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Hills Letter to Judge re: Support for Vested
Conceptual Approval

pgs. 7

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February 3, 1986

FILE NO. 3000-0

RUIS - AD - 1986 - 60

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

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

Dear Judge Serpentelli:

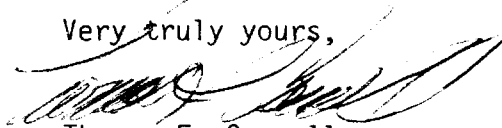
As Your Honor is aware, the above-captioned matter has presented the issue of whether an ordinance provision permitting vested conceptual approval of planned developments is lawful. In this regard, I enclose for the Court's review copies of pertinent sections of the draft Model Subdivision and Site Plan materials prepared by the Center for Urban Policy Research and other consultants to the Department of Community Affairs.

The draft Model Ordinance expressly provides for vested approval of "conceptual" general development plans for planned developments. Article IV, Section E. Although widely disseminated, the enclosed Model Ordinance materials are indeed a draft, "not for quotation" and not yet reviewed or approved by D.C.A. Nevertheless, as submitted to the Court in previous memoranda, the enlightened view of the approval process entails vested conceptual approval of large planned developments. The Model Ordinance materials enclosed herewith provide further support for this assertion.

Finally, it should be noted that the draft Model Ordinance recognizes the wisdom of vested conceptual approval for any planned development. Where the planned development in question is inclusionary and reduction of development costs is a primary goal, the desirability of a vested conceptual provision is further enhanced. Such cost saving devices are expressly encouraged in the Mount Laurel II opinion.

Thank you for your attention in this matter.

Very truly yours,



Thomas F. Carroll

TFC:klp

Enclosure

cc: James E. Davidson, Esq. (w/enclosure)
Arthur H. Garvin, III, Esq. (w/enclosure)

An application for approval of a General Development Plan shall require a public hearing and notice pursuant to the provisions of the Municipal Land Use Law and Section _____ of the Land Development Ordinance of _____
(municipality)

The Planning Board shall, within ninety-five (95) days or within such further time as may be consented to by the applicant, either grant approval of the General Development Plan as submitted or with changes and or conditions, or deny approval.

If the Approving Board grants approval of a General Development Plan, all of the representations and commitments of the applicant, including all maps or plans, together with all conditions imposed by the Approving Board to constitute the General Development Plan shall be mutually binding upon the applicant and the Approving Board for such period of time as shall be set forth in the Resolution of Approval subject to such minor refinement or adjustments as may be appropriate in connection with subsequent approvals of each of the several sections or subdivisions.

2. Preliminary Approval of Major Subdivisions and Site Plans

Following approval of the General Development Plan (or if it is elected to avoid the General Development Plan process or this process is not applicable) the applicant seeking preliminary major subdivision or preliminary major site plan approval shall submit to the Administrative Officer of the Planning Board, or other designee, _____ copies of the materials stipulated in Article Eight of this Ordinance together with an executed application form, the prescribed fee, and evidence that no taxes or assessments are outstanding against the property.

The application shall be declared complete within a 45-day period from the date of its submission according to the provisions of Article Four of this Ordinance.

The Subdivision and Site Plan Committee, if established, shall review the application and comment and make recommendations to the Planning Board.

Upon the submission to the Administrative Officer of the Planning Board, or other designee, of a complete application for a subdivision of 10 or fewer lots or site plan of 10 acres or less, the Planning Board shall grant or deny preliminary approval within 45 days of the date of such submission or within such further time as may be consented to by the developer. Upon the submission of a complete application for a subdivision or site plan of more than 10 lots, the Planning Board shall grant or deny preliminary approval within 95 days of the date of such submission or within such further time as may be consented to by the developer. Otherwise, the Planning Board shall be deemed to have granted preliminary subdivision or site plan approval.

3. Effect of Preliminary Approval of Major Subdivisions and Site Plans

Preliminary approval of a major subdivision and site plan shall, except as provided in subsection d of this section, confer upon the applicant the following rights for a 3-year period from the date of the preliminary approval as specified by the Municipal Land Use Law:

a) That the general terms and conditions on which preliminary approval was granted shall not be changed, including but not limited to use requirements; layout and design standards for streets, curbs and sidewalks; lot sizes; yard dimensions and off-tract improvement; and in the case of a site plan, any requirements peculiar to site plan approval pursuant to the Municipal Land Use Law (C.40:55D-41), except that nothing herein shall be construed to prevent the municipality from modifying by ordinance such general terms and conditions of preliminary approval as related to public health and safety;

Eight of this Ordinance, together with an executed application prescribed fee, and evidence that no taxes or assessments are against the property.

