

RULS - AD - 1986 - 50

1/30/86

~~Notice~~ Notice of Motion for Order Reversing
Denials of Hills Development Application

Pgs. _____

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January 30, 1986

FILE NO. 3000-04-

RULS - AD - 1986 - 50

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

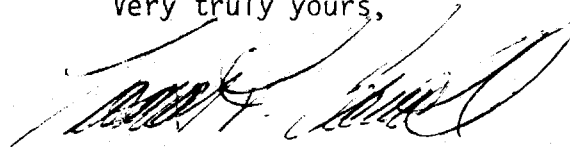
RE: Hills Development Company v. Tp. of Bernards, et al.
Docket No: L-030039-84 P.W.

Dear Judge Serpentelli:

On behalf of the plaintiff, The Hills Development Company, enclosed please find a notice of motion, letter memorandum, certification and appendix. In said motion, Hills requests that this Court reverse the arbitrary denial of Hills' development application by defendant Bernards Township Planning Board. Pursuant to my conversation with Your Honor's law secretary, the enclosed motion has been made returnable on February 28, 1986 at 1:30 p.m.

Thank you for your kind attention to this matter.

Very truly yours,



Thomas F. Carroll

TFC:klp

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

CLERK OF COURT
MAYSON

M.V. 24
JOHN H. MAYSON
CLERK

BRENER, WALLACK & HILL
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Attorneys for Plaintiff

THE HILLS DEVELOPMENT COMPANY,

Plaintiff,

vs.

THE TOWNSHIP OF BERNARDS in the
COUNTY OF SOMERSET, a municipal
corporation of the State of New Jersey,
THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF BERNARDS, THE
PLANNING BOARD OF THE TOWNSHIP
OF BERNARDS and the SEWERAGE
AUTHORITY OF THE TOWNSHIP
OF BERNARDS,

Defendants.

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION-
SOMERSET COUNTY/OCEAN COUNTY
(Mt. Laurel II)

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

CIVIL ACTION

NOTICE OF MOTION

TO: James E. Davidson, Esq.
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PLEASE TAKE NOTICE that the undersigned counsel for Plaintiff, The Hills Development Company will move before the Honorable Eugene D. Serpentelli at the Ocean County Court House on February 28, 1986 at 1:30 p.m. or as soon thereafter as counsel may be heard for an Order reversing the denial by the Bernards Township Planning Board of a development application filed by Plaintiff, The Hills Development Company and for other related relief.

PLEASE TAKE FURTHER NOTICE that, in support of the instant application, Plaintiff will rely upon the letter memorandum, exhibits and affidavit served herewith.

Brener, Wallack & Hill
Attorneys for Plaintiff,
The Hills Development Company

By: 

Thomas F. Carroll

January 30, 1986

BRENER, WALLACK & HILL

ATTORNEYS AT LAW

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FILE NO.

Honorable Eugene D. Serpentelli, A.J.S.C.
Ocean County Courthouse
CN 219
Toms River, New Jersey 08753

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

Dear Judge Serpentelli:

As Your Honor will recall, plaintiff, The Hills Development Company ("Hills"), has recently moved before this Court to restrain the defendant, Bernards Township Committee, from adopting an ordinance which would divest Hills of the development rights which would accrue upon approval of its then-pending development application. The Township was so restrained pending further order of this Court or issuance of the Supreme Court's opinion with respect to Bernards' appeal of this Court's denial of transfer to the Council on Affordable Housing. Shortly thereafter, the defendant, Planning Board of the Township of Bernards, summarily, arbitrarily and unlawfully denied Hills' development application. In effect, defendants have attempted to achieve in the back room what could not be accomplished in the courtroom. Unfortunately, Hills is once again compelled to seek relief from this Court.

FACTS

The relevant facts on this motion are as follows. On October 17, 1985, Hills submitted a "conceptual approval application" pursuant to Section 707 of Bernards' land use ordinances. On November 12, 1985, the Appellate Division granted Bernards' motion to stay all trial court proceedings. Also on November 12, 1985, Bernards Township Committee introduced Ordinance 746 (Exhibit A to Appendix submitted herewith), an ordinance which would have amended Section 707E. so as to remove the language which expressly confers development rights upon approval of a Section 707 development application.¹ On November 14, 1985, the Supreme Court entered an Order (Exhibit B) which sustained the Appellate Division stay but granted to Hills leave to apply to the courts for relief in the event that Bernards attempted any action which would have the effect of frustrating compliance with Southern Burlington County N.A.A.C.P. v. Tp. of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II").

Upon learning of Bernards' attempted adoption of Ordinance 746, Hills moved before this Court for an order restraining Bernards from adopting said ordinance. This Court declined to enjoin the adoption of Ordinance 746 but the Court did expressly order that such an ordinance must be amended so as to provide that it is inapplicable to the Section 707 development application submitted by Hills. (Exhibit C, Order of December 12, 1985). Such relief was to remain in effect until such time as either: (1) the 95 day approval period for said application was about to expire at which time Bernards was authorized to seek relief from the Order; or (2) the Supreme Court issued its opinion with respect to Bernards' appeal of this Court's denial of transfer.

¹ Section 707 is set forth as Exhibit J.

On December 17, 1985, representatives of Hills met with the Bernards "Technical Coordinating Committee" ("TCC") for the purpose of discussing Hills' development application.² At that time, the TCC advised Hills as to potential Township concerns with respect to the plans. Hills listened to the suggestions made by the TCC and indicated its intention to do its utmost to revise the plans in accordance with those suggestions. Also at the December 17, 1985 meeting with the TCC, it was agreed that another meeting would be held with the TCC on January 17, 1986 to be followed by a January 24, 1986 meeting with the full planning board. Hills then instructed its planners to review the suggestions made by the members of the TCC and implement appropriate revisions. (Certification of Guliet D. Hirsch, Esq.).

On December 26, 1985, Bernards adopted an amended form of Ordinance 746 which specified that the Section 707E. "divesting amendment" was inapplicable to Hills. (Exhibit D). However, amended Ordinance 746 expressly provided that inapplicability of the Section 707E. amendment was confined to Hills' pending application.

Pursuant to this Court's directive, the parties submitted extensive supplemental briefs on the issues of: (1) whether Section 707, including its vesting provision, is an authorized enactment; and (2) the harm Hills would suffer if Bernards were permitted to retroactively apply a Section 707E. amendment to Hills. These supplemental briefs were submitted to this Court during the first week of January.

² An initial meeting was held on November 12, 1985. The TCC is a development application review entity consisting of various Township officials. Naturally, it has no authority to approve or deny applications. See N.J.S.A. 40:55D-39f. (See also Exhibit I, ordinance provision establishing the TCC and describing its duties).

On January 6 and 7, 1986, the appeals of Bernards and other municipalities were argued before the Supreme Court. On the evening of January 7, 1986, the defendant Planning Board voted to summarily deny approval of Hills' development application. The circumstances under which approval was denied include the following:

(1) Hills received slightly more than one business day's notice of the Planning Board's intention to take action on the application. Hills was thus unable to have its expert witnesses attend or otherwise prepare for the meeting in any meaningful way (T18;T25)³ (Certification of Hirsch);

(2) Despite the scheduled meetings discussed supra, the application was summarily denied without rational explanation (T39 - T40);

(3) Hills' offer to revise its plans to the best of its ability went unheeded (T16-19; T24; T26; T30); and

(4) Hills offered to withdraw its application and submit a second application if Bernards would stipulate that approval of the second application would vest Hills with development rights as would approval of the original application. Bernards declined Hills' offer (T22-24; T27-T29; T32);

(5) The Planning Board went into closed session immediately prior to voting upon whether to deny the application (T38); and

(6) A number of new Planning Board members were sworn in that very evening. It is highly unlikely that the new members so much as glanced at the application.

³ "T" references are to transcript of January 7, 1986 Planning Board meeting which transcript is set forth as Exhibit E, submitted herewith.

Hills was thus totally denied the opportunity to present expert witnesses, present the plan to the Planning Board itself and to appear at a public hearing or otherwise make a record with respect to the merits of its application.

The motivation underlying the clearly unlawful denial of Hills' application is readily apparent. Due to the aforesaid entry of injunctive relief by this Court, Bernards was compelled to complete the processing of a development application which would vest Hills with development rights upon approval of same.⁴ However, since the amended Ordinance 746 and this Court's order limited said injunctive relief to Hills' pending application, Bernards apparently realized that it could avoid any such risk by simply refusing to allow Hills to revise the plans and summarily and arbitrarily denying the application. Again, Hills offered to withdraw the application and submit a second application if the Township would stipulate that the second application would not be subject to the divesting language contained in amended Ordinance 746. Bernards declined the offer and, immediately following a closed session, the Planning Board voted to deny approval of the application.

As set forth below, the denial of the application was clearly unlawful. Hills, therefore, respectfully requests that the Planning Board's action in denying the application be reversed and that the Planning Board be directed to consider the application in accordance with the Municipal Land Use Law, the Township's land use ordinances and other pertinent law. In other words, Hills again asks today, as it did in its last application before this Court, that the status quo be preserved.

⁴ Bernards does contend that approval would not vest Hills with rights in any event since Section 707E. is asserted to be ultra vires. Bernards' machinations with respect to Hills' application indicate Bernards' reluctance to allow a court to decide the issue.

ARGUMENT

POINT I

**THE ARBITRARY DENIAL OF HILLS' DEVELOPMENT
APPLICATION WAS IN VIOLATION OF THIS COURT'S
ORDER OF DECEMBER 12, 1985.**

The Supreme Court sustained the Appellate Division stay of trial court proceedings. However, the Supreme Court did permit Hills to:

make application for a modification of this [the Supreme Court] Order or other appropriate relief based upon any proposed municipal action that might affect the municipality's ability to satisfy its Mt. Laurel obligations or upon any other relevant change in circumstances. (Exhibit B).

As indicated, Hills moved before this Court to enjoin the adoption of Ordinance 746 and Hills' motion was granted insofar as Bernards was preliminarily enjoined from applying its proposed Section 707E. amendment to Hills. Bernards then introduced an amended version of Ordinance 746. Meanwhile, Bernards objected to the form of Order submitted by Hills. (Exhibit F, Howard P. Shaw letter of December 5, 1985). Most of the objections contained therein were innocuous. Prior to Hills' receipt of Mr. Shaw's December 5 letter, the undersigned wrote to the Court and explained that Bernards' amended Ordinance 746 (Exhibit D) was, in effect, designed to nullify the relief granted to Hills by this Court. (Exhibit G, December 6, 1985 correspondence of Thomas F. Carroll).

Thereafter, Township counsel wrote a second letter adding an additional objection to the form of Order submitted by Hills. (Exhibit H, Howard P. Shaw correspondence of December 6, 1985). The Order as proposed by Hills provided that a Section 707E. amendment would be inapplicable to "a" Section

707 application submitted by Hills. Bernards suggested that the words "the pending" should be substituted for the word "a". Bernards explained that this change was necessary because, inter alia, the Planning Board might reject Hills' application and a different application "should not be protected by the instant Order." The same letter concluded: "I am sure that this [the pending] application will receive no different treatment from any other application by any applicant." (Exhibit H).

