

- Respondent Hillsborough Alliance for Adult Living, L.L.P.'s Letter Brief in opposition to CoAH's motion to dismiss w/ a certification of service
- Cover letter to clerk

Pgs. 19

HI 000090B

**GREENBAUM, ROWE, SMITH,
RAVIN, DAVIS & HIMMEL LLP**

COUNSELLORS AT LAW

METRO CORPORATE CAMPUS ONE
P.O. BOX 5600
WOODBIDGE, NEW JERSEY 07095-0988
(732) 549-5600
TELECOPIER (732) 549-1881
ABA NET 2529

DELIVERY ADDRESS:
99 WOOD AVE. SOUTH
ISELIN, NEW JERSEY 08830-2712

6 BECKER FARM RD.
ROSELAND, NEW JERSEY 07068-1735
(973) 535-1600
TELECOPIER (973) 535-1698

REPLY TO

Woodbridge

VIA MESSENGER

June 17, 1998

Emille R. Cox, Clerk
Superior Court of New Jersey
Appellate Division
CN 006
Trenton, NJ 08625-006

RE: IN THE MATTER OF THE PETITION FOR SUBSTANTIVE CERTIFICATION OF
THE HOUSING ELEMENT AND FAIR SHARE PLAN OF THE TOWNSHIP OF
HILLSBOROUGH, SOMERSET COUNTY
Docket No. A-5349-95T3

Dear Mr. Cox:

Enclosed for filing please find an original and five copies of Respondent Hillsborough Alliance for Adult Living, L.L.P.'s letter brief in opposition to COAH's motion to dismiss together with a Certification of Service. Kindly return a stamped "filed" copy of the documents to the waiting messenger and charge our account #38800 for any required filing fee.

Thank you for your attention to the above.

Very truly yours,


PETER A. BUCHSBAUM

PAB/pas
Enclosures

WM L GREENBAUM (1914-1983)
ALLEN RAVIN (1957-1997)

ROBERT S GREENBAUM
ARTHUR H. GREENBAUM
PAUL A. ROWE
WENDELL A. SMITH
ALAN E. DAVIS
DAVID L. BRUCK
MICHAEL B. HIMMEL
MICHAEL A. BACKER
ROBERT C. SCHACHTER
MARTIN L. LEPELSTAT
DENNIS A. ESTIS
WILLIAM D. GRAND
BENJAMIN D. LAMBERT, JR.
ALAN S. HAAR
HARRIET F. KLEIN
MARK H. SOBEL
MAL W. HANDEL
BARRY S. GOODMAN
PETER A. BUCHSBAUM
LAWRENCE P. MAHER
THOMAS J. DENITZIG, JR.
ROBERT S. GOLDSMITH

JOHN D. NORTH
KENNETH T. BILLS
THOMAS C. SEIFER
MARGARET GOODZEIT
ROBERT J. KIPNEZ
W. RAYMOND FELTON
CHRISTINE F. LI
MERYL A. G. GONCHAR
MICHAEL K. FEINBERG
CARLTON T. SPILLER
JAMES E. PATTERSON
JOSEPH M. ORIOLO
LLOYD H. TUBMAN
SABRINA A. KOGLER
JACQUELINE M. PRINTZ
MARJORIE F. CHERTOK
LAWRENCE H. WERTHEIM
DAVID B. HINELMAN
GARY K. WOLINETS
KEVIN T. McNAMARA
RICHARD L. HERTZBERG

DANIEL L. GOLDEN, OF COUNSEL
STEVEN S. GOLDENBERG, OF COUNSEL
NJ LEGISLATIVE AGENT
SHERRYL W. KAUFMAN, OF COUNSEL

ALLEN V. BROWN
ROBERT S. UNDERHILL
SUSAN OKUN GOLDSMITH
JAMES A. MOHONEY
JESSICA R. MAYER
ELLEN A. SILVER
ANDREA J. SULLIVAN
ANNE DONLON MORRISON
CHRISTINE F. MARKS
MARC D. POLICASTRO
DIANE V. GARRITY
JONATHAN W. PHILIPP
MARC J. GROSS
LUKE J. KEALY
CHRISTOPHER S. PORRINO
JEFFREY M. SHAPIRO

CATHERINE M. FRANZ
JODI L. ROSENBERG
MIA L. STUART
RICHARD L. ELBERT
MICHAEL T. RAVE
AARON R. EASLEY
JESSICA L. KYLE
KEITA ARCHIE YOUNG
CIPORA SALZHAN
MARCUS A. BANKS
DILIP B. PATEL
JODI S. ELIGBERG
WILLIAM D. BRICK
RACHEL M. COE
KENNETH J. MANSFIELD

