

RULS-AD-1986-140
3/24/86



Appendix in Support of Motion on Remand from
the ~~E~~ Supreme Court of NJ

pg. 135

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

THE HILLS DEVELOPMENT COMPANY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	SOMERSET COUNTY/OCEAN COUNTY
	:	(Mt. Laurel II)
vs.	:	
	:	Docket No. L-030039-84 P.W.
THE TOWNSHIP OF BERNARDS in the	:	CIVIL ACTION
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.	:	

APPENDIX IN SUPPORT OF MOTION ON REMAND FROM
THE SUPREME COURT OF NEW JERSEY

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

APC
4-3-86
244

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EXHIBIT A

1 THE COURT: I would not mind being
2 quoted in what I am saying here. Unfortunately,
3 the courtroom is empty.

4 MR. DAVIDSON: May I say one other thing:
5 We are very concerned with their commitment.
6 They have attached a commitment.

7 Mr. Hill has referred to the commitment
8 in his reply brief to our motion. We read that
9 commitment to say that we are committed to
10 Mount Laurel housing if we get what we want.

11 We want them to be committed to build
12 Mount Laurel housing whether or not they get
13 what they want. That's what the commitment
14 ought to be, and if they are willing to build
15 it, then they ought to be willing to stand
16 behind it.

17 THE COURT: Yes, but now your naivete
18 is probably going to result in your ordinance
19 being found valid just as your argument with
20 respect to Mr. Hill's approach to the Town.

21 Unless you are going to be able to
22 prove, and you are going to have a tough row
23 to hoe, I mean, factually, in a mandatory
24 set aside, in the absence of mandatory set aside
25 that you are going to be able to produce housing

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in this Town, it seems to me you are going to face a very, very difficult uphill fight.

I think it is going to be rather easy for Mr. Hill to demonstrate that this ordinance will not produce low and moderate housing.

If he cannot demonstrate it as a matter of law on a motion, it's going to be rather easy as a matter of fact if you are going to rely upon the good faith of builders to come into your town and build low and moderate housing.

MR. DAVIDSON: Okay. I hear you.

THE COURT: And there is one thing that follows on that, and I think should be clear to you and should be thought out, and that is, that the plaintiffs barred now in Mount Laurel matters are now bringing these motions for other purposes other than winning, and that is, that they will follow with a motion after they have proven invalidity pursuant to Rule 4:44-6 to demonstrate that the town has defended against the motion for summary judgment knowing that there was palpably no genuine issue of fact which would then entitle them if such a motion was granted to attorney's fees from this day forward.

EXHIBIT B



Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

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

October 16, 1984

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

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

Dear Mr. Garvin:

I have your letter of October 10, 1984 which enclosed a proposed order.

The procedure being followed is not in accordance with my normal approach to granting immunity to builder's remedy suits. I have previously been agreeable to granting immunity from builder's remedy suits if the township will stipulate the present invalidity of its ordinance and its fair shae number. The order as submitted merely delays the interim process for 45 days while the township attempts to resolve the matter. I do not believe that that is a healthy practice in Mount Laurel litigation given the procedure which I am willing to follow. I will be happy to confer with all counsel concerning the matter at your earliest convenience.

Very truly yours,

Eugene D. Serpentelli
Eugene D. Serpentelli, JSC

EDS:RDE

EXHIBIT C

Bernards Twp.

ORDNANCE #784

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 N.J.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 25 percent of the family income for sales housing and 30 percent for rental housing.

(B) Inserting, after Subsection 180, Retail Sales and Services, the following new Subsection:

180.A Reviewing Body: The Planning Board, except where otherwise required by N.J.S.A. 40:55 D-1 et seq.

3. Section 405, Conditional Uses, Subsection C, Specific Requirements, paragraph 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, singly and in combination, serve a local and not a regional market.

4. Section 405, Conditional Uses, Subsection 10, Apartment within a single family residence, is amended in the following manner:

(A) Deleting paragraph a, in its entirety, and replacing the same with the following:

a. The number of apartments within a single-family residence shall be limited to one, and shall be located within the principal building or an out-building existing at the time of passage of this amendment.

(B) Deleting paragraph b, in its entirety.

(C) Deleting paragraph 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 the Ordinance. PROVIDED, however, that in the event that any provision for a mandatory set-aside, as specified in Section 1110.A., is declared invalid at 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

1101. Purpose

The purpose of this Article 1100 is to establish procedures for approving PRD developments in the R-5 and R-8 zoning districts in order to comply with the provisions of Mt. Laurel II. The regulations and controls contained in this Article shall be interpreted to assure the construction of lower income housing which meets the standards and guidelines set forth in Mt. Laurel II. Any provisions of any other ordinances or Articles in conflict with this Article 1100 and which imposes restrictions or limitations not related to health and safety shall be inapplicable to developments under this Article 1100.

It is also the intent of this Article to provide a realistic opportunity for the construction of a variety of housing types and income levels in the Township, including housing for lower income households; and to encourage the development of such lower income housing, and other housing, by providing specific land use regulations addressing those needs. These regulations are designed to meet the mandate of Mt. Laurel II.

1102. Regulations Applicable to the R-5 and R-8 Zones as Part of the PRD-2 and PRD-4 Options

A. Application Procedure

1. Applicant shall submit required plans and documents to the Planning Board for review and approval. The Planning Board shall distribute the plans to those agencies required by law to review and/or approve development plans and to Township agencies which normally review development plans.

2. The Planning Board shall hold a public hearing in accordance with N.J.S.A. 40:55D-46.1 on the application. The initial hearing shall be held not less than thirty (30) days nor more than forty-five (45) days from the date of submission of a complete application.

3. Applicants with 10 or more acres may elect to submit a Concept Plan in accordance with Section 707 as part of a PRD application in any R-5 or R-8 zone. In the alternative, applicant may follow procedures for subdivision and site plan approval set forth elsewhere in this ordinance. Once a GDP is approved, applicant shall proceed as provided in this ordinance for subdivision and/or site plan approval.

1103. Use Regulations.

A. Permitted Uses

1. Dwelling, One-Family
2. Townhouse
3. Dwelling, Two-Family
4. Dwelling, Multi-Family
5. Public parks, playgrounds, conservation areas, and municipal facilities
6. Common Open Space
7. Planned Development

B. Accessory Uses

1. Personal recreational facilities
2. Accessory buildings
3. On-street parking and garages
4. Fences
5. Signs

C. Conditional Uses

1. Essential Services
2. Nursery schools
3. Private recreation uses with lights
4. Retail and service commercial under PRD-4 option in accordance with Section 405 requirements

1104. Minimum Tract Size and Gross Density

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

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

R-5: PRD-2: 5.5 dwelling units/acre on lands defined as Drivlands 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. Berms may include minimum yard

requirements for all single-family, two-family and townhouse development.

1105. Schedules of Area, Bulk and Yard Requirements

Permitted Uses	Minimum Lot Area (sq. ft.)	Minimum Lot Width	Minimum Yard			Maximum Building Coverage	Maximum Height
			Front	Side (one/both)	Rear		
Dwelling, One-Family	5,000	50'	25'	10'/15'	25'	20%	35'
Townhouse	N/A	16'	25'	N/A	20'	60%	35'
Dwelling, Two-Family (horizontally separated)	6,000	60'	25'	10'/15'	25'	40%	35'
Dwelling, Two-Family (vertically separated)	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 this Article and do not create any adverse negative impacts.

1108. Minimum Off-Street Parking Requirements

- 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
- An additional ten (10) percent (of that computed in #1 above) off-street parking shall be provided for visitation.
- 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

- Number of Lower Income Dwelling Units Required**
All developments on contiguous parcels of land totaling ten (10) acres or more as of 10/2/84 in the R-5 and R-8 zones shall be developed in accordance with the 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

- 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.
- 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

- 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 which, in his opinion, ensure that such housing will remain affordable to persons of lower income.
- 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.
- 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.
- 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.
- 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.
- 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.
- 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

- 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.

BERNARDS TWP. ORDINANCE #704 — PAGE 3

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. Prepared 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 ceded 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 ceded 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 513 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 necessary to minimize these effects.

3. The maximum intensity of lighting permitted on roadways shall be as required in Section 512 of this Ordinance.

C. Sanitary Sewers

Where required and where a public or private treatment and collection system is provided, the developer shall design and construct such facilities in accordance with the N.J.D.E.P. permit requirements and in such a manner as to make adequate sewage treatment available to each lot and structure within the development from said treatment and collection system. If a public or private treatment and collection system is included as part of a development application, the developer shall install sewers, including connections to each home to be constructed.

D. Streets

1. All developments shall be served by paved streets in accordance with the approved subdivision and/or site plan, all such streets shall have adequate drainage.

2. Local streets shall be planned so as to discourage through traffic.

3. The minimum public street right-of-way and cartway and the minimum private street cartway shall be in accordance with the following schedule:

	R.O.W.	Cartway
a. Collector street (no parking on either side)	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, unweaving 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.