Thereafter, Hills received an executed copy of this Court's Order of December 12, 1985. The Order indeed struck the word "a" and specified that the relief contained in that Order (i.e., inapplicability of the Section 707E. amendment) was confined to Hills' pending application. (Exhibit C).

Frankly, as soon as Hills reviewed the December 12, 1985 Order as amended by Your Honor, Hills feared that its pending application was doomed to denial. Bernards had already conceded in open court that a reason underlying the amendment of Section 707E. was that of preventing Hills from vesting development rights. With the relief granted Hills confined to its pending application, the obvious course to achieve Bernards' desired result would be to simply deny approval of the pending application. Unfortunately, that is exactly what occurred.⁵

For the past two and one-half months, Bernards has advised all three tiers of our State's courts that a stay of trial court proceedings would not harm Hills and that Bernards would continue to process Hills' development application as it would any application. As recently as December 6, 1985, when requesting a

⁵ The December 12, 1985 Order permitted Bernards to apply to modify the relief contained therein prior to approval and vesting. Apparently, such protection did not satisfy Bernards.

change in the form of the Order, Bernards advised this Court that Hills would receive the same treatment as any other applicant. (Exhibit H).

The only public hint of a reason underlying Bernards' summary denial of Hills' application was that of a need for revision of the plans. It is an extraordinary application indeed which is found by any planning board to be "perfect" as submitted. Hills presumes that the defendant Planning Board ordinarily acts in a lawful manner and does not summarily deny applications simply because revisions may be desired. As discussed below, denial for such a reason is unlawful. However, it is indisputable that the Planning Board was not compelled to deny the application simply because it allegedly felt revisions were necessary. The Board clearly could have granted Hills the opportunity to revise its plans rather than demanding a new application. Nevertheless, Hills repeatedly advised the Board that it would accede to the Board's demand and submit a new application if it was stipulated that the "divesting" language would not apply to such a second application. In response, the Board retired to closed session and then emerged into "sunshine" to deny the application.

Once again, Bernards has attempted to make preservation of the status quo a one-way street. Bernards has trial court proceedings stayed while, at the same time, it engages in a series of elaborate machinations in an attempt to prevent processing of Hills' application in the same manner as other applications and according to law. Hills respectfully submits that the Orders issued by this Court and our Supreme Court prohibit such conduct. Indisputably, the defendant Planning Board could have, and should have, permitted Hills to revise the plans submitted with its application. For obvious reasons, it chose not to do so. Hills therefore requests that the status quo truly be preserved and that

the defendant Planning Board be ordered to reverse its denial, permit Hills to revise its plans and process same in accordance with law.

POINT II

BERNARDS' DENIAL OF HILLS' DEVELOPMENT APPLICATION WAS CONTRARY TO THE MUNICIPAL LAND USE LAW, A DENIAL OF DUE PROCESS, ARBITRARY, CAPRICIOUS AND UNREASONABLE.

A. The defendant Planning Board's refusal to permit Hills to revise its plans was contrary to numerous provisions of the Municipal Land Use Law.

(1) The right to revise plans prior to a public hearing.

The defendant Planning Board steadfastly refused to permit Hills to revise the plans submitted to the Board despite Hills' repeated offers to make desired revisions. No public hearings had been held. In violation of the MLUL, the Board insisted that a new application be brought.

A planning board is not authorized to demand a new development application unless "substantial amendment in the layout of improvements" is required by a planning board subsequent to a public hearing on the development. N.J.S.A. 40:55D-46b; 40:55D-48b. Since no hearings have yet been held on Hills' application, the Planning Board was without authority to demand a new application.

(2) The right to a hearing.

Pursuant to N.J.S.A. 40:55D-10a, a "municipal agency shall hold a hearing on each application for development." The Planning Board refused Hills' request to defer action on its application so as to allow a hearing and

presentation of witnesses and evidence. In lieu thereof, the Board summarily denied the application. Since there exists no record with respect to the merits of Hills' application, a reviewing court is unable to adjudge the lawfulness of the Board's denial. For this reason, the denial must be reversed, the matter must be remanded to the Board and a record must be made. See e.g. Giordano v. City Comm'n of City of Newark, 2 N.J. 585, 589 (1949) (board determinations must rest upon findings and information in record lest essence of right to hearing and due process be denied); Hamlin v. Matarazzo, 120 N.J. Super. 164, 174-176 (Law Div. 1972) (remand to planning board necessary where deliberative process, findings and reasons not disclosed on record and judicial review therefore infeasible); Battaglia v. O'Brien, 59 N.J. Super. 154, 172-174 (App. Div. 1960) (remand necessary where lack of evidentiary record and, hence, lack of means to measure lawfulness of board action).

(3) The right to review by the Planning Board itself.

In fact, Hills' application was never even presented to the Planning Board. Hills' opportunity to explain its plans and respond to suggestions was confined to meetings with the TCC. The Planning Board itself did not independently consider the application. The MLUL confers upon planning boards the power to engage in site plan review. N.J.S.A. 40:55D-25a(2). Any power to be exercised by a planning board shall not be exercised by any other body. N.J.S.A. 40:55D-20. If TCC's are authorized at all, their function must be limited to powers granted to site plan review advisory boards pursuant to N.J.S.A. 40:55D-39f i.e. to make recommendations to the Planning Board. Since actual review of Hills' plans was limited to that performed by an advisory body, the TCC, the denial of the application must be reversed.

With the exception of one Planning Board member, it does not appear that the Board itself had so much as glanced at the application. Twice during the meeting of January 7, the Board's Vice-Chairman asked the Board members for comments with respect to Hills' plans. The Vice-Chairman confined his inquiry to those "continuing" members who had "been in on discussions" with Bernards' consultants. (T14). One member, Mr. Seebohm was unsure whether the plans he had seen were the "latest" and he stated that he did not "accept them as final." He also termed the plans (which are in absolute accord with the ordinance) an "abomination." (T15). Mr. Seebohm is the sole member who indicated any first-hand familiarity with Hills' plans.

The only other comments by a Board member were those of Mr. Apgar who stated:

I think we count on Harvey and Peter as our professionals to do a preliminary evaluation and they have. I've read the project report...I think we better take Harvey's advice on this one." (T15).

Mr. Apgar later stated: "Well, I am listening to our professional." (T39).

Thus, of the seven Board members who voted to deny the application, it appears that only one had actually seen the plans. As indicated above, a number of new members were sworn in on that very evening and thus could have no prior familiarity with the plans.

In order to perform its duty in a lawful manner pursuant to N.J.S.A. 40:55D-25a(2) and 40:55D-20, the Board must actually review the plans. It may not permit such decisions to be made by a TCC or a consultant. A board must independently exercise its judgment. Since the Board itself did not evaluate the application, its denial of same must be reversed.

B. The Hills' application was denied without benefit of due process of law.

In violation of the guarantee of due process of law, Hills was denied any meaningful opportunity to be heard on its application. Hills received slightly more than one business day's notice of the Planning Board's intention to take action on the application. Hills was unable to arrange for attendance by its consultants or otherwise prepare for the meeting in any meaningful way. Hills requested that the Board refrain from action on the application until such time as the plans and any revisions could actually be presented to the Board by Hills and its consultants. Hills' request was denied.

The guarantees of due process of law apply to planning board proceedings. See e.g. Planning Bd. Tp. of West Milford v. Tp. Council, 123 N.J. Super. 144 (Law Div. 1973). Hills is entitled to a fair hearing, notice and a meaningful opportunity to be heard. Id. See also Geiger v. Levco Rt. 46 Associates, Ltd., 181 N.J. Super. 278, 281 (Law Div. 1981); Yellow Cab Corp. v. City Com., Passaic, 124 N.J. Super. 570, 578, 582-583 (Law Div. 1973); Tomko v. Vissers, 21 N.J. 226, 238-241 (1956). Hills was totally denied an opportunity to present its plans to the Board. Therefore, the Planning Board denial must be reversed.

C. The denial of Hills' application was contrary to Bernards' land use ordinance, arbitrary, capricious and unreasonable.

As indicated above, it does not appear that the defendant Planning Board itself actually reviewed Hills' application. Section 707 of Bernards' land use ordinance provides in pertinent part:

The conceptual review is intended to provide the applicant with a review and discussion by the Board of major areas of concern...
Section 707C.1. (emphasis added)

If, in fact, the Board so much as reviewed Hills' application, there was certainly no discussion of same.

The ordinance also provides that the "Board shall take action on conceptual plans within 90 days" of certification of completeness. Section 707 D.1. Further, the ordinance mandates that: "Prior to taking action on any conceptual plan, the Board shall set forth the reasons for such action ... or for the denial ..." Section 707D.2. (emphasis added). See also Section 707D.3.b. Assuming that the Board did actually review Hills' plans, the Board members stated no reasons prior to its denial. Action taken in facial violation of Bernards' own ordinances is certainly arbitrary, capricious and unreasonable and should be reversed.

The only arguable reason for the denial is that based on the opinion of Bernards' consultant. That consultant opined that Hills' plans depicted a greater than desirable mix of single family homes on small lots and that the perceived flaws could not be corrected through revision of the plans. (T6-T11). Bernards has not asserted that Hills' plans depicted any violation of any ordinance. Nevertheless, Hills offered to revise the plans in accord with Bernards' desires. As discussed above, Hills submits that Bernards' refusal to permit Hills to revise its plans is contrary to the MLUL. Assuming arguendo that Bernards' demand for a new application was not expressly proscribed by law, its demand was nevertheless arbitrary, capricious and unreasonable.

Again, Hills submits that the sole reason underlying the Board's denial was that of bypassing judicial resolution of Hills' rights. However, in the absence of direct proof of such motive, it is nevertheless apparent that Bernards' denial was based upon no more than whimsy and caprice. The Board surely could have

permitted Hills to revise its plans. At best, its refusal to permit revisions was without rational reason. Such a denial can only be viewed as arbitrary, capricious and unreasonable and it should therefore be reversed.

On a practical level, it is useful to note that the denial can only serve to add complexity, expense and delay to the approval process. The approval process is almost invariably evolutionary. Hills' application had already evolved and the evolution would have continued. However, the Board's summary denial stops the process in its tracks. If the denial were not reversed, Hills would be compelled to commence preparation of an entirely new application. Bernards would then have 45 days to determine whether the application was complete and review of the plans would then start anew. There is simply no legitimate reason to proceed in such a fashion when, in the absence of the arbitrary denial, the process could be continuing today.

Therefore, Hills respectfully requests that the Board's denial be held to be arbitrary, capricious and unreasonable.

POINT III

THE DENIAL OF HILLS' APPLICATION WAS IN VIOLATION OF THE OPEN PUBLIC MEETINGS ACT.

No deliberations concerning the denial of Hills' application occurred in public. The decision to deny Hills' application was obviously pre-ordained and made outside of the presence of the public. Immediately prior to the vote to deny Hills' application, the Vice-Chairman requested of the Planning Board attorney "a privileged conversation with you before we move further." (T37). Following the closed session, the Board emerged into "sunshine" and voted unanimously (with one abstention) to deny the application.

