

HAAL v. Hillsborough

2/9/98

Complaint in Lieu of Prerogative Writs by HAAL against Hillsborough

15 pgs

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SUPERIOR COURT OF N.J.
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HILLSBOROUGH ALLIANCE FOR
ADULT LIVING, L.L.P.,

Plaintiff,

v.

TOWNSHIP OF HILLSBOROUGH,

Defendant.

SUPERIOR COURT OF NEW JERSEY
LAW DIVISION
SOMERSET COUNTY

DEPUTY CLERK

DOCKET NO.

Som-L-247-98

COMPLAINT IN LIEU OF
PREROGATIVE WRITS AND
FOR OTHER RELIEF

Plaintiff HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.L.P.,
a New Jersey limited partnership, with offices located at P. O.
Box 720, Neshanic, New Jersey 08853 ("HAAL"), by way of
Complaint against defendant TOWNSHIP OF HILLSBOROUGH
("TOWNSHIP"), says that:

FIRST COUNT

1. At all times hereinafter referred to, HAAL has been
and is the owner of certain tracts of land in the Township of
Hillsborough and County of Somerset a municipal corporation of
the State of New Jersey (the "Township" or the "Defendant"),
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 "Plaintiff's Lands").

2. Defendant is a municipal corporation of the State of New Jersey with an obligation to provide its fair share of the required need for low and moderate income housing.

3. The plaintiff's 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") as it existed prior to October 28, 1997.

4. The Project will be a senior citizen community of approximately 3,000 houses, with various building densities together with assisted and congregate care, nursing, extended care and hospital, and medical facilities (collectively, the "Housing and Health Care Facilities"), recreation, office and mixed use facilities and an eighteen hole golf course.

5. In June 1991, upon the application of HAAL to the Planning Board of the Township of Hillsborough ("Planning Board") pursuant to the PAC/HCF Ordinance, the Planning Board approved a General Development Plan for the Project on January 2, 1992 (the "Initial GDP Approval").

6. On application of HAAL to the Planning Board on December 7, 1995, the Planning Board approved an amended General Development Plan for the Project (the "Amended GDP Approval") and, collectively with the Initial Approvals, the "Project Approvals").

7. On February 1, 1996, HAAL entered into a Municipal Development Agreement with the Township (the "Fair Share

Agreement"). By the Fair Share Agreement, HAAL agreed to set aside, as part of the housing component of the Project, up to 15% of its development for low and moderate income housing for age-restricted and non-age-restricted occupancies, on a sale or rental basis.

8. ¶3 of the Fair Share Agreement required the Township to seek Planning Area 2 status under the New Jersey State Development and Redevelopment Plan, for plaintiff's lands. This status was consistent with the development approval in the Amended GDP Approval and the agreed upon use of plaintiff's land for affordable housing and other uses.

9. The Fair Share Agreement also anticipated defendant's cooperation in obtaining sewer service consistent with the Planning Area 2 designation, the Amended GDP Approval, and the affordable housing requirement.

10. Pursuant to an application previously made by the Township, subsequent to the original GDP Approval, on April 3, 1996, the Council on Affordable Housing ("COAH") granted substantive certification of Hillsborough Township's Housing Element and Fair Share Plan predicated upon the Fair Share Agreement, acting pursuant to the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:93.

11. The COAH approval incorporated into it the Fair Share Agreement, and the Project Approvals.

12. The COAH Approval remains in full force and effect.

13. Notwithstanding the above, on October 28, 1997, defendant unilaterally adopted on final reading Ordinance No. 97-28 which purported to repeal Section 91.1 (PAC Planned Adult Community) of the Municipal Code of the Township of Hillsborough. A true copy of which is annexed hereto and incorporated herein by reference as "Schedule A" (the "Repealer Ordinance").

14. No exception was made for plaintiff's Property even though it had been the subject of the COAH approvals and the Project approval.

15. On October 28, 1997, defendant adopted a Resolution purporting to justify the adoption of the Repealer Ordinance, a true copy of which is annexed hereto and incorporated herein by reference as "Schedule B" (the "Resolution").

16. However, pursuant to Article 1 of the Constitution of the State of New Jersey as interpreted in the Mt. Laurel cases, and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., no Ordinance may be adopted in contravention of a duly certified housing plan which has been approved by COAH.

