

Hillsborough Lit.

7-19-96

- Letter re. CIS
- encl. CIS

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WRITER'S DIRECT EXTENSION

VIA FEDERAL EXPRESS

July 19, 1996

Emille R. Cox, Clerk-Appellate Division
Superior Court of New Jersey
Richard J. Hughes Justice Center
CN - 006
Trenton, NJ 08625
ATTN: KHERIS F. SEPULVEDA
T1-609-292-6999

RE: In the Matter of the Petition for Substantive Certification of
the Housing Element and Fair Share Plan of the Township of
Hillsborough, Somerset County, Substantive Certification 31-99
Docket No. A-5349-95-T1

Dear Mr. Cox:

Enclosed for filing please find an original and two copies of a
Civil Case Information Statement on behalf of Respondent
Hillsborough Alliance for Adult Living, L.L.P. Kindly charge any
filing fee to our account #0038800 and return a "filed" copy to me
in the enclosed self-addressed envelope.

Also, please note our appearance as counsel for this Respondent.
All future communications regarding this matter should be addressed

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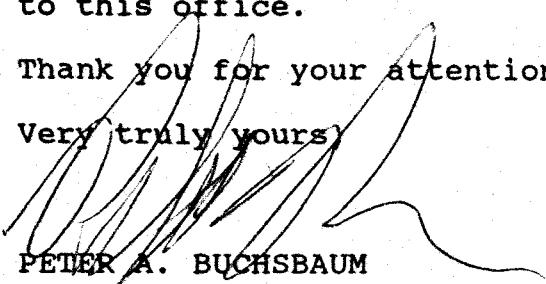
GREENBAUM, ROWE, SMITH,
RAVIN, DAVIS & HIMMEL

July 19, 1996
Page 2

to this office.

Thank you for your attention to the above.

Very truly yours,



PETER A. BUCHSBAUM

PAB/pas
Enclosures

cc: Edward M. Lloyd, Esq. - with encl.
Attorney General Deborah Poritz - with encl.
Frank Yurasko, Esq. - with encl.
Ronald Shimanowitz, Esq. - with encl.

CIVIL APPEAL CASE INFORMATION STATEMENT

TITLE IN FULL: In The Matter of the Petition for Substantive Certification of the Housing Element and Fair Share Plan of the Township of Hillsborough, Somerset County, Substantive Certification 31-99		FOR OFFICIAL USE ONLY Appeal Docket No. A-005349-95-T1 Notice of Appeal Filed: 5/20/96 Date Sent:	
APPELLANT'S ATTORNEY(S): Name	<input type="checkbox"/> Plaintiff Address	<input type="checkbox"/> Defendant Telephone	<input type="checkbox"/> Other (Specify) Client
SEE ATTACHED			
RESPONDENT'S ATTORNEY(S)*: Name	Address	Telephone	Client
SEE ATTACHED			
(*INDICATE WHICH PARTIES, IF ANY, DID NOT PARTICIPATE BELOW OR WHO WERE NO LONGER PARTY TO THE ACTION AT THE TIME OF ENTRY OF THE ORDER/JUDGMENT BEING APPEALED.)			
GIVE DATE AND SUMMARY OF TERMS OF JUDGMENT ENTERED BELOW: SEE ATTACHED.			
Does this determination dispose of all issues as to all parties? If not, has it been certified as final pursuant to R.4:42-2? (If not, leave to appeal must be sought. R.2:2-4, 2:5-6.)		Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Is the validity of a statute, executive order, franchise or constitutional provision of this state questioned: (R.2:5-1(h)).		Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	
GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY: SEE ATTACHED			
TO THE EXTENT POSSIBLE, LIST THE PROPOSED ISSUES TO BE RAISED ON THIS APPEAL, AS THEY WILL BE DESCRIBED IN APPROPRIATE POINT HEADINGS PURSUANT TO R.2:6-2(a)(5). Appellant or cross appellant only. NOT APPLICABLE			

CIVIL APPEAL CASE INFORMATION STATEMENT

APPELLANT'S ATTORNEYS:

1. Attorneys for New Jersey Future, Inc.

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RESPONDENT'S ATTORNEYS:

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4. Attorney for Hillsborough Alliance for Adult Living, L.L.P.

