

Hillsborough Litigation

8/26/97

Brief in support of motion for leave
to intervene

Certification of Judith Glassgold in
support of motion to intervene

Friends of Hillsborough plan for
affordable housing

pg 35

HI000052B

RECEIVED/FILED
SUPERIOR COURT OF N.J.
DEPUTY CLERK

97 AUG 26 AM 11: 24

U.S. HOME CORPORATION and,
HILLSBOROUGH ALLIANCE FOR
ADULT LIVING, L.P.,

Plaintiffs,

vs.

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF HILLSBOROUGH in the
County of Somerset,

Defendant.

: SUPERIOR COURT OF NEW JERSEY
: LAW DIVISION
: SOMERSET COUNTY
: DOCKET NO. SOM-L-1239-97 PW

: Civil Action

BRIEF IN SUPPORT OF MOTION FOR LEAVE TO INTERVENE

On the Brief:
David W. Trombadore, Esq.

TROMBADORE, SEEL & TROMBADORE
A Professional Corporation
33 East High Street
Somerville, NJ 08876
908-722-7555
Attorneys for Friends of Hillsborough, Inc.

8/26/97

This matter arises out of plaintiffs' attempts to obtain wastewater sewer approvals for a proposed residential development in Hillsborough Township now commonly known as Greenbriar at the Village.¹ Plaintiffs propose to develop a 3,000 unit planned adult community, or "PAC", on a 750 acre site in the northwest corner of the Township.² The proposed site presently consists of farms and large lot single family homes. The site has little infrastructure, and minimal wastewater sewer service. The PAC will add at least 6,000 new residents to the Township and will require extension of wastewater sewer service and other infrastructure to and around the proposed site.

The Township Committee, Hillsborough's governing body, recently resolved to recommend that Somerset County exclude the Greenbriar site from the County's wastewater management plan ("WMP") for the Upper Raritan Watershed. The plan currently is pending before the New Jersey Department of Environmental Protection ("DEP"). Plaintiffs now seek positive injunctive relief to require the Township Committee to endorse the site for inclusion in the County WMP. Plaintiffs implicate the Township's actions not only with respect to the WMP, but also with respect to local land use ordinances and the Township's fair share housing obligations.

Friends of Hillsborough, Inc. ("Friends") seek to intervene as long-standing objectors to the Greenbriar project. As explained more fully below, Friends do not believe the Township will adequately represent the interests of Friends or of the public at large in this action.

¹ Plaintiff Hillsborough Alliance for Adult Living, L.P., formerly PAC/HCF Joint Venture, is the owner of the subject property, and has been the applicant for general development plan approval since 1991. Certification of David W. Trombadore ("Tr. Cert.") at ¶ 26, Exhs. AA and BB. Plaintiff U.S. Homes has represented itself as the contract purchaser of the property at least since August, 1996. Tr. Cert. at ¶ 27, Exh. CC.

BACKGROUND

Given the broad sweep of the matters asserted in the Complaint, and Friends' involvement in these matters, it is necessary to give the Court some background regarding the Greenbriar project, and the manner in which it implicates the wastewater management process, the Township's land use process, and the Township's fair share housing obligations.

The Wastewater Management Process.

Extension of wastewater sewers requires approval at the state level by the New Jersey Department of Environmental Protection ("DEP") pursuant to the Water Quality Planning Act, N.J.S.A. 58:11A-1 et seq., and associated regulations, N.J.A.C. 7:15-5.1 et seq. Presently, there are two avenues available to the developer to obtain DEP approval. The developer can petition DEP directly for amendment of the areawide wastewater plan to include the proposed site. N.J.A.C. 7:15-3.4. In addition, the designated planning agency responsible for the areawide plan can include the site in its wastewater management plan ("WMP"). N.J.A.C. 7:15-5.1, 5.3.

In March, 1993, DEP formally recognized the transfer of wastewater management responsibility for the area known as the Upper Raritan Watershed to the Somerset County Board of Chosen Freeholders. Certification of David W. Trombadore (Tr. Cert.) at ¶ 6. This area includes the Township of Hillsborough.³ The County assumed authority for wastewater planning previously held by other agencies, including the Hillsborough Township Municipal Utilities Authority ("MUA").⁴ The

² See sewer service area maps showing the proposed site at Tr. Cert. at ¶¶ 5, 9, Exhs. B and K.

³ The area includes Bedminster, Bernardsville, Branchburg, Bridgewater, Far Hills, Hillsborough, Manville, Millstone, Peapack-Gladstone, Raritan, Somerville and Warren. Tr. Cert at ¶ 6, Exhs G, H.

⁴ The County assumed responsibility from Bedminster Township, Bernardsville Borough, Branchburg Township, Far Hills Borough, Hillsborough Municipal Utilities Authority, Manville

Freeholders requested that the Somerset County Planning Board develop a WMP to revise and consolidate existing WMPs in the area. Tr. Cert. at ¶ 6. The existing Hillsborough Township WMP was approved in 1988, Tr. Cert. at ¶ 4, Exh. A, and remains in effect until adoption of the County WMP. N.J.A.C. 7:15-5.2. Hillsborough's 1988 WMP does not include the proposed Greenbriar site in its sewer service area. Tr. Cert. at ¶ 5, Exh. B.

The record concerning the County WMP does not support plaintiffs' contentions that the Township has irrevocably committed itself to inclusion of the Greenbriar site in the County WMP. In 1993, the County Planning Board convened an Advisory Committee consisting of representatives of the affected communities. Tr. Cert. at ¶ 6. The Hillsborough MUA was Hillsborough's representative to the Committee until 1997. Tr. Cert. at ¶¶ 7, 19. From 1993 to 1995, Harry Smith, chairman of the MUA, was the representative to the Committee; from 1995 to 1997, Gail Quabeck, Executive Director of the MUA, served as representative to the Advisory Committee. Tr. Cert. at ¶ 7. The Township Committee did not replace the MUA until January, 1997. Tr. Cert. at ¶ 19. Throughout this period, Mr. Smith was both chairman of the MUA and a principal architect in the development of the PAC site. Tr. Cert. at ¶¶ 7, 28, Exhs. F and DD. Indeed, Mr. Smith is president of Hillsborough Alliance for Adult Living, Inc., general partner of plaintiff Hillsborough Alliance for Adult Living, L.P. ("HAAL"). See infra note 10. There is no resolution of the Township Committee approving or endorsing the MUA as representative to the Advisory Committee. Tr. Cert. at ¶ 7.

In January, 1994, the County Planning Board circulated an initial draft WMP to the Hillsborough Planning Board. The draft did not include flow calculations for the PAC site. Tr. Cert. at ¶ 8, Exh. G. The next draft, circulated in November, 1994, did

Borough, Millstone Borough, Peapack-Gladstone Borough, Somerset Raritan Valley Sewerage

contain flow calculations for a proposed 10,000 unit PAC. Tr. Cert. at ¶ 8, Exh. G. There is no record that the Township Committee, the Township Planning Board or the MUA officially endorsed inclusion of flow calculations for the PAC in the November draft. Tr. Cert. at ¶ 8.