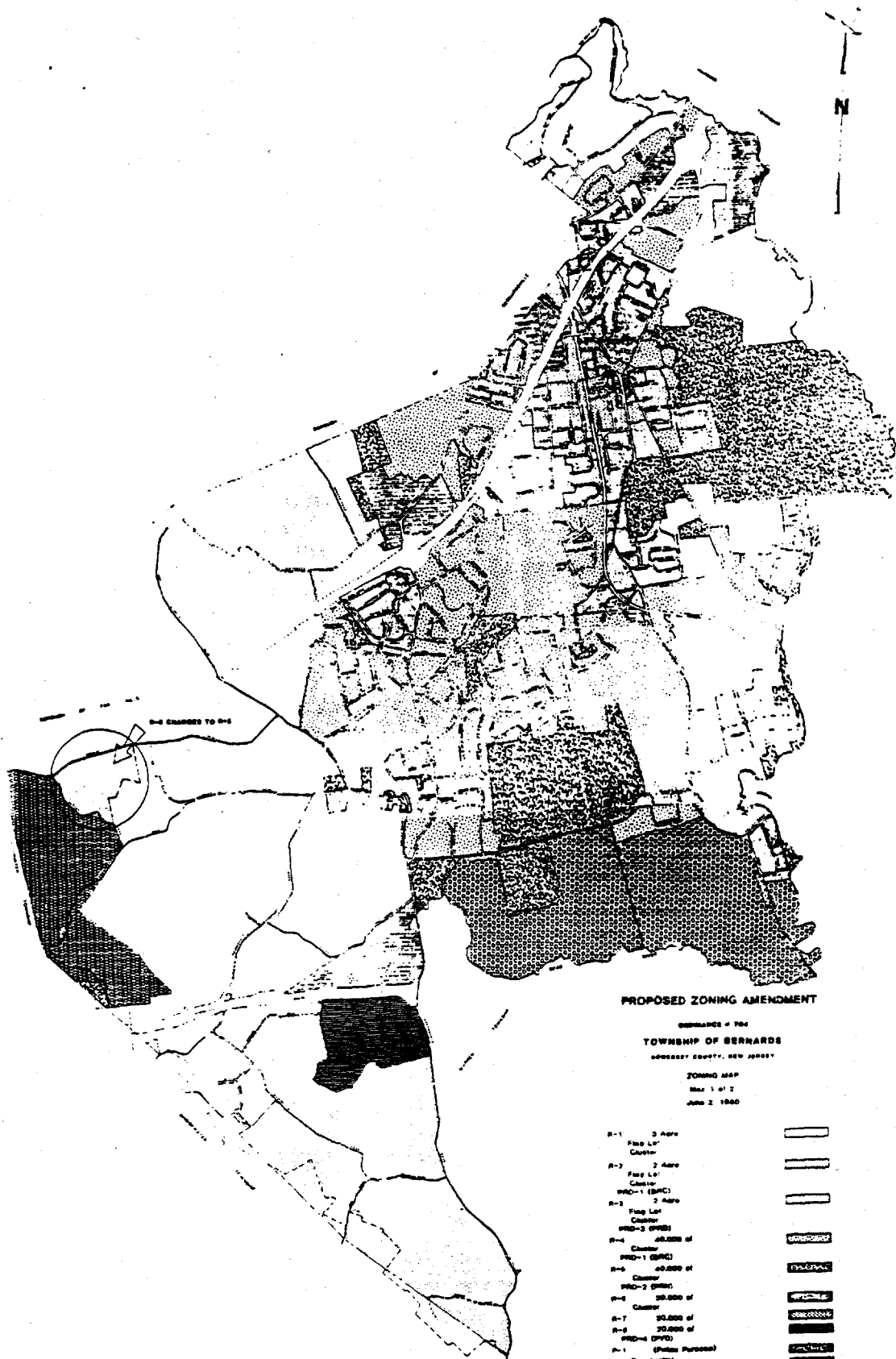
Passed on first reading October 2, 1984.

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



PROPOSED ZONING AMENDMENT

ORDINANCE # 704
TOWNSHIP OF BERNARDS
 BERKSHIRE COUNTY, NEW JERSEY

ZONING MAP
 Map 1 of 2
 June 2, 1980

R-1	3 Acre Flag Lot Cluster	[Symbol]
R-2	5 Acre Flag Lot Cluster	[Symbol]
PRD-1 (BRC)	2 Acre Flag Lot Cluster	[Symbol]
R-3	5 Acre Flag Lot Cluster	[Symbol]
PRD-2 (BRC)	40,000 sq Cluster	[Symbol]
PRD-1 (BRC)	40,000 sq Cluster	[Symbol]
PRD-2 (BRC)	20,000 sq Cluster	[Symbol]
PRD-3 (BRC)	20,000 sq Cluster	[Symbol]
PRD-4 (BRC)	20,000 sq Cluster	[Symbol]
P-1	Private Personal Non Residential	[Symbol]

SCALE 1" = 1000'

DESIGNED BY: [Name]
 DRAWN BY: [Name]
 CHECKED BY: [Name]

THIS MAP WAS PREPARED BY THE TOWNSHIP OF BERNARDS, NEW JERSEY, IN ACCORDANCE WITH THE ZONING ACT OF 1952, AS AMENDED BY THE ZONING ACT OF 1968, AND THE ZONING ACT OF 1978, AND IS HEREBY ADOPTED AS THE ZONING MAP OF THE TOWNSHIP OF BERNARDS, NEW JERSEY.

EXHIBIT D

FARRELL, CURTIS, CARLIN & DAVIDSON
ATTORNEYS AT LAW
43 MAPLE AVENUE
P.O. BOX 145
MORRISTOWN, N. J. 07960
(201) 267-8130

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

OF COUNSEL
FRANK J. VALGENTI, JR.

171 NEWKIRK STREET
JERSEY CITY, N.J. 07308
(201) 795-4227

November 23, 1984

Honorable Eugene D. Serpentelli
Judge of the Superior Court
Court House
CN 2191
Toms River, New Jersey 08754

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

Dear Judge Serpentelli:

On November 12, Bernards Township adopted an amendment to its land use ordinance pursuant to Mt. Laurel II. A copy of the ordinance is enclosed herein. The ordinance requires Mt. Laurel housing in two separate areas of Bernards Township. The first area (R-8; PRD-4) is owned by the plaintiff in this suit - Hills Development Corporation. The ordinance provides (§1104.2) for 5.5 units per acre up to a maximum of 2750 dwelling units in the zone. (The zone is approximately 500 acres). Section 1110(a) provides for a mandatory set-aside, in that 20% of all dwelling units shall be affordable for lower income housing. The ordinance also provides for similar densities in another area in the township (R-5; PRD-2) as also set forth in §1104.2. In that area there is also a 20% mandatory set-aside except that the set-aside is modified to 15% moderate income housing in developments that have already received conceptual approval and 12% moderate income housing in developments where the sales price of any housing unit in the development will not exceed \$100,000 per unit.

Pursuant to these provisions more than 900 new Mt. Laurel housing (low and moderate) will be constructed. In addition, Mt. Laurel housing is provided which arises out of the redevelopment of current substandard housing together with rehabilitations and apartments in existing housing. This should result in more than 1050 Mt. Laurel housing units being

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Honorable Eugene D. Serpentelli
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supplied. There currently exists senior citizens Section 8 housing which was constructed in the late 1970's which provides more than 200 units of low and moderate income housing.

There is, of course, not a clear agreement as to Bernards Township's fair share number. The amended Master Plan of Bernards Township indicates that the fair share is within the range of 1000 to 1200 units. Plaintiff's expert in the above case indicates that he feels that Bernards Township is in the 1300 unit range, whereas the township's expert indicates that he feels the number is in the 1200 unit range. (These opinions both give credit for the existing senior citizen housing). Both experts have used the so-called "consensus methodology" which is set forth in the Lerman report and is discussed in your decision in the Warren Township case.

We feel that the ordinance provides for Bernards Township's fair share of low and moderate income housing pursuant to Mt. Laurel II. The result of the ordinance will be to provide for more than 1050 units; 900 of which will be newly constructed by developers. We also feel that these units will, in fact, be built. Hills Development, as you know, has already built low and moderate income housing in Bedminster and is probably considered the most qualified developer (for that purpose) in New Jersey. Additional factors which we think are valid for your consideration are:

1. One developer in the township has committed to building approximately 730 other units at moderate price (not however qualified for low and moderate status) which will be affordable for another economic level.

2. Under Mt. Laurel I, Bernards Township rezoned for 600 units of least cost housing (initially, prior to the Madison Township Opinion, these were to be strict Section 8 housing or the equivalent). While this attempt did provide substantial housing which was affordable to various income groups we recognize that it did not result in additional low and moderate income housing. Notwithstanding this, we believe Bernards Township should receive some recognition for having employed a somewhat unique system (at that time) of providing housing at that level.

For all the reasons set forth above, it is our contention that the zoning amendment complies with Mt. Laurel and should be acceptable to the court. It is my understanding that the

Honorable Eugene D. Serpentelli
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density provided for the Hills property and the 20% mandatory set-aside are acceptable to Hills. There are, however, some issues still open regarding Hills most of which relate to design requirements, off-tract improvements, and other similar matters which must be negotiated before the current litigation can be finally settled. It is our feeling that all the issues outstanding can be finally settled by the parties themselves.

We are, however, concerned that the status of our Mt. Laurel compliance efforts should not be disturbed while we are settling these issues and therefore respectfully request a stay of this matter and a stay of any action, or intervention in the current action, being brought by persons seeking a builders remedy.