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CIVIL APPEAL CASE INFORMATION STATEMENT

Give Date and Summary of Terms of Judgment Entered Below:

On April 3, 1996, the Council on Affordable Housing (COAH) granted Substantive Certification to Hillsborough Township's Housing Element and Fair Share Plan, acting pursuant to the New Jersey Fair Housing Act, New Jersey Stat. Ann. 52:27D-301 et seq. and N.J.A.C. 5:93. COAH concluded that the Housing Element and Fair Share Plan submitted by Hillsborough Township comported to the standards set forth in N.J.S.A. 52:27D-314 and were consistent with the rules, criteria and policies adopted by COAH and allowed for the achievement of the low and moderate income housing needs of the region.

If Any Circumstance Exist Which Might Justify A Shorter Or Longer Period Of Time For The Filing Of Your Brief And Appendix, Give A Detailed Explanation:

This case involves complex issues which require substantial time and effort for a response. Respondent Hillsborough Alliance for Adult Living, L.L.P. respectfully believes that the development of a cogent, meaningful and in depth response to these issues requires more time than that permitted to Respondent under the Rules of Court.

Give A Brief Statement Of The Facts and Procedural History:

Respondent Hillsborough Alliance for Adult Living, L.L.P. generally adopts the attached statement of facts submitted by Respondent Hillsborough Township with the exception of the last paragraph which speaks directly in the name of the Township.

In addition, we assert that the State Plan is, by its terms, a flexible document whose planning areas are not to be implemented on a site by site basis. For this additional reason, and because of the substantial reliance and vested legal rights of this Respondent based on the 1991 grant to it of general development plan approval, the decision approving inclusion of this site by COAH is valid.

Respondent reserves the right to amend and supplement this response in full as counsel has just been retained in this action and have not had a chance to review all the documents.

CIVIL CASE INFORMATION STATEMENT

GIVE A BRIEF STATEMENT OF THE FACTS AND PROCEDURAL HISTORY

Hillsborough Township is recognized by COAH as a "complying municipality" which has always accepted and respected its Mt. Laurel responsibilities. Indeed, its first cycle obligations were met and exceeded long before COAH rules would have mandated. Its present Petition for Substantive Certification was filed simultaneously with the submission of its housing element and fair share plan without delaying for the 2 year period (from plan submission) permitted by COAH rules. Because Hillsborough Township is such a complying municipality, it is entitled to receive the benefit of maximum flexibility with respect to COAH certification (principle #10-COAH/OSP (Office of State Financing) memorandum of understanding).

In 1990-91, Hillsborough Township set about developing the foundation for this PAC/HCF. Its motivation, as declared in the purpose provision of its Ordinance, was a recognition that:

...it is important to provide housing and to otherwise meet the needs of our elder citizens for health care, support services and recreation in an overall community atmosphere.

Interwoven within this goal was the objective of developing a plan that would meet future Township Mt. Laurel obligations without substantial economic burden on its school system or other municipal support services. Further, development of the PAC/HCF had the added benefit of bringing substantial tax ratables into a municipality sorely lacking in commercial ratables because of the absence of a major highway. Its approach was the classic example of a municipality meeting community needs by taking responsibility for planning its own future (a benefit flowing directly from the principle of Home Rule).

Its plans and objectives were set into motion and finalized between the Spring of 1991 and the Spring of 1992, prior to the adoption of the SDRP in June of 1992. All of its municipal actions were taken in conformance with NJ law at that time and with a recognition of COAH rules and a dialogue with COAH to insure compliance.

The PAC/HCF Ordinance was adopted in June 1991. In December of 1991, the developer received its General Development Plan approval. The Township Master Plan was amended in 1992 to reflect the goal of "establishing the necessary frame work for providing housing, health care, and specific needs for the growing number of senior citizens". A key component of the 1992 Master Plan was the 10 year plan map which included PUDs for adult communities and related health facilities for senior citizens. The land area chosen was on the western fringe of the already developed portions of Hillsborough Township to the west of Route 206 within walking distance of the Municipal Complex, library, police and YMCA. The land area was planned to receive the benefits of both public water and public sewage treatment

facilities. The adopted Master Plan also included specific recommendations for road improvement and road re-alignment. Finally, the Township took part in the State Planning Commission's cross acceptance process and the PAC/HCF was identified as a village center in the SDRP adopted in June of 1992.