Meanwhile, Hillsborough proceeded with a separate amendment to the *existing* WMP. In July, 1994, the Township Engineer sought and received the permission of the County Planning Board to include the PAC site as a "minor change" to the existing WMP. Tr. Cert. at ¶ 9, Exhs. I, J. Apparently in August, 1994, Robert Heibell⁵ of Van Cleef Associates submitted to DEP a proposed amendment to include the PAC site in the existing WMP. Tr. Cert. at ¶ 11, Exh. L.⁶

DEP reviewed the proposal and requested the endorsement of the Township Committee. Tr. Cert. at ¶ 13, Exh. N. The Township Committee endorsed the amendment by resolution dated July 26, 1995. Tr. Cert. at ¶ 14, Exh. O. The Township Committee then withdrew its endorsement on August 22, 1995, following the filing of objections with DEP on behalf of another developer. Tr. Cert. at ¶¶ 15-16, Exhs. P, Q. The Township Committee stated:

[T]he Township Committee does not believe it to be appropriate to sponsor a Wastewater Management Plan Amendment involving individual property owners where objections have been filed since such issues essentially involve disputes between the objector and the developer.

Tr. Cert. at ¶ 16, Exh. Q. The Township Committee resolved to:

Authority, and the Warren Township Sewerage Authority. Tr. Cert. at ¶ 6, Exhs. G, H.

⁵ At the time, Mr. Heibell also was HAAL's engineer in connection with HAAL's General Development Plans discussed below. Tr. Cert. at ¶ 26, Exhs. AA and BB.

⁶ The Township Committee did not officially resolve to engage Van Cleef to do so until December, 1994. Tr. Cert. at ¶ 12, Exh. M.

[Leave] the individual property owners to either continue to pursue their independently filed requests for plan amendments or to allow such plan amendments to proceed to NJDEPE for review in accordance with the Somerset County/Upper Raritan Watershed Wastewater Management Plan dated November 1994, of which the respective amendments are a part.

Id.

The County WMP proceeded apace. On August 26, 1996, Friends lodged an objection with DEP to the extension of sewers to the Greenbriar site. Tr. Cert. at ¶ 17, Exh. R. By resolution dated September 25, 1996, the Township Committee requested that the County Planning Board defer consideration of the Hillsborough portion of the WMP.⁷ Tr. Cert. at ¶ 18, Exh. S. The resolution specifies that no amendment to the Hillsborough portion of the WMP was to be endorsed without the consent of the Township Committee. On January 28, 1997, the Township Committee asked the Planning Board Chairman to serve as the Township's representative to the County Advisory Committee. Tr. Cert. at ¶ 19, Exh. T.

The Chairman promptly abused the privilege. On April 3, 1997, at the Chairman's urging, the Planning Board adopted two resolutions. See generally Certification of Judith Glassgold, Psy. D., ("Gl. Cert.") at ¶ 8. The first established a set of principles guiding proposals for extension of sewers; the second recommended extension of sewers to the Greenbriar site. Tr. Cert. at ¶ 20, Exh. U. The Chairman sent the resolutions directly to the County Planning Board. Id.

The Chairman's conduct was precipitous and contrary to ordinary procedure: The Chairman did not permit public comment prior to the Board's action; the Planning

Board agenda listed the County WMP only for *discussion*, not action; and neither resolution was introduced or discussed at any prior plenary meeting of the Planning Board. Gl. Cert. at ¶ 8. In the space of a few minutes, and without the benefit of prior discussion among its members or of public comment, the Board not only adopted a set of principles of substantial public importance, but also applied them to resolve a long-standing issue of even greater controversy and public concern. The Chairman clearly had prejudged these issues and used his position to push them through the Board.

The Township Committee agreed. On April 22, 1997, the Township Committee suspended the Planning Board's action. Tr. Cert. at ¶ 21, Exh. V. At the request of the Mayor, the Chairman of the Planning Board recused himself from further consideration of the Greenbriar project at the Planning Board's May 1st meeting. Gl. Cert. at ¶ 10. On June 24, 1997, the Township Committee reversed the Chairman and requested that the County not include the PAC site in the WMP. Tr. Cert. at ¶ 22, Exh. W.

The County WMP now pending before DEP does not include the Greenbriar site. However, on April 28, U.S. Homes filed a petition with DEP requesting inclusion of the Greenbriar site. Tr. Cert. at ¶ 23, Exh. X. The U.S. Homes application also is pending before DEP. Friends requested that the Township Committee oppose the U.S. Homes application at the June 24 meeting, but the Township Committee declined. Gl. Cert. at ¶¶ 7, 12.

The Land Use Element.

Plaintiffs claim the Township through its land use process has committed itself to support inclusion of the Greenbriar site in the County WMP. Neither the

⁷ This appears to have been the Township Committee's *first* public resolution regarding the County WMP. Tr. Cert. at ¶ 18.

Township's ordinances nor its actions regarding the Greenbriar site support this position.

From a land use perspective, the Greenbriar project is a massive subdivision. The Planning Board has authority for subdivision approval and site plan review. See N.J.S.A. 40:55D-25(a)(2). The Planning Board acts pursuant to zoning ordinances adopted by the governing body. N.J.S.A. 40:55D-62. Zoning ordinances establish permitted uses, densities, etc.

The municipal governing body is responsible for adoption of land use ordinances under the Municipal Land Use Law. N.J.S.A. 40:55D-62. The Township Committee adopted a planned adult community ordinance in June 1991. Development Regulations, Chapter 77, Township of Hillsborough Code, § 77-91.1. The ordinance was amended in 1994 and 1995. Tr. Cert. at ¶ 24, Exh. Y.

Under the ordinance, an application for development of a PAC requires four approvals: (1) Classification as a PAC by the Planning Board; (2) general development plan ("GDP") approval; (3) preliminary subdivision and/or site plan approval; and (4) final subdivision and/or site plan approval. Tr. Cert., Exh. Y at § 77-91.1B(1). GDP approval is conditioned on, among others, the applicant's showing of availability of public sewers. Tr. Cert., Exh. Y at § 77-91.1C(3)(d).

The Planning Board classified the present project as a PAC on July 11, 1991. Tr. Cert. at ¶ 25, Exh. Z. The Planning Board approved an initial GDP for the project on January 2, 1992, and an amended GDP on December 5, 1995. Tr. Cert. at ¶ 26, Exhs. AA, BB. Sewer approvals were not in place at the time either GDP was granted. In other words, the Planning Board approved the GDP on both occasions despite the applicant's failure to comply with the requirements of the ordinance. Of course,

neither the PAC ordinance nor the GDP approvals placed any burden on the Township to support sewer approvals.

Further, plaintiffs must have known that the Greenbriar proposal would require a massive shift in Hillsborough's existing zoning policies. Under the ordinance, a PAC is permitted as an overlay zone in virtually any residential zone in the Township. Tr. Cert., Exh. Y at § 77-91.1D(1). The Greenbriar site is located in the AG (agricultural) zone, with a minimum lot size for detached single family homes of three acres and for clustered single family homes of two acres. Tr. Cert., Exh. P at 2. The first GDP included in excess of 10,000 units⁸ at a gross density of over 13 units per acre; the revised GDP, some 3,000 units, or four per acre. Tr. Cert., Exh AA, Exh. BB at 4.

