

Hillsborough Litigation

7/29/97

Complaint in lieu of prerogative writs

resolution

memo

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P.O. Box 190
Middletown, New Jersey 07748
(732) 741-3900
Attorneys for Plaintiffs

DEPUTY CLERK

U.S. HOME CORPORATION and HILLS-	:	SUPERIOR COURT OF NEW JERSEY
BOROUGH ALLIANCE FOR ADULT	:	LAW DIVISION
LIVING, L.P.,	:	SOMERSET COUNTY
Plaintiffs,	:	
	:	
vs.	:	DOCKET NO. SOM-L-1251-97 P.W.
	:	
TOWNSHIP COMMITTEE OF THE TOWN-	:	COMPLAINT IN LIEU OF
SHIP OF HILLSBOROUGH in the	:	PREROGATIVE WRITS
County of Somerset,	:	
Defendant.	:	

Plaintiffs U.S. HOME CORPORATION, ("USH"), a corporation of the State of Delaware authorized to do business in the State of New Jersey, with offices located at 800 West Main Street, Freehold, New Jersey 07728, and HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.P., a New Jersey limited partnership, with offices located at P. O. Box #720, Neshanic, New Jersey 08853 ("HAAL" and, collectively with USH, the "Plaintiffs"), by way of Complaint In Lieu Of Prerogative Writs against Defendant TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HILLSBOROUGH in the County of Somerset ("Township Committee" or "Defendant") says that:

INTRODUCTION AND BACKGROUND

1. At all times hereinafter referred to, HAAL has been and is the owner, and USH is the contract purchaser, of certain tracts of land in the Township of Hillsborough and County of Somerset (the "Township"), known and designated as Lots 1, 6, 10A, 13, 27, 28, 34, 44 and 44A in Block 11, and Lots 26, 27, 28, 29A, 33, 44, 45 and 47 in Block 12, as shown on the Official Tax Map of the Township, comprised of 760+ acres (alternatively referred to as the "Project Site" or "Petitioners' Lands").

2. The Petitioners' Lands are proposed to be developed as a Planned Adult Community/Health Care Facilities planned development (the "Project") pursuant to §77-91.1 of the Hillsborough Township Code (the "PAC/HCF Ordinance").

3. Subsequent to the adoption of the PAC/HCF Ordinance by the Township Committee in June 1991, upon the application of HAAL to the Planning Board of the Township of Hillsborough ("Planning Bd.") pursuant to the PAC/HCF Ordinance, the Planning Bd. (i) classified the Project as a PAC/HCF on July 18, 1991, and (ii) approved the General Development Plan for the Project on January 2, 1992.

4. The Project Site comprises all of Petitioners' Lands containing approximately 760 acres along Mill Lane from Amwell Road to the Conrail railroad tracks (north to south) and from the proposed County road known as West County Drive to River Road (east to west). The Project is intended to be developed as a senior citizen community of approximately 3,000 houses, with

building densities shown as lower, moderate and upper, together with congregate care, nursing, extended care and hospital, medical, recreation, office, and mixed use, facilities and an eighteen hole golf course.

5. On August 16, 1993, HAAL entered into an agreement with Hunterdon Healthcare Systems, a new Jersey Nonprofit Corporation ("HHS") whose responsibilities include assessing and providing for the healthcare needs of the population served by Hunterdon Medical Center with which it is affiliated (the "HHS Contract"). By the HHS Contract, HHS contracted with HAAL to provide the planning services necessary for the development of the health care facilities components of the Project.

6. On February 1, 1996, HAAL entered into a Municipal Development Agreement with the Township of Hillsborough (the "Fair Share Housing Contract"). By the Fair Share Housing Contract, HAAL agreed to include, as part of the housing components of the Project, low and moderate income housing for age-restricted and non-age-restricted occupancies, on a sale or rental basis.