All of the elements of what would become the Hillsborough Township Fair Share Plan were in place in 1994 when the Plan was developed and ultimately finalized in early 1995. A 12 year COAH obligation of 482 units was reduced to 160 because of the Township commitment to compliance which resulted in a 315 unit credit. Its 160 unit obligation (plus 7 unit rehabilitation component) would be met through the construction of 95 senior citizen units and 40 non-age restricted rental units within the PAC/HCF which would produce a 24 unit rental bonus credit.

The PAC/HCF itself became further refined in 1995 by virtue of COAH/OSP input and direction. The "final product" included far more than the 136 Mt. Laurel units referenced in Appellant's recitation of facts in its Case Information Statement. The life care community would consist of 3,000 residential units to be developed over an expanded time build-out. 15% or 450 of the 3,000 units would be reserved for Mt. Laurel households. This would not only take care of the second cycle COAH obligation, but a third and fourth cycle obligation as well made up of senior citizen and non-age restricted households as determined by COAH formula. However, the PAC/HCF goes beyond COAH requirements. The Ordinance, General Development Plan approval and Developer's Agreement require one-half of the units to consist of least cost housing (approximately 1,500 minus 450 Mt. Laurel units). Least cost housing is to consist of housing whose prices are stratified between Mt. Laurel values and market values. In addition, the developer will be required to provide certain health care facilities and related support services such as a hospital, public health center, diagnostic center, rehabilitation center, extended care facility, nursing home, elder care center, out patient clinic, intermediate care facility, respite care center, convalescent care facilities or other related medical support facilities.

Hillsborough Township was well aware that much of the PAC/HCF lay in planning area 4 and would need either center designation from OSP or a waiver therefrom from COAH, if the Fair Share Plan was to be approved. However, a careful review of COAH rules and policies simply demonstrated that the Township was entitled to that waiver. Not only did COAH agree, but so did OSP. A review of the COAH compliance report sets forth 12 reasons which cumulatively justify the waiver. Indeed, most of those 12 reasons were cited by Herbert Simmons (OSP Director) in his 1/31/96 letter to COAH Executive Director Shirley Bishop. Not only did he not object to the waiver, but, citing State Plan Policy 20 and the Memorandum of Understanding, he concluded that since the PAC/HCF lay in planning areas 2 and 4, the criteria for planning area 2 applied and thus center designation was not needed. Further, he stated that his recommendation to SPC (State Planning Commission) would be that the areas encompassing the PAC/HCF and its surrounds be re-designated as planning area 2. Whether SPC does this or not, these conclusions lend ample support to the reasonableness of the COAH decision to grant the waiver.

COAH reasoning, both separately and cumulatively, is support of the waiver included:

1. The site was jointly proposed by the developer and the Township pursuant to N.J.A.C. 5:93-5.4(c).

2. The site had water and sewer capacity and accessibility. Public water service would be provided by Hillsborough. The entire tract was within the sewer service area of the collector system of the Hillsborough Township Municipal Utilities Authority (HTMUA). The tract is included in the Somerset County Water Management Plan which is under review by NJDEP. Upon DEP approval, sewage from the tract would be carried to the SRVSA regional waste water treatment plant.

3. Infrastructures may be easily extended to the site.

4. The site is available, approvable, suitable and developable.

5. There are no environmental constraints.

6. The Hillsborough Township Fair Share Plan fosters the development of affordable housing.

7. Not granting the waiver would place an unfair hardship on Hillsborough Township since its ordinance and General Development Plan approval preceded the SDEP.

8. Since the site exists in planning areas 2 and 4, the criteria for planning area 2 applies thus, justifying the waiver and even justifying a re-designation of the tract into planning area 2 according to the report of Herbert Simmons Director of OSP.

9. Pursuant to principle #1 of the Memorandum of Understanding, the matter was submitted to OSP for their direction and guidance and the result was the letter of non-objection from the OSP Director.

10. The PAC/HCF was identified in the SDEP as a village center.

11. OSP has no regulations or guidelines regarding the designation of senior citizen centers.

12. As a complying municipality, Hillsborough Township is entitled to maximum flexibility with regard to the granting of Substantive Certification in accordance with principle #10 of the Memorandum of Understanding.

Contrary to Appellant's position, all of these factors make the granting of the waiver not only reasonable, but compelling.