The application shall be declared complete within a 45-day the date of its submission according to the provisions of Article Four or this Ordinance.

If the subdivision or site plan is unanimously approved by at least _____ members of the Subdivision and Site Plan Committee, no further action shall be required of the Planning Board as a whole. If the approval is other than unanimous, or if such committee has not been established, the minor subdivision or site plan shall be referred to the Planning Board for further action. If a variance within the jurisdiction of the Planning Board is requested, the subdivision or site plan must also be referred to the Planning Board as a whole.

The action of the Subdivision and Site Plan Committee or the Planning Board under this Article must be taken within 45 days, or 95 days if a variance is involved, of a complete submission as defined in Article Four of this Ordinance or within such further time as is agreed to by the subdivider and the Board by waiver. Failure of the Planning Board or committee to act within the period prescribed shall constitute minor subdivision approval and a certificate of the Administrative Officer as to the failure of the Planning Board or committee to act shall be issued on request of the applicant; and it shall be sufficient in lieu of the written endorsement or other evidence of approval, herein required, and shall be so accepted by the county recording officer for purposes of filing subdivision plats.

Approval of a minor subdivision shall expire 190 days from the date of municipal approval unless within such period a plat in conformity with such approval and the provisions of the "Map Filing Law," P.L. 1960, c. 141 (C. 465:23-9.9 et seq.), or a deed clearly describing the approved minor subdivision is filed by the developer with the county recording officer, the municipal engineer and the municipal tax assessor as specified by the Municipal Land Use Law. Any such plat or deed accepted for such filing shall have been signed by the chairman and secretary of the Planning Board.

The zoning requirements and general terms and conditions, whether conditional or otherwise, upon which minor site plan approval was granted, shall not be changed for a period of 2 years after the date of minor site plan approval.

E. MAJOR SUBDIVISION AND MAJOR SITE PLAN PROCEDURES

1. General Development Plan

To avoid expensive changes in full engineering drawings required for preliminary plats of Planned Unit Developments and similar classes of significant developments as defined by the Planning Board, an applicant requesting Preliminary Approval of such classes of developments may first obtain approval of a General Development Plan as provided herein and shall thereafter proceed to obtain preliminary and final plan approval(s) of the various section(s) or subdivision(s) that collectively constitute the General Development Plan.

A subdivider requesting General Development Plan approval shall first submit to the Administrative Officer of the Planning Board, or other designee, _____ copies of the materials stipulated in Article Seven of this Ordinance together with an executed application form, the prescribed fee, and evidence that no taxes or assessments are outstanding against the property.

The application should be declared complete within a 45-day period from date of its submission according to the provisions of Article Four of this Ordinance.

A committee of at least three (3) Board members appointed by the Chairman of the Board with the approval of the Board, for the purpose of reviewing subdivision applications prior to action by the Board to determine whether such applications comply with all ordinance provisions and with other duties relating to land subdivision which may be conferred on this committee by the Board through a motion duly adopted and recorded.²⁹

Some municipalities have delegated considerable authority to their subdivision and site plan committee, for instance, allowing this committee to approve minor subdivision or site plan applications -- without further action by the full planning board. The following such authorization is illustrative:

If the subdivision is unanimously approved by the Subdivision and Site Plan Review Committee, no further action shall be required of the Planning Board as a whole. If the Approval is other than unanimous, the minor subdivision shall be referred to the Planning Board for further action.³⁰

A subdivision and site plan committee offers the potential of a designated body which can assist the planning board's subdivision and site plan deliberative functions. The committee has effectively served this role in many localities.

3. General Development Plan. Some New Jersey communities allow for a General Development Plan (GDP) approval for large developments (i.e. PUDs above a stipulated size). It is extremely costly to prepare the full engineering work for such developments for presentation for the usual first part of the formal review stage -- the preliminary review (see Exhibit 1). The GDP is introduced as a stage before preliminary subdivision or site plan review. It is designed to permit the developer of a large scale project to go before the planning board with a description, but not full engineering details of the development, and secure formal approval of basic development parameters such as the total number of residential units and major circulation patterns. Once having secured such approval -- an agreement which cannot be obtained in a binding matter at the informal or preapplication stage -- the developer proceeds with full engineering plans to be considered at length at the preliminary subdivision/site plan review stage.

