

U.S. Home Corp - v. Twp of Hillsborough

9/30/97

Letter brief in reply to response of plaintiff HAAL to the Order to Show Cause brought on behalf of Intervenor "Friends"

2 ps.

HI 000068 B

TROMBADORE, SEEL & TROMBADORE

A PROFESSIONAL CORPORATION
 COUNSELLORS AT LAW
 33 EAST HIGH STREET
 SOMERVILLE, NEW JERSEY 08876

RECEIVED
 SUPERIOR COURT OF N.J.
 DEPUTY CLERK
 97 SEP 30 PM 11:55

RAYMOND R. TROMBADORE
 MEGAN C. SEEL
 DAVID W. TROMBADORE

TELEPHONE (908) 722-7555
 FAX (908) 722-6269

ANN WILKIN TROMBADORE
 OF COUNSEL

September 30, 1997

VIA HAND DELIVERY

The Honorable Victor Ashrafi
 Somerset County Court House
 Somerville, NJ 08876

Re: U.S. Home Corp., et al. v. Township Committee of the
 Township of Hillsborough & Friends of Hillsborough, Inc.
 Docket No. SOM-L-1239-97 PW

Dear Judge Ashrafi:

Please accept this letter in lieu of a more formal brief in reply to the response of plaintiff Hillsborough Alliance for Adult Living, L.P. ("HAAL") to the Order to Show Cause brought on behalf of Intervenor Friends of Hillsborough, Inc. ("Friends").

ARGUMENT

Most of HAAL's brief requires no extended reply. It should be self-evident that the Court has power to maintain the status quo among the parties as to those issues presented for disposition. HAAL has submitted to this Court the issue whether the Township of Hillsborough can be ordered to endorse the Greenbriar site for inclusion in the County wastewater management plan. The Court clearly has authority over HAAL's actions relating to this requested relief pending resolution of this lawsuit. Such authority includes restraining HAAL from seeking such relief elsewhere, whether it be another court or COAH. Friends trusts it need not cite extensive authority to the Court in support of this proposition. Friends reminds the Court that it is HAAL, not Friends, that has invoked the authority of this Court. Further, this Court should not wait for COAH to act - that path invites the mischief discussed in Friends initial brief.

Nevertheless, Friends is compelled to respond to one point in HAAL's response. HAAL's assertion that the Alexander's case is not controlling as to COAH's authority to grant the relief requested is stunning. The case by its clear holding controls the outcome here - COAH has no authority to *order* the Township to endorse sewers for the Greenbriar site. The decision of the New Jersey Supreme Court in Hills Dev. Co. v. Tp of Bernards, 103 N.J. 1 (1986) is not to the contrary. Indeed, the holding cited by HAAL is that COAH can impose conditions in connection with its grant of substantive certification, not that COAH can enforce such conditions:

We have concluded that the Council has the power to require, as a condition of its exercise of jurisdiction on an application for substantive certification, that the applying municipality take appropriate measures to preserve "scarce resources," namely, those resources that will probably be essential to the satisfaction of its *Mount Laurel* obligation.

Hills Dev. Co., 103 N.J. at 61.

Friends trusts that HAAL's misuse of authority does not blur the distinction between the ability to impose conditions on the granting of certification and the enforcement of such conditions. The distinction is critical and goes to the heart of COAH's power and the inappropriateness of HAAL's conduct. Nowhere in the enabling legislation nor in the precedents of the courts of this state has COAH been granted the power to render injunctive relief against municipalities. That power remains in the courts, as the Supreme Court unequivocally held in Alexander's.

The certification itself contains the penalty for noncompliance. The certification states that deviation from its terms and conditions may render the certification null and void. Certification of David Trombadore in Support of Motion for Leave to Intervene, Exh II at 8. More specifically, the certification states that the Township will have to amend its housing element and fair share plan if the Greenbriar site is not included in the WMP. Id. at 4. The simple fact is that if the Township does not fulfill the conditions set by COAH in connection with its substantive certification, the Township probably will lose the certification and the protections it affords. Nowhere is it contemplated that COAH can or will force the Township to fulfill the conditions imposed on the granting of certification. That task clearly has been left to this Court.

Respectfully submitted,



David W. Trombadore

Enclosure

cc: John R. Halleran, Esq.
Frank N. Yurasko, Esq.
James A. Farber, Esq.
Friends of Hillsborough, Inc.