Not only is the site in a low density zone, but it also is located in the northwestern portion of the Township. The Township has protected this area from high density development. In 1989, the Township opposed the application of the Elizabethtown Water Company to extend water lines under Amwell Road to provide service to portions of Hunterdon County. In support of its opposition, the Township claimed the extension would lead to the rapid development of 12,000 to 15,000 homes in the western portion of the Township.⁹ The Township further claimed such development would be inconsistent with the Township Master Plan, the County Master Plan and the draft State Redevelopment Plan,¹⁰ all of which designated the western areas of the Township for low density development and agricultural uses. Tr. Cert. at ¶ 17, Exh. R (see Verified Complaint attached to Exh. R at ¶ 8).

Indeed, the Greenbriar project is at odds with both the County Master Plan and the State Development and Redevelopment Plan ("SDRP"). Both the County plan and

⁸ See Tr. Cert., Exh H, Table 1, note 20 (reflecting in excess of 10,000 units for the PAC).

⁹ Amwell Road forms a rough southern boundary to the Greenbriar project.

the SDRP are relevant – not only has the Township relied on both to protect the area, but the Township’s Master Plan also must include a policy statement indicating the relationship of proposed development to each. N.J.S.A. 40:55D-28(d).

The County Master Plan shows the proposed site as primarily “rural preservation.” Tr. Cert. at ¶ 30, Exh. FF. The Master Plan describes this category as follows:

The purpose of this category is to preserve a rural land use pattern in portions of the County and to protect natural resources and the open character of the area These are areas with a predominance of low-density, single-family and estate uses, large areas of agriculture, headwater areas and no major public facilities. The recommended density, therefore, is quite low and uses such as agricultural operations, large-lot, single-family, estate type planned development, spacious institutional and other open space oriented uses are strongly encouraged. Accordingly, capital intensive improvements involving major highway widenings, sewer interceptors and other major public utilities should be directed away from these areas because it is not cost efficient and induces additional development activity.

Id.

The SDRP was approved by the State Planning Commission pursuant to N.J.S.A. 52:18A-196 et seq. in 1992. The purpose of the SDRP was, among others to “Protect the natural resources and qualities of the State, including, but not limited to, agricultural development areas . . .and areas with scenic, historic, cultural and recreational values.” N.J.S.A. 52:18A-201.

¹⁰ Indeed, the Township accused the applicant of attempting to evade the requirements of the

The SDRP identifies five primary planning areas on a statewide basis: Metropolitan Planning Area (Planning Area 1); Suburban Planning Area (Planning Area 2); Fringe Planning Area (Planning Area 3); Rural Planning Area (Planning Area 4); and Environmentally Sensitive Planning Area (Planning Area 5). Tr. Cert. at ¶ 31, Exh. GG. The vast majority of the Greenbriar site is in Planning Area 4. Tr. Cert., Exh. P at 3.

The SDRP sets policy objectives for the various Planning Areas. With respect to Planning Area 4, these include:

- (1) Land Use: Enhance agricultural viability and rural character by guiding development and redevelopment into Centers. Ensure that the location, pattern and intensity of any development in the Environs maintains existing low-density development patterns that complement the rural character and landscape, and maintain large contiguous areas of open space.

Tr. Cert., Exh. GG at 113. The SDRP's policy with respect to Planning Area 4 is clear - development should be guided into Centers.

The "Centers" concept is critical to the SDRP - the plan directs development to designated Centers to avoid development "sprawl". *Id.* at 4-5. The SDRP identifies five types of Center: Urban Centers; Towns; Regional Centers; Villages; and Hamlets. *Id.* at 93 - 100. The SDRP identifies existing and planned Centers in each category. *Id.* at 140 - 149. All identified Centers may petition the State Planning Commission ("SPC") for Center designation. The Centers Designation Process, Document #99, New Jersey Office of State Planning (February, 1993).

draft State Plan by pushing through the project in advance of formal adoption of the Plan.

The SDRP identifies the Greenbriar site as a "planned", not an existing village. Tr. Cert., Exh. GG at 147. Indeed, as it presently exists, the site does not meet the criteria for an existing village. *Id.* at 98. The distinction between "planned" and "existing" is significant. With regard to Planning Area 4, the SDRP states that "growth should be guided to *existing* Centers before *planned* (new) Centers. *Id.* at 112 (emphasis added).

Neither the Township nor plaintiffs have petitioned the SPC for Center designation for the Greenbriar site. Further, the Township has not engaged in any meaningful review to determine whether the proposed PAC is consistent with the SDRP. Rather, the Township and plaintiffs rely on the conclusion of the Council of Affordable Housing ("COAH") that Center designation may be waived in this case. As discussed below, those findings are flawed.¹¹

The Affordable Housing Element.

Plaintiffs contend the substantive certification granted the Township by COAH, and the corresponding Municipal Development Agreement entered into by the Township and HAAL require the Township to support the sewerage of the Greenbriar site.

COAH administers municipal fair share housing obligations on a statewide basis pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. and related regulations, N.J.A.C. 5:93-1.1 et seq. A municipality with a fair share obligation may file a housing element with and seek substantive certification from COAH. N.J.S.A.

¹¹ Indeed, COAH's findings prompted New Jersey Future, Inc., a non-profit corporation dedicated to implementation of the SDRP, to challenge COAH's actions in the Appellate Division in Trenton. In the Matter of the Petition for Substantive Certification of the Housing Element and Fair Share Plan of the Township of Hillsborough, A-5349-95-T1. COAH has since asked the Court to send the substantive certification back to COAH for reexamination.

52:27D-309 - 314. Substantive certification provides a presumption of validity to the approved housing element in an exclusionary zoning lawsuit. N.J.S.A. 52:27D-317.

Hillsborough filed a housing element with COAH proposing to satisfy its obligation for newly constructed affordable units through 2002 in the Greenbriar site. Tr. Cert. at ¶ 32, Exh. HH at 3. COAH granted substantive certification on April 3, 1996. Tr. Cert. at ¶ 33, Exh. II. In order to obtain certification, the Township and HAAL entered into the previously referenced Municipal Development Agreement on February 27, 1996. The Agreement commits HAAL to build out affordable housing units according to an agreed upon schedule. Tr. Cert. at ¶ 29, Exh. EE.

The substantive certification nowhere requires the Township to obtain or assist in obtaining sewer approvals. COAH simply recites that the Greenbriar project is contingent on sewer approvals and states:

[I]n the event that the PAC/HCF site is not approved for inclusion in the 208 plan amendment, Hillsborough shall be required to amend its housing element and fair share plan to address the 160 units in another manner

Tr. Cert., Exh. II, at 4. Contrary to plaintiffs' assertions, the certification recognizes only that the Township will have to go back to COAH in the event sewer approvals are not forthcoming.

Similarly, the Agreement places no burden on the Township to obtain or support sewer approvals.¹² Quite to the contrary, the Agreement explicitly places this burden on HAAL:

14. The developer *shall continue to pursue in every way possible sewer approval from NJDEP.*

Tr. Cert., Exh. EE at 8 (emphasis added). There could not be a clearer statement that the burden of obtaining approvals falls on plaintiffs.