In one New Jersey community, the township planner described the need for a GDP as follows: "(it) is a more convenient vehicle for the planning board and an applicant to agree on the basic framework with a large tract of land. It's incredibly complicated for the planning board to sit down and grant preliminary approval for 1,000 acres, and it's a waste of time for the developer to go into engineering details on such a vast tract of land."³¹ For these reasons this community approved a GDP process in April 1983 as follows:

An applicant for approval of a Class I or Class II Planned Development may file a General Development Plan . . . The applicant shall first obtain approval of the General Development Plan as provided herein and shall thereafter from time to time, proceed to obtain Preliminary and Final Plan Approval(s) of the various section(s) on subdivision(s) that collectively constitute the GDP.³²

The various actions taken by numerous communities to expedite development processing -- encouraging a pre-application conference, establishing a subdivision and site plan committee, and providing for a GDP -- are incorporated in the Model Ordinance Procedure section (Article Four). The model thus starts with the framework of the New Jersey Municipal Land Use Law and adds the best of national and local refinements.

MODEL SUBDIVISION AND SITE PLAN PROCEDURES-OUTLINE

As stipulated by the New Jersey Municipal Land Use Law, the Model Ordinance assigns major responsibility for subdivision and site plan processing to the planning board and board of adjustment.

The Planning Board must approve of subdivision plats.... The Planning Board must also approve of site plans...; provided that the resolution of the Board of Adjustment shall substitute for that of the Planning Board whenever the Board of Adjustment has jurisdiction over a subdivision or site plan involving variances pursuant to the Municipal Land Use Law (C.40:55D-76b). Where the Board of Adjustment has such jurisdiction, references in this Ordinance to the Planning Board refer as well to the Board of Adjustment.³³

To assist the deliberation of the planning board and board of adjustment, the Model Ordinance provides for the establishment of a subdivision and site plan committee.

If the subdivision or site plan is unanimously approved by at least _____ members of the Subdivision and Site Plan Committee, no further action shall be required of the Planning Board as a whole. If the approval is other than unanimous, or if such committee has not been established, the minor subdivision or site plan shall be referred to the Planning Board for further action.³⁵

A "major" application is reviewed in multiple steps. For a large development, the Model Ordinance provides for a General Development Plan Stage.

To avoid expensive changes in full engineering drawings required for preliminary plats of Planned Unit Developments and similar classes of significant developments as defined by the Planning Board, an applicant requesting Preliminary Approval of such classes of developments may first obtain approval of a General Development Plan as provided herein and shall thereafter proceed to obtain preliminary and final plan approval(s) of the various section(s) or subdivision(s) that collectively constitute the General Development Plan

If the Approving Board grants approval of a General Development Plan, all of the representations and commitments of the applicant, including all maps or plans, together with all conditions imposed by the Approving Board to constitute the General Development Plan shall be mutually binding upon the applicant and the Approving Board for such period of time as shall be set forth in the Resolution of Approval subject to such minor refinement or adjustments as may be appropriate in connection with subsequent approvals of each of the several sections or subdivisions.³⁶

Following the GDP, or if this step is inappropriate or not requested, the applicant of a major subdivision or site plan proceeds to secure first preliminary and then final approval. The Model Ordinance provision in this regard mirrors the stipulations of the state's Municipal Land Use Law.

In sum, the Model Ordinance procedure provisions encompass both the requirements of the Municipal Land Use Law and innovative procedures adopted by numerous municipalities in New Jersey and elsewhere throughout the country.

This same spirit is reflected in the Model Ordinance's specification of the documents to be submitted (Article Eight). The number and kind of documents to be submitted is guided by adherence to statutory considerations -- New Jersey's Map Filing Law -- and provision of information necessary for sound planning. To this end, three categories of information are specified: 1) basic project and plat description (i.e. applicant's name, block and lot number, zoning district, monumentation, signature blocks, etc.); 2) areal setting and environmental information (i.e., key map, location of flood plains, wetlands and other sensitive areas, drainage calculations, perc test and soil boring results etc.); and 3) project improvement and construction information (spot and finished elevations, lighting, landscape and parking plans, sight triangles, etc.).

To further enhance the expeditious and "rational" consideration of development applications, the Model Ordinance's specification of documents to be submitted is keyed to the different development steps described previously in this article. For the pre-application and concept plan stages, only preliminary project and area information, which for the most part is readily obtainable, is required. Examples include: a tax map sheet, north arrow, and topographic features from the U.S.C. & G.S. survey. More detailed information is requested at the minor and major development stages, especially the latter. To illustrate, a tighter contour line specification) is indicated for major subdivision and site plans as opposed to their minor application counterparts. Similarly, major applications require lighting, landscaping, and other detailed construction-related information (Category Three of the submission items) while minor applications do not.

In sum, both the Model Ordinance procedures (Article Four) and specification of items to be submitted (Article Eight) are guided by the objectives of satisfying statutory requirements - the Municipal Land Use Law and Map Filing Law respectively -- and providing an appropriate framework for sound planning and the expeditious review of development applications.