17. The housing plan certified by COAH in the COAH approval makes the PAC/HCF site the sole site in which low and moderate income housing may be constructed within Hillsborough Township.

18. The adoption of Ordinance 97-28 which repeals the PAC/HCF zoning thus blatantly violates the terms and conditions

of the housing plan certified by COAH, and hence violates the terms and conditions of the COAH approval.

19. Such action also violates the Fair Housing Act and Article 1 of the Constitution of the State of New Jersey.

20. There is no adequate remedy at law.

WHEREFORE, plaintiff HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.L.P. demands judgment against defendant Hillsborough Township for an Order:

- (a) reversing and setting aside the Resolution;
- (b) declaring the Repealer Ordinance to be null and void and of no force or effect;
- (c) permanently restraining and enjoining defendant from taking any further action the intent of which is to prevent the processing of development approvals for the Project;
- (d) directing defendant to pay costs of suit; and
- (e) for such other and further relief as the Court may deem necessary and just.

SECOND COUNT

1. Plaintiff repeats and realleges each and every allegation contained in the First Count above set forth as though set forth at length herein, and the same are hereby made a part hereof by reference.

2. Plaintiff's lands are the only lands which have been designated by the defendants for construction of low and moderate income housing to satisfy the defendants' obligation to provide a reasonable opportunity for such construction within

Hillsborough Township, in accordance with the dictates of the New Jersey Constitution, as interpreted in the Mt. Laurel cases, and the Fair Housing Act N.J.S.A. 52: 27D-301 et seq.

3. Where a municipality takes action in violation of its constitutional and statutory obligations to implement a housing plan certified by COAH, as did defendant here, a landowner whose site is included in the COAH plan may obtain a builder's remedy in order to vindicate the rights of the landowner and of low and moderate income persons to an opportunity for the construction of low and moderate income housing pursuant to the Mt. Laurel doctrine and the Fair Housing Act.

4. Plaintiff is ready, willing and able to develop such housing on the Project Site.

5. Plaintiff's site is available, developable, suitable and approvable.

WHEREFORE, plaintiff HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.L.P. demands judgment against defendant Township of Hillsborough for an Order:

(a) awarding plaintiff a builder's remedy and the right to construct at its option, up to 3,000 housing units, with or without rental units, of which up to 15% would be for low and moderate income persons;

(b) appointing a Master to supervise the implementation of the builder's remedy;

(c) requiring that defendant adopt an Ordinance incorporating the relief granted under the builder's remedy

within ninety days after the Court grants judgment declaring the adoption of Ordinance 97-28 unconstitutional as being in violation of the Mt. Laurel doctrine and the Fair Housing Act;

(d) reversing and setting aside the Resolution;

(e) declaring the Repealer Ordinance to be null and void and of no force or effect;

(f) permanently restraining and enjoining defendant from taking any further action the intent of which is to prevent the processing of development approvals for the Project;

(g) directing defendant to pay costs of suit; and

(h) for such other and further relief as the Court may deem necessary and just.

THIRD COUNT

1. Plaintiff repeats and realleges each and every allegation contained in the First and Second Counts above set forth as though set forth at length herein, and the same are hereby made a part hereof by reference.

2. Under the Fair Share Housing Agreement, specifically §3, the defendant agreed to request that PAC/HCF site be included within Planning Area 2 in the State Development and Redevelopment Plan in order to facilitate the provision of sewer service to the site as a whole.

3. Defendant has not complied with this obligation.

4. Instead, defendant, who during the first round of cross-acceptance under the State Planning Act, N.J.S.A. 52:18A-196 et seq., consented to the identification of a center for

3,000 units of development in the PAC/HCF site, has, in the round of cross-acceptance for revision of the State Development and Redevelopment Plan beginning in July 1997, refused to request that the PAC/HCF site be designated as such a center.

5. Further, defendant has refused to propose that the mapping of the PAC/HCF site be changed to designate the entire site as Planning Area 2.

6. Such actions violate plaintiff's rights under the Fair Share Housing Agreement.

7. Such action also contravenes the State Planning Act, N.J.S.A. 52:18A-196, et seq., as implemented in the State Development and Redevelopment Plan, both of which envision that low and moderate income housing will be developed on sites which are served by sewer, as is the PAC/HCF site which has a sewer line running right to it.

