

PULS-AD-1986-40

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Hills letter to Judge re: Denial of Application

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January 15, 1986

FILE NO.

SENT VIA FEDERAL EXPRESS

The Honorable Eugene D. Serpentelli
Assignment Judge, Superior Court of New Jersey
Ocean County Court House
CN-2191
Toms River, New Jersey 08753

RECEIVE

JAN 17 1986

JUDGE SERPENTELLI'S CHM

RUIS - AD - 1986 - 40

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

Dear Judge Serpentelli:

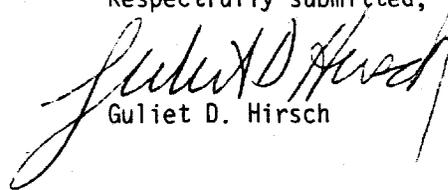
On behalf of Plaintiff-The Hills Development Company, we wish to advise Your Honor of the denial with prejudice of the Hills Development Company conceptual application by the Bernards Township Planning Board on January 7, 1986. This decision of the Planning Board was made under a number of questionable circumstances, including:

1. The Hills was given a little over one business day's notice of the fact that its application was on the agenda for the meeting of January 7th, making it impossible for the Hills to produce expert witnesses;
2. Contrary to the last meeting between the Hills and the Technical Coordinating Committee (TCC) of the Planning Board on December 17, 1985, and apparently on advice of its attorney, the Planning Board refused to schedule Hills for an additional TCC meeting on January 21st and the Planning Board informal session of January 27th, as previously agreed upon;
3. The action of the Planning Board was taken despite several representations which I made to the Planning Board that the revisions requested by members of the TCC would be made to the best of our ability;
4. Prior to the decision of the Planning Board, the Board retired to a closed session to discuss a matter in litigation.

We have ordered the transcript of the January 7, 1986 Planning Board session on an expedited basis and understand that it will be available around January 20, 1986. We respectfully request the right at that time to supplement our brief concerning conceptual approval, because we believe that the Planning Board's denial and the chain of events leading to that denial should be considered by this Court on the equitable estoppel issue.

I am available for a telephone conference on this matter, if Your Honor so desires.

Respectfully submitted,



Guliet D. Hirsch

GDH/sr

cc: Henry A. Hill, Esq.
Stephen W. Townsend, Clerk
Arthur Garvin, Esq. (SENT VIA FEDERAL EXPRESS)
James Davidson, Esq. (SENT VIA FEDERAL EXPRESS)
Mr. John Kerwin

Plans for 2,750 homes rebuffed

By DAVID POLAKIEWICZ
Staff Writer

BERNARDS TWP — A conceptual site plan for 2,750 housing units on a 511-acre piece of the Hills Development Company's property was turned down by the Planning Board Tuesday night, but the firm's representatives maintain the denial was merely Mount Laurel II legal maneuvering by the township.

After Hills Development officials refused to withdraw the plans, the board followed the advice of its

technical staff and denied them by a 7-0 vote with one abstention.

Before voting, the board heard Harvey Moskowitz, the township's planning consultant, call the plans "extremely constrained and overcrowded." Moskowitz's main criticism was Hills' emphasis on placing large single-family homes on small lots.

Hills had submitted the 13-page conceptual plan in October. It called for 1,411 single-family units on 411 acres and 1,339 multi-family units on 100 acres in the Raritan Basin or western portion of the Hills property along the Bedminster border. A total of the 550 multi-family units would be affordable Mount Laurel II homes.

The plans had been discussed previously with the board's technical committee but not by the entire board. Board members who commented Tuesday agreed with Moskowitz's assessment calling the Hills plans "an abomination" and "seriously flawed."

Township officials asked Hills representatives if they would withdraw the plans because any redesign would require such a drastic change it should be considered an entirely new plan.

Hills officials refused, but did say

they would work on amendments suitable to the board. After a brief closed session to discuss legal strategy, the board denied the plans.

Throughout the meeting, John Kerwin, Hills Development's president, (Please see Plans on page 15.)

Plans for housing rebuffed by Bernards

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and Guliet Hirsch, the firm's attorney, maintained that the board was seeking a withdrawal or a denial in order to take away certain development rights for the property.

Under an ordinance passed last month, the township changed the development rights included with conceptual approvals. Hills obtained a court order to exempt its site plan from the new guidelines.

Kerwin and Hirsch claimed that the board was seeking a withdrawal or a denial to erase that exemption. "Let's let the judge decide that and not through the back door here," Hirsch told the board.

Hirsch said it is not unusual for developers to change their plans based on comments made at meetings by board members and said Hills would do so. But her request was not heeded by the board.

Kerwin said his firm would eventually come back with some type of revised plan after being asked what Hills Development's response would be to a denial.

But Kerwin also said there is legal maneuvering going on by his firm and the township because of the Mount Laurel II litigation the two sides are involved in. Board members did not confirm or deny Kerwin's claims.

"Some of the things you find abhorrent in that plan are permitted under your land use ordinance," Kerwin told the board. "In all honesty I think that there's maneuvering on both sides."

Hills Development and the township presented their arguments to the state Supreme Court on Monday and Tuesday on whether their Mount Laurel II case should be transferred to the state's Affordable Housing Council.

Bernards Township filed an appeal of a ruling made by state Superior Court Judge Eugene Serpentelli last year that the transfer be disallowed. The appeal was originally scheduled

to be heard by the state Superior Court's Appellate Division, but in November the Supreme Court decided to directly hear Bernards Township's appeal and those of several other towns that were denied transfers.

Creation of the housing council was one of the provisions contained in legislation signed last year by Gov. Thomas Kean aimed at easing the effects of the state Supreme Court's 1983 Mount Laurel II decision.

A report filed by a court-appointed planner last June set the township's affordable housing "fair share" at 1,066 units. Bernards Township officials believe that number could be lowered if the housing council determines their case instead of Judge Serpentelli. Hills is attempting to block the transfer.

Hills Development filed suit against the township in 1984 claiming local zoning did not provide for affordable housing. Hills offered to include 1,160 Mount Laurel II homes if its 1,100 acres of property near the Bedminster border were rezoned to allow a total of 5,800 units. Previously, the Hills tract was zoned for 1,273 units.

The Township Committee passed an ordinance in November 1984 that rezoned the Raritan Basin for 2,750 units including 550 affordable homes. The Passaic Basin or remaining eastern portion of the tract remained zoned for 273 units.

The Hills zoning was part of an overall plan that called for affordable homes being built in several complexes in the township.

At Tuesday's meeting, Kerwin admitted the Mount Laurel II rules seem to be continually changing.

"The only thing that's clear to me anymore is that we own the property," Kerwin told the board.

Afterward, Kerwin attached little significance to the board's denial of his firm's conceptual plans. "There's nine innings to a ballgame," Kerwin said. "This isn't even a strikeout."