7. Subsequent to the Original GDP Approval, pursuant to an application made by the Township of Hillsborough (the "Township"), on April 3, 1996, the Council on Affordable Housing ("COAH") granted substantive certification of Hillsborough Township's Housing Element and Fair Share Plan, acting pursuant to the New Jersey Fair Housing Act, N.J. Stat. Ann. 52:27D-301 et seq. and N.J.A.C. 5:93. The Housing Element and Fair Share Plan

are premised on development of the Project on the Project Site, which COAH found to be "available, approvable, suitable and developable" (the "COAH Approval"). On May 20, 1996, New Jersey Future, Inc. filed an appeal from the COAH Approval with the Appellate Division of the New Jersey Superior Court which is currently pending (the "COAH Appeal"). Notwithstanding the COAH Appeal, the COAH Approval remains in full force and effect.

8. On application of HAAL to the Planning Bd. on December 7, 1995, the Planning Board approved an amended general development plan for the Project (the "Amended GDP Approval"), which results in a residential building density of the Project of 3,000 dwelling units, together with an eighteen (18) hole golf course, recreation facilities, a nursing home, extended care, hospital and medical facilities, offices and a congregate care facility.

9. On June 27 and July 18, 1996, USH appeared before the Planning Bd. at workshop sessions, at which time USH advised that it was the contract purchaser of the Project Site and made a presentation demonstrating its experience in the development of planned adult and retirement community projects and an overview of its development plans for this Project to be known as "Greenbriar At The Village".

10. On July 1, 1996, HAAL originally filed, and after a subsequent withdrawal, on December 23, 1996 USH refiled, App. No. 96-PB-40-MJ/PUD with the Planning Board for preliminary

subdivision approval of Phase I of the Project covering Lots 27 and 34 of Block 11 of the Project Site, seeking the subdivision of 25 building lots (the "Phase I Application").

11. Phase I of the Project shall consist of twenty-five senior citizen residential lots along Amwell Road in the Southern portion of Greenbriar at The Village, a planned adult community ("Phase I") and the Phase I Application is currently pending before the Planning Board.

12. At all times hereinbefore and hereinafter mentioned, the Petitioners, Planning Board and the Township all understood, acknowledged and agreed that the Project was to be served by central sanitary sewer collection and treatment facilities ("Sewer Service") proposed to be provided by the Township of Hillsborough Municipal Utilities Authority ("HTMUA").

13. At the present time, the Project Site is not included in the Township Wastewater Management Plan (the "Tp. WMP"). The existing "Wastewater Management Plan for Hillsborough Township, Somerset County, New Jersey" as dated May 10, 1988, prepared by Van Cleef Engineering Associates was approved by DEP on September 8, 1988, prior to the adoption of the PAC/HCF Ordinance and the GDP Approval. The "Amendment of the Wastewater Management Plan for Hillsborough Township, Somerset County, New Jersey" was revised on October 18, 1995, and was approved by DEP on December 14, 1995, but did not include the Project Site.

14. The proposed Somerset County/Upper Raritan Watershed Wastewater Management Plan as prepared by Malcolm Pirnie, Inc., dated November 1994 (the "County WMP"), was submitted to DEP on behalf of the County of Somerset ("Somerset County") for review and approval in November 1994, and does include the Project Site. Deborah A. Bechtel, Principal Environmental Specialist, Water Planning Group, DEP, issued a ten page review report to Malcolm Pirnie, Inc. on November 15, 1995, and Malcolm Pirnie, Inc., on behalf of Somerset County, submitted revisions to the County WMP on or about June 1, 1996. The County WMP is still pending before DEP in the review process.

15. Somerset County is in the process of modifying the County WMP for submission to DEP, which modifications may result in the deletion or conditional deletion of the Petitioners' Lands from the County WMP (the "WMP Modifications").

APPEAL

16. As a part of the revision process by Malcolm Pirnie, Inc., intended to result in the WMP Modifications to the County WMP being submitted to DEP, Somerset County invited comment from the Defendant Township Committee of the Township of Hillsborough concerning the areas of the Township to be included in the County WMP (the "Hillsboro Modifications").

17. At the request of the Township Committee, the Planning Board undertook a study to delineate the areas of the Township to be included in the County WMP in the Hillsboro Modifications and,

at its meeting held on April 3, 1997, the Planning Board adopted three (3) resolutions whereby the Petitioners' Lands as the Project Site, together with other lands were recommended for inclusion within the County WMP through the Hillsboro Modifications.