The Planning Board's deliberation (if any) and decision with respect to the merits of Hills' application were undertaken entirely outside of the presence of the public. In so doing, the Board violated the Open Public Meetings Act, N.J.S.A. 10:4-7 and 10:4-12. Contrary to the Act, the Board did not state a reason for the closed session. (T38). Assuming that the exception relied upon was matters in litigation, N.J.S.A. 10:4-12b(7), the Board's action was nevertheless unlawful. See e.g. Accardi v. Mayor and Council of City of North Wildwood, 145 N.J. Super. 532 (Law Div. 1976). (notwithstanding the fact that the parties were in litigation the board of adjustment was obligated to discuss merits of development application in public). As per N.J.S.A. 10:4-15a, the Board's clandestine denial of Hills' application should be declared void.

CONCLUSION

For the aforementioned reasons, Hills respectfully requests that this Court: (1) reverse defendant Bernards Township Planning Board's summary denial of Hills' development application; (2) remand this matter to the defendant Planning Board with directions to process said application in accordance with applicable law; (3) restrain defendants from any further attempts to apply an amendment of Section 707 to Hills and from otherwise altering the status quo; and (4) direct that no amendment of Section 707 shall apply to Hills pending further order of a court of law.

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

By: 

Thomas F. Carroll

BRENER, WALLACK & HILL
2-4 CHAMBERS STREET
PRINCETON, NEW JERSEY 08540
(609) 924-0808
ATTORNEYS FOR PLAINTIFF/RESPONDENT

THE HILLS DEVELOPMENT COMPANY,

Plaintiff,

v.

THE TOWNSHIP OF BERNARDS in the COUNTY OF
SOMERSET, a municipal corporation of the State
of New Jersey, THE TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF BERNARDS, THE PLANNING BOARD OF
THE TOWNSHIP OF BERNARDS and the SEWERAGE
AUTHORITY OF THE TOWNSHIP OF BERNARDS,

Defendants.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION

:
: SOMERSET/OCEAN COUNTY

:
: (Mount Laurel II)

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

: CIVIL ACTION

: CERTIFICATION
:
:

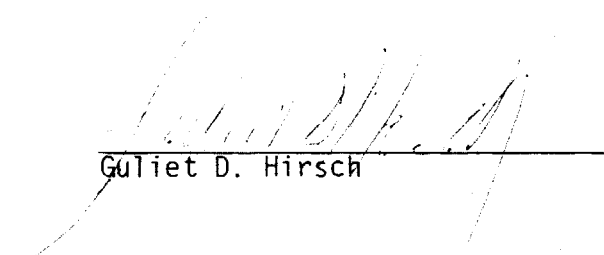
Guliet D. Hirsch, Esquire, of full age, hereby certifies as follows:

1. I am a member of the law firm of Brener, Wallack & Hill, counsel for plaintiff, The Hills Development Company, and I am fully familiar with the facts as set forth herein.
2. On December 17, 1985, I attended a meeting of the Bernards Township "Technical Coordinating Committee" ("TCC") at which Hills' conceptual approval application was discussed. Present at that meeting were Peter Messina, (Township Engineer), Harvey Moskowitz, (Township Planner), Steven Wood, (Township

Administrator), Harry Dunham (Planning Board member), Arthur Garvin (Planning Board Attorney), Nancy Ferguson (Planning Board Secretary) and Kenneth J. Mizerny, (planner retained by Hills).

3. At said meeting, the representatives of the Township indicated to Hills that they perceived some problems with the plans submitted by Hills and, on behalf of Hills, both Mr. Mizerny and myself indicated that Hills would consider their suggestions and revise the plans where possible.
4. Also at that meeting, additional meetings with the TCC and Planning Board were scheduled for January, 17 and 27, respectively, 1986 for the purpose of further discussing and evaluating the plans submitted by Hills in connection with its conceptual approval application.
5. During the week of December 30, 1985, Ms. Nancy Ferguson, the Planning Board Secretary, telephoned me with regard to the meetings scheduled for January 17 and 27, 1986. She indicated that her notes agreed with mine as to the scheduling of these meetings, and she would check with Arthur Garvin.
6. On January 3, 1986, counsel for the Bernards Township Planning Board apparently telephoned the offices of this law firm and left a message that the Planning Board would probably deny the Hills' application on January 7, 1986. This message, which was directed to Tom Hall, did not come to my attention until Sunday, January 5, 1986.
7. On January 6 and 7, 1986, I appeared before the New Jersey Supreme Court in connection with the various consolidated transfer appeals.

8. On the evening of January 7, 1986, I attended the Bernards Township Planning Board meeting at which time the Planning Board summarily denied the development application which had been submitted by Hills. Due primarily to the lack of sufficient advance notice of said Planning Board meeting, Hills was unable to arrange for attendance by its consultants or otherwise prepare for the meeting in any meaningful way.



Giuliet D. Hirsch

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

THE HILLS DEVELOPMENT COMPANY, :
Plaintiff, :

vs. :

THE TOWNSHIP OF BERNARDS in the :
COUNTY OF SOMERSET, a municipal :
corporation of the State of New Jersey, :
THE TOWNSHIP COMMITTEE OF THE :
TOWNSHIP OF BERNARDS, THE :
PLANNING BOARD OF THE TOWNSHIP :
OF BERNARDS and the SEWERAGE :
AUTHORITY OF THE TOWNSHIP :
OF BERNARDS, :

Defendants. :

SUPERIOR COURT OF
NEW JERSEY
LAW DIVISION-
SOMERSET COUNTY/OCEAN COUNTY
(Mt. Laurel II)

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

CIVIL ACTION

ORDER

This matter having been opened to the Court by Brener, Wallack & Hill, counsel for Plaintiff, The Hills Development Company, Henry A. Hill, Esquire, appearing, in the presence of Farrell, Curtis, Carlin & Davidson, counsel for Defendants, the Township of Bernards, the Township Committee of the Township of Bernards and the Sewerage Authority of the Township of Bernards, James E. Davidson, Esquire, appearing and Kerby, Cooper, Schaul & Garvin, counsel for Defendant Planning Board of the Township of Bernards, Arthur H. Garvin, III, Esquire appearing and the court having reviewed the memoranda and affidavits submitted in

connection with this application and having considered the arguments of counsel, it is on this _____ day of _____, 1986 ORDERED that:

1. The January 7, 1986 denial by the Defendant Bernards Township Planning Board of a conceptual approval application submitted by the Plaintiff is hereby declared to be in violation of the Municipal Land Use Law, arbitrary, capricious, unreasonable, in violation of an Order entered by this Court on December 12, 1985 and otherwise unlawful;

2. This matter is hereby remanded to the Defendant Planning Board wherein Plaintiff will be permitted to revise the plans submitted in connection with its conceptual approval application of October 17, 1985 and Plaintiff's conceptual approval application shall be reconsidered and processed in accordance with the Municipal Land Use Law, the Defendant's Township's land use ordinances and other pertinent law;

3. Amended Township Ordinance 746 is inapplicable to the conceptual approval application submitted by Plaintiff on October 17, 1985;

4. Defendants are hereby restrained from taking any further action in an effort to divest Plaintiff of development rights which would accrue upon approval of Plaintiff's development application pending further order of this Court; and

5. The relief granted to Plaintiff in this Order and in this Court's Order of December 12, 1985 shall not automatically expire upon issuance of the Supreme Court's opinion with respect to Defendants' appeal of this Court's denial of transfer. Any amendment of Defendant Township ordinance Section 707E shall not be applicable to Plaintiff pending further Order of this Court.

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

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

Attorney(s) for Plaintiff

The Hills Development Company
Plaintiff(s)

vs.

The Township of Bernards, et al.
Defendant(s)

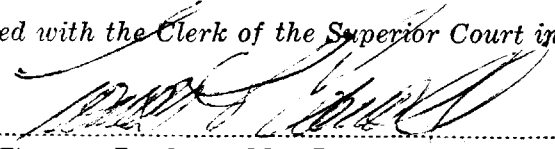
Docket No. L-030039-84 P.W.

CIVIL ACTION

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

Attorney(s) for

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


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

Service of the within

is hereby acknowledged this day of 19

Attorney(s) for

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

Attorney(s) for

PROOF OF MAILING: On January 30 19 86, I, the undersigned, mailed to
Arthur H. Garvin, III, Esq. and James E. Davidson, Esq.
Attorney(s) for Defendants
at 9 DeForest Avenue, Summit, NJ and 43 Maple Avenue, Morristown, NJ respectively
by regular mail, ~~return receipt requested~~, the following:
Notice of Motion, order, letter memorandum, certification and appendix

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

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

Dated: January 30, 19 86 .


Thomas F. Carroll, Esq.

	:	
THE HILLS DEVELOPMENT COMPANY,	:	SUPERIOR COURT OF
	:	NEW JERSEY
Plaintiff,	:	LAW DIVISION-
	:	SOMERSET COUNTY/OCEAN COUNTY
vs.	:	<u>(Mt. Laurel II)</u>
	:	
THE TOWNSHIP OF BERNARDS in the	:	Docket No. L-030039-84 P.W.
COUNTY OF SOMERSET, a municipal	:	
corporation of the State of New Jersey,	:	CIVIL ACTION
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 PLAINTIFF,
THE HILLS DEVELOPMENT COMPANY'S MOTION
TO REVERSE DENIAL OF DEVELOPMENT APPLICATION

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

CONTENTS OF APPENDIX

Document	Exhibit
1. Ordinance 746	A
2. Supreme Court Order of November 14, 1985	B
3. December 12, 1985 Order of Honorable Eugene D. Serpentelli, A.J.S.C.	C
4. Amended Ordinance 746	D
5. Transcript of January 7, 1986 proceedings before Bernards Township Planning Board	E
6. Howard P. Shaw, Esq., correspondence of December 5, 1985	F
7. Thomas F. Carroll, Esq., correspondence of December 6, 1985	G
8. Howard P. Shaw, Esq., correspondence of December 6, 1985	H
9. Ordinance Section 704 (Technical Coordinating Committee)	I
10. Ordinance Section 707 (Applications for Conceptual Approvals)	J



ORDINANCE 746

AN ORDINANCE OF THE TOWNSHIP COMMITTEE
OF THE TOWNSHIP OF BERNARDS AMENDING
SECTION 707 OF THE LAND DEVELOPMENT
ORDINANCE WHICH PROVIDES FOR THE
CONCEPTUAL APPROVAL OF DEVELOPMENT PLANS
FOR RESIDENTIAL CLUSTER DEVELOPMENT
AND PLANNED DEVELOPMENT.

WHEREAS, Section 707(E) of the Land Development Ordinance of the Township of Bernards is contrary to the statutory approval procedures for preliminary and final subdivision and site plan approvals.

NOW, THEREFORE BE IT ORDAINED that Section 707(E) of the Land Development Ordinance is hereby deleted and repealed and is replaced with the following:

"E. Conceptual approval shall not confer any development rights upon the applicant."

2. This ordinance shall take effect immediately upon final passage and publication in accordance with law.

SUPREME COURT OF NEW JERSEY
M-268 September Term 1985
24,780

THE HILLS DEVELOPMENT COMPANY,

Plaintiff-Movant,

v.

O R D E R

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

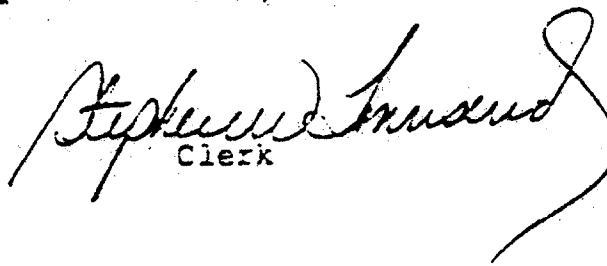
Defendants-Respondents.