I am, therefore, enclosing a copy of a form of Order for your consideration. I am distributing the Order to the other attorneys for their consent.

If you think it would be helpful to discuss the matter, we would be happy to meet with you at your convenience.

Respectfully yours

FARRELL, CURTIS, CARLIN & DAVIDSON

By:

James E. Davidson

JED/sjm

Encl.

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

EXHIBIT E

EXHIBIT E

FARRELL, CURTIS, CARLIN & DAVIDSON
43 Maple Avenue
Morristown, New Jersey 07960
(201) 267-8130
Attorneys for Defendants, The Township of Bernards, et al.

THE HILLS DEVELOPMENT COMPANY,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
Plaintiff,	:	SOMERSET/OCEAN COUNTY
	:	(Mt. Laurel II)
vs.	:	
	:	Docket No. L-030039-84 P.W.
THE TOWNSHIP OF BERNARDS, et al.,	:	
	:	Civil Action
Defendants.	:	ORDER STAYING ACTION AND
	:	PRECLUDING BUILDERS' REMEDIES
	:	FOR 90 DAYS

This matter having been opened to the Court jointly by Farrell, Curtis, Carlin & Davidson, Attorneys for Defendants, The Township of Bernards, The Township Committee of the Township of Bernards, and the Sewerage Authority of the Township of Bernards, Kerby, Cooper, Schaul & Garvin, Attorneys for The Planning Board of the Township of Bernards, and Brener, Wallack & Hill, Attorneys for Plaintiff, The Hills Development Company and the Court having been informed that the Defendant, Township of Bernards has amended its land use ordinance to provide for

EXHIBIT E

more than 1000 units of low and moderate income housing pursuant to Mount Laurel II; and the Court having been further informed that the parties are in settlement negotiations with regard to some aspects of the aforesaid amendment and other issues; and the Court being satisfied that such voluntary settlements of Mount Laurel II cases may be in the public interest;

It is on this 19th day of DECEMBER, 1984;

1. Ordered that this matter including all discovery and motions, is stayed by a period of 90 days;
2. Ordered that pending this stay period, during which the parties will have an opportunity to complete the settlement of this matter in compliance with Mount Laurel II, any person who shall commence an action, or who shall apply to intervene in this action, against any or all of the Defendants upon Mount Laurel II grounds shall not be permitted to seek or have a builder's remedy in such action;
3. Ordered that George M. Raymond, 555 White Plains Road, Tarrytown, New York 10591-5179 be appointed as the Court appointed expert to review the Amended Land Use Ordinance and to report to the Court as to its compliance with Mt. Laurel II, and to assist the Court and the parties in resolving any outstanding issues where requested.
4. Ordered that the parties may apply to this Court for an extension of the stay herein ordered if further time is needed to work out this settlement.

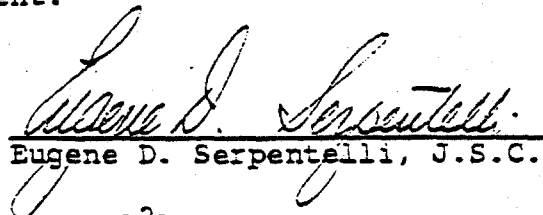


Eugene D. Serpentelli, J.S.C.

EXHIBIT E

This Order is consented to both in form and substance.


Henry A. Hill, Esq.
Brener, Wallack & Hill
Attorneys for Plaintiff
The Hills Development Company

James E. Davidson, Esq.
Farrell, Curtis, Carlin & Davidson
Attorney for Defendants,
The Township of Bernards, et al.

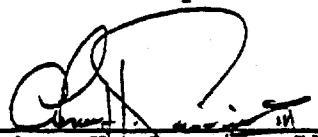

Arthur H. Garvin, III
Kerby, Copper, Schaul & Garvin
Attorney for Defendant
Planning Board of the Township
of Bernards

EXHIBIT F

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

*with
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.

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.

^{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. 40:55D-90 and the provisions of this Ordinance shall expire one (1) year from its effective date unless repealed or modified prior to that time.

EXHIBIT G

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

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

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

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

60% - lot coverage

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

Schedule of Area, Bulk and Yard Requirements
(Proposed)

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

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

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

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

B. Section 1107. Distance Between Buildings

The existing regulations are:

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

Mizerny suggested two additional dimensional categories as follows:

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

We concur in the addition.

C. Section 1109. Minimum Floor Area for Efficiency Units

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

D. Section 1111. Common Open Space Requirements

The current paragraph reads as follows:

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

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

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

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

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

E. Add the following definition:

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

F. Section 405C.6. Commercial Development

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

f. The maximum development shall be limited to 30,000 square feet of gross leasable floor area for the first 600 dwelling units of the PRD-4 and 1,000 square feet of gross leasable floor area for each additional 20 dwelling units of the PRD-4 thereafter, providing that the Board shall find that the intent of the proposed commercial uses, singularly and in combination, serve a local and not a regional market.

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

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

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

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

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

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

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

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

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

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

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

G. Section 604. Development Standards (Cluster)

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

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

H. Section 607G. Curbs

The following sentence should be added to the first paragraph:

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

We allow this now in these zones.

I. Section 610A.1 Parking Space Size

Change to 9' X 18'.

We have recommended this change before.

EXHIBIT H

DRAFT

5/31/85

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

Plaintiff,	:	SUPERIOR COURT OF NEW JERSEY
	:	LAW DIVISION
THE HILLS DEVELOPMENT COMPANY,	:	SOMERSET COUNTY/
	:	OCEAN COUNTY
vs.	:	(Mt. Laurel II)
	:	
Defendants,	:	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 THE TOWNSHIP OF BERNARDS,	:	ORDER
THE PLANNING BOARD OF THE	:	
TOWNSHIP OF BERNARDS and the	:	
SEWERAGE AUTHORITY OF THE	:	
TOWNSHIP OF BERNARDS.	:	

This matter having been opened to the Court by The Hills Development Company, Henry A. Hill, Esquire appearing, and in the presence of the Township of Bernards Planning Board, Arthur H. Garvin III, Esquire appearing, and the Township of Bernards and the Township of Bernards Sewerage Authority, James E. Davidson, Esquire appearing, and the Court having reviewed the papers and memoranda submitted, and good cause having been shown:

IT IS on this day of , 1985, ORDERED THAT:

The following Stipulation is hereby accepted by all parties hereto and the Court:

STIPULATION OF SETTLEMENT

I. Parties To This Settlement.

This is an agreement which has been reviewed and accepted by this Court and may be enforced by motion brought pursuant to Rule 1:10-5 for enforcement of litigant's rights. This Agreement is between the following parties:

1. The Hills Development Company, which is a joint venture general partnership organized under the laws of the State of New Jersey. As used in this Stipulation, The Hills Development Company (hereinafter "Hills") also refers to any successors or assigns of The Hills Development Company.

2. The Township of Bernards in the County of Somerset, State of New Jersey which includes, but is not limited to, the following entities and officials:

- a. The governing body of the Township of Bernards;
- b. The Planning Board of the Township of Bernards;
- c. The Sewerage Authority of the Township of Bernards;
- d. The Mayor, elected officials, and the Administrator of the Township of Bernards;
- e. All professional employees of the Township of Bernards, including but not limited to, the Construction Code Official, the Township Engineer, the Township Planning Consultant, the Township Attorney, and any other individuals providing consultative services to the Township with reference to the land development process. Hereinafter, all entities or individuals associated with the Township of Bernards shall be referred to as "Township".

II. Recitations.

WHEREAS, Hills owns approximately 1,046 contiguous acres of land, of

which approximately 501 acres are located within the Raritan Watershed and approximately 545 acres are located in the Passaic Watershed, all in Bernards Township, Somerset County, New Jersey. In addition, Hills owns other land, also in Bernards Township, also in the Raritan Watershed, but not contiguous to these aforementioned other properties ; and

WHEREAS, Hills filed suit against the Township of Bernards, et al. on May 8, 1984 (Docket L-030039-84), alleging, inter alia, that the Bernards Township Land Development Ordinance was not in conformance with the constitutional requirements set forth in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983), hereinafter, Mount Laurel II; and that the Bernards Township Land Development Ordinances precluded the possibility of having reasonable opportunities for lower income households to acquire housing; and

WHEREAS, the Township's Fair Share of housing for persons of lower income has been determined to be _____ units; and

WHEREAS, the Township has, as of November 12, 1984, adopted a new Ordinance (Ordinance 704) which substantially modifies its existing Land Use Ordinances and provides substantially enhanced opportunities for the development of housing for lower income households; and

WHEREAS, this Court has appointed George M. Raymond, AICP, as Special Master to review the Township's Ordinance and to assist the parties to negotiate a settlement of all remaining issues in this case; and

WHEREAS, the parties have been meeting regularly, and working with great diligence to resolve all remaining issues in this case; and

WHEREAS, the Township and Hills have agreed on all remaining issues and wish to amicably settle this case; and

WHEREAS, The Township is willing to assist in the provision of sewage service which will be needed if housing and ancillary services are to be constructed in

conformance with public health and safety regulations; and

WHEREAS, The Bernards Township Sewerage Authority, which has jurisdiction over a portion of Hills' property, has no plans to directly service that portion of Hills' property which lies within the Passaic Basin; and