Despite careful advanced planning by Hillsborough Township and compliance with COAH rules, one objector/developer came forward seeking for his site the increased density afforded to an inclusionary development. As a result of mediation, his objections were addressed and disposed of by COAH as lacking merit. COAH concluded that the objector was not entitled to site specific relief based on N.J.A.C. 5:91-3.6 and the complying municipality was entitled to the widest latitude in determining how and when it would meet its obligation. As to his other objections, COAH concluded that the granting of a waiver from center designation was appropriate and infrastructure could be easily extended and sewer capacity and accessibility existed based on the remaining needs above. It further concluded that the Fair Share Plan did provide for the full Fair Share obligation and the Developer's Agreement demonstrated the developer's commitment to construct the 136 affordable housing units within the COAH 6 year imposed time frame. During the 14 day comment period which followed the mediation report and the compliance report, the objector did not pursue his objections by filing any comments.

After all issues and concerns were resolved and compliance with all COAH rules established, at the 25th hour, Appellant New Jersey Future Inc. (hereinafter "Future") entered the picture. Approximately 2 1/2 weeks before COAH was scheduled to grant Substantive Certification, Future submitted its letter opposing certification. More than a year had elapsed since Hillsborough Township first petitioned for Substantive Certification and the time frame for filing as an objector to the plan had expired some 11 months earlier. Query, on what basis did Future have standing to even advance its position. At what point can a municipality safely rely on its compliance with COAH procedural and substantive rules and be free from another entity's self interest agenda and attacks on a municipality's Fair Share Plan.

Future argued essentially that the PAC/HCF did not yet have DEP sewer approval, was not consistent with the State Plan and did not provide the "reasonable opportunity" (for affordable housing). These were the very same issues that COAH had already considered and resolved favorably to Hillsborough Township. The site was accessible to the HTMUA sewer collector system, the SRVSA had the capacity to treat the sewage and the tract was already included in the Somerset County 208 Plan Amendment awaiting DEP sewer approval. Ironically, "but for" Future's late entry into the fray, DEP sewer approval would be a formality especially in view of the granting of Substantive Certification.

COAH amply considered the issue of the SDRP. Pursuant to principle #1 of the Memorandum of Understanding, OSP input, advice and opinion was actively solicited and incorporated in large part into the COAH decision. There was substantial collaboration and discussion among COAH, OSP and Hillsborough Township in the fall of 1993 in recognition of the existence and goals of the SDRP. By the same token, cognizance was taken of the fact that the Township Ordinance and General Development Plan Approval predated adoption of the SDRP. Of key significance is the fact that the developer had every right to develop the PAC/HCF without ever seeking COAH or OSP acquiescence if the site were not part of the Township Fair Share Plan. Lastly, COAH could not ignore and was obliged to consider that the

PAC/HCF would accomplish the three-fold purpose of providing 3 cycles of affordable housing (450 units), address the need for senior citizen housing and provide substantial rental units. The PAC/HCF met the COAH directives and the goals of the Fair Housing Act in a very meaningful way.

It is clear that the Mt. Laurel mandate is to provide a "reasonable opportunity" for affordable housing, not a guarantee, but a reasonable opportunity. That reasonable opportunity exists here and is well on its way to becoming a reality with DEP sewer approval. That is why COAH granted Substantive Certification. COAH simply did not allow itself to become a tool of Future to be used to sabotage DEP sewer approval and jeopardize the very reasonable opportunity Hillsborough Township had worked so diligently to create.

Hillsborough Township endeavors, here, reflect the highest of ideals and goals. A commitment to the housing, health and lifestyle needs of the regions senior citizens was made. At the same time, the Township took steps to plan for its future development that would allow for growth, deliver stable clean tax rates, not burden the school system or municipal services, address the lifestyle needs of its senior citizens and plan for the productive development of an emerging area of the Township.

The Plan represents a responsiveness of municipal government to the needs of its people. It is what Home Rule is about. The opposition of New Jersey Future and the reasons it advances are a puzzlement to the municipality. The Township is a strong proponent of open space preservation and the protection of the environment. It is also sensitive to the needs of an important segment of its population and the plans of its overburdened taxpayers. Ultimately, it must be allowed the freedom to chart the course of its own community development. How can something conceived and developed to accomplish so much good be made to demonstrate its worthiness "one more time" based on the belated interest of a private environmental group whose issues have already been resolved by COAH with significant input from OSP?

mlh/sgp/4-8