8. Plaintiff has suffered damages as a result of the breach of contract.

WHEREFORE, plaintiff HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.L.P. demands judgment against defendant Township of Hillsborough for an Order:

(a) awarding plaintiff a builder's remedy and the right to construct at its option, up to 3,000 housing units, with or without rental units, of which up to 15% would be for low and moderate income persons;

(b) appointing a Master to supervise the implementation of the builder's remedy;

(c) requiring that defendant adopt an Ordinance incorporating the relief granted under the builder's remedy within ninety days after the Court grants judgment declaring the adoption of Ordinance 97-28 unconstitutional as being in violation of the Mt. Laurel doctrine and the Fair Housing Act;

(d) reversing and setting aside the Resolution;

(e) declaring the Repealer Ordinance to be null and void and of no force or effect;

(f) permanently restraining and enjoining defendant from taking any further action the intent of which is to prevent the processing of development approvals for the Project;

(g) awarding plaintiff damages;

(h) directing defendant to pay costs of suit; and

(i) for such other and further relief as the Court may deem necessary and just.

FOURTH COUNT

1. Plaintiff repeats and realleges each and every allegation contained in the First, Second and Third Counts above set forth as though set forth at length herein, and the same are hereby made a part hereof by reference.

2. In accordance with the Municipal Land Use Law, specifically N.J.S.A. 40:55D-62a, no zoning ordinance may be adopted which contravenes the housing, as well as the land use element of the Municipal Master Plan, unless a Resolution explaining the discrepancy has been adopted.

3. Where the housing element of the Master Plan has been approved by the New Jersey Council on Affordable Housing, moreover, pursuant to the Fair Housing Act, N.J.S.A. 52:27D-301, et seq., by way of a grant of substantive certification, (the COAH approval), a municipality is not free to adopt an Ordinance inconsistent with the housing element of the Master Plan without the consent of the Council on Affordable Housing.

4. The Resolution adopted by defendant ("Resolution") when Ordinance 97-28 was adopted does not even address the need to obtain approval from the New Jersey Council on Affordable Housing for adoption of an Ordinance inconsistent with the housing element certified by COAH pursuant to the COAH approval.

5. The adoption of such an inconsistent Ordinance in the absence of the COAH Approval and an explanatory Resolution which addresses the need for COAH approval renders the Ordinance 97-28 null, void and of no effect.

WHEREFORE, plaintiff HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.L.P. demands judgment against defendant Township of Hillsborough for an Order:

- (a) reversing and setting aside the Resolution;
- (b) declaring the Repealer Ordinance to be null and void and of no force and effect;
- (c) permanently restraining and enjoining defendant from taking any further action the intent of which is to prevent the processing of development approvals for the Project;
- (d) directing defendant to pay costs of suit; and

(e) for such other and further relief as the Court may deem necessary and just.

FIFTH COUNT

1. Plaintiff repeats and realleges each and every allegation contained in the First, Second, Third and Fourth Counts above set forth as though set forth at length herein, and the same are hereby made a part hereof by reference.

2. 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 health care 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 Housing and Health Care Facilities components of the Project as described in ¶4 of the First Count.

3. The housing and health care facilities to be provided by plaintiff would serve the needs of persons with handicaps as defined in the Federal Fair Housing Amendments Act ("FHAA"), 42 U.S.C. §3601 et seq. and the Americans with Disabilities Act ("ADA"), 42 U.S.C. §12101, and the New Jersey Law Against Discrimination ("NJLAD"), specifically N.J.S.A. 10:5-12.5.

4. Ordinance 97-28, by interfering with the construction of such housing, violates plaintiff's rights, and the rights of persons with disabilities who would purchase housing from plaintiff or reside within the development planned by plaintiff,

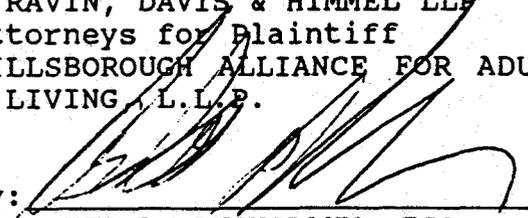
to a reasonable accommodation in the provision of housing in the Township of Hillsborough and to equal housing opportunities, contrary to the FHAA, ADA and NJLAD.

5. Defendant's actions interfering with the provision of sewer service to plaintiff's PAC/HCF site have likewise violated the FHAA, the ADA, and the NJLAD.

WHEREFORE, plaintiff HILLSBOROUGH ALLIANCE FOR ADULT LIVING, L.L.P. demands judgment against defendant Township of Hillsborough for an Order;

- (a) reversing and setting aside the Resolution;
- (b) declaring the Repealer Ordinance to be null and void and of no force and effect;
- (c) permanently restraining and enjoining defendant from taking any further action the intent of which is to prevent the processing of development approvals for the Project;
- (d) awarding plaintiff damages and punitive damages;
- (e) directing defendant to pay attorneys' fees pursuant to 42 U.S.C. §3613 or otherwise and costs of suit; and
- (f) for such other and further relief as the Court may deem necessary and just.

GREENBAUM, ROWE, SMITH,
RAVIN, DAVIS & HIMMEL LLP
Attorneys for Plaintiff
HILLSBOROUGH ALLIANCE FOR ADULT
LIVING, L.L.P.

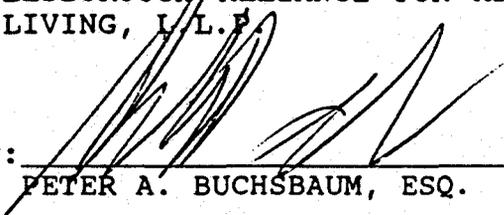
By: 
PETER A. BUCHSBAUM, ESQ.

DATED: February 9, 1998

RESERVATION OF FEDERAL RIGHTS

Plaintiff hereby reserves any rights or claims it has to relief under the Fifth and Fourteenth Amendments to the United States Constitution, and 42 U.S.C. §1983 and §1988, and hereby gives notice that it further reserves the right to pursue such federal rights or claims in a separate proceeding in federal court or in the courts of the State of New Jersey.

GREENBAUM, ROWE, SMITH,
RAVIN, DAVIS & HIMMEL LLP
Attorneys for Plaintiff
HILLSBOROUGH ALLIANCE FOR ADULT
LIVING, L.L.P.

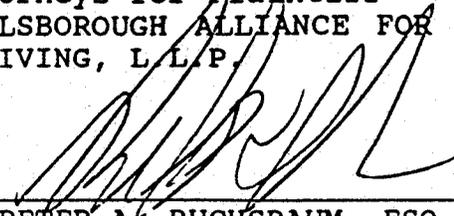
By: 
PETER A. BUCHSBAUM, ESQ.

DATED: February 9, 1998

DESIGNATION OF TRIAL COUNSEL

Pursuant to R.4:25-4, Peter A. Buchsbaum, Esquire is hereby designated as trial counsel in the above captioned litigation.

GREENBAUM, ROWE, SMITH,
RAVIN, DAVIS & HIMMEL LLP
Attorneys for Plaintiff
HILLSBOROUGH ALLIANCE FOR ADULT
LIVING, L.L.P.

By: 
PETER A. BUCHSBAUM, ESQ.

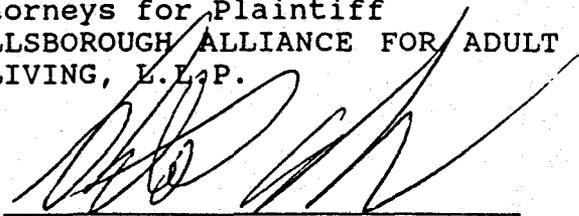
DATED: February 9, 1998

CERTIFICATION PURSUANT TO R. 4:5-1

Plaintiff hereby certifies, by and through its counsel, that based upon knowledge and the information available at this time, except for the Reservation of Federal Rights attached hereto that the matter is controversy is (1) not the subject of any other pending or contemplated action, or arbitration proceeding in New Jersey other than In the Matter of the Petition for Substantive Certification of the Housing Element and Fair Share Plan of the Township of Hillsborough, Somerset County, Substantive Certification No. 31-99, Superior Court of New Jersey Appellate Division, Docket No. A-5349-95-T1 and U.S. Home Corp. v. Township Committee of Township of Hillsborough, Docket No. SOM-L-1996-97, and (2) that no other parties should be joined in this action at this time.

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

GREENBAUM, ROWE, SMITH,
RAVIN, DAVIS & HIMMEL LLP
Attorneys for Plaintiff
HILLSBOROUGH ALLIANCE FOR ADULT
LIVING, L.L.P.

By: 
PETER A. BUCHSBAUM, ESQ.

DATED: February 9, 1998