WHEREAS, The Environmental Disposal Corp., hereinafter referred to as "EDC", a franchised public utility, licensed by the New Jersey Board of Public Utilities, presently is authorized to service and has agreed to service other portions of Hills' property, including that portion of the Hills property which is in the Raritan Basin of Bernards Township; and

WHEREAS, EDC, while not a party to this lawsuit, is willing to assist in the social and economic development of this area, and has agreed to apply to all pertinent regulatory authorities for permission to expand its plant and facilities to provide additional capacity to serve housing and associated facilities to be constructed as part of Mount Laurel litigation; and

WHEREAS, EDC has been ordered, as a result of recently concluded litigation involving the Township of Bedminster, to provide additional sewage treatment opportunities, when capacity is increased, to builders seeking to provide lower income housing and the associated market housing/commercial development necessary to fund such lower income housing; and

WHEREAS, Hills will seek to enter into an agreement with EDC to provide additional capacity to serve residential units and associated ancillary facilities to be constructed as a result of Mount Laurel litigation; and

WHEREAS, The Township will agree to extend the franchise of EDC to serve additional properties owned by the Hills as part of a comprehensive settlement of all issues currently in litigation between itself and Hills, including the settlement of Mount Laurel litigation; and

WHEREAS, the Special Master appointed by the Court, George Raymond,

has found that the Township's Land Development Ordinance, if amended as provided herein and if the other terms and conditions of this settlement are met, would be in compliance with the requirements of Mount Laurel II; and

WHEREAS, the settlement of all issues between Hills and Bernards Township would provide an acceptable means of solving several issues which have been in contention between the parties; and

WHEREAS, such settlements are in the public interest and encouraged by this Court; and

WHEREAS, the parties agree to the terms and conditions of the Stipulation as set forth below, and the Special Master has reviewed and recommended to this Court the acceptance of the Township Ordinance and other revisions to its land development policies and has found them satisfactory in terms of compliance with Mount Laurel II.

III. Matters Resolved By Agreement.

1. That portion of Hills' property located within the Raritan Watershed, stipulated to consist of approximately 501 acres, has been zoned as R-8 with a PRD-4 option; upon which the parties agree that a total of 2,750 dwelling units can be built within said portion of the property. Hills will build 20% of the total number of units to be constructed on said portion of the property as housing affordable to lower income households, pursuant to Mt. Laurel II. Such housing for lower income households ("lower income" includes both "low" income and "moderate" income housing, as those terms are defined in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) at n. 8, p 221) shall be constructed in accord with a housing plan, referenced below; provided, however, that not more than 50% of such housing shall be constructed for low income households.

2. Hills hereby stipulates that it will not seek to obtain any additional density nor seek the right to construct additional units on the aforementioned

approximately 501 acres within the Raritan Basin because of its current ownership of lands with similar zoning also located in the Raritan Basin. Hills hereby agrees to limit its Raritan Basin development to 2,750 units except as provided for below and will forego development on other properties that it currently owns in the Raritan Basin.

3. Hills Development agrees that it will provide additional lower income units, after 1990, if such units are required in order to assist the Township to meet its lower income obligations; provided, however, that The Hills Development Company shall also receive Township permission to build additional market units in the same ratio as provided for in Paragraph 1, supra.

4. The Township, including the Township Planning Board, stipulates that Hills shall be entitled to construct 2,750 dwelling units within the Raritan Basin; provided that 20% of said units are marketed so as to be affordable to households of lower income; and further provided that site plan and subdivision standards as set forth in the Township Ordinance and as modified by this Stipulation are observed. In the event that additional lower income housing units are needed by the Township after 1990, Hills and the Township shall review landholdings of Hills and allow for the construction of additional market and non-market units.

5. Hills also owns approximately 545 acres within the Passaic Basin, on which, as a result of prior litigation, prior Planning Board action and the current Township Ordinance, it has the right to develop 273 single family detached homes. Hills shall not be entitled to develop this property at any density higher than that set forth in the previous Court Order signed by the Hon. B. Thomas Leahy on March 18, 1980, in the matter entitled Allan-Deane Corporation v. Township of Bernards, Docket No. L-25645-75 P.W., (which is set forth herein as Appendix A) and the aforementioned Ordinance. This right to develop 273 single-family homes in the Passaic Basin, as set forth in that Order, and as reflected in the Bernards Land

Development Ordinance is specifically incorporated herein.

6. The Township agrees that it will permit a central sewage collection and disposal system to be operated by EDC to serve the Passaic Basin portion of Hills' properties upon the following terms and conditions:

- a. A total of 273 residential units are permitted to be built within the Passaic Basin portion of Hills' property.
- b. These 273 units will be so designed and constructed so as to generate no more than 110,000 gallons per day (gpd) of sewage, based on current industry design standards.
- c. A school building may be erected on property owned by Hills on a site chosen by mutual agreement between Hills and the Township, said site not to exceed fifteen (15) acres. A decision on the actual location and size of any school site must be made by the Township, and sufficient funds appropriated to construct such a facility, before July 1, 1990. If no decision is made by that date, The Hills shall be under no obligation to provide any such site.

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

Subject to mutual agreement, and subsequent payment of sewage treatment fees reflected in tariffs filed with the New Jersey Board of Public Utilities, as adjusted from time to time, the school facility may be connected to the central sewage collection and treatment system described above. Capacity for the school will be made available if and when the

EDC plant is expanded, as contemplated and described below.

- d. The central sewage collection and disposal system shall be provided by agreement with the Environmental Disposal Corporation, a franchised public utility. The Township agrees to authorize the extension of Environmental Disposal Corporation's franchise to include Hills' properties in the Passaic Basin.
- e. Commercial uses, designed to serve the needs of the residents of the Township, with such uses not to exceed 150,000 square feet in size, may also be tied into the central sewer service to be provided by EDC. These commercial uses shall be constructed so that they shall not generate more than 25,000 gpd of sewage, based on industry design standards. The aggregate of all facilities to be constructed on property owned by Hills within the Passaic Basin to be served by the EDC will be designed so as not to generate a total of more than 150,000 gpd of sewage, based on industry design standards.
- f. The Township shall pass a resolution expanding the franchise of EDC to include those properties currently owned by Hills in the Passaic Basin and providing that jurisdiction of Bernards Township Sewerage Authority will be withdrawn for the Hills Passaic Basin property as indicated above. Bernards Township Sewerage Authority agrees to serve, if necessary, as co-permittee of the EDC's service in Bernards Township, if such action is necessary to meet NJDEP requirements. Such a franchise expansion resolution is set forth herein as Appendix

g. The Bernards Township Sewerage Authority will cooperate with EDC by reviewing designs for pumps, force mains, collectors, and other structures designed to serve the structures, dwellings, and facilities referenced above. It is specifically stipulated that physical facilities designed to service Hills properties in the Passaic Basin portion of the Township will be sized and located in such a manner as to preclude expansion of the system in the Passaic Basin beyond that necessary to serve the properties referenced above. Hills agrees that it will provide reasonable funds to the Township for an engineering review fee, provided, however, that such sums shall not exceed Ten Thousand (\$10,000) dollars. The terms and conditions of such resolutions are set forth in Appendix B attached hereto and made a part hereof, as if set forth at length herein.

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

a. EDC will construct, on a site satisfactory to the township, sewage conveyance pipes and a central holding tank to hold effluent from houses constructed during the period during which the permanent connections with the EDC plant are being built;

b. The grant of the franchise to EDC to serve the Hills property in the Passaic Basin notwithstanding, the Bernards Township Sewerage Authority will have jurisdiction over the holding tank and sewage conveyances during such temporary holding period, and will enter into a sewage

management agreement with EDC;

c. Hills, upon submission to the Township of satisfactory evidence that it has met all relevant subdivision, site plan and construction code requirements, shall, after execution of the sewage management agreement with the Bernards Township Sewerage Authority, be authorized to obtain building permits (and subsequently, certificates of occupancy) for houses and other facilities within the Passaic Basin;

d. Such use of a holding tank and sewage management program will be discontinued upon the completion of all construction, inspections and acceptance of the expansion of the EDC facilities required to service the Passaic Basin properties.

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

The Township shall take all reasonably necessary actions to support modifications of plans or requirements established by the New Jersey Department of Environmental Protection, the United States Environmental Protection Agency, or the County of Somerset. Such resolutions necessary to support these expansion plans are set forth in Appendices ___ and ___, incorporated herein and made a part hereof as if set forth at length herein.

9. Under the prior Court Order and by current Township Ordinance, Hills has the right to construct up to 50,000 square feet of commercial space, which may

include professional office space, within its Bernards Township property holdings. The Township herein stipulates that Hills can build from 75,000 to 200,000 square feet of net leasable commercial space, subject to the Planning Board's finding that such commercial space is desirable and receives Planning Board approval as to location and site design.

10. The Township's off-site improvement ordinance is inapplicable to Hills. Hills stipulates that it will provide up to \$3.24 million as contributions to the Township for the construction of required off-tract improvements in the Township.

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

- a. Hills will construct no more than 2,750 units of housing in the Raritan Basin;
- b. Hills will construct no more than 273 units of housing in the Passaic Basin;
- c. Hills will construct no more than 200,000 square feet of retail commercial or office space.

