court having made the following findings of fact:

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

2. The fair share number set forth in paragraph 1 is calculated in the following manner:

(a) The gross fair share number without any credits or deletions as determined in accordance with the method provided in AMG, Realty, et al. v. Warren Tp., decided July 16, 1984 is 1,509 units.

(b) Credit allowed against such number for settlement as authorized by the Allan-Deane Corporation v. Township of Bedminster, et al., decided May 1, 1985 is 302 units.

(c) Credit allowed for providing additional housing under Mt. Laurel I including 600 least cost units located in the BRC zones (Bernards Township Land Development Ordinance) and a senior citizen's housing project in the amount of 248 units (which provides an estimated average turn-over 17 units per year) is 141.

TOTAL CREDITS	443 units
FAIR SHARE	1,066 units

3. The actual number of units (1,066) for which a realistic opportunity must be provided is satisfied in the following manner:

(a) Units produced under Ordinance #704 for the time period in question (through 1991) 839

(b) Units to be phased in during the period 1991 to 1994 pursuant to prospective amendment to Ordinance #704.

68

(c) Units provided for in Order of Judgment in the matter of Spring Ridge Associates, et al. v. Township Committee of the Township of Bernards, Docket No. L-012580-85, dated June , 1985 141

(d) Deficient units for indigenous poor to be located and rehabilitated 18

TOTAL UNITS PROVIDED 1,066

4. Ordinance #704 was drafted to provide a realistic opportunity for the construction of the following number of units of lower income housing:

(a) 550 units to be constructed in the R-8 zone (PRD-4);

(b) 430 units to be constructed in the R-5 zone (PRD-2 PRN);

(c) 43 units of indigenous housing to be rehabilitated;

(d) 114 units of supplementary apartments;

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

6. The report of George Raymond provides and recommends the following:

(a) Of the units referred to in Paragraph 5(b) hereof, 141 have been provided pursuant to the Order of the court in Spring Ridge Associates, et al. v. Township Committee of the Township of Bernards, Docket No. L-012580-85, dated June , 1985.

(b) The number of indigenous units requested should be reduced to 18.

(c) The provision of 114 units of supplementary apartments is not likely to result in the construction of low and moderate income housing.

(d) The Planning Board application fee for low and moderate income housing units should be waived for development in the R-8 zone.

(e) That Hills be required to construct 68 additional units of low and moderate income housing in that portion of its property located in the Raritan Basin, to be phased in during the period 1991 through 1994.

(f) The defendants agree to extend the sewer franchise of Environmental Development Corporation to sewer 273 market units to be located in the Passaic Basin.

(g) Township should adopt an ordinance regulating low and moderate housing including the rental, sale and other aspects to assure that such housing shall remain low and moderate income housing for the required period.

(h) All development applications for developments which include low and moderate income housing units should be completed and action taken within a 95-day period commencing on the date of filing of a complete application.

(i)

(j)

7. The Court agrees with and adopts the above recited recommendations set forth in the report of George Raymond except for the following:

(a)

(b)

8. The defendant Township has indicated its agreement to certain amendments to Ordinance #704 which amendments include a provision for 68 additional units to be located in the R-8 (PRD-4) zone, such units to be phased in and constructed during the period commencing 1990 and ending 1994, all as more specifically set forth on Exhibit A attached hereto.

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

And for good cause shown:

NOW, THEREFORE it is on this day of
1985

ORDERED AND ADJUDGED that:

1. Bernards Township Land Development Ordinance as amended by Ordinance #704 and as to be further amended as herein provided provides a realistic opportunity for the satisfaction of and in conformance with the requirements set forth in Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel, 92 N.J. 158 (1983).

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

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

(1) An increase in density in that portion of the Hills property located in the Raritan Basin to provide 68 additional units of housing, 50% of which shall be low income housing and 50% of which shall be moderate income housing. The construction of such housing shall be phased in so that such housing shall be provided during the period 1991 through 1994.

(2) Planning Board application fee for units of low and moderate income housing only shall be waived.

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

(4) A provision that will insure that development applications for developments which include low and moderate income housing units should be completed and action taken within a 95-day period commencing on the date of filing of a complete application.

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

FURTHER ORDERED that this action shall be dismissed and that the defendant, Township of Bernards, shall be entitled to repose from further litigation relating to its obligation to provide housing for low and moderate income families under Mt. Laurel II or otherwise and this judgment shall have res judicata.

effect, despite changed circumstances, for a period of six years, the period to begin on the date of entry of this judgment.

J.S.C.