18. At its public meeting held on June 24, 1997, Defendant adopted a resolution endorsing all of the Planning Board's recommended Hillsboro Modifications to Somerset County except for Petitioners' Lands, a copy of which resolution is annexed hereto as "Schedule A" (the "Affirmative Endorsement").

19. At its public meeting held on June 24, 1997, Defendant adopted a resolution rejecting the Planning Board's recommended inclusion of Plaintiffs' Lands in the Hillsboro Modifications to Somerset County, a copy of which resolution is annexed hereto as "Schedule B" (the "Negative Recommendation").

20. On April 21, 1997, Petitioners filed a Petition with the Township Committee and the Board of Freeholders of Somerset County seeking inclusion of Petitioners' Lands in the County WMP, upon which Defendant has refused to act.

21. On April 21, 1997, Petitioners also filed a Petition with the Department of Environmental Protection of the State of New Jersey ("DEP") seeking inclusion of Petitioners' Lands in the County WMP, which remains pending before DEP.

22. All of Petitioners' Lands were assembled as an integrated real estate parcel to be developed as the Project and serviced with Sewer Service from the HTMUA.

23 The Petitioners' Lands will have no recourse to Sewer Service unless the Project Site is included in the County WMP.

24. The PAC/HCF Ordinance and the Amended GDP Approval expressly contemplated that Sewer Service was to be provided to the Project by the HTMUA.

25. The Fair Share Housing Contract expressly contemplated that Sewer Service was to be provided to the Project by the HTMUA.

26. The COAH Approval is predicated upon Sewer Service to be provided to the Project by the HTMUA.

27. The inclusion of Petitioners' Lands within the County WMP is a condition precedent to the HTMUA providing Sewer Service to the Project.

28. The PAC/HCF Ordinance and the Amended GDP Approval for the development of the Project on Petitioners' Lands are wholly consistent with the New Jersey State Development And Redevelopment Plan adopted on June 12, 1992, which classified Petitioners' Lands in Planning Area 4 as a Village Center.

29. The Negative Recommendation adopted by Defendant is invalid, void, and of no force or effect by reason of the following:

(a) the Negative Recommendation seeks to control the use and development of Plaintiffs' Lands contrary to the Municipal Land Use Law;

(b) the Negative Recommendation is contrary to the express agreements previously entered into by the Township pertaining to the development of Plaintiffs' Lands;

(c) the Negative Recommendation is factually and legally inconsistent with the Affirmative Endorsement;

(d) the Negative Recommendation improperly seeks to interfere with the Planning Board's exercise of its powers in considering the Phase I Application;

(e) the Negative Recommendation constitutes arbitrary, capricious and unreasonable action by Defendant;

(f) Defendant is without lawful power or authority to adopt the Negative Recommendation;

(g) Defendant is estopped from adopting the Negative Recommendation;

(e) the Negative Recommendation is otherwise contrary to law.

WHEREFORE, Plaintiffs U.S. HOME CORPORATION and HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.P. demand judgment against Defendant TOWNSHIP COMMITTEE OF THE TOWNSHIP OF HILLSBOROUGH in the County of Somerset for an order:

(a) reversing and setting aside the Negative Recommendation,

(b) directing Defendant to include Plaintiffs' Lands in the Affirmative Endorsement,

- (c) permanently restraining and enjoining Defendant from taking any further action the intent of which is to prevent the inclusion of Plaintiffs' Lands in the County WMP,
- (d) for such other and further relief as the Court may deem necessary and just; and
- (e) directing Defendant to pay attorneys' fees and costs of suit.

GIORDANO, HALLERAN & CIESLA, P.C.
A Professional Corporation
Attorneys for Plaintiffs

By: 

JOHN R. HALLERAN, ESQ.

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, John R. Halleran, Esq. is hereby designated as trial counsel in the within matter.

CERTIFICATION PURSUANT TO R. 4:5-1

I hereby certify that the matter in controversy is not the subject of any action pending in any court or of a pending arbitration proceeding and that no other action or arbitration proceeding is contemplated.

In addition, I hereby certify that I know of no other party who should be joined in this action.

GIORDANO, HALLERAN & CIESLA, P.C.
A Professional Corporation
Attorneys for Plaintiffs

By:



JOHN R. HALLERAN, ESQ.