Any additional retail or commercial space shall be subject to additional contributions for off-site improvements, which shall reflect a credit given for internalization of traffic within Hills' properties, as set forth in the Memorandum of Understanding, dated May 28, 1985 concerning the off-tract improvements. That Memorandum of Understanding, including the timing of the construction of off-tract improvements, is attached hereto as Appendix D, attached hereto and made a part hereof as if set forth at length herein.

11. Hills and the Township stipulate that modifications to existing Ordinance standards for building coverage, site design, and application submission requirements shall be made. These modifications are set forth in Appendix E, attached hereto and made a part hereof as if set forth at length herein.

12. The parties agree that the current Bernards Township Land

Development Ordinances provide substantial flexibility for the Planning Board and Hills, and agree that this flexibility will be used in a manner which encourages timely review, economical development, and maintenance of public health and safety standards. If Hills feels aggrieved by the manner in which its applications are being processed by the Township, it may appeal to the Special Master, George Raymond, for assistance in resolving disputes between itself and the Township.

13. The parties stipulate that the applications shall be processed under a "fast tracking process", as set forth in Appendix F, attached hereto and made a part hereof as if set forth at length herein.

14. The parties stipulate that fees charged for applications and inspection of lower income housing will be waived, to the extent possible, by the Township. Fees charged for all housing built by Hills shall not exceed the actual cost of the inspection performed. The Township stipulates that it will observe the requirement set forth in State law, in that use of prototype building designs will result in reduction of fees charged.

15. Hills is currently engaged in litigation against the Township, on a farmland assessment issue. This matter, docketed as 18-02044A-83(C), is currently scheduled to be heard by the Honorable Lawrence L. Lasser. The parties agree that this matter has been resolved by the entry of this Stipulation of Settlement, and that Hills will seek a voluntary dismissal of its matter currently pending in Tax Court, referenced above.

16. The parties stipulate that the Concept Plan Map attached hereto as Appendix G and made a part hereof as set forth herein will serve as a general guide to the development within properties which it owns in the Township. Hills shall provide engineering details, as quickly as possible, for the planned development of Schley Mountain Road and Allan Road. The Township shall implement a timely review and approval process of said road plans. Priority review shall be accorded to the

portion of Schley Mountain Road which begins in Bedminster Township and provides access to Block 59, Lots 1.01 and 1.02 as shown on the Tax Maps of Bedminster Township.

17. The parties stipulate that the Concept Plan provides an overall vesting of the right of Hills to build in accordance with the generalized layout, with regard to number of buildings, generalized location of roads, density ranges, and other particulars noted on the map. This vesting lasts for a period of ten (10) years from the date of entry of this Order. Hills shall submit detailed preliminary and final applications for each subdivision for the Planning Board's review, as provided by ordinance, and modified by the timetable set forth in Appendix F.

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

19. This Consent Order shall not be affected by any State, County or municipally imposed moratorium or phasing schedule which may become an option due to the passage of legislation or for any other reason.

IT IS FURTHER ORDERED:

Upon entry of this Order, this litigation is dismissed, and Bernards Township shall be entitled to a six-year period of repose from further Mount Laurel litigation. This dismissal is conditioned as follows:

a. George Raymond is retained as Special Master, with the following continuing responsibilities:

1. To mediate any disputes which may arise between the Township and Hills;

2. To monitor the construction, occupancy, and use of the lower income housing, so as to insure that the units are occupied and used in accordance with the provisions established by this Court; and
3. To inform the Court as to any other matters which the Master deems appropriate.

Hills and the Township shall contribute equally to the costs incurred by the Master.

- b. This Court will dismiss the case in toto when satisfactory evidence of full completion of all portions of Hills' project are presented to this Court.

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

We consent to the form and entry of this Order.

Henry A. Hill, Esquire
Attorney for The Hills Development
Company

James E. Davidson, Esquire
Attorney for Township of Bernards,
the Township Committee of the
Township of Bernards and the
Sewerage Authority of the Township
of Bernards

Arthur H. Garvin III, Esquire
Attorney for Bernards Township
Planning Board

TJH/4

DRAFT

7/2/85

7/3/85

MEMORANDUM OF AGREEMENT

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

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

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

property. Hills will build 20% of the total number of units to be constructed on said portion of the property as housing affordable to lower income households, pursuant to Mt. Laurel II. Such housing for lower income households ("lower income" includes both "low" income and "moderate" income housing, as those terms are defined in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) at n. 8, p 221) shall be constructed in accord with a housing plan, referenced below. At least 50% of such housing shall be constructed for low income households.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) 273 residential units;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(e) Security (?)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT J

DRAFT
9/2/85
7/3/85

MEMORANDUM OF AGREEMENT

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

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

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

property. Hills will build 20% of the total number of units to be constructed on said portion of the property as housing affordable to lower income households, pursuant to Mt. Laurel II. Such housing for lower income households ("lower income" includes both "low" income and "moderate" income housing, as those terms are defined in Southern Burlington County NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) at n. 8, p 221) shall be constructed in accord with a housing plan, referenced below. At least 50% of such housing shall be constructed for low income households.

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

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

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

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

~~A portion of the property in Block 174 is in the Raritan Basin.~~
A portion of Lot 1.01Q

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

delete

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

See Letter

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

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

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

6. Hills hereby stipulates that it will not seek to obtain any additional density nor seek the right to construct additional units on the aforementioned approximately 545 acres within the Passaic Watershed. Hills hereby agrees to limit its Passaic Watershed development to 273 units ^{unless written agreements with the township should permit increased} Hills agrees to provide deeds, assignments, acknowledgments and other documents necessary to regulate and restrict the development of such property as hereinabove provided.

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

- 4 -

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

This grant of franchise is specifically conditioned on the following:

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

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

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

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

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

~~8.2 Township of Bernards and Township of Bernards Sewerage Authority agree to take whatever action is reasonably necessary to extend the franchise of the Environmental Disposal Corp. (hereinafter referred to "EDC") a franchised public utility, licensed by the New Jersey Board of Public Utilities to that portion of the Hills property which is located in the Passaic Watershed and upon which the 273 units hereinabove referred to will be constructed. Such franchise will only include that area upon which the units are to be built and will be limited to the following properties and structures:~~

delete

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

Corrected to:

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

The Township of the Sewage Authority agree to support the resolution substantially as set forth in Appendix C.
The Board in Bernards will adopt a resolution

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

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

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

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

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

- a. Hills shall retain ownership of the land until such time as the Bernards Township School Board ("Board") completes all necessary State plan reviews and has allocated sufficient funds to commence construction of the building. Thereafter, Hills shall convey the site to the Board on its request.
- b. If the Board elects not to construct a public school building on that site or fails to complete the plan reviews and appropriate the funds as set forth above by July 1, 1990, Hills' obligation to provide the site is extinguished.
- c. The property shall be reserved for use as a public educational facility and ownership and use of such property shall automatically revert to Hills if the facility is ever used for any other purpose other than public education.

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

delete

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

parameters:

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

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

-11-

(d) The Township will supply documentation as to:

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

given for internalization of traffic within Hills' properties, as set forth in the Memorandum of Understanding, dated _____ concerning the off-tract improvements. That Memorandum of Understanding, including the timing of the construction of off-tract improvements, is attached hereto as Appendix E, attached hereto and made a part hereof as if set forth at length herein. *Exhibit B, dated 1/15/2001*

13. Hills and the Township of Bernards stipulate and agree that the Bernards Township Land Development Ordinance as amended by Ordinance #704 and as further amended as set forth on ~~Appendix B, dated 1/15/2001~~ *Appendix B, dated 1/15/2001* Schedule A of the Judgment in this matter shall control the development of the Hills properties.

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

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

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

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

17

see Municipal Ord. 12-14
re: Housing in Hills

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

18

see 12/15/81

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

19

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

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

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

118

EXHIBIT K



Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

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

May 13, 1985

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

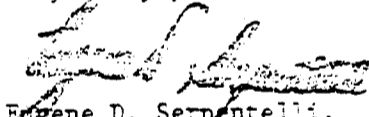
Re: Hills Development v. Township of Bernards

Dear Mr. Raymond:

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

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

Very truly yours,


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

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

EXHIBIT L

FARRELL, CURTIS, CARLIN & DAVIDSON

ATTORNEYS AT LAW
43 MAPLE AVENUE
P.O. BOX 145
MORRISTOWN, N.J. 07960
(201) 267-8130

OF COUNSEL
FRANK J. VALGENTI, JR.

EDWARD J. FARRELL
CLINTON J. CURTIS
JOHN J. CARLIN, JR.
JAMES E. DAVIDSON
DONALD J. MAIZYS
LOUIS P. RAGO
LISA J. POLLAR
HOWARD P. SHAW
CYNTHIA H. REINHARD
MARTIN G. CROHIN

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 Serptentelli:

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

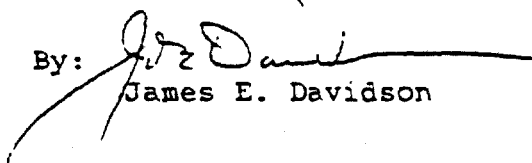
letter dated May 13, 1985 be extended until such hearing date
and until the matter is finally disposed of by the Court.