Further, COAH failed to follow two of its own regulations designed to ensure conformance with the SDRP. The first requires construction of affordable units in "developable sites":

Municipalities shall designate sites that are available, suitable, developable and approvable, as defined in N.J.A.C. 5:93-1. In reviewing sites, the Council shall give priority to sites where infrastructure is available. All sites designated for low and moderate income housing shall receive approval for consistency review, as set forth in Section 208 of the Clean Water Act, 33 U.S.C. 1251 et seq., prior to substantive certification. Where a site is denied consistency review, the municipality shall apply for an amendment to its Section 208 plan to incorporate the denied site.

N.J.A.C. 5:93-5.3(b).¹³ The regulations define "developable site" as one that has "received water consistency approvals from the DEP or its designated agent authorized by law to issue such approvals." N.J.A.C. 5:93-1.3. Clearly, this regulation was not followed - the Greenbriar site has never had sewer approval.

The second, requiring that new construction conform to the SDRP, states:

In Planning Areas 4 or 5, as designated in the SDRP, the Council *shall require* inclusionary development to be located in centers. Where the Council determines that a municipality has not created a realistic

¹² It must be noted that the Agreement is signed on behalf of HAAL by Harry Smith as President of Hillsborough Alliance for Adult Living, Inc., general partner of HAAL.

¹³ The Water Quality Management Act implements the federal requirements under the Clean Water Act, including the implementation of the 208 plans. See N.J.A.C. 7:15-1.5 ("Areawide plan" defined to include plans authorized by Section 208 of the Clean Water Act, 33 U.S.C.

opportunity within the development boundaries of a center to accommodate that portion of the municipal inclusionary component that the municipality proposes to address within the municipality, the Council *shall require* the municipality to identify an expanded center(s) or a new center(s) and submit the expanded or new center(s) to the State Planning Commission for designation.

N.J.A.C. 5:93-5.4(c)(emphasis added). As to municipalities comprising more than one planning area, the regulations further specify "The Council shall encourage and may require the use of sites in Planning Areas 1 and 2 prior to approving inclusionary sites in Planning Areas 3, 4 and 5 that lack sufficient infrastructure." N.J.A.C. 5:93-5.4(d)(1).¹⁴

COAH simply did not follow this regulation. The PAC is in Planning Area 4; it is not in a designated Center. Therefore, COAH was to require Hillsborough to seek Center designation from the SPC pursuant to N.J.A.C. 5:93-5.4. COAH did not. Instead, COAH granted a waiver of Center designation relying on its policy that such

§ 1251 et seq.)

¹⁴ Indeed, alternative fair share proposals consistent with the SDRP have been available to the Township. As early as 1990, an alternative PAC proposal known as "Sunnymead" (also "Gateway") was before the Planning Board. Tr. Cert. at ¶ 28, Exh. DD. The Planning Board classified the project as a PAC in November, 1991. Tr. Cert. at ¶ 25, Exh. Z. Sunnymeade was proposed as an inclusionary development, but, over the objections of the developer, was not included in the Township's fair share housing element. Tr. Cert., Exh II at 2-3, Exh. HH at 8. The project is located entirely in Planning Area 2, Tr. Cert., Exh HH at 8, and is still pending in Hillsborough.

In addition, Friends submitted its own alternative fair share plan. Gl. Cert. at ¶ 7, Exh. A. Friends circulated the proposal to the Township Committee, the Township Planning Board, and the State Planning Commission. Gl. Cert. at ¶ 7. In March, 1997, Friends met with the Township Administrator and Engineer to discuss implementation of the proposal. Gl. Cert. at ¶ 7. The Township has not pursued the proposal.

Finally, the Municipal Development Agreement itself provides if for any reason the developer cannot move forward (including, for example, failure to obtain sewer approvals), the developer shall transfer ten acres to the Township for the development of affordable housing. Tr. Cert., Exh. EE at 7-8.

waiver is acceptable in Planning Areas 4 and 5 if the site has water and sewer capacity. Tr. Cert. Exh. II at 5. However, the site has never had sewer capacity.

ARGUMENT

Intervention of right requires that the movant show: (1) An interest relating to the property or transaction which is the subject of the action; (2) disposition of the action may impair or impede the ability to protect the interest; (3) inadequate representation of the interest by existing parties; and (4) a timely application has been made. Rule 4:33-1; Chesterbrooke Limited Partnership v. Planning Board of Tp. of Chester, 237 N.J. Super. 118, 124 (1989).

A. Friends Is An Interested Party.

Friends is a not for profit corporation organized to promote planning, conservation, and development policies that will create a sustainable future for Hillsborough Township. Gl. Cert. at ¶ 3. Friends was incorporated one year ago. Id. Today, Friends has approximately 200 members, most of whom reside in the Township. Gl. Cert. at ¶ 4.

The Greenbriar project will have a profound impact on Friends' members, many of whom live on Mill Lane or in the immediate vicinity of the site, as well as on the Township as a whole. Greenbriar will add at least 6,000 new residents to a Township numbering approximately 30,000 residents. Greenbriar will generate substantial traffic, increase demand for services, reduce agrarian spaces, and generally degrade the quality of life in the Township.

As residents of Hillsborough, the members of Friends are concerned with the impacts of the project. Friends seeks managed growth consistent with the preservation of historic, cultural, environmental, and agrarian resources. In Hillsborough, this means directing high density development toward areas with

existing infrastructure, allowing for the preservation of the Township's northern and western areas for low-density uses. Gl. Cert. at ¶ 6. This very approach has been articulated by the Township and is embodied in the SDRP.

In the past year, Friends actively has opposed Greenbriar. See generally Gl. Cert. at ¶¶ 7 - 9. For example, Friends has circulated petitions in the Township opposing the project and the extension of sewers to the site, have appeared to voice objection at virtually all public meetings of the Township Committee and Planning Board where the project or the proposed sewer extension was discussed, have held meetings with local, county and state officials and representatives to present their views on and alternatives to the project, have attended a meeting with DEP to comment on the County's proposed wastewater management plan, and have been recognized by state and local media covering the project. Through its numerous activities, Friends has become the *de facto* voice of concerned citizens in Hillsborough. Indeed, the neighboring communities of East Amwell and Readington have joined Friends in opposing Greenbriar. Tr. Cert. at ¶ 34, Exh. JJ.

By any measure, Friends is an interested party for purposes of Rule 4:33-1. The cases and other authorities make clear that the legitimate and publicly articulated interests of citizens' groups support intervention as of right. Allan-Deane Corp. v. Tp. of Bedminster, 63 N.J. 591 (1973)(nonresidents objecting to large-lot exclusionary zoning may intervene of right in developer's action in lieu of prerogative writs for zoning changes to permit higher density residential and other uses); Warner Co. v. Sutton, 270 N.J. Super. 658, 663-4, n.1 (App. Div. 1994)(nonprofit environmental groups whose members reside in community and have participated in public hearings may intervene of right *on appeal* in mining company's action in lieu of prerogative writs to address Planning Board's decision to rezone certain mining areas as

conservation areas); N.J.S.A. 40:55D-4 ("Interested party' means: . . . any person, whether residing within or without the municipality, whose right to use, acquire, or enjoy property is or may be affected by any action taken under this act"); Cox, New Jersey Zoning and Land Use Administration, § 33-1.1 (1996).

B. Disposition of the Issue at Bar Without Involvement of Friends Will Defeat Friends' Ability to Protect the Interests It Asserts.