Dated: July 29, 1997



Township of Hillsborough

COUNTY OF SOMERSET
MUNICIPAL BUILDING
555 AMWELL ROAD
NESHANIC, NEW JERSEY 08853

TELEPHONE
(908) 369-4313

RESOLUTION REGARDING VARIOUS CHANGES TO THE HILLSBOROUGH TOWNSHIP WASTEWATER MANAGEMENT PLAN, EXCLUDING THE MILL LANE AREA

WHEREAS, on April 3, 1997, the Hillsborough Township Planning Board adopted a resolution recommending changes to the Hillsborough Township portion of the Somerset County/Upper Raritan Watershed Wastewater Management Plan; and

WHEREAS, by resolution of April 22, 1997 the Hillsborough Township Committee requested that the Somerset County Planning Board defer any action on the Planning Board resolution of April 3, 1997 until such time as the Hillsborough Township Committee has a chance to review and endorse it; and

WHEREAS, the Hillsborough Township Committee has reviewed those changes recommended by the Hillsborough Township Planning Board and detailed as Areas 1 through 18 in a June 19, 1997 letter from Township Engineer Frank Scarantino, incorporated herein by reference.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey, that the changes recommended by the Hillsborough Township Planning Board and detailed as Areas 1 through 18 in a June 19, 1997 letter from Township Engineer Frank Scarantino, incorporated herein by reference, are endorsed and the Somerset County Planning Board is requested to include them in the Somerset County/Upper Raritan Watershed Wastewater Management Plan.

I, Gregory J. Bonin, Hillsborough Township Clerk, hereby certify that the above resolution is a true and correct copy of a resolution adopted by the Township Committee of the Township of Hillsborough at a regular and duly convened meeting held on June 24, 1997.

In witness thereof I have set my hand and affixed the seal of the Township of Hillsborough this 25th day of June 1997.



Township of Hillsborough

COUNTY OF SOMERSET
MUNICIPAL BUILDING
555 AMWELL ROAD
NESHANIC, NEW JERSEY 08853

TELEPHONE
(908) 369-4313

RESOLUTION REGARDING THE STATUS OF THE PAC/HCF OVERLAY ZONE IN THE MILL LANE AREA IN THE HILLSBOROUGH TOWNSHIP WASTEWATER MANAGEMENT PLAN

WHEREAS, on April 3, 1997, the Hillsborough Township Planning Board adopted a resolution recommending changes to the Hillsborough Township portion of the Somerset County/Upper Raritan Watershed Wastewater Management Plan; and

WHEREAS, by resolution of April 22, 1997 the Hillsborough Township Committee requested that the Somerset County Planning Board defer any action on the Hillsborough Township Planning Board resolution of April 3, 1997 until such time as the Hillsborough Township Committee has a chance to review and endorse it; and

WHEREAS, as part of that resolution, the Hillsborough Township Planning Board recommended including the PAC/HCF overlay zone in the Mill Lane area in the Hillsborough Township Wastewater Management Plan; and

WHEREAS, U. S. Homes and the Hillsborough Alliance for Assisted Living have applied for preliminary approval of a major subdivision in the Mill Lane area to be known as Greenbriar at the Village; and

WHEREAS, on June 11, 1997, the developer petitioned the New Jersey Department of Environmental Protection for inclusion of their lands in the Somerset County/Upper Raritan Watershed Wastewater Management Plan; and

WHEREAS, both the Hillsborough Township Planning Board and the New Jersey Department of Environmental Protection have clearly defined public processes for reaching their decisions; and

WHEREAS, the Hillsborough Township Committee believes both processes should be allowed to proceed to conclusion.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Hillsborough, County of Somerset, State of New Jersey, that the changes recommended by the Hillsborough Township Planning Board relative to the PAC/HCF zone are overruled and the PAC/HCF zone should not be included in the Hillsborough Township portion of the Somerset County/Upper Raritan Watershed Wastewater Management Plan.

I, Gregory J. Bonin, Hillsborough Township Clerk, hereby certify that the above resolution is a true and correct copy of a resolution adopted by the Township Committee of the Township of Hillsborough at a regular and duly convened meeting held on June 24, 1997.

