

Faxed ~~the~~ letter to John Payne. Letter ~~re~~ re Trombadori's  
Review of the General Development Agreement for  
the Planning Board.

Pg. 3

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To: John Payne

Fr: Bill

As promised - 2 more pages

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December 3, 1996

VIA FACSIMILE (908) 369-3954  
Planning Board  
Township of Hillsborough  
ATTN: SHIRLEY YANNICH, Planner  
Municipal Building  
Amwell Road  
Neshanic, NJ 08853

Re: Greenbriar at the Village  
Block 11, Lots 1, 6, 10A, 13, 27, 28, 34, 44 and 44A  
Block 12, Lots 26, 27, 28, 29A, 33, 44, 45 and 47  
96-PB-16-MJ (the "Application")

Dear Planning Board Members:

The Friends of Hillsborough have asked me to review the term of the General Development Agreement approved by resolution of the Planning Board on January 2, 1992 in connection with the above-referenced project. The Planning Board subsequently approved an amended GDP on December 7, 1995. The question has been put whether the term of approval of the GDP extends to December 7, 2000 by virtue of the later approval. I conclude it does not. My reasons follow.

The Hillsborough Development Ordinance, Sec. 77-91.1B(3) provides approval of a general development plan remains in effect (for an unspecified term) only upon satisfaction of two conditions: (i) the filing for preliminary subdivision and/or site plan approval; and (ii) the submission of progress reports demonstrating compliance with the terms of the GDP. As a threshold matter, both conditions must be satisfied within five years of GDP approval. Clearly, the Ordinance makes GDP approval a "use it or lose it" proposition.

Here, at the least, the first condition has not been satisfied. A preliminary request for site plan approval was filed earlier this year, but voluntarily withdrawn in September. In effect, there was no filing for purposes of tolling the five year period. Any other conclusion is contrary to the implicit purpose of the ordinance to get developers "off the dime" in moving forward with the buildout of

a GDP. Any developer with GDP approval could easily circumvent the five year limitation by filing and then withdrawing an application for site plan or subdivision approval.

Further, there is no basis to find that the 1995 revision to the GDP extends the five year period beyond the original term which expires on January 2, 1997. The Ordinance provides no authority or discretion to the Planning Board or Township Committee to extend the five year period based on submission or approval of revisions to the GDP. One might argue, perhaps correctly, that a new five year period vests with the filing of a new GDP. However, the argument provides no solace to the developer in the present matter. The 1995 revisions do not constitute a new GDP - the resolution adopting the revisions relies on and incorporates wholesale the submissions and plans supporting the 1991 application (see Resolution of December 7, 1995 at paras. 2, 3, 4, 5, 6 and 7). In short, the 1995 revision hardly stands on its own feet - it is not a "new" GDP.

Thank you for considering these remarks.

Respectfully,

David W. Trombadore

cc: Frank Scarantino, Director  
William R. Sutphen, Esq.  
Friends of Hillsborough, Inc.