It is self-evident that Friends will not be able to defend its interests if it is not allowed to intervene. Plaintiffs not only seek a court order requiring the Township Committee to recommend inclusion of the Greenbriar site in the County's wastewater plan, but also ask this Court to enjoin the Township Committee from any further conduct which might exclude the site from the plan. Friends and its members have campaigned successfully for the Township Committee to recommend exclusion of the site. The Township Committee has reluctantly provided an important public forum for redress of Friends' concerns. Now, plaintiffs not only want the results of battle reversed, they also want to roll up the battlefield behind them. Clearly, the purpose of the present action is precisely to impede Friends' ability to continue the fight to exclude the Greenbriar site from the wastewater management plan.

C. The Township Committee is Unlikely to Defend the Interests of the Friends.

The Hillsborough Township Committee will not adequately represent the interests of Friends. The history of the current wastewater management plan makes the point. The Township Committee certainly knew Harry Smith was President of HAAL at the same time he was the MUA representative to the County Advisory Committee. Harry Smith certainly stands to make a handsome profit if the Greenbriar is built. It is too much to expect of him, and perhaps any individual, to act in the best

interests of the community when his own interests are so clearly at stake. One can only wonder why the Township took no action to remedy such a clear conflict of interest. In any event, the Township's inaction hardly fosters confidence that the Township Committee is prepared to defend the community's interests in this litigation.

The Township Committee's inaction in other aspects of the PAC project also demonstrate a lax attitude toward the greater good of the community:

- The Township Committee countenanced a GDP proposing more than 10,000 units in a 700 acre site;
- The Township Committee failed to provide any guidance in the PAC ordinance as to a suitable location for a PAC, and allowed the Planning Board to select an inappropriate site in the low density AG zone;
- The Township Committee allowed not one but two GDPs to be approved without a showing of the availability of sewers, in direct contradiction to the PAC ordinance;
- The Township Committee has not required or conducted any meaningful consistency review under the SDRP, which the Township previously has relied on to oppose development of the area where the PAC is proposed;
- The Township Committee has not criticized the Center designation waiver created out of whole cloth by COAH;
- The Township Committee has failed to stand by, let alone acknowledge its policy of opposing high density development in the western portion of the Township;
- The Township Committee has failed to justify to the public the need to locate high density housing in a low density, Planning Area 4 zone in light of alternatives in more developed areas of the community;
- The Township Committee refuses to oppose the application of U.S. Homes pending before DEP for sewer approvals for the PAC site.

D. The Present Motion is Timely.

Plaintiffs filed their Complaint on July 30, 1997. This Motion has been filed by August 26, 1997. Movants submit the Motion is timely filed.

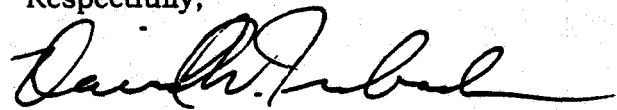
SUMMARY

For all of the reasons stated above, Friends of Hillsborough, Inc. should be granted leave to intervene in this matter. The suit filed by plaintiffs raises substantial issues, the resolution of which will affect the future of Hillsborough Township. It is the position of Friends that these issues should not be left exclusively in the hands of the incumbent Township Committee. Serious questions have been raised concerning the impartiality and the objectivity of the incumbent Township Committee. This Court should have the benefit and the advantage of the evidence and arguments which are available to Friends and which can be brought to the Court only through the intervention of Friends in this litigation. Indeed, Friends have been parties to this dispute for at least the last 14 months. As a result of objections raised by Friends, the Township Committee has been required to take action which might not otherwise have been taken.

No case better illustrates the purposes for which the intervention rules have been put in place. Friends do have a true interest in this matter. That interest cannot be protected without intervention. The proposed intervention is timely. No prejudice can accrue to any party by intervention of Friends in this matter.

It is respectfully requested that the motion for intervention be granted.

Respectfully,



David W. Trombadore

Dated: August 26, 1997

RECEIVED
SUPERIOR COURT OF N.J.
CLERK
AUG 26 AM 11:24

TROMBADORE, SEEL & TROMBADORE
A Professional Corporation
33 East High Street
Somerville, NJ 08876
908-722-7555
Attorneys for Friends of Hillsborough, Inc.

U.S. HOME CORPORATION and,
HILLSBOROUGH ALLIANCE FOR
ADULT LIVING, L.P.,

Plaintiffs,

vs.

TOWNSHIP COMMITTEE OF THE
TOWNSHIP OF HILLSBOROUGH in the
County of Somerset,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY
DOCKET NO. SOM-L-1239-97 PW

Civil Action

CERTIFICATION OF
JUDITH GLASSGOLD
IN SUPPORT OF MOTION
TO INTERVENE

I, JUDITH GLASSGOLD, of full age, certify as follows:

1. I make this certification in support of the Motion to Intervene of Friends of Hillsborough, Inc.
2. I am President and a founding member of Friends of Hillsborough. I am familiar with the members, goals and activities of Friends. I have appeared on behalf of Friends at numerous meetings of the Hillsborough Township Committee and the Planning Board.
3. Friends was founded in 1996 to promote planning, conservation, and development policies to help create a sustainable future for all residents of Hillsborough Township.

4. The Friends comprises 200 active members. Most members reside in Hillsborough; several reside in close proximity to the site of the proposed 3,000 unit planned adult community in Hillsborough known as Greenbriar at the Village ("Greenbriar").

5. From the time of its founding, Friends has actively opposed the Greenbriar project.

6. Friends is not opposed to senior housing or to affordable housing. To the contrary, Friends supports both. However, Friends believes the Greenbriar project is not the appropriate vehicle for either. The proposed location for the Greenbriar project is primarily agricultural, lacks infrastructure such as roads and sewers, and is unsuitable for high density development. Unmanaged growth will degrade the cultural, historic, scenic, environmental and agricultural resources of the Township. Friends proposes high density development such as the Greenbriar be directed toward those areas of the Township with existing infrastructure, as suggested in the State Development and Redevelopment Plan. The outlying northern and western areas of the Township presently without extensive sewers or other infrastructure should be preserved for low-density development consistent with the preservation of agrarian uses, scenic and historic areas, and other environmental and quality of life considerations.

7. The following is a brief summary of some of the activities undertaken by Friends in connection with the Greenbriar project and the extension of wastewater sewers to the proposed site:

- In August, 1996, Friends delivered a flyer to all Hillsborough residents inviting their attendance at the upcoming Planning Board meeting at which the project was to be discussed. Over 100 people attended.