H1000090B

GREENBAUM, ROWE, SMITH,
RAVIN, DAVIS & HIMMEL LLP

June 17, 1998
Page 2

cc: Ronald L. Shimanowitz, Esq. VIA FEDERAL EXPRESS
Stephen Eisdorfer, Esq. VIA FEDERAL EXPRESS
Edward Lloyd, Esq. VIA FEDERAL EXPRESS
William P. Malloy, Deputy Attorney General VIA FEDERAL EXPRESS
James A. Farber, Esq. VIA FEDERAL EXPRESS
Edward Halpern, Esq. VIA FEDERAL EXPRESS

**GREENBAUM, ROWE, SMITH,
RAVIN, DAVIS & HIMMEL LLP**

COUNSELLORS AT LAW

METRO CORPORATE CAMPUS ONE
P.O. BOX 5600
WOODBIDGE, NEW JERSEY 07095-0988
(732) 549-5600
TELECOPIER (732) 549-1881
ABA NET 2529

DELIVERY ADDRESS:
99 WOOD AVE. SOUTH
ISELIN, NEW JERSEY 08830-2712

6 BECKER FARM RD.
ROSELAND, NEW JERSEY 07068-1735
(973) 535-1600
TELECOPIER (973) 535-1698

REPLY TO

Woodbridge

June 17, 1998

Emille R. Cox, Clerk
Superior Court of New Jersey
Appellate Division
CN 006
Trenton, NJ 08625-006

RE: IN THE MATTER OF THE PETITION FOR SUBSTANTIVE CERTIFICATION OF
THE HOUSING ELEMENT AND FAIR SHARE PLAN OF THE TOWNSHIP OF
HILLSBOROUGH, SOMERSET COUNTY
Docket No. A-5349-95T3

Dear Mr. Cox:

Please accept this letter brief in lieu of a more formal brief of Respondent Hillsborough Alliance for Adult Living, L.L.P. ("HAAL") in opposition to the June 4, 1998 motion of Respondent New Jersey Council on Affordable Housing ("COAH") for dismissal of this appeal as moot.

TABLE OF CONTENTS

PROCEDURAL HISTORY & STATEMENT OF FACTS 2
ARGUMENT 3

WM L. GREENBAUM (1914-1983)
ALLEN RAVIN (1957-1997)

ROBERT S. GREENBAUM
ARTHUR M. GREENBAUM
PAUL A. ROWE
WENDELL A. SMITH
ALAN E. DAVIS
DAVID L. BRUCK
MICHAEL B. HIMMEL
MICHAEL A. BACKER
ROBERT C. SCHACHTER
MARTIN L. LEPPELSTAT
DENNIS A. ESTIS
WILLIAM D. GRAND
BENJAMIN D. LAMBERT, JR.
ALAN S. HAAR
HARRIET F. KLEIN
MARK H. SOBEL
HAL W. MANDEL
BARRY S. GOODMAN
PETER A. BUCHSBAUM
LAWRENCE P. MAHER
THOMAS J. DENITZIO, JR.
ROBERT S. GOLDSMITH

JOHN D. NORTH
KENNETH T. BILLS
THOMAS C. SENTER
MARGARET GOODZEIT
ROBERT J. KIPHEES
W. RAYMOND FELTON
CHRISTINE F. LI
MERYL A. G. GONCHAR
MICHAEL K. FEINBERG
CARLTON T. SPILLER
JAMES E. PATTERSON
JOSEPH M. ORIOLO
LLOYD H. TUSHNETZ
SABRINA A. KOGL
JACQUELINE M. PRINTZ
MARJORIE F. CHERTOK
LAWRENCE H. WERTHEIM
DAVID B. HIMELMAN
GARY K. WOLNETZ
KEVIN T. McNAMARA
RICHARD L. HERTZBERG

DANIEL L. GOLDEN, OF COUNSEL
STEVEN S. GOLDENBERG, OF COUNSEL
NJ LEGISLATIVE AGENT
SHERRYL W. KAUFMAN, OF COUNSEL

ALLEN V. BROWN
ROBERT S. UNDERHILL
SUSAN OKIN GOLDSMITH
JAMES A. MOHONEY
JESSICA R. MAYER
ELLEN A. SILVER
ANDREA J. SULLIVAN
ANNE DONLON MORRISON
CHRISTINE F. MARKS
MARC D. POLICASTRO
DIANE V. GARRITY
JONATHAN W. PHILIPP
MARC J. GROSS
LUKE J. REALY
CHRISTOPHER S. PORRINO
JEFFREY M. SHAPIRO