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

It is ORDERED that the motion to dissolve the stay
in this matter imposed by the Superior Court, Appellate Division,
is denied; and it is further

ORDERED that the stay shall remain in effect pending the
resolution of the appeal in the within matter now pending before
this Court; provided, however, that plaintiff may make applica-
tion for a modification of this Order or other appropriate relief
based upon any proposed municipal action that might affect the
municipality's ability to satisfy its Mt. Laurel obligations or
upon any other relevant change in circumstances.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice,
at Trenton, this 14th day of November, 1985.


Clerk

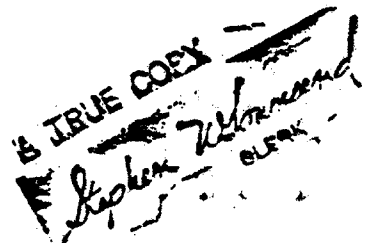
A TRUE COPY

Clerk

Exhibit C



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

THE HILLS DEVELOPMENT COMPANY :	SUPERIOR COURT OF
Plaintiff :	NEW JERSEY
vs. :	LAW DIVISION-
:	SOMERSET COUNTY/OCEAN COUNTY
:	(Mt. Laurel II)
THE TOWNSHIP OF BERNARDS in the :	Docket No. L-030039-S4 P.W.
COUNTY OF SOMERSET, a municipal :	CIVIL ACTION
corporation of the State of New Jersey, :	
THE TOWNSHIP COMMITTEE OF THE :	ORDER
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 by Brener, Wallack and Hill, attorneys for Plaintiff, The Hills Development Company, Henry A. Hill, Esq. appearing, in the presence of Farrell, Curtis, Carlin & Davidson, attorneys for Defendants, Howard P. Shaw, Esq. appearing, and the Court having reviewed the Plaintiff's motion on short notice and the moving and responding briefs, affidavits and exhibits submitted with respect thereto and having considered the arguments of

counsel, it is on this 12 day of December, 1985 ORDERED that Plaintiff's application to modify the stay issued in this matter is granted insofar as the Defendant Township Committee may proceed to adopt an ordinance modifying Section 707 (E) of the Bernards Township Land Development Ordinance provided that such an ordinance expressly provides that any modification of Section 707 (E) shall be inapplicable to ^{the} ~~the~~ Conceptual Approval Application submitted by Plaintiff pursuant to Section 707 of said Land Development Ordinance. on October 17, 1985 and deemed complete on December 3, 1985,

IT IS FURTHER ORDERED that the relief ordered herein shall remain in effect until such time as the New Jersey Supreme Court resolves the Defendant or until this Court resolves the issues raised at the motion on Nov. 22, 1985 Township's appeal which appeal has been certified to the Supreme Court provided, however, that the Defendant Township may apply to this Court to modify the terms of this Order on or about the 90th day of the time frame for application approval set forth in Section 707(D)(1) of the Bernards Township Land Development Ordinance.

Supplemental briefs regarding the issues raised on November 22, 1985 are to be submitted by January 2, 1986,

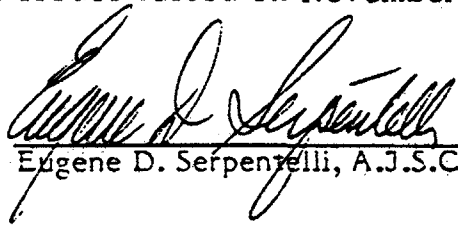

Eugene D. Serpentelli, A.J.S.C.

Exhibit D

Bernards Twp.

AMENDED ORDINANCE #746

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF BERNARDS AMENDING SECTION 707 OF THE LAND DEVELOPMENT ORDINANCE WHICH PROVIDES FOR THE CONCEPTUAL APPROVAL OF DEVELOPMENT PLANS FOR RESIDENTIAL CLUSTER DEVELOPMENT AND PLANNED DEVELOPMENT

WHEREAS, Section 707(E) of the Land Development Ordinance of the Township of Bernards is contrary to the statutory approval procedures for preliminary and final subdivision and site plan approvals

NOW, THEREFORE BE IT ORDAINED that Section 707(E) of the Land Development Ordinance is hereby deleted and repealed and is replaced with the following

"E. Conceptual approval shall not confer any development rights upon the applicant, PROVIDED, HOWEVER, that on November 22, 1985, a judge of the Superior Court of New Jersey, Law Division, entered an order which directs that this clause, and the repeater effected by Township of Bernards Ordinance #746, shall not be applicable to a certain application for conceptual approval submitted by Mita Development Company and pending as of November 22, 1985, said order to remain in effect until such time as either (a) the Supreme Court of New Jersey has rendered its opinion in the pending appeal in the case of Mita Development Company v. Township of Bernards, et al., Docket No. A-122, or (b) a period of 95 days from November 12, 1985, is about to expire in which event, if the Supreme Court has not yet spoken, the Township of Bernards shall have leave on or after the 90th day of such period to apply to the Superior Court of New Jersey, Law Division for further review of such order; and PROVIDED FURTHER that the foregoing proviso shall be of no force or effect and shall be deemed to have never been of any force or effect, immediately upon the occurrence of any one or more of the following events, without need for further legislation: (i) reversal, vacating, or modification of said order by any court of competent jurisdiction; or (ii) issuance by the Supreme Court of its opinion in said pending appeal."

2. This ordinance shall take effect immediately upon final passage and publication in accordance with law.

The foregoing ordinance, having been introduced and passed on first reading by the Township Committee of the Township of Bernards in the County of Somerset on November 26, 1985 and then ordered to be published according to law, will be further considered for final passage and adoption and a public hearing held at a meeting of said Township Committee to be held at the Municipal Building, Collyer Lane, Basking Ridge, N.J. in said Township on December 10, 1985 at 8:00 p.m., when and where, or at such time and place to which said meeting may be adjourned, all persons interested will be given an opportunity to be heard concerning said ordinance.

By order of the Township Committee
James T. Hart
Township Clerk
12/5/85

BERNARDS TOWNSHIP PLANNING BOARD
BERNARDS TOWNSHIP, NEW JERSEY

In the matter of the Concept :
Plan of the Hills Development : **STENOGRAPHIC RECORD**
Company :
----- :

Taken on: Tuesday
January 7, 1986
7:30 p.m.

At: Municipal Building
Collier Lane, Hasking Ridge, N.J.

PEOPLE: JOHN HOAFF, Acting Chairman

MEMBERS OF THE PLANNING BOARD:

GEORGE APGAR
THOMAS DAGGETT
~~EDWARD FARRELL~~
SANDRA J. HARRIS
JEROME KIEWLER
DONALD SEEDON
MASON SISK, JR.

A P P E A R A N C E S:

ARTHUR H. GARVIN, III, ESQ.
Attorney for the Planning Board

MESSRS. BRENER, WALLACE & HILL
BY: GULIET D. FIRSCH, ESQ.
Attorneys for Hills Development Company

ALSO PRESENT:

FRANK MESSINA, Township Engineer
CAROL MACHOINE, Community Planning &
Development Consultant
NANCY FERGUSON, Secretary

MEL WEINER & ASSOCIATES
Certified Shorthand Reporters
1 Maryland Street
Orangetown, New Jersey 07016
(201) 272-7336-7337

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THE CHAIRMAN: I call the meeting to order. Nancy, the roll call, please.

(Whereupon, the roll is called,)

THE CHAIRMAN: In accordance with the requirements of the Open Public Meetings Law of 1975, notice of this meeting of the Planning Board of the Township of Bernards is posted out in the bulletin board in the reception hall, Collier Lane, Basking Ridge, and was mailed to the Bernards News, the Courier News, and the Daily Record of

~~Morristown, all on December 14th, 1985. It was mailed to all of those persons who have requested individual notice and paid the required fee.~~

Such notice is adequate to meet the Open Public Meetings Act and is in no way to be made by the applicants before this Board.

The following procedure has been adopted by the Bernards Township Planning Board. The meeting will be adjourned at 11:00 p.m.

THE CHAIRMAN: We return now to Item No. 5 on this evening's agenda, Hills Developers. We've had some discussions in

1 regard to this particular matter, and I'm
 2 going to turn to our planner, Mr. Koskowitz,
 3 for comments, as I think he has provided it
 4 to the Board in writing. Perhaps you would
 5 like to enlighten those of us, or should I
 6 say some of the new members of the Board.

7 MR. KOSKOWITZ: Thank you, Mr.
 8 Chairman and members of the Board.

9 The Hills Development group has been
 10 before the Planning Board, and the initial
 11 review of the plan took place on March 19th,

12 1985. This was a plan which called for

13 twenty-seven hundred and fifty (2,750) total
 14 housing units of which, at that time,
 15 fourteen-fifty-nine (1,459) were proposed
 16 for single-family, and twelve hundred and
 17 ninety-one (1,291) were proposed as
 18 multi-family. There was a variety of
 19 single-family sized lots.

20 The price ranges ran from one hundred
 21 and forty thousand (140,000) to about three
 22 hundred and fifty thousand (350,000). I
 23 forgot to note that of the twenty-seven
 24 hundred and fifty (2,750), five hundred and
 25 fifty (550) units were slated for lower

income housing.

We had significant problems with the design of the initial presentation. The last comment on my report dated March 26th, 1985 noted that the T.C.C. has some serious questions about the design of the single-family group. We're going to be reviewing this in more detail.

This was, essentially, an introductory presentation to the Technical Coordinating Committee and, based on the comments, the applicant then, essentially, came back in October, specifically - - I'm sorry - - November 21st, 1985 and presented the Technical Coordinating Committee with a concept plan which was dated October 15th, 1985.

That plan consisted of thirteen sheets entitled site plan. There was a number of two "A's" and "P's", and three sheets of "B's". There were thirteen sheets which constituted the complete site plan to be submitted to the Board of Planning and Zoning for review.

1 Coordinating Committee began its review of
2 that plan, and we met with Hills based on
3 this review, both initially and subsequent
4 to that date, to review some of our
5 comments. Those comments are contained in
6 my report dated November 21st, 1985.

7 I'm not going to read the entire
8 report except to point out the highlights
9 and, essentially, what my summary and
10 conclusions were with respect to the plan,
11 which essentially is the same plan before
12 the Board at this time.

13 I will point out that Hills did
14 address some of our comments and made
15 certain changes, but basically the plan is
16 the same plan as shown dated October 15th.

17 Paragraph 2 on page 2, we start off
18 by saying "We basically disagree with the
19 emphasis on single-family detached housing
20 on small lots."

21 I might add that there was an error.
22 The applicant indicated that he proposes
23 essentially attached houses, zero lot patio
24 homes, rather than straight single families
25 on the small lots.

"Hills proposes fourteen hundred and eleven (1,411) single-family homes of which one hundred and fifty-seven (157) will be on lots of approximately twelve thousand (12,000) square feet, and twelve hundred and fifty-four (1,254) will be on lots of five thousand to six thousand (5,000 to 6,000) square feet.

The one hundred and fifty-seven (157) larger lots will occupy about seventy acres for a net density of just over two-per-acre.