- On September 9, 1996, Friends held a forum to discuss wastewater management issues associated with Greenbriar. Deborah Bechtel of the New Jersey Department of Environmental Protection ("DEP") was invited to and did attend. David Eilbacher, a member of Friends, gave a presentation detailing inconsistencies in the proposed County wastewater management plan ("WMP"), including inaccurate assessments of septic failures, inaccurate descriptions of proposed sewer extensions, and inconsistent increases in flow capacity. Thomas Bates, Chairman of the Planning Board, attended and made a short statement. Also in attendance were Harry Smith, president of the Hillsborough Alliance for Adult Living, Inc., Glen Van Lier, a member of the Planning Board and Township Committee, and several dozen members of the public.
- On September 12, 1996, I and other members of Friends attended the Planning Board's scheduled meeting and requested that the Greenbriar site be excluded from the County WMP. Over 100 members of the public attended the meeting.
- On September 24, 1996, I and other members attended the Township Committee's scheduled meeting where we requested the Greenbriar site be excluded from the County WMP, and that the Township's planned adult community ordinance be rescinded. Members also requested an inquiry into apparent errors and inconsistencies in the Hillsborough portion of the WMP. At that meeting, the Township Committee agreed to defer inclusion of the Greenbriar site in the WMP. Mayor Kenneth Scherer suggested a joint meeting with DEP representatives.
- On September 26, 1996, and at the invitation of the Mayor, David Eilbacher and I, the Mayor, Deputy Mayor Brett Radi, Township Engineer Frank Scarantino and Township Administrator John Middleton met jointly with representatives of DEP, including Director Daniel Van Abs and Deborah

Bechtel, to discuss the status of the County wastewater management plan pending before DEP. DEP agreed to defer consideration of the Hillsborough portion of the WMP.

- Since September, 1996, I and/or other members of the Friends have attended every public meeting of the Township Committee and Planning Board, including working sessions, at which the Greenbriar project or the WMP was an agenda item. Members have consistently voiced objections to Greenbriar and to the extension of sewers to the site. Friends has videotaped all of these proceedings.
- Friends members have circulated materials to and sought the input of municipalities and environmental groups in the area regarding the Greenbriar project.
- Friends has circulated a petition within the Township and neighboring communities objecting to further action on the Greenbriar project until sewer issues are resolved and the global impacts of the project as a whole are studied. Friends has obtained the signatures of several hundred Hillsborough residents on the petition.
- I and other members of the Friends have held numerous meetings with Township officials, and have had numerous telephone communications and extensive correspondence with County officials regarding Greenbriar, the WMP, and the Township's fair share housing obligation.
- Friends has met with and has had extensive correspondence with representatives of DEP responsible for reviewing the WMP.
- On December 3, 1996, I attended a meeting of the State Planning Commission to present Friends' analysis of the inconsistencies between the Greenbriar project and the State Development and Redevelopment Plan ("SDRP"). At this

meeting, I also presented Friends' alternative fair share housing plan consistent with the SDRP. I attach a copy of this proposal as Exhibit A.

- In December, 1996, Friends delivered its alternative fair share housing proposal to the Township Committee and Planning Board. On March 13, 1997, members met with the Township Administrator and Engineer to discuss implementation of the plan.
- Beginning in January, 1997, the Friends have published a weekly column concerning the Greenbriar project in the Hillsborough Beacon. Members also have written letters which have been published in the Star Ledger, the Courier News, and the Messenger Gazette.
- On February 6, 1997, Friends presented alternatives for conservation of open space areas to the Hillsborough Open Space Committee.
- On May 1, 1997, members appeared at the Planning Board meeting and gave testimony opposing U.S. Homes' application for the Phase I buildout of the Greenbriar project.
- On June 24, 1997, members appeared at the Township Committee meeting and requested that the Township Committee oppose the petition of U.S. Homes to DEP for approval of extension of sewers to the Greenbriar site. The Township Committee declined such an undertaking.
- In August, 1997, Friends wrote to the Office of State Planning to recommend against reclassification of the Greenbriar site from Planning Area 4 to Planning Area 2.

8. I and other members of Friends attended the meeting of the Hillsborough Planning Board on April 3, 1997. The agenda for that meeting listed the County wastewater management plan as for discussion only, not action. At the meeting,

Chairman Bates introduced two new resolutions regarding wastewater management: The first embodying a set of principles to guide decisions concerning extension of sewers; the second, a recommendation that the County include the Greenbriar and other sites in the proposed wastewater management plan. Neither resolution previously had been introduced or discussed at a regular Planning Board meeting. Chairman Bates then brought both resolutions to a vote after allowing minimal discussion among Board members and no comment from the public. Friends objected to the action taken, but only after the fact.

9. I and other members of Friends attended the Township Committee's April 22, 1997 meeting. At that meeting, Friends demanded both that Chairman Bates resign and that the Township Committee investigate his conduct at the April 3rd meeting.

10. I attended the Hillsborough Planning Board meeting on May 1, 1997. At that meeting, Chairman Bates read into the record a letter from the Mayor asking that the Chairman recuse himself from further consideration of matters involving the Greenbriar site. Chairman Bates acceded to this request at that same meeting.

11. The local media have given extensive coverage to the Friends' activities. The Courier News has carried numerous articles including coverage of the Friends' objections to the Greenbriar project. Indeed, an editorial published on August 8th in the Courier supported the Friends' alternative plan for affordable housing in the Township. Letters of nonmembers published in the Courier have recognized Friends as representing the public interest.

12. The Township Committee has not followed the public requests of Friends to:

- Formally oppose U.S. Homes' application pending before DEP for sewer approval for the Greenbriar site.
- Appoint an impartial and independent panel to investigate the Hillsborough portion of the County WMP.
- Assume direct responsibility for the Hillsborough portion of the County WMP.
- Investigate potential conflicts of interest of Planning Board Chairman Thomas Bates.

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



JUDITH GLASSGOLD

Dated: August 25, 1997

Friends of Hillsborough, Inc.

P. O. Box 624
Neshanic Station, NJ 08853
908-359-0424

Addressing the Affordable Housing Obligation in Hillsborough

Friends of Hillsborough, Inc. believes that affordable housing in Hillsborough could be achieved while preserving the rural areas and sections of farmland in the Township. We believe that there are win-win solutions for this town, where sensible planning can provide a way to balance affordable housing, the needs of seniors, and preserve the rural character of the Township. Our plan is consistent with the State Development and Redevelopment Plan, Somerset County Master Plan and the Hillsborough Township Master Plan.

The governing principles of our plan are as follows:

1. Minimize isolated, large developments that segregate seniors or affordable units far from the center of Town and away from services and public transportation.
2. Maintain the rural beauty and character of our Township by locating development in areas designated as Planning areas 1, 2, & 3 in the State Development and Redevelopment Plan, and in existing community centers and not in State Planning areas 4 & 5.
3. Only plan/build what we need for Phase 2--160 credits. We think that planning/building for Phases 3 & 4 is premature because we do not know if COAH formulas will change and thus alter the final COAH numbers, how COAH will be administered, and what our affordable housing needs will be in the years after 2001.
4. Inclusionary development in a rural area can change the nature of the area irrevocably. Avoid inclusionary development whenever possible. Inclusionary development often leads to large numbers of housing that places stress on Township infrastructure. Often inclusionary development presents a fair share dilemma in itself, by distorting the Town's growth rate, which is then factored into COAH formulas leading to greater future affordable housing obligations.

Further we discovered that the Township is not counting existing group home beds in its Fair Share Plan. There are 10 group home bedrooms in the Township; they are eligible for a 2 for 1 bonus as well, bringing the credits to 20. This reduces the Township's need to build new homes or spend more money.

We have two parts to this handout, first we provide a summary of the programs available to the Township for affordable housing, and a brief commentary on our Fair Share Plan. Then we present a plan--with hard numbers. The advantage of the Friends of Hillsborough Plan is that it is flexible and presents a number of possible options that could be amended to the existing Fair Share Plan.