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

EXHIBIT M

8740
~~DRAFT~~
7/1/85
13/85

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
Plaintiff, : LAW DIVISION
 : 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 : ORDER OF JUDGMENT
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 pleadings in this matter, the report of the Master appointed in this matter, George Raymond, and the Land Development Ordinance of the Township of Bernards, Ordinance #704 which amends the Land Development Ordinance of the Township of Bernards, and a report of Harvey Moskowitz, Planner for the Township of Bernards;

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

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

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

1. For the period ending 1991 the Township of Bernards is required to provide a realistic opportunity for the provision of 1066 units of low and moderate income housing, which number shall constitute the "fair share" of the Township of Bernards for provision of such housing, as that term is used in Southern

Burlington County N.A.A.C.P. vs. Township of Mt. Laurel, 92 N.J.

158 (1983) ("Mt. Laurel II");

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

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

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

See letter

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

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

And for good cause shown:

DO NOT WRITE IN THESE SPACES. Day of

1985

ORDERED AND ADJUDGED that:

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

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

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

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

See
letter

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

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

(3) The regulation of low and moderate income housing including rental, sale, re-rental, and re-sale, in order to assure that such housing shall remain low and moderate income housing for a period of 20 years from the date hereof.

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

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

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

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

J.S.C.

EXHIBIT N

THE HILLS DEVELOPMENT COMPANY,

Plaintiff-Movant,

v.

O R D E R

THE TOWNSHIP OF BERNARDS in the
COUNTY OF SOMERSET, etc., et al.,

Defendants-Respondents.

This matter having been duly presented to the Court, and
good cause appearing;

It is ORDERED that the motions for leave to supplement
the record (M-549) and to file a supplemental brief (M-550) are
denied, without prejudice to the filing by plaintiff, regardless
of any outstanding stay Orders, of an application to the trial
court, in a form that that court deems appropriate, asserting
plaintiff's alleged development rights arising of out any
alleged settlement, estoppel, or otherwise; provided, however,
that such application shall not affect this Court's Order trans-
ferring the matter to the Council on Affordable Housing and pro-
vided further that this Order granting leave to file such
application shall not preclude the assertion by defendants that
this Court's Order of transfer forecloses such claims by plain-
tiff.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice,
at Trenton, this 20th day of February, 1986.

A TRUE COPY
Stephen Wilentz
Clerk

Stephen Wilentz
Clerk

EXHIBIT O

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

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

Sat Below:

Hon. Eugene D. Serpentelli

TO: The Honorable Judges of the Appellate Division

PROCEDURAL HISTORY

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

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

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

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

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

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

EXHIBIT P

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

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

THE HILLS DEVELOPMENT COMPANY,	:	SUPREME COURT OF NEW JERSEY
	:	
Plaintiff/Respondent,	:	
	:	Docket No.
vs.	:	
	:	Sat Below:
THE TOWNSHIP OF BERNARDS in the	:	
COUNTY OF SOMERSET, a municipal	:	Morton I. Greenberg, J.A.D.
corporation of the State of New	:	Virginia A. Long, J.A.D.
Jersey, THE TOWNSHIP COMMITTEE	:	
OF THE TOWNSHIP OF BERNARDS, THE	:	Civil Action
PLANNING BOARD OF THE TOWNSHIP	:	
OF BERNARDS and the SEWERAGE	:	
AUTHORITY OF THE TOWNSHIP OF	:	LETTER BRIEF IN OPPOSITION
BERNARDS,	:	TO APPLICATION TO DISSOLVE
	:	STAY GRANTED BY THE
Defendants/Appellants.	:	<u>APPELLATE DIVISION</u>
	:	

PROCEDURAL HISTORY

Defendants rely upon the Procedural History contained in
Defendants' Brief in support of their Motion for Stay, filed
with the Appellate Division, except to add that on November 12,
1985, the Appellate Division entered an Order staying

proceedings in the trial court pending resolution of the motion for leave to appeal.

STATEMENT OF FACTS

Defendants rely upon the Statement of Facts contained in their Brief in support of their Motion for Stay and their Brief in support of motion for leave to appeal, filed with the Appellate Division.

In addition, it is respectfully requested that the Court take judicial notice of the enactment by Bernards Township of an Ordinance repealing the "sunset" provisions of its "Mt. Laurel" ordinance, Ordinance 704 (Ev. R. 9; see attached Certification of James E. Davidson).

I

This matter is apparently being brought on by plaintiff seeking to have a stay previously issued by the Appellate Division dissolved. We have received telephone notice of the application only and therefore we are not aware of the basis of the application other than plaintiff's contention that the action of the Appellate Division in granting the stay was improper.

The stay granted by the Appellate Division is not a final judgment and is therefore an interlocutory order.

An appeal of an interlocutory order is only maintainable "when necessary to prevent irreparable injury." R.2:2-2(b). We assume this application is being brought under R.2:9-5(b) which

provides in part that the grant of a stay by the Appellate Division "may be reviewed on motion to the Supreme Court on notice to the Appellate Division . . ." In that the normal motion procedures are not being followed (R.2:8), R.2:9-8 appears applicable. Glassboro v. Gloucester Cty. Bd. of Freeholders, 98 N.J. 186 (1984). R.2:9-8 provides as follows:

"2:9-8 Temporary Relief in Emergent Matters.

When necessary, temporary relief, stays, and emergency orders may be granted, with or without notice, by a single Justice of the Supreme Court or, if the matter is pending in the Appellate Division, by a single judge thereof, to remain in effect until the court acts upon the application. The Chief Justice shall in accordance with a schedule to be filed with the Clerk of the Supreme Court, designate for each county at least one Justice to whom an application for such relief in the Supreme Court shall be made, if such Justice is available."

Plaintiff will not suffer the irreparable injury required under R.2:2-2(b) (required if this is an appeal); nor is the matter emergent or one in which temporary relief is necessary as required by R.2:9-8.

II

The granting of the stay by the Appellate Division maintains the status quo until such time as the Appellate Division has the opportunity to decide whether it will grant Defendants' motion for leave to appeal. As noted in Defendants' Motion for Leave to Appeal filed in the Appellate Division, Defendants' claim is that the matter should be transferred to the Council on Affordable Housing pursuant to §16(b) of the Fair

Housing Act, and that the trial court does not have jurisdiction to hear the case.

In granting the stay the court indicated its concern that the decision of the trial court in refusing to transfer the matter was contrary to the intent and purpose of the statute and that the Legislature had set up an administrative process which was intended to remove the housing cases from the courts except in a limited area specifically described in the statute.

It is also clear that the court properly found that no harm would result to the Plaintiff by the granting of the stay and that the failure to grant the stay would result in substantial harm to the Defendants.

This is so for the following reasons:

(1) The Township of Bernards adopted a Mt. Laurel ordinance (Ordinance 704) in November, 1984 which is producing housing for low and moderate income families. The ordinance is effective as to plaintiff's property and has been for approximately a year. No development has occurred on plaintiff's property although a recent application for conceptual approval has been filed. This will presumably continue and the stay will have no effect on this process. Plaintiff specifically does not object to Ordinance 704 and has admitted that it complies with the dictates of Mt. Laurel II.

Therefore the stay will have no effect on the construction of housing for the poor nor will it affect plaintiff's

development rights.

(2) As to the Defendants, a dissolution of the stay will result in the trial court's (rather than the Council's) deciding the various Mt. Laurel II issues including fair share and compliance. If the trial court holds its housing, Defendants will presumably will be bound its decision (even though they contend that the court has no jurisdiction). The Decision will be based on non-statutory law and will prevent the Defendants from receiving the various benefits of the Fair Housing Act. Developers receiving approvals under the Ordinance will receive the protection set forth in the Municipal Land Use Law, especially N.J.S.A. 40:55D-42: (This point is more specifically set forth in Appellate Division Letter Brief, pages 11-14.)

The stay maintains the status quo without causing harm or damage to any person or party. In this situation, there is no adequate reason to dissolve the stay.

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

By: 

James E. Davidson, Esq.

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

By: 

Arthur H. Garvin, III, Esq.

Dated: November 13, 1985

EXHIBIT Q

1 You can't do it both ways. And suppose I conclude
2 that.

3 Are you then going to withdraw 704, or
4 are you going to offer it as your compliant
5 ordinance?

6 MR. DAVIDSON: I don't know. I don't
7 know the answer to that question.

8 THE COURT: Because it seems to me if
9 you withdraw it, then the, under -- the normal
10 scenario would be that I would direct a master to
11 prepare one for us, which would be 704, with some
12 modifications.

13 MR. DAVIDSON: If I may --

14 THE COURT: And we would be back where
15 we were.

16 MR. DAVIDSON: If I can assume what I
17 would do, if I decided to withdraw 704, I'd
18 replace it.

19 THE COURT: I don't think you can.
20 That's the point. The time's up. And either you
21 go with what got you here, or you don't have a
22 compliant ordinance.

23 In other words, there was a time
24 limitation under your immunity orders, and --

25 MR. DAVIDSON: For me to do what, Your

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Honor?

THE COURT: The time limitation said: Submit a compliant ordinance within X amount of days, and that was extended three times. And you really had two choices, not to submit or to submit. And you chose to submit.

Now, I would not preclude your right to withdraw it; but on the other hand, I wouldn't give you the right over and above that to say: Now I want some more time to draw a new one.