In witness whereof I have set my hand and affixed the seal of the Township of Hillsborough this 25th day of June 1997.

SCHEDULE B Part 4

SEWER SERVICE AREAS OF CHANGE

	<u>ACTION</u>	<u>ZONE</u>
1.	Delete	R1
2.	Delete	R1
3.	Delete	R
4.	Delete	AG
5.	Add	ED
6.	Add	O2/13
7.	Add	RA
8.	Add	R
9.	Add	R
10.	Add	R
11.	Add to SRVSA only	AG (Duke Estate)
12.	Change	ED
13.	Change	R
14.	Change	ED
15.	Individual treatment works	CDZ/OS
16.	Do not include	CDZ/OS
17.	Do not include	RA
18.	Do not include	R
19.	Defer	PAC/HCF



Township of Hillsborough

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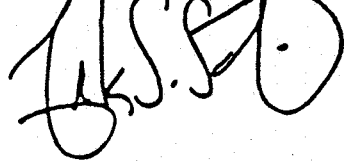


(908) 369-4313

June 17, 1997

MEMORANDUM

TO: Township Committee

FROM: Frank S. Scarantino, Township Engineer 

RE: "SEWER SERVICE AREA MAP OF HILLSBOROUGH TOWNSHIP, 1997"
Proposed Changes for the Somerset County Amendment to the Wastewater Management Plan

Attached to this memo is an exhibit labeled "SEWER SERVICE AREA MAP, TOWNSHIP OF HILLSBOROUGH, 1997". The map has been prepared by the Engineering Department to represent existing and proposed sewer service conditions within Hillsborough Township. It is the result of a review of the 1988 Hillsborough Township MUA Sewer Service Map and discussions with Hillsborough Township Municipal Utilities Authority and the Somerset County Planning Department.

The map utilized five legends and nineteen (19) numerical labels to differentiate the various existing conditions and recommended actions. A more specific explanation follows.

Areas 1, 2, 3, and 4 are proposed to be deleted from Hillsborough Township MUA and SRVSA sewer service areas. These are islands of proposed service which currently do not have infrastructure. There are no plans to sewer these areas in the future and current zoning does not warrant sewers.

Areas 5 thru 9 are proposed additions to Hillsborough Township MUA and SRVSA service area.

- Area 5 is currently zoned for Economic Development (ED). Other portions of this zone and the adjacent General Industrial Zone are already in the sewer service area. This property is wedged between railroad lines and crossed by PSE&G high tension lines. Sewer service is needed to support the current zoning.
- Areas 6, 8, and 9 are areas of existing Office (O2), Industrial (I3) or Residential (R) development that are currently on septic systems, many of which are quite old. Overall, these areas will in time need to be serviced by the Hillsborough Township MUA system.
- Area 7 is zoned RA but with existing court mandated density which averages 1.5 units per

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Areas 10 thru 14 are areas of existing private sewer service which are being changed to SRVSA.

- Areas 10, 12, and 14 are the Valley Road Sewerage Authority, the VA depot and the GSA depot respectively, which are all expected to be added to both Hillsborough Township MUA and SRVSA.
- Area 11 is the Duke Estate which will remain a private authority (not part of Hillsborough Township MUA).
- Area 13 will remain part of the Manville Boro Sewer Service Area.

Area 15 is the Royce Brook Golf Course which is to remain an individual treatment works. This makes it a part of Hillsborough's Wastewater Plan, but not part of the Hillsborough Township MUA or SRVSA system.

Area 16, (between Hamilton Road to the North and Amwell Road to the South) is to remain outside the sewer service area. These lands are currently zoned for Corporate Development (CDZ) and Office (O5). The Planning Board is currently studying the area in order to determine rezoning parameters.

Area 17 is to remain outside the sewer service area. The area is currently zoned for two acre residential lots (RA) and does not require sewers.

Area 18 is to remain outside the sewer service area. The lands are zoned for one acre Residential Development (R) but are currently being studied by the Planning Board for rezoning parameters.

Area 19, is the area of the PAC/HCF overlay zone. At this time the Township defers any action regarding this area.

FSS:srp

cc: John D. Middleton, Township Administrator
Gregory J. Bonin, Township Clerk

NO-RECORD B Pq 4/17