This plan is consistent with the State Development and Redevelopment Plan and meets COAH regulations. Hillsborough Township could revise its current Fair Share Plan with COAH with elements of this plan and thus meet the requirements of the State Development and Redevelopment Plan and COAH regulations, without jeopardizing existing COAH certification. We urge the Township to take such action immediately.

Friends of Hillsborough, Inc. is a non-profit, non-partisan group organized to promote sound principles of preservation and managed growth. We advocate for planning, conservation, and development policies that will help improve the quality of life of residents of Hillsborough Township and surrounding communities. The Friends of Hillsborough, Inc. is a registered non-profit 501(c)(3) organization, incorporated under the laws of the State of New Jersey in 1996.

fu A

Friends of Hillsborough, Inc.

Our Plan for Affordable Housing

We think that affordable housing in Hillsborough could be achieved while preserving the rural areas and sections of farmland in the Township. We believe that there are win-win solutions for this town, where sensible planning can provide a way to balance affordable housing, the needs of seniors, and preserve the rural character of the Township. Our plan is consistent with the State Development and Redevelopment Plan, Somerset County Master Plan and the Hillsborough Township Master Plan.

The governing principles of our plan are as follows:

1. Minimize isolated, large developments that segregate seniors or affordable units far from the center of Town and away from services and public transportation.
2. Maintain the rural beauty and character of our Township by locating development in areas designated as Planning areas 1, 2, & 3 in the State Development and Redevelopment Plan, and in existing community centers and not in State Planning areas 4 & 5.
3. Only plan/build what we need for Phase 2--160 credits. We think that planning/building for Phases 3 & 4 is premature because we do not know if COAH formulas will change and thus alter the final COAH numbers, how COAH will be administered, and what our affordable housing needs will be in the years after 2001.
4. Inclusionary development in a rural area can change the nature of the area irrevocably. Avoid inclusionary development whenever possible. Inclusionary development often leads to large numbers of housing that places stress on Township infrastructure. Often inclusionary development presents a fair share dilemma in itself, by distorting the Town's growth rate, which is then factored into COAH formulas leading to greater future affordable housing obligations.

The Township is not counting existing group home beds in its Fair Share Plan. There are 10 group home bedrooms in the Township; they are eligible for a 2 for 1 bonus as well, bringing the credits to 20. This reduces the Township's need to build new homes or spend extra money. The Township should amend its plan immediately to include these credits.

We are greatly limited by COAH regulations. The regulations stress providing new housing and the numbers they have given us are such that we will have to build something. However, we have flexibility to what we build and where we build it. We also need to recognize that due to their regulations we are limited in the number of senior units (96), rehabilitation credits (21) and rental bonus credits (24). Also with any inclusionary building the developer due to COAH regulations is exempt from development fees and the deed restriction is 30 years.

The 160 credits the Township needs could be met in the following ways:

a) 10 affordable accessory apartments	10 credits
b) 10 buy down/write down units	10 credits
c) Existing group home beds	10 credits
2 for 1 bonus	10 credits
d) 96 senior housing units	96 credits
including 15 senior rentals	
1.33 rental bonus	5 credits
e) Family rentals or Alternate Living Arrangements	10 credits
2 for 1 bonus	9 credits
Total.....	160 credits

Minimizing Inclusionary Development

The senior units and other new housing could be built in the following ways: by a non-profit corporation, the Township, a private developer specializing in senior housing or a combination of all three. If an area is zoned exclusively for senior housing 100% of the homes could be for seniors and the number of units built would be 96. This is in contrast to the Township pattern of using inclusionary development where the developer gets to build at a ratio of 80/20 market/affordable units necessitating 480 total homes.

There are a number of non-profit agencies that are experienced in building large numbers of affordable housing, for instance, Lutheran Ministries. There are also private builders who might be willing to also do so. We have contacted a planner with contacts in this area.

The total number of homes built under various plans is as follows:

<u>Type of Builder</u>	<u>Total Number of Senior Homes</u>	<u>family rentals and Senior Homes</u>
Municipality/ Senior Development/ Non-Profit	96	106
Inclusionary Development-- Private Builder	480	530

Other Possible Formulas

Affordable housing can combine any number of the previously mentioned programs depending on cost, availability and land use preferences.

Other Plans

I

A. Affordable Accessory Apartments	10 units max
B. Senior Housing	96 units max
16 rental units/1.33 bonus	5 units
C. Existing Group Homes	10 units
2 for 1 bonus	10 units
D. RCA & up to 10 buy down/write down	29 units
Total	160 credits

II

A. Affordable Accessory Apartments	10 units max
B. Senior Housing	96 units max
16 rental units/1.33 bonus	5 units
C. Existing Group Homes	10 units
2 for 1 bonus	10 units
D. Alternative Living Arrangement	5 units
2 for 1 rental bonus	5 units
E. RCA & up to 10 buy down/write down	19 units
Total	160 credits

Existing Group Homes

4 bedrooms
Association for Retarded Citizens (ARC)
Ardsley Road

3 bedrooms
Venice Avenue Community Residence, Inc
Francis Drive

3 bedrooms
United Cerebral Palsy
Euclid Ave

Belle Mead

Belle Mead

Belle Mead

Friends of Hillsborough, Inc.

PO Box 624
Neshanic, NJ 08853
908-359-0424

Addressing the Affordable Housing Obligation in Hillsborough

The Council on Affordable Housing (COAH) rules offer municipalities a variety of approaches to meet their affordable housing obligation. The Township must have a proposal (Fair Share Plan) and submit it to COAH for certification. Techniques for creating affordable housing opportunities that are acceptable to COAH are listed below:

- Rehabilitation
- Municipally Sponsored Construction
- Inclusionary Zoning
- Regional Contribution Agreements
- Creation of Accessory Apartments
- Alternative Living Arrangements
- Purchase of housing units that have never been occupied or have been vacant for 18 months or more
- Development Fee Ordinances
- Write-Down/Buy-Down Program

The following is a brief description of the methods for addressing the housing obligation, including a commentary specifically regarding Hillsborough Township.

Rehabilitation

Each municipality is provided with an estimate from COAH of the number of substandard housing units occupied by low and moderate income households. This estimate is considered the municipalities' indigenous need. The purpose of a rehabilitation program is to rehabilitate substandard housing units occupied by low and moderate income households. If a municipality chooses to rehabilitate its indigenous need component it is responsible for funding the program. This requirement includes administrative and actual rehabilitation activities. A municipality shall provide \$ 2000 per unit towards administration and \$ 8000 per unit for rehabilitation activity for a total of \$ 10,000 per unit. COAH requires six year affordability controls on owner-occupied units and 10 year controls on affordability for rental units.

COAH determined that Hillsborough was eligible for 12 units in phase 1 and 21 rehabilitation units in phase 2. Hillsborough Township has utilized this program fully; the funds have been set aside and all but 7 units have been rehabilitated. These credits have been included in Hillsborough's Fair Share plan.

Municipally-Sponsored Construction

Municipalities may create low and moderate income units within their borders by sponsoring their construction either by acting as the developer directly or by financial support of a nonprofit corporation that would construct the units. A municipally-sponsored construction program shall address four areas of concern. This program will document that the municipality has control of the site(s), that an administrative mechanism exists to construct the proposed housing, that there is a funding plan and evidence of adequate funding capacity, and there is a schedule for each phase of the construction of the units.