MR. DAVIDSON: I'm not suggesting that, Your Honor, and -- but I will suggest to you, sir, that until you make certain findings, and even if you do, you cannot prevent me from passing legislation.

THE COURT: Okay.

MR. DAVIDSON: I am suggesting that one of the things that might occur is, we would amend 704 to be what we think is going to be proper under the Act.

THE COURT: Okay.

MR. DAVIDSON: Then again, we might not. I don't know the answer to the question that you asked, what would we do.

THE COURT: All right. Anything further?

EXHIBIT R

SENATE, No. 2313

STATE OF NEW JERSEY

INTRODUCED OCTOBER 18, 1984

By Senator STOCKMAN

Referred to Committee on County and Municipal Government

AN ACT to amend and supplement the "Municipal Land Use Law,"
approved January 14, 1976 (P. L. 1975, c. 291).

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. Section 2 of P. L. 1975, c. 291 (C. 40:55D-2) is amended to
2 read as follows:

3 2. Purpose of the act. It is the intent and purpose of this act:

4 a. To encourage municipal action to guide the appropriate use
5 or development of all lands in this State, in a manner which will
6 promote the public health, safety, morals, and general welfare;

7 b. To secure safety from fire, flood, panic and other natural and
8 man-made disasters;

9 c. To provide adequate light, air and open space;

10 d. To ensure that the development of individual municipalities
11 does not conflict with the development and general welfare of
12 neighboring municipalities, the county and the State as a whole;

13 e. To promote the establishment of appropriate population densi-
14 ties and concentrations that will contribute to the well-being of
15 persons, neighborhoods, communities and regions and preservation
16 of the environment;

19 use policies;

17 f. To encourage the appropriate and efficient expenditure of
18 public funds by the coordination of public development with land

20 g. To provide sufficient space in appropriate locations for a
21 variety of agricultural, residential, recreational, commercial and
22 industrial uses and open space, both public and private, according

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendments adopted December 13, 1984.

**—Assembly committee amendments adopted December 5, 1985.

***—Assembly amendment adopted December 12, 1985.

33 policies and standards, or whether a new plan or regulations should
34 be prepared.

1 19. (New section) The absence of the adoption by the planning
2 board of a reexamination report pursuant to section 76 of P. L.
3 1975, c. 291 (C. 40:55D-89) shall constitute a rebuttable presump-
4 tion that the municipal development regulations are no longer
5 reasonable.

1 20. Section 77 of P. L. 1975, c. 291 (C. 40:55D-90) is amended to
2 read as follows:

3 77. Moratoriums; interim zoning. a. The prohibition of develop-
4 ment in order to prepare a master plan and development regula-
5 tions is prohibited.

6 b. **[A municipality may adopt a reasonable interim zoning ordi-**
7 **nance not related to the land use plan element of the municipal**
8 **master plan without special vote as required pursuant to sub-**
9 **section 49 a. of this act, pending the adoption of a new or sub-**
10 **stantially revised master plan or new or substantially revised**
11 **development regulations. Such interim zoning ordinances shall not**
12 **be valid for a period longer than one year unless extended by ordi-**
13 **nance for a period no longer than an additional year for good**
14 **cause and upon the exercise of diligence in the preparation of a**
15 **master plan, development regulations or substantial revisions**
16 **thereto, as the case may be; provided, however, that, notwithstand-**
17 **ing the provisions of this section or of any ordinance heretofore**
18 **adopted pursuant to this section, any such extending ordinance in**
19 **effect on January 31, 1979 shall be valid until May 31, 1979.] No**
20 *moratoria on applications for development or interim zoning*
21 *ordinances shall be permitted except in cases where the municipality*
22 *demonstrates on the basis of a written opinion by an ****[appropri-***
23 *ate]****** ****qualified health**** professional that a clear ****[potential]*********
24 *imminent danger to ****[health and safety]****** ****the health of the*****
25 *inhabitants of the municipality****** exists, and in no case shall the*
26 *moratorium or interim ordinance exceed a six-month term. ****[Ex-***
27 *tensions may be made only upon leave of court.]*******

1 21. (New section) a. The governing body may by ordinance
2 provide for ****[an historic preservation body either by authorizing**
3 **the chairman of the planning board to appoint an historic preser-**
4 **vation committee of the planning board or by creating]****** an historic
5 preservation commission.**

6 b. Every historic preservation ****[body]****** ****commission****** shall**
7 include, in designating the category of appointment, ****at least********
8 one member of each of the following classes:**

EXHIBIT S

D R A F T

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

DATE: January 23, 1985

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

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

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

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

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

D. Ordinance Revisions

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

2. Bulk standards.

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

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

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

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

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

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

f. Road widths shall remain as indicated.

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

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

3. Curbs and drainage.

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

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

E. Application Processing

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

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

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

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

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

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

F. Fees

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

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

G. Off-Tract Improvements

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

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

H. Summary

1. Hills will:

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

2. The Township will:

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

EXHIBIT T

BERNARDS TOWNSHIP
AMENDMENTS TO MASTER PLAN

Adopted October 30, 1984

Master Plan Amendments

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

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

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

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

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

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

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

Mt. Laurel II Housing

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

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

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

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

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

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

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

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

EXHIBIT U

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540

(609) 924-0808

CABLE "PRINLAW" PRINCETON
TELECOPIER (609) 924-6238
TELEX 837652

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

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

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

FILE NO.

November 5, 1984

James E. Davidson, Esq.
Farrell, Curtis, Carlin and Davidson
43 Maple Avenue
Morriston, New Jersey 07960

3000-04-02

Dear Mr. Davidson:

On behalf of The Hills Development Company, let me thank you for your letter to Henry A. Hill dated October 15, 1984, which enclosed a copy of the proposed amendments to the Bernards Township Land Development Ordinance. Both in your October 15th letter, and in meetings prior to the introduction of the ordinance and in subsequent telephone conversations, you have solicited our comments as to the settlement process. I have set forth our concerns and comments below.

At the outset, The Hills applauds the effort now underway to pass an ordinance which complies with Mount Laurel II standards. We recognize this is a difficult process, and believe that the Ordinance which we have seen is a good start towards an Ordinance which would enable us to settle the litigation we have brought against Bernards, and permit Bernards to obtain the repose which it seeks. Our comments, below, are offered in an attempt to be helpful, and to identify those points which we believe ought to be addressed as soon as possible. We have included comments as to issues in the proposed Ordinance as well as matters of concern to Hills which are outside of the Ordinance process.

1. The proposed Ordinance:

Page 3, section 404.f.

The Hills Development Company objects to the limit of 50,000 square feet of gross leasable floor area of commercial space. In initial conversations with Bernards, we had indicated that we were interested in 150,000 square feet of commercial as part of a package which included residential development at 5.5 du/ac.

Section 1100

Section 1104: Contains a "cap" of 2,750 du; which does not reflect the fact that Hills has perhaps 20 acres of land in the R-8 zone which is in the Raritan basin, outside of the 500 acres + about which most attention is focused. Hills intends to leave those 20 acres or so undeveloped and would like to transfer building credits from that area into the main landholding.

Section 1106: Contains a maximum building coverage requirement, which would hamper Hills ability to deliver lower income housing product. See the attached comments of Kenneth J. Mizerny, the project planner for Hills. Some of Mr. Mizerny's comments are highlighted in this letter, and we think that your office and Bernard's planner should look at all of Mr. Mizerny's comments.

Section 1106 also contains a height restriction of 35', and we think 45' feet would be preferable; and contains a front yard requirement of 25', while we think 10' would be preferable.

Section 1107. Please note Mr. Mizerny's comments.

Section 1110: We think a significant probability of unequal competitive advantage exists for those developers owning land in the R-5 zone as opposed to those owning land in the R-8 zone, both as to the percentage of units required and, as we will note below, in the concessions granted to developers in the R-5 zone not granted to the R-8 developers.

We have no comments at this time with respect to your proposed resale/marketing procedures. We are learning a great deal from the Bedminster project and may have some concrete suggestions for you based on our experience in Bedminster at a later time.

We would suggest modifying your phasing requirements to bring them in line with those used in Bedminster and approved by the Court, namely,

% low/moderate	% market
0%	up to 25%
25%	up to 50%
50%	up to 75%
100%	more than 75%

It would even be wise to permit some relaxation of these phasing requirements, since a developer may chose to do what Hills did in Bedminster--build all of the lower income units at once, after the market pattern of the unrestricted units was set.

Sections 1111 and 1112 : Please note Mr. Mizerny's comments.

II. Items outside the proposed Ordinance.

The proposed ordinance does not replace the existing Ordinance, and we have some major problems remaining with that. These include:

1. Submission requirements. We believe that the submission process is far more complex and cumbersome than is necessary for any protection of the public health, safety and welfare; would not withstand judicial scrutiny, and serves neither the Township nor the developer. You have recognized this by giving "fast-tracking" to other developers providing lower income housing; and we think that Hills is entitled to at least that much.

2. Waiver of fees. It is our understanding that your Planning Board has already waived fees for a competitive developer in the area so as to induce him to provide lower income housing. We understand that this waiver of fees was for the entire development, not just the lower income portion thereof. We would also like to have the development fees waived.