CATHERINE M. FRANZ
JODI L. ROSENBERG
MIA L. STUART
RICHARD L. ELBERT
MICHAEL T. RAVE
AARON R. EASLEY
JESSICA L. KYLE
KEITA ARCHIE YOUNG
CIPORA SALZMAN
MARCUS A. BANKS
DILIP B. PATEL
JODI S. ELIGBERG
WILLIAM D. BRICK
RACHEL M. COE
KENNETH J. MANSFIELD

June 17, 1998
Page 2

THIS OVER TWO YEAR OLD APPEAL SHOULD NOT NOW BE DISMISSED AS MOOT SINCE THE ISSUES BETWEEN THE PARTIES REMAIN CONTESTED AND SINCE THE INTERESTS OF JUSTICE REQUIRE THAT THE MATTER FINALLY BE BROUGHT TO AN EXPEDITIOUS CONCLUSION.

CONCLUSION 11

PROCEDURAL HISTORY & STATEMENT OF FACTS

Respondent HAAL generally adopts the procedural and history and Statement of Facts set forth in the COAH letter brief, with the exception of the last three sentences which assert that the waiver of center designation is void, the case is now moot and the appeal must be dismissed. Rb at 5.¹

HAAL further asserts that the facts with respect to the matter as set forth in the COAH opinion dated June 3, 1998 and reproduced in the Appendix to the COAH letter brief are generally accurate.

In addition, on June 12, 1998, Hillsborough filed a motion to reconsider the June 3, 1998 COAH decision. Since COAH rules require that motions be filed no later than thirty days prior to the next COAH meeting, the motion is not returnable until the first week in August, 1998, given that COAH meets only on the first Wednesday of every month. Assuming that COAH considers it properly filed, this motion stays the time for appeal of the June

¹ Citations to Rb and Ra respectively refer to the COAH brief and appendix on support of its motion to dismiss. RaHAAL and RbHAAL refer to this brief and appendix opposing the motion to dismiss.

June 17, 1998
Page 3

3 COAH action, see R. 2:4-3(b) and may if granted change the decision on which the COAH motion to dismiss is predicated.

ARGUMENT

THIS OVER TWO YEAR OLD APPEAL SHOULD NOT NOW BE DISMISSED AS MOOT SINCE THE ISSUES BETWEEN THE PARTIES REMAIN CONTESTED AND SINCE THE INTERESTS OF JUSTICE REQUIRE THAT THE MATTER FINALLY BE BROUGHT TO AN EXPEDITIOUS CONCLUSION.

First, COAH's motion is based on the finality of its June 3 decision to revoke the certification that was the subject of this appeal. However, a motion to reconsider that decision has been filed. Therefore the operative effect of the revocation will be further reviewed. Under this circumstance, the motion to dismiss is premature.

More importantly, the COAH motion will further delay resolution of an ongoing controversy. Clearly as Hillsborough has already argued in its June 15 brief opposing the pending motion, the issues between the parties are not moot.

As the COAH brief describes, this appeal is now over two years old. Moreover, as documented at length in the COAH opinion, Ral,ff. throughout this two year period, HAAL, the developer of the sole low and moderate income housing site in the Hillsborough Affordable Housing Plan, has been stymied from proceeding with that site by Hillsborough's stalling tactics including, as recounted in the COAH opinion, Hillsborough's failure to approve sewer service for its affordable housing site and its unilateral attempt to

June 17, 1998
Page 4

repeal the zoning ordinance which supported the HAAL site. Ra6,20. Hillsborough has also failed to advocate inclusion of that site in Planning Area 2 as required by the Developer's Agreement of February, 1996 between HAAL and Hillsborough, even though this agreement had specifically been incorporated by reference to the April, 1996 COAH resolution granting substantive certification to HAAL. Ra6,26.

Moreover, the HAAL project has been in gestation for even longer, since it first received the General Development Plan from Hillsborough in early 1992, approximately six and one half years ago. Ra7.

Despite these enormous time delays, COAH rejected HAAL's request that the terms and conditions of the April, 1996 substantive certification be enforced and that Hillsborough be required to cooperate in obtaining sewer service, re-instating the ordinance and seeking Planning Area 2 status for the HAAL property. HAAL has twice requested such relief, first in a motion for emergent relief prior to the repeal of the PAC/HCF ordinance and later in its response to COAH's order to show cause of February, 1998. See Ra31, documents 9 and 13 with respect to emergent relief and order dated February 4, 1998, RaHAAL 1, memorializing COAH's October 3, 1997 decision to deny such relief. See also June 3 COAH

June 17, 1998
Page 5

opinion at Ra10-12 and Ra16-17, setting forth HAAL's arguments in favor of enforcement of the certification.