The smaller ones, twelve hundred and fifty-four (1,254), will occupy two hundred and fifty-three-point six (253.6) acres."

As a result, one has fourteen hundred and eleven (1,411) units on four hundred and eleven (411) acres, which leaves approximately a hundred acres for the additional thirteen hundred and thirty-nine (1,339) additional housing units.

"As a result of a significant overcrowding of the site because of the great emphasis and large number of single-family units on small lots,

1 multi-family and townhouses would result in
2 a much more efficient use of the property
3 with considerably more open space."

4 I then pointed out that the Hills
5 planner, Ken Mizerny, indicated that their
6 marketing study showed a significant demand
7 for relatively high-priced single-family
8 homes with a lot of amenities and with a
9 closer integration with the outdoor space.

10 We then, in that memo, Mr. Messina
11 and I went into, and he has a separate
12 memorandum, as to some major technical
13 difficulties we had with the site-plan.

14 Again on page 4 I state, "Again, the
15 problem is caused by the very high
16 percentage of single-family lots in the
17 development. It is inefficient and requires
18 an enormous number of roads with concurrent
19 problems of land disturbance, consideration
20 of the topography, etcetera."

21 Then we went into more specifics.

22 My summary, as it relates to the plan
23 concept before the Board, is shown on page
24 6.

25 "In summary, the concept plan is

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severely constrained and overcrowded, in our opinion, because of the large number, fifty-one percent (51%), of single-family homes. A five-point-five (5.5) unit-per-acre density, in another type of housing unit, would result in a much more open layout with considerably more open space and less linear feet of road since many more units can be served by a single road in multi-family than with single-family.

~~The result is an overcrowded site and~~

one which, in our opinion, represents over-use of the land. It also results in an excessive number of cul-de-sacs, poor block layout and many lots with roads on two sides. In fact, in many cases the corner lots have road frontages on three sides.

What the applicant proposes, and has indicated to us, is a type of design which is such as prevalent in the southwest and the West Coast, high density development packed very tightly with small, single-family lots. It is a type of development that has not been introduced in

the east and possibly for good reasons.

It may be better suited, from a climatological point of view, toward the southwest and West Coast, more amenable site conditions, and a lack of available land. In my opinion, it represents poor planning."

The applicant responded. We met again with the applicant on December 17th, 1965 at which time some of the specific comments related to lot layout and access were addressed. I'd like to read that to the Board.

Tom Mizerny has responded to many of the comments in Peter Messina's and my reports. There was discussion on lot configuration, streets and circulation, and the need to convert many of the cul-de-sacs to loop streets. We also talked about zoning and some of the deficiencies in the design, particularly with respect to some lots having roads on three sides."

With respect to some lots having roads on three sides, Mr. Mizerny did indicate that they would respond to comments regarding the problems.

1 "The main purpose of the meeting was
2 to establish some basic principles. The
3 approval of actual design would need more
4 detailed submissions at appropriate scales."

5 Then we went on to talk about some of
6 the other problems.

7 "We also talked about the school site
8 previously recommended for this area. The
9 T.C.C. also discussed with Hills the basic
10 philosophical problems we had with the
11 design, and that, of course, is spelled out
12 in my previous memorandum.

13 It refers to the significant
14 overcrowding of the site because of the
15 great reliance on single-family, zero lot
16 line units on small lots. We suggested that
17 a greater variety of mix, duplex, threplex,
18 and fourplex units, for example, might open
19 up the site.

20 We also suggested that fewer units
21 would also accomplish the same objective.
22 We asked that they reconsider some of the
23 basic design configurations, and we pointed
24 out that there was a need for a better
25 transition between the large lot

1 single-family detached lots in the Passaic
2 Basin and the development in the Raritan
3 Basin."

4 Mr. Chairman, members of the Board,
5 what I think is, that the basic plan that
6 the applicant has submitted, dated October
7 15th, 1985, still represents essentially the
8 same plan, although I point out that he did
9 respond to some of the specific technical
10 deficiencies being noted.

11 I think it represents a deficient
12 plan. I think the plan, as I pointed out in

13 my memorandum, represents an overcrowding
14 and over-utilization of the site, and the
15 basic reason is because of the very large
16 number of small lots with very large
17 structures proposed for those lots.

18 I don't think that kind of plan can
19 be corrected, if you will, by addressing,
20 for example, the question of access, or
21 berms, or that kind of thing.

22 It represents, and I would
23 characterize it as, Band-Aids on a fatal
24 wound. But I think, basically, that because
25 of the great emphasis on the approach of the

1 applicant, the great emphasis on smaller
2 single-family lots, it constrains the design
3 of the site. It prevents, I think, taking
4 advantage of what is an attractive site,
5 obviously a site with some problems, but
6 with great potential.

7 I would recommend that the Board deny
8 the concept plan because I think that
9 conceptually the plan is fatally flawed
10 because of the reasons I set forth in my
11 memorandum.

12 **THE CHAIRMAN:** Thank you. Peter, you

13 also prepared a memorandum dated December
14 the 12th which Harvey has referred to. I
15 know that there are a number of technical
16 issues that you've addressed there, and I
17 know that there are a number of new members
18 of the Planning Board here tonight.

19 If you could, perhaps, please just
20 pick and choose a couple of the items to
21 bring those to our attention.

22 **MR. MESSINA:** I will touch on the
23 items of most concern in my memo. First of
24 all, the application locates areas that are
25 environmentally sensitive, steeper slope

1 areas, wetlands areas. However, in the
 2 loting arrangement, there are homes, and
 3 there are lots placed on these environmental
 4 restrictive lands, over twenty-nine I
 5 counted, maybe more than that, that overflow
 6 into other lots. This should have been
 7 located in a different loting arrangement
 8 set-up.

9 More attention should be focused on
 10 the corner of Mt. Prospect and Layton Road.
 11 It's a wide open field, better suited for a
 12 different type of land use, rather than
 13 straight lots and one families.

14 I would say I agree with Harvey's
 15 comments. We discussed that before. There
 16 are certain things that I would like to
 17 emphasize. They have long cul-de-sacs, and
 18 they should be eliminated. Access points
 19 should be increased, several hundred feet
 20 with access points up the street. The
 21
 22 Extension and other collector roads.

23 They had nine hundred and
 24
 25

1 homes in Bernards. The homes don't lay out
2 very well across the town boundary line,
3 which they should, and various cul-de-sacs
4 should be extended to vacant land to the
5 east.

6 Harvey mentioned that in the initial
7 pages of the Hills Development Plan there
8 were locations for school sites and park
9 sites. That is not shown on it. And,
10 again, at the corner of Somerville Road and
11 Liberty Corner Road it is still labeled as
12 reserved. I still don't know what

13 "reserved" means, and to plan that for
14 better use.

15 There were discussions with Peter
16 Wright, our recreation director, who made
17 several points about open space to be
18 connected with bikeways and bike paths. We
19 need a separate memo from him, which I think
20 the Board has received, but that basic item
21 is of concern.

22 **THE CHAIRMAN:** I think the Board
23 members who are continuing and have been in
24 on discussions that both Peter and Harvey
25 have had with us in the past, I'm just

1 wondering, do any of you have any comments.

2 MR. SEEBOHM: I looked at the plans
3 that we have received. If these are the
4 latest, and I have seen everything that
5 Harvey and Peter have mentioned in those
6 plans, and I think the plans are an
7 abomination. I certainly don't accept them
8 as final.

9 THE CHAIRMAN: Are there any other
10 comments?

11 MR. APGAR: I think we count on
12 Harvey and Peter as our professionals to do
13 a preliminary evaluation, and they have.
14 I've read the project report. There are
15 flaws in many, many areas, and I think we
16 had better take Harvey's advice on this one.

17 MS. HIRSCH: My name is Guliet
18 Hirsch, and I represent the Hills
19 Development Company. It is good to see you
20 again. I wonder if this would be an
21 appropriate time for me to comment?

22 THE CHAIRMAN: If you would like.

23 MS. HIRSCH: I would just like to
24 bring some of our concerns to the attention
25 of the Board.

1 First, let me say that the comments
2 that have been offered by your professionals
3 are comments that are good ones, are ones
4 that we certainly intend to heed to the
5 extent that we can.

6 Just by way of background, I should
7 tell you that at the T.C.C. meeting of
8 December 17th, we sat around and discussed
9 those comments for, I believe, the first
10 time. I'm not sure if anyone had seen those
11 memos from your consultants before, but it

~~12 certainly was our first time, and I took~~

13 pretty good notes from the meeting because
14 it was the first time I have handled one of
15 these applications in Bernard's for awhile,
16 and while I am familiar with the planning,
17 it was a learning experience for me.

18 I went through my notes before I came
19 here tonight and made a list of all the
20 issues that we discussed with the T.C.C. My
21 recollection is that with respect to
22 virtually every issue that was raised we
23 said, "That's a good comment. We'll make
24 that change, or we'll try to show you what
25 our approach is, and explain it to you, and

1 do something further to illustrate it," and
2 with respect to what I hear is Dr.
3 Moskowitz's major problem with this plan, it
4 is the large number of small lot
5 single-family.

6 I know that we agreed that we would
7 make changes in the plan, and towards the
8 end of the meeting there was a discussion
9 about a different housing type, perhaps
10 duplexes and triplexes, which are two and
11 three-unit buildings. They are,
12 essentially, small townhouse structures.

13 We've talked about making those
14 changes, eliminating the single family and
15 small lot single-family, and replacing them
16 with other unit types, and we fully intend
17 to do that.

18 I'm quite surprised that we're here
19 tonight, first of all, because at the T.C.C.
20 meeting of December 17th, I thought we had
21 all agreed that because we wanted to make
22 the revisions and bring them back to the
23 T.C.C., that we would have a further meeting
24 with the T.C.C. before we came before the
25 full Planning Board, and that that T.C.C.

1 meeting would be January 21st, and that the
2 next likely opportunity for us to be before
3 the Board would be January the 27th.

4 At that time we would have had
5 something revised, not the plans you see
6 there. It would have been something
7 different from that, in response to your
8 consultants comments. I'm sorry, but I only
9 got a one-day notice of this meeting
10 tonight, and I'm not able to respond to all
11 of the comments that have been raised. I

~~12 really need my planner and my engineer for~~
13 that.

14 I would just request the Board to put
15 off taking any action on this application
16 until we have a chance to respond to your
17 consultant's comments. We fully intend to
18 do that.

19 I can't guarantee anyone that the end
20 result is going to be something that
21 everyone is pleased with, but it will
22 certainly be something that is technically
23 better than what you see here, and we may
24 learn something in the process.

25 We may come up with something that

1 we're more satisfied with and eliminate the
 2 problem with the small lot single-family, or
 3 reduce it and come up with a plan that still
 4 contains that element that shows it in a way
 5 that it would be less troublesome for you.

6 That's all I would ask, just that you
 7 defer action on this and not act on it
 8 tonight. We do honestly intend to make
 9 revisions to what you have before you
 10 tonight.

11 **THE CHAIRMAN:** Thank you.

12 **MR. GARVIN:** Just briefly, and

13 perhaps Miss Wirth is correct; that there
 14 wasn't a clear understanding about what was
 15 going to happen, and perhaps that's our
 16 fault, and maybe it's just one of those
 17 situations where nothing was spelled out as
 18 clearly as everyone thought it might have
 19 been.