3. The Off-tract contributions need to be discussed between your engineer and ours, and a reasonable figure developed which both of our clients could agree to. We cannot live with the present formula with the higher density in place, and I think neither of us wants to leave this case with any issues unresolved.

4. We have some general problems with your design requirements. The building length, number, and mix requirements not only violate the previous (Leahy) Order, but also make it impossible for us to provide the kind of units which we are providing in Bedminster. Just one example: 605 D requires that no building have more than 8 units in it. In several of our product types, for which the architectural work is already done, for which construction has been completed, and for which there is an obvious market, we have buildings with 16 units or more, and we fail to see why we should either discard a winning formula or be forced to seek a waiver of this requirement. There are other design problems, such as the parking stall size requirement, the granite block curbing requirement, the shade tree requirement, and other illustrations referenced in our complaint. Rather than list all of the design problems in the letter, a better way to proceed with this is to have your planner and ours sit down together and work out a series of proposals which meet our mutual goals.

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

The tax issue we have previously discussed may well have worked itself out, in fact, since Hills intends to proceed to market the lots which were affected by the series of errors affecting the tax assessment. We may wish to review this, particularly if there is a delay in marketing those lots.

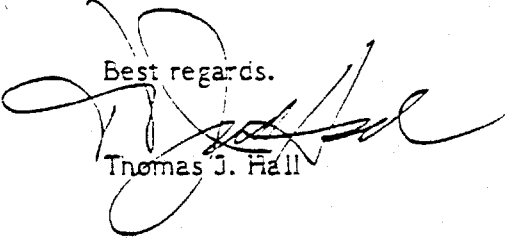
There is a significant problem we may face with respect to the lots we have begun to develop in the Passaic basin--the sewer issue. As you know, we had proposed serving the 268 + units in the Passaic with a "community septic system", and have had some discussions with your Sewerage Authority as to how the systems would be monitored, serviced, and maintained. One proposal we had put forward was to have Environmental Disposal Corp. handle that process.

We have now learned that NJDEP is raising some questions as to the final approval of the community septic system proposal, based on preliminary data which they got from a project in Wisconsin. We have learned that later data seems to contradict the earlier findings and perhaps the issue can be resolved on a technical basis. However, we are also thinking that a better approach might well be to abandon the idea of a community septic system, and tie the lots into the Environmental Disposal Corp. plant or into the Bernards sewer system. If we do go forward with the EDC sewer possibilities, we would be willing to size the pipes, pumping station, and all other facilities so that they would serve only those lots we are zoned for in the Passaic and would covenant with you that we are not going to sewer any more areas within the Passaic basin.

Such a solution might be the best one, both from an immediate standpoint and also from a longer-run maintenance view, and we should discuss it. If this is a desirable way to proceed, Hills will have to work out the administrative problems with NJDEP and would have to expand its franchise area, and the cooperation of Bernards Township would be vital in both areas.

As I suggested, I am enclosing Mr. Mizerney's critique, and would be happy to assist in arranging meetings between Mr. Mizerney and your planning/technical staff, as well as between Bob Rodgers, our traffic engineer, and your engineering/technical staff. There are a series of important details which need to be resolved if we are to have a complete settlement of all issues in this case, which is, I think, the goal which both Hills and Bernards are trying to reach.

Best regards.


Thomas J. Hill

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

EXHIBIT V

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540

(609) 924-0808

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

HARRY BRENER
HENRY A. HILL
MICHAEL D. MASANOFF**
ALAN M. WALLACK*
GULIET D. HIRSCH
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* MEMBER OF PA. BAR ONLY

FILE NO.

January 14, 1985

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

Dear George:

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

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

See you then.

Regards,


Thomas J. Hill

SEND VIA EXPRESS

Enclosure

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

MEMORANDUM

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

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

RE: Issues in the Hills v. Bernards case

DATE: January 14, 1985

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

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

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

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

2. Permitted commercial space.

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

3. Sewer service:

(a) Service to the Passaic Basin.

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

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

this service.

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

(b) Expansion of EDC's plant.

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

4. Revisions to the Bernards Township Ordinance:

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

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

a. Design Standards:

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

b. Application processing:

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

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

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

c. Fees:

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

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

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

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

d. Engineering Standards:

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

5. Off-Tract improvements:

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

- a. Hills and Bernards agree to a timetable and location of the improvements to be undertaken by Bernards; including the Allen Road extension/bridge
- b. Hills and Bernards agree to a timetable and approval standards of all road/utility improvements to be undertaken by Hills; including the reconstruction/realignment of Schley Mountain Road.
- c. Bernards agrees that this sum will cover all assessments made by governmental bodies, whether state, county or local, for road improvements. Hills cannot agree to contribute a known sum of money to improve roadways impacted by its development; and remain liable for "assessments" proposed by other levels of government which intend to improve roadways as a result of their own or other developer's planning processes.

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

6. Farmland Assessment:

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

7. Open Space requirements

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

tjh-4/1/14

EXHIBIT W

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540

(609) 924-0808

CABLE "PRINLAW" PRINCETON
TELECOPIER (609) 924-6238
TELEX 837682

HARRY BRENER
HENRY A. HILL
MICHAEL D. MASANOFF**
ALAN M. WALLACK*
GERARD H. HANSON*
GULIET E. HIRSON

J. CHARLES SHEAR**
EDWARD D. PENN*
ROBERT W. BACSO, JR.*
MARILYN E. SILVIA
THOMAS J. HALL
SUZANNE M. LAROBARDIER*
ROCKY L. PETERSON
VICKI JAN ISLER
MICHAEL J. FEEMAN
MARTIN J. JENNINGS, JR.**
MARY JANE NIELSEN**
E. GINA CHASE**
THOMAS F. CARROLL
JANE E. KELSEY

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

FILE NO.

April 1, 1985

James E. Davidson, Esquire
Farrell, Curtis, Carlin, & Davidson
43 Maple Avenue
Morristown, New Jersey 07950

Dear Jim:

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

I am enclosing the following items:

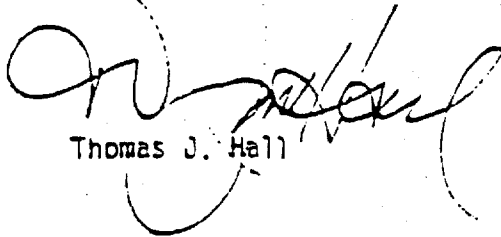
1. A redrafted Stipulation of Settlement, which reflects a conversation I had with George Raymond today. George is going to review the material he has and will set forth his understanding of your fair share of lower income housing. The Stipulation now includes language making it clear that the Township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

Mr. James Davidson
April 1, 1985
Page 2

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

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

Sincerely,

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

Thomas J. Hall

TJH/ehl
Enclosures

cc: John Kerwin
Art Garvin
George Raymond

EXHIBIT X

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^Δ
GULIET D. HIRSCH

J. CHARLES SHEAK**
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THOMAS F. CARROLL
JANE S. KELSEY

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

FILE NO.

May 21, 1985

John Kerwin
President, The Hills
3 Burnt Mills Road
Pluckemin, New Jersey 07978

Dear John:

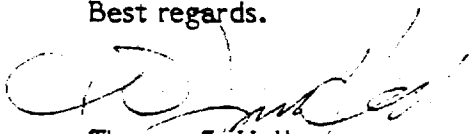
You requested a copy of the current Bernards Stipulation of Settlement. Enclosed is a copy of the last draft circulated— there needs to be some change in this to reflect:

- a. Whatever number George Raymond finally settles on as Bernards fair share;
- b. Whatever agreement we make with regard to off-tract improvements;
- c. Any other final issues.

Jim Davidson and I spoke today-- he's requested a meeting for Friday, 10:30 a.m., his offices in Morristown, to resolve all final issues, including number of lower income housing units to be built. Can I assume you'll be there?

As you may also be aware, I'm meeting with Cilo, O'Connell and Callahan at Bedminster, 9:00 a.m. on Friday to dispose of the Offerjoist/other sewer issue.

Best regards.



Thomas J. Hall

EXHIBIT Y

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540

(609) 924-0808

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

FILE NO.

May 31, 1985

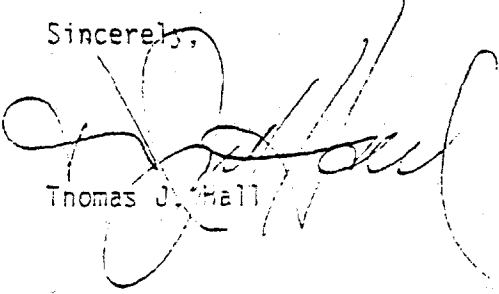
James Davidson, Esquire
Farrell, Curtis, Carlin, & Davidson
43 Maple Avenue
Morristown, New Jersey 07960

Dear James:

In anticipation of our meeting on Wednesday, I have put together yet another draft of the Stipulation of Settlement, which reflects a refinement of thought with respect to the square footage of the commercial area. Since I understand that George Raymond's report to the court will include a reference to the 68 unit "bonus" we discussed Monday, but will suggest that these units be phased later in the 1990's, I have retained the language in the draft stipulation to that effect.

On Wednesday, I would like to think we would be in a position to resolve all remaining issues to get this agreement initialed.

Sincerely,


Thomas J. Hall

TJH/ehl
Enclosure
cc: Art Garvin ✓
John Kerwin
George Raymond