Hillsborough has no municipally-sponsored housing.

Municipally sponsored housing requires that the Township build the homes itself or find a non-profit organization to do so. If built by the municipality, the income would be the Townships and after 30 years the Township would be free to rent/sell at market rates. Some form of bond measure is usually necessary for municipally sponsored housing, however the income from the property may cover some/all of the bonding costs. If a non-profit builds the homes, the Township may be asked to guarantee the mortgage.

Inclusionary Zoning

Municipalities may address their affordable housing obligation by zoning parcels of land that meet the requirements for development. COAH has set forth a general gross density of three- to five units per acre for detached housing and six units per acre for attached units. Higher densities may be required by COAH in cases where existing zoning exceeds three units per acre, where land is a scarce resource, and where circumstances in a municipality require higher densities in order to provide an opportunity for inclusionary development. A private developer/builder then builds a mix of affordable and market rate homes. There is a maximum set aside of 20% for low and moderate income units (the developer builds 80% market value and 20% affordable housing).

Hillsborough has used inclusionary zoning in an earlier phase of its affordable housing requirement: Heritage Green and Crestmont Hills for a total of 91 credits. In its current Fair Share Plan the Township has proposed an age-restricted PAC/HCF inclusionary development for 160 credits, including 40 family rentals, 96 senior affordable units, and 24 bonus rental credits. 770 market value/least cost units are included in this plan. The builder also proposes another 2000 plus units, with the possibility of building more affordable units for later COAH phases.

This type of plan results in a ratio of at best of 4 market value homes per 1 affordable; this means to get 100 affordable units one must build 400 market value units, resulting in a total of 500. This type of plan can result in large numbers of new homes. There are no building costs to the municipality, but by law the developer is exempt from development fees for all the units. The municipality is responsible for the additional services for these homes, but receives taxes on these homes. The homes are deed restricted for 30 years maximum.

Regional Contribution Agreements (RCA)

A municipality may transfer up to half of its affordable housing obligation remaining after subtracting any credits for its calculated need to another municipality in its housing region. A municipality may not transfer any of the rehabilitation component of its obligation. There must be a contract between the sending and the receiving municipality before COAH will review the RCA. COAH requires that a sending municipality shall transfer at least \$ 20000 to a receiving municipality for each unit transferred as part of a RCA. There are additional terms and conditions listed in COAH rules.

Hillsborough has transferred to Phillipsburg 79 units as part of its phase 1 plan. There is no RCA element in phase 2 of the plan.

The current receiving municipality is New Brunswick. The cost of transfer (\$ 20000 per unit) is the only liability. Hillsborough could transfer up to 80 credits.

Creation of Accessory Apartments

Accessory apartments are independent housing units created out of surplus space in single-family homes. Examples of accessory apartments include mother-daughter homes or converted attics, garages, carriage houses, and barns. The accessory unit is subordinate to the primary unit in terms of size, location and appearance. The main structure is usually divided so that the subordinate unit can function independently of the main living unit in terms of access, kitchen, bedroom and bathroom facilities. It may share common utility service. It differs from a two-family home in that the units of a two-family dwelling are typically of comparable size, there are no ownership requirements and they may have different or similar outer appearances. Municipalities may seek credit for up to ten accessory apartments, however certain conditions must be met. Municipalities must:

- Demonstrate that its housing stock lends itself to creation of accessory apartments, e.g. there are large older homes
- Provide at least \$ 10,000 per unit to subsidize their creation
- Establish rents of accessory apartments that will average 57.5% of median income, including utilities
- Develop an effective marketing program for the units to low and moderate income households
- Dwellings will be deed-restricted for 10 years into assure affordability to low/moderate households. If deed restricted for 30 years the property shall qualify for rental bonus credit.

Hillsborough zoning law does not allow for accessory apartments.

This plan is economical and allows seniors to remain in their own home because seniors who own large homes or properties can rent out sections of their property. This would allow individuals to stay in their homes longer, either due to increasing their income via rental income and/or providing help with daily living. Sample zoning ordinances from Union and East Amwell Townships in Hunterdon County area available upon request.

Alternative Living Arrangements

This is defined as a structure in which households maintain private rooms, yet share kitchen and plumbing facilities, central heat and common living areas. Examples are group homes, congregate living arrangements and boarding homes. Municipalities may gain credit against their housing obligation by entering into an agreement for the location of such a facility with the provider of such a facility or by granting preliminary approval to a developer of alternative living arrangement. The unit of credit of alternative living arrangements is the number of bedrooms. This housing is eligible for double rental bonus credits. Programs for seniors would also qualify if they met the low or moderate income requirements, such as congregate care facilities, and would receive 1 1/3 bonus rental credits per bedroom.

Hillsborough does not list any such units in its Fair Share Plan.

There are three existing group homes in the Township for a total of 10 bedrooms. The Township should apply for 10 credits plus 10 rental credits for these homes. ARC is interested in buying property to build more homes, this should be pursued. Other non-profit agencies such as Easter Seals, etc. may also be interested. In this way the Township provides services for the disabled/disadvantaged while receiving credits for affordable housing. There is little or no cost to the Township for such a program.

The purchase of unoccupied housing

Municipalities may receive credit against their housing obligation by purchasing units that have never been occupied or have been vacant for at least 18 months and offering them in sound condition at affordable prices and/or rents to low and moderate households.

Hillsborough does not include such a program in its Fair Share Plan.

Such a program would require administrative support and mean that the Township would have to buy these properties, possibly at a good price. We are not aware of homes in Hillsborough that are unoccupied or vacant for 18 months at this time, however such properties may exist or come into existence in the future.

Development Fee Ordinance

The New Jersey Supreme Court has determined that mandatory development fees are both statutory and constitutionality permissible. Municipalities may institute a development fee ordinance in order to collect funds to address their affordable housing obligation. Both the fee collection program and spending plan must be approved by COAH. Residential development fees shall be a maximum of 0.5% of the equalized assessed value for residential development, provided no increased density is permitted. Where there is a zoning change that permits increased residential development, the municipality may impose a fee of up to 0.6%. Non-residential development fees shall be a maximum of 1% of equalized assessed value for non-residential development.

Hillsborough has such a program in place.

Fees have been collected by the Township, and are available for use to fund programs such as accessory apartments, rehabilitation and buy down/write down programs.

Write-Down/Buy-Down Program

Writing down or buying down of previously owned market rate units and offering them in sound condition at affordable prices to low and moderate income households can be used to address affordable housing needs. The maximum number of units is up to 10 but no more than 25% of net inclusionary component. The program means that a non-profit or municipality buys a unit and then sells it at the stated affordable cost. A municipality must:

- Demonstrate that there are sufficient for-sale market rate units within the Township to make the program viable
- Provide at least \$ 20000 per unit to subsidize the cost of the buy-down unit
- Place a 30 year deed restriction and mortgage lien on each unit.

Hillsborough does not have such a plan in place.

Such a plan reduces the number of new units to be built. However, it does cost \$20000 per unit and a non-profit organization or the municipality must administer such a program.