20 Mr. Vice-Chairman, I anticipated that
 21 we were going to meet with the applicant,
 22 and I had forgotten what the January T.C.C.
 23 date was. You mentioned it, but I think the
 24 Chairman, who is not here tonight, felt as a
 25 result of the T.C.C. meeting on December

1 17th, that the applicant and the T.C.C. were
2 of the opinion that this plan was not going
3 to be an effective plan for development and
4 that, therefore, we might as well as not
5 deal any further with it, and what we were
6 going ahead with was going to be a plan that
7 I thought the applicant also agreed was
8 going to be a better and totally different
9 plan.

10 I think Miss Hirsch has just
11 indicated that, in effect, the plan we're
12 going to look at will be decidedly different

13 from the one that we're looking at, and I
14 think Miss Hirsch is correct, and I don't
15 believe at that point there was any
16 discussion about the Board taking any action
17 on the plan tonight.

18 My recollection serves me that that
19 thought was generated by the Chairman on
20 December 17th, and I believe the notice that
21 was provided to the applicant was a
22 telephone call from me trying to reach Mr.
23 Hall at the end of last week. I can't
24 remember if it was Thursday or Friday. It
25 was one of those two days.

1 I think, and again the Chairman isn't
2 here, but I believe that was the Chairman's
3 intention, Mr. Vice-Chairman, and you were
4 here at the December 17th meeting. I think
5 we're saying that this application is, to
6 use Harvey's, Dr. Moskowitz's analogy, not
7 one to be subject to Band-Aid surgery, if
8 you will.

9 What we're really talking about,
10 starting from this point on, is an
11 application that may focus in an entirely

~~12 different direction, and there are some~~

13 significant aspects of it that really mean
14 that it should be treated as a new
15 application from this point on, and I think
16 that's what the Chairman was looking for the
17 Board to consider tonight.

18 THE CHAIRMAN: Are you suggesting to
19 us that we allow them to withdraw their
20 application, or do you feel that we should
21 take some action on this application and
22 send them back to the drawing board?

23 MR. GARVIN: I don't know. I suppose
24 we should ask the applicant if the applicant
25 wants to withdraw the present concept.

1 application.

2 THE CHAIRMAN: Or have us take action
3 on it.

4 MS. HIRSCH: I would have to say
5 there is a third course. It's almost too
6 obvious to comment on.

7 What is happening here is nothing
8 unusual for any kind of development
9 application. You meet with the Board's
10 consultants, and they give you ideas, and
11 you try to respond to them, and your

~~12 response is not necessarily to create a new~~

13 application, so long as that occurs in a
14 public hearing, and I cite the Municipal
15 Land Use Law for support of that concept.

16 If we had been here in front of the
17 public after appropriate notice and hearing,
18 and the hearing was closed, and then we
19 attempted to make changes, or someone wanted
20 changes, I would concede to you that then we
21 had a new application. But that's not the
22 case.

23 We're trying to respond to the good
24 comments of your consultants, and I think,
25 and I don't want to use value-laden words,

1 but I think it's unfair to attempt to do
2 that.

3 I can suggest another option. If all
4 your concern is, or that you expect, and I
5 don't know how you could know; that you
6 merely expect that the revisions will create
7 a substantially different application, well,
8 I don't know that. I don't know if our
9 planners know that.

10 If that is your concern, then I would
11 ask you to waive a portion of your

~~12 ordinance. That, of course, cuts our~~

13 vesting cut if we submit a new application.

14 You know what the issue is that I'm
15 addressing. I'm very concerned with the
16 advice I'm hearing here because it seems to
17 serve no purpose other than to cut off the
18 potential vesting, that's all it is, of this
19 application under your revised ordinance
20 which, by its terms, refers to this specific
21 application.

22 If we were to withdraw, or if you
23 were to deny this application, then we would
24 be coming in with a new application, and it
25 would be called consensual, but it would

1 have no effect. If the Board would act on
2 it, it wouldn't bind us or the Board.

3 MR. GARVIN: If I may, I think
4 counsel is raising points that are hardly
5 appropriate either for me to respond to in
6 argument or this Planning Board because I
7 think you're talking about something that
8 this Board is just not equipped to deal
9 with. I think the position that the Board
10 is espousing, as I have heard, responds as
11 to what Dr. Moskowitz and Mr. Messina have

~~12 said, that is, that this plan is not a plan~~
13 that they are enthusiastic about, to say the
14 least, and that under no circumstances is
15 that plan going to be a plan that they are
16 going to be enthusiastic about, for lack of
17 a better phrase.

18 That's all this Board is talking
19 about in terms of this discussion at the
20 present time.

21 MS. HIRSCH: Well, I believe you've
22 told us what changes you would like to see,
23 and we're honestly going to try to implement
24 those changes.

25 MR. GARVIN: But don't you think, and

1 we're not just talking about - - I mean, I
2 was present at that T.C.C. meeting, and as
3 was the case with Miss Hirsch, we were
4 looking at this for the first time, though I
5 had seen the plan in March, as did Peter and
6 Harvey.

7 MS. HIRSCH: I'm sorry to interrupt,
8 but it seems very curious to me that this is
9 happening. The Board is not running into a
10 time limitation on this application that
11 forces them to act or suffer an approval,

~~12 and if we were, I will tell you that we~~

13 certainly will give you more time. We want
14 to try to work and make this application
15 make sense to everyone.

16 I would also comment that I feel it
17 is a little bit unnatural for us not to have
18 the opportunity to present our witnesses.
19 Certainly the Board has to listen to the
20 expert advice that it gets from its
21 consultants, but the applicant, similarly,
22 should have an opportunity to try to
23 convince the Board that at this point we'd
24 like to make the revisions and then come
25 back with our reports to do that.

1 MR. GARVIN: Except, Miss Hirsch, and
2 I think you're putting your finger on the
3 point. The Board is not under any time
4 constraints. There is no reason to do this
5 except to clearly remove this particular
6 application because the Board and its
7 experts feel it's just so grossly inadequate
8 as a concept plan that they want to see
9 developed on the site. That appears to be
10 what the simple matter is.

11 MS. HIRSCH: What is the difference,
12 ~~from the Board's perspective, of the two~~
13 alternatives; one, allowing us to make these
14 revisions that we've suggested to you that
15 we will make in good faith and do our very
16 best to meet your concerns; that alternative
17 versus the alternative of just dismissing
18 this application, denying it, and forcing us
19 to come in again?

20 I'm trying to understand what use
21 that would serve to the Board.

22 MR. GARVIN: I think they are trying,
23 if I may, and I may be incorrect, and the
24 members should say so if I'm wrong,
25 certainly, but I think they are trying to

1 make it very clear to the applicant that
2 there has got to be a dramatic change, to
3 use the Board's word, "dramatic," change to
4 this conceptual plan before the Board is
5 going to show any enthusiasm about it.

6 THE CHAIRMAN: That's correct.
7 That's at least my opinion, and I would like
8 to underscore that.

9 I think you're drawing from this that
10 we have concluded, with the help of our
11 experts here, that the plan as submitted so
12 far misses the mark that we're suggesting

13 that you go right back and start once again,
14 rather than try to revise the plans that you
15 submitted.

16 MS. HIRSCH: Well, in the event that
17 we do that, will the Board protect us as if
18 we had a new application, in other words,
19 grant us the vesting rights that we would
20 have had under the old application? I'm not
21 being specific about this. Maybe I'm just
22 alluding to something that I am thinking
23 about and not describing.

24 MR. GARVIN: Without arguing the
25 point that is at issue in litigation between

1 this applicant and this Township, the Board
2 will treat this applicant as any other
3 applicant.

4 If you have, as a result of a
5 conceptual application, something that you
6 think you're entitled to, you certainly have
7 that protection. I think we certainly have
8 to say this, alluding to the matter at issue
9 that we're talking about here. In terms of
10 this Board's recent amendment to its
11 conceptual portions of its ordinance, I

12 ~~think we have a disagreement about what that~~
13 means.

14 When counsel says that she believes
15 that there is some vesting as a result of a
16 conceptual application, I can only tell you
17 that, as this Board's legal advisor, I don't
18 believe that's true.

19 MS. BIRSON: There is under your
20 current ordinance. I will concede that we
21 have an issue before Judge Serpenteilli, and
22 depending on how it is decided, you may be
23 right, or I may be right.

24 I suggest to you, let the Judge
25 decide that, and not decide it through the

1 back door, thereby cutting off our
2 legitimate rights to respond to your
3 comments, and make revisions, and try to
4 come in and convince you with our expert
5 witnesses that the revised plan is suitable,
6 meets your ordinance requirements, and it's
7 something that the Board should encourage.

8 What I'm asking is, am I wasting my
9 breath here in the sense that the Board has
10 already determined not to give us that
11 opportunity?

~~12 THE CHAIRMAN: Will you comment?~~

13 MR. MOSKOWITZ: Let me comment. I
14 think Arthur summed up, Miss Hirsch, what
15 the problem is, namely, conceptual approval.

16 The concept plan that has been
17 submitted to the Board will not be approved
18 because if they follow my advice, it will
19 not be approved. I think it requires such a
20 complete reversal of the entire philosophy
21 that underlays the original plan that what
22 you're dealing with is an entirely new
23 concept plan.

24 I think the plan should be rejected
25 as a concept plan and the applicant is

1 urged, as no doubt you will, to come back
2 with a new plan based on the extensive
3 discussions that we've had. Why continue on
4 the books a concept plan which, in fact,
5 will not be the concept plan that is
6 approved, if the Board takes my advice?

7 MR. HIRSCH: Because it's not an
8 unusual thing for an applicant to try to
9 make revisions and respond to experts,
10 whether the revisions requested are major or
11 minor. It's not an unusual thing for a plan
12 ~~to evolve during a review process, and~~
13 that's all that's simply happening here.

14 With all due respect to you, I don't
15 see how you can foresee what will be in that
16 new revised plan and say that it's
17 substantially different, it also will be
18 unacceptable, or make any comments about it
19 until you see it.

20 MR. ROSEWITZ: You're absolutely
21 correct, except that we have seen a plan
22 and, based on what we see, my recommendation
23 to the Board is that a plan based on that
24 underlying philosophy, by my recommendation,
25 is that it be denied.

1 Let me make one other comment. It
2 seems to me, and I defer to both you and
3 Arthur from a legal perspective. If an
4 applicant proceeds during a formal hearing
5 with a preliminary plan, and as a result of
6 reports by agencies, experts, or by the
7 public, and that significant and substantial
8 changes are required, isn't that plan to be
9 treated as a new application?

10 MS. HIRSCH: The key thing is when
11 the public hearing occurs in relationship to
12 the changes, and I suggest to you that if
13 you're then going to argue to me that there
14 is no public hearing required on this
15 application, I suggest that your ordinance
16 requires otherwise.

17 MR. MESSINA: I think we all know
18 that plans get revised during application,
19 E.C.C., technical, planning reviews. I
20 think the idea is that this plan cannot be
21 revised.

22 The plan is inherently poor in terms
23 of layout, access, revisions have got to be
24 made, and essentially it's a new plan that
25 needs to be submitted.

1 MR. KERWIN: Mr. Chairman, we will
2 withdraw to make a decision.

3 MS. HIRSCH: We don't withdraw, and I
4 don't think there's too much else to say
5 that hasn't been said tonight, so we await
6 your decision.

7 THE CHAIRMAN: Would you like to
8 inform us as to what your next move will be?

9 MR. GARVIN: That's an unfair
10 question.

11 THE CHAIRMAN: We want to know. At
12 least I would like some understanding as to
13 where we're going here.

14 MS. HIRSCH: Mr. Chairman, if you
15 would suggest to me that if we submitted a
16 new application and made changes and that we
17 wouldn't lose our vesting, that the second
18 application will have the same effect as if
19 it were a continuance of the first one, then
20 I could suggest to my client and I could
21 recommend to him to come back with a new
22 plan.

23 But I think you're likely to say "We
24 don't have the power to do that," or "We
25 don't want to do that." So in light of

1 that, I think that we need to discuss our
2 strategy. I don't know what it is.

3 MR. KERRIN: We have to make an
4 assessment, Mr. Chairman, of just exactly to
5 what extent we can rely on the Bernard's
6 Township Land Use Ordinance.

7 These things that some of your
8 members find abhorrent in the plan are
9 permitted by your ordinance, strictly
10 permitted, and so based on your
11 determination tonight, should you determine
12 ~~that this plan is denied, we have to make a~~
13 decision.

14 ~~Do we come in with a new concept~~
15 plan, spend whatever money that it takes for
16 the privilege of having one or two T.C.C.
17 meetings and having to fall prey to, whether
18 it be legal maneuvering, positioning, or
19 whether there is an attempt on the part of
20 both parties to come up with the best plan,
21 and we have to make the decision as to what
22 ~~is the principal objective in the process.~~

23 I think, and let me be at least
24 candid enough to say this: that I think
25 there is maneuvering on both sides, and so

1 who shall not cast the first single-family
 2 unit? At some point we have to make a
 3 decision as to which comes first.

4 THE CHAIRMAN: So you would like to
 5 withdraw to make that decision?

6 MR. HEPWYN: No. We elected tonight
 7 not to withdraw our plan. Rather, we're
 8 your humble servants before this Board, and
 9 you will make your decision.

10 You're asking us to tell you before
 11 you make a decision what, thereafter, we
 12 will do. Well, I can't tell you.

13 THE CHAIRMAN: Maybe I am confused
 14 slightly because at each turn, with every
 15 application, we attempt to determine the
 16 next course of action so that we can be
 17 prepared as well as you so that we leave
 18 together with some solid understanding of
 19 what is going to come next.

20 I think what we're trying to do here
 21 is to establish ourselves from this evening,
 22 from the legal standpoint, where we're
 23 going. Maybe I should let Mr. Garvin make
 24 any points - - -

25 MR. HEPWYN: Our objective is going

1 to be to try to reconstitute this plan with
2 certain of those elements that you have
3 before you. I'm not certain that Bernards
4 Township's plan expresses abhorrence to
5 single-family housing nor, for that matter,
6 have I vet to understand Dr. Moskowitz to
7 take the position that in every planning
8 scenario, that small single-family detached
9 housing on small lots is necessarily bad
10 planning.

11 I think what we're talking about is
12 ~~to what extent have we allocated so much of~~
13 that property towards a single product type
14 that, by definition, the remainder is
15 stretched to the limit.

16 Whether or not this Board decides
17 tonight to continue our application and/or
18 deny this application with the hope that we
19 come back with a plan that you find more
20 appealing, I think the only recourse to us
21 is, in any event, that whatever you decide,
22 is to continue to try to take the comments
23 we've had from your staff, the comments
24 we've heard from the Board, and try to come
25 in before this Board with a better plan.

1 It seems to me that however you
 2 choose to handle this, from purely a
 3 procedural basis tonight, it doesn't really
 4 change the only course of action left to us,
 5 obviously. We will not build on the
 6 property unless we come in with a plan that
 7 flies.

8 MR. GARVIN: I don't know how I got
 9 stuck with answering this, and I think I
 10 have already said, in speaking to Gulie,
 11 that we expect the process to go on. We
 12 expect to meet at the T.C.C. meeting,

13 whatever date you said it was, the 21st or
 14 22nd, and if you're ready to be heard on it,
 15 and I'm going to apologize, but I think it's
 16 Monday the 27th, with what the new
 17 constituted plan is, but I don't know. I
 18 think - - -

19 MR. APRIL: Let me ask you this, Mr.
 20 Garvin. Do I understand, and this is kind
 21 of like Super Bowl Sunday. Do you get three
 22 plays and punt every time? Every time we
 23 come in we will find ourselves with the
 24 privilege of paying a seventy-five thousand
 25 dollar (\$75,000.00) application fee.

1 MR. GARVIN: Absolutely not.

2 MR. KERWIN: Then I get a refund.

3 Our intention is to come back with a revised
4 plan. I think what I need to have from my
5 attorneys is some counsel as to what form
6 that will take, what the standing is,
7 clearly.

8 The only thing that is clear to me
9 any more is that we own the property.

10 Exactly what rights, what bundle of rights
11 that constitutes, I suppose we're all trying
12 to find out.

13 MR. GARVIN: Did you learn a lot in
14 Trenton?

15 MR. KERWIN: No.

16 THE CHAIRMAN: Can we cut through
17 this a little bit? Do you have any advice
18 to us, to the Board, at this point?

19 MR. GARVIN: No, I don't. I think
20 it's up to the Board to decide what it
21 wishes to do at this juncture. Do you mean
22 individually?

23 THE CHAIRMAN: No. I am wondering if
24 we need a privileged conversation with you
25 before we move further.

1 MR. GARVIN: You certainly may, if
2 you wish.

3 THE CHAIRMAN: I think we ought to do
4 that. If we could close the meeting for
5 just about ten minutes, I think it would be
6 advisable, and we'll call you all back in
7 perhaps ten minutes or so.

8 It is necessary for this matter,
9 which is permitted under Section 7.3 of the
10 Open Public Meetings Act, 231 of the Public
11 Laws of the State of New Jersey for 1975, to
12 ~~be discussed in closed session in the~~

13 absence of the public, and whereas the
14 Planning Board has determined that in the
15 public interest the results of the
16 discussion can be disclosed to the public at
17 the conclusion of such matters, now
18 therefore it is resolved that the public be
19 excluded at this time.

20
21 (Thereafter, there is

22 a short recess.)

23
24 THE CHAIRMAN: I think we're ready to
25 resume now. We will recognize you once

1 again, Gullet.

2 MS. HIRSCH: I believe we were
3 waiting for a decision from you.

4 THE CHAIRMAN: Then I think you'll be
5 very gratified that we will probably take
6 some action.

7 MS. HIRSCH: It depends on what the
8 action is.

9 THE CHAIRMAN: I think you would like
10 to leave here knowing how we stand about it,
11 and I wonder if the Planning Board members
12 ~~have any other comments on this and, if so,~~

13 would you like to make them at this point,
14 or what is your pleasure?

15 MR. APGAR: Well, I am listening to
16 our professional. He thinks we should
17 reject this conceptual plan, and I would
18 move rejection.

19 MR. SEEBORN: I second it.

20 THE CHAIRMAN: Is there any
21 discussion?

22 (No response.)

23 THE CHAIRMAN: If not, Nancy, will
24 you call the roll, please.

25 THE SECRETARY: Mr. Apgar?

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MR. APGAR: Yes.

THE SECRETARY: Mr. Daggett?

MR. DAGGETT: Yes.

THE SECRETARY: Mrs. Harris?

MRS. HARRIS: Yes.

THE SECRETARY: Mr. Hoare?

MR. HOARE: Yes.

THE SECRETARY: Mr. Seebohm,

MR. SEEBOHM: Yes.

THE SECRETARY: Mr. Kienlen?

MR. KIENLEN: Abstain

THE SECRETARY: Mr. Sisk?

MR. SISK: Yes.

THE SECRETARY: Mr. Farrell?

MR. FARRELL: Yes.


THE CHAIRMAN: Motion carried.

MS. HIRSCH: Thank you.

(Whereupon, the proceedings
are concluded for the evening.)

C E R T I F I C A T E

I, MEL WEINER, a Certified Shorthand Reporter
and Notary Public of the State Of New Jersey,
certify that the foregoing is a true and accurate
transcript of my stenographic notes in the
above-entitled matter at the time and place
aforesaid.


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December 5, 1985

Hon. Eugene D. Serpentelli, A.J.S.C.
Ocean County Court House
Toms River, New Jersey 08753

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

Dear Judge Serpentelli:

This letter is submitted to set forth our objections to the proposed form of Order which was submitted by plaintiff's counsel by letter dated November 26, 1985, but which was not received by us until December 4, 1985. On December 4, I telephoned your chambers to make the court aware of the fact that I had just received the proposed Order. Your law clerk was in court at the time, and so I spoke with your secretary, who told me that the court had received the proposed Order on December 2, and would hold it for receipt of objections through December 9, 1985.

We object to three sepecific aspects of the proposed Order, as follows:

First, the Order recites that "plaintiff's application to modify the stay issued in this matter is granted". We believe that this statement is inaccurate. It was our understanding that Your Honor did not grant or deny the application at all, but rather reserved decision pending submission of supplementary briefs, and that the injunction that Your Honor ordered was in the nature of temporary relief pending disposition of the motion. If our undestanding is not correct, then we are at a loss to see why supplementary briefs would be required. We propose that plaintiff's proposed form of order be modified by deleting the words "plaintiff's application to modify the stay in this matter is granted insofar as".

Second, the proposed Order recites that the Township may

Hon. Eugene D. Serpentelli

Page Two

December 5, 1985

apply to the court to modify the terms of the order on or about the 90th day "of the time frame for application approval set forth in Section 707(D)(1)" of the ordinance. As noted in my letter to the court dated November 27, 1985, there may well be disagreement between the parties as to when that time frame begins to run, and therefore the proposed language is too indefinite to apprise the parties of their rights. We propose that the form of the proposed Order be changed to allow application to the court "on or about 90 days after November 12, 1985," since that was the date that Mr. Hill placed before the court in his oral argument upon this motion. However, we submit that it would be preferable to remove the 90 day provision entirely, and revise the court's ruling to permit the township to apply to the court to modify the terms of the order "at any time that factual or procedural developments warrant such application," as previously suggested in our letter to the court dated November 27, 1985.

Last, the proposed Order omits any reference to Your Honor's order that the parties submit supplementary briefs, and therefore has the potential to create the impression that the motion has, in fact, been formally and finally adjudicated. To avoid such possible misconstruing of Your Honor's ruling, we propose the addition of the following language to the form of the Order:


"IT IS FURTHER ORDERED that in order to assist this Court in making a determination upon the issues raised in the instant motion papers, counsel shall, on or before January 2, 1986, submit supplementary briefs, addressing the issues of (a) the validity of the 10-year vesting provision in the Bernards Township Land Development Ordinance, in light of provisions of the Municipal Land Use Law, and (b) what damage, if any, would result to the developer by virtue of the enactment of the proposed ordinance which would repeal said vesting provision and replace it with a provision which would provide that conceptual approval shall not confer any development rights upon the applicant."

Hon. Eugene D. Serpentelli
Page Three
December 5, 1985

While the above comments are our only objections to the form of the Order, we respectfully continue to note our objection to the substance of Your Honor's ruling of November 22, 1985.

Respectfully yours,

FARRELL, CURTIS, CARLIN & DAVIDSON


By: Howard P. Shaw

HPS:nmp

cc: ~~Thomas F. Carroll, Esq.~~
Arthur H. Garvin, III. Esq.



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** MEMBER OF N.J. & GA. BAR
Δ CERTIFIED CIVIL TRIAL ATTORNEY

FILE NO.

December 6, 1985

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

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

Dear Judge Serpentelli:

This is in reference to The Hills Development Company's recent motion to modify the stay entered in this matter (i.e. the motion to enjoin Bernards Township from deleting the "vesting" language contained in Bernards Ordinance Section 707).

As Your Honor may recall, the defendant Township Committee was restrained from amending §707 of the Township's Land Use Ordinance unless such an amending ordinance specified that the amendment was not applicable to The Hills Development Company. Your Honor also advised that the defendant Township may move to modify Your Honor's restraint at such time as the §707 95-day approval period nears its completion.

Initially, there seems to be some confusion as to when the 95-day approval period begins to run. Pursuant to §707(D) of the Township's ordinances (copy attached), the Planning Board must take action on conceptual plans within 95 days after the certification by the administrative officer of the submission of a complete application. Hills' pending development application was officially deemed complete on December 3, 1985 (see correspondence attached). Therefore, in Hills' view, the 95-day approval process commenced running on December 3rd, not November 12th as alluded to by counsel for defendants in his correspondence to the Court of November 27, 1985. I do not believe that we have ever suggested to the contrary.

The Township has indeed introduced a revised ordinance which indicates that the deletion of the vesting provision is inapplicable to Hills (copy of revised Ordinance #746 attached). The ordinance is scheduled for adoption on December 10, 1985. Unfortunately, the revised ordinance is objectionable. As indicated, the ordinance does contain a provision which specifies that the deletion of the vesting language is inapplicable to Hills' development application. However, the ordinance further specifies that the provision "shall be deemed to have never been of any force or effect...without need for further legislation" if (1) Your Honor's November 22nd Order is revised, vacated or modified; or (2) the Supreme Court issues its opinion concerning the Township's appeal of this Court's denial of transfer.

Thus, should Your Honor's November 22 Order be so much as "modified" by this or any other court, or, should the Supreme Court issue its opinion on transfer prior to either approval of Hills' application or March 8, 1986, the development application will be worthless. This is the very harm Hills sought to avoid when it applied to this Court for relief.

On November 22, Your Honor sought to preserve the status quo. However, the "proviso to the proviso" in Bernards ordinance would immediately alter the status quo upon the occurrence of either of the above two events. Hills believes that Your Honor sought to preserve the status quo pending resolution of the issue of whether Bernards should be permanently enjoined from deleting the vesting language vis-a-vis Hills. If Your Honor has not resolved this issue at such time as Your Honor's order is "modified" or the Supreme Court issues its opinion, Bernards will have successfully divested Hills of the development rights Hills would otherwise acquire pursuant to ordinance Section 707.

Therefore, Hills requests that this Court either: (1) resolve the ultimate issue of whether Bernards can apply the divesting language to Hills prior to the issuance of the Supreme Court opinion; or (2) direct that the divesting language shall not apply to Hills, regardless of any extraneous event, until such time as a court of law decides whether Bernards may apply the deletion of vesting language to Hills. As Your Honor may recall, supplementary briefs concerning the Section 707 issue are due by January 2, 1986.

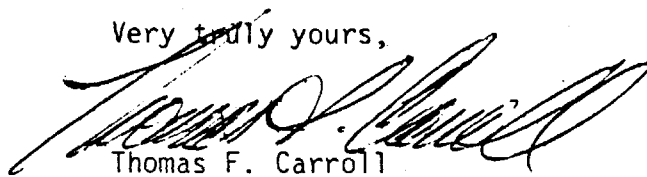
Finally, counsel for defendants requests that Your Honor reconsider the ruling allowing the Township to apply to remove the restraint on or about the 90th day of the approval period set forth in §707(D) of the Township's ordinances since the Planning Board could not otherwise approve the application without prejudicing its rights. In the event that the defendant Planning Board wishes to approve Hills' pending development application, Hills would certainly have no objection to the Township's ability to apply to modify Your Honor's restraint at any time prior to the 90th day of the approval process. Since Hills' pending development application has just recently been certified to be complete, the Township's concern in this regard seems to be quite premature. Nevertheless, it seems that the Township's concern could be alleviated if the proposed form of order were amended to provide that, in the event that the defendant Planning Board represents that it desires to approve Hills' pending development application, the Township may apply to this Court to modify the restraint entered by Your Honor on November 22, 1985.

If the Court wishes to hold a telephone conference with respect to this matter, kindly so advise and I will arrange for same.

The Honorable Eugene D. Serpentelli
Page 3

Thank you for your kind attention to this matter.

Very truly yours,

A handwritten signature in black ink, appearing to read "Thomas F. Carroll", written in a cursive style.

Thomas F. Carroll

TFH/sr

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

environmental assessment at the time of preliminary submission.

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

D. Action by the Township

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



TOWNSHIP OF BERNARDS

COLLYER LANE

P. O. BOX 437

BASKING RIDGE, NEW JERSEY 07920

201--766-2510.

December 4, 1985

Mr. Thomas Hall
Brener, Wallack & Hill
2-4 Chambers Street
Princeton, New Jersey 08540

Re: Hills Development
Conceptual Application

Dear Mr. Hall:

Please be advised that on Tuesday, December 3, 1985, the Technical Coordinating Committee deemed the above referenced application complete.

Very truly yours,

A handwritten signature in cursive script that reads "H. Steven Wood".

H. Steven Wood
Administrative Officer
Planning Board

HSW/PAM/gh

cc: Mr. John Kerwin
The Hills Development
Box 500
Pluckemin, New Jersey 07978

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MARTIN G. CRONIN

December 6, 1985

Hon. Eugene D. Serpentelli, A.J.S.C.
Ocean County Court House
Toms River, New Jersey 08753

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

Dear Judge Serpentelli:

After making a letter of objection dated December 5, 1985, I realized that there is one other objectionable aspect of plaintiff's proposed Order.

The proposed Order would require the ordinance to provide that it "shall be inapplicable to a Conceptual Approval Application submitted by Plaintiff pursuant to Section 107 of said Land Development Ordinance." Your Honor's ruling was that the amendment should be inapplicable to "the pending" Conceptual Approval application of plaintiff, and we submit that "the pending" should be substituted for "the pending" in the proposed Order.

The significance of this amendment is that (a) if the Planning Board might find the application objectionable for any number of reasons, withdraw the pending application, or (b) Hills might not be "the pending" application, and the entire section protected by the instant Order.

I note that my raising the possibility of a rejection by the Planning Board does not impact the instant Order.

Hon. Eugene D. Serpentelli, A.J.S.C.

Page Two

December 6, 1985

been made. On the contrary, I have not discussed the application with any member of the Planning Board and I have no knowledge of which members, if any, have even reviewed the application. I mention it only to point out that the mere fact that Mr. Hill's client has submitted an application does not automatically require that such application be approved. I am sure that this application will receive no different treatment from any other application by any applicant.

Respectfully yours,

FARRELL, CURTIS, CARLIN & DAVIDSON

BY: Howard P. Shaw

HPS:nmp

cc: Thomas V. Carroll, Esq.
Arthur H. Garvin, III, Esq.



704. TECHNICAL COORDINATING COMMITTEE

A. Composition.

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

Township Administrator

Township Engineer

Construction Code Enforcement Official

Zoning Officer

Health Officer

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

B. Meetings.

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

C. Responsibilities.

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

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

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

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

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

705. WAIVERS

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

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

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

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

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

Applicant (2)

Municipal Engineer (1)

Construction Official or Zoning Officer (1)

Tax Assessor (1)

County Planning Board (1)

Health Officer (1)

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

A. General.

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

B. Procedure for Submitting Application for Conceptual Approval.

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

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

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

C. Information Required for Conceptual Approval.

1. General. The conceptual review is intended to provide the applicant with a review and discussion by the Board of major areas of concern such as traffic circulation, access, drainage, environmental impacts, methods of providing utilities, water and sewerage, intensity of development, and project scheduling. Additionally, by providing a review of these items, preliminary and final Development Plan submissions for each of the phases of the development can address site-oriented problems within a previously established framework encompassing the development of the entire tract.

2. Specific Submission Requirements.

- a. A key map of the tract superimposed on a map of a section of the Township showing all roads and streets within one-half mile of the proposed development at a scale of one inch equals not more than 2,000 feet.
- b. Title Block
 1. Name of development, municipality and county.
 2. Name and address of developer.
 3. Scale.
 4. Date of preparation.
 5. Development application number.
 6. Name and address of person(s) preparing the application and the signature, date, seal, and license number.
- c. Name and address of the owner or owners of record, and authorized agent, if any.
- d. Signature of the applicant and, if the applicant is not the owner, the signed consent of the owner.
- e. Graphic scale and north arrow.
- f. Revision box and date of each revision.

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

environmental assessment at the time of preliminary submission.

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

D. Action by the Township

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

- g. That the environmental assessment adequately addresses the impacts anticipated from development of the conceptual plan, or those items which should be addressed more fully at the time of preliminary submission(s).
3. After reviewing the information submitted by the applicant, the Board may take action to grant or deny approval as set forth below:
 - a. Grant approval - If, after reviewing the material submitted by the applicant, the Board is satisfied with the conceptual plan, the Board shall approve the application for conceptual plan approval in writing. Such approval shall set forth those aspects of the conceptual plan which have been reviewed and approved. The items approved will be determined by the extent of information provided by the applicant, but approval shall include:
 1. The total number of dwelling units.
 2. The amount of non-residential development, if applicable.
 3. The circulation pattern.
 4. The utilities plan.
 5. The drainage plan.
 6. Critical areas that will not be developed.
 7. The staging plan.
 8. The environmental assessment.

Approval of preliminary and final Development Plans shall be conditional upon conformance with the approved conceptual plan submitted in accordance with the provisions of this Ordinance.

- b. Deny approval - If, after reviewing the material submitted by the applicant, the Board is not satisfied with the conceptual plan, the Board shall deny the application for conceptual plan approval in writing, setting forth the deficiencies in the plan. Such disapproval shall in no way prohibit the applicant from submitting a new conceptual plan addressing those deficiencies or from proceeding with the submission of a preliminary Development Plan.

E. Effect of Conceptual Approval.

1. Conceptual approval shall confer upon the applicant the right to develop in accordance with those aspects of the conceptual plan approved by the Board as set forth in Section 707C.3.a. above for a period of ten (10) years, except that all preliminary and final approvals for individual development plans shall be obtained within that ten (10) year period.
2. If the approval of the conceptual plan includes a condition to the effect that on-tract and/or off-tract improvements may be constructed prior to the submission of preliminary development plans,

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

F. Modifications to an Approved Conceptual Plan.

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

708. SUBMISSION OF PRELIMINARY PLATS AND PRELIMINARY PLANS

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

A. Procedure for Submitting Preliminary Plats and Preliminary Plans.

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