Instead of adopting those arguments, COAH revoked Hillsborough's substantive certification, thus remanding to HAAL such relief as it might obtain in the builder's remedy suit it filed in Superior Court in February, 1998. That suit had been filed subsequent to the February 4 order to show cause and in anticipation that COAH might chose the avenue it ultimately did select, that is revoking Hillsborough's substantive certification and leaving Hillsborough vulnerable to builder's remedy actions.

It is uncertain how long such litigation will take place. A Case Management Conference is scheduled before Judge Ashrafi for June 19, 1998. However, it is clear that six and one half years after first being approved, and more than two years after having been certified by COAH, and having expended more than \$1,000,000 pursuing approvals in reliance on the 1991 General Development Plan and the 1996 COAH certification, see Ra16, HAAL will now go through almost through an entire Superior Court litigation process in order to procure its rights.

In this drawn out context, COAH now suggests that this appeal by New Jersey Future, which has been pending for two years, should be wiped out. A clear consequence of this assertion that any issues raised by its June 3, 1998 decision as to the HAAL site,

June 17, 1998
Page 6

which essentially continues the controversy over the center waiver and COAH certification, should be handled in an entirely new appeal such as will probably occur. Thus, although COAH is supposed to expedite the creation of affordable housing -- that is its primary mission -- in order to engender realistic opportunities for such housing, it has in this case embarked on a procedural course which requires a new trial court litigation in order to secure HAAL's rights to a builder's remedy and now, a whole new appeal to determine whether certification was properly revoked and in fact Hillsborough is subject to a builder's remedy action. Thus, the combination of COAH's declining to enforce the 1996 certification, and its motion to dismiss the pending appeal as moot, is certain to delay resolution of Hillsborough's affordable housing obligations for another period of years.

This delay can only prejudice HAAL's pending application for approval. It can be represented to the Court that the concept hearing on this application will be heard on June 18 by the Hillsborough Planning Board. Moreover, HAAL has appeared before the Somerset County Planning Board with respect to the State Plan and Planning Area 2 status of the property on June 16. Yet a cloud of uncertainty will hang over these proceedings in light of COAH's request to have the pending appeal dismissed and the corollary that

June 17, 1998
Page 7

any challenges to COAH's decision of June 3, 1998 would be delayed for another year or so in the course of new appeal.

This result is inconsistent with COAH's own determination that while Hillsborough may formulate a new housing plan, it must reach agreement with HAAL as to the zoning of its property. As COAH stated in its June 3 decision:

"Consistent with the Fair Housing Act and the MLUL, both Hillsborough and HAAL entered into a mediated agreement as part of COAH's process and Hillsborough sought and received certification based upon this agreement. It would be a waste of this Council's time and effort in administering the Hillsborough plan, conducting the required mediation, granting certification, and defending that certification in the appellate courts, for the Council to not require Hillsborough to include a new agreement for development of the HAAL site in any future fair share plan filed with the Council. Anything less would compromise the COAH process and allow any municipality in the future to repudiate mediated agreements, as Hillsborough has done here. Such municipal behavior cannot be tolerated in the future by the Council, nor will it be." Ra29.

This observation is drawn directly from that of the New Jersey Supreme Court in Hills Development Corp. v. Township of Bernards, 103 N.J. 1, 57-58 (1986). There, the Supreme Court, discussed whether COAH would have the right to enforce the terms of substantive certification, as contrasted with merely revoking it for a municipality which had defaulted during the certification process. The Court stated:

June 17, 1998
Page 8

The Council may have the power, once its jurisdiction is invoked, to require the municipality to pursue substantive certification expeditiously and to conform its ordinances to the determination implicit in the Council's action on substantive certification. While the language of the statute could support a contrary conclusion, that conclusion would allow a municipality to use all of the energies of the Council, presumably for the purpose of determining its Mt. Laurel obligation through the council rather than the courts, all the way up to the point at which substantive certification is about to be determined, and then to withdraw from the matter. It would be beyond the understanding of any citizen if our system of government allowed a municipality, about to conform to the requirements of our Constitution after years of litigation for that purpose, to have its case transferred to an administrative agency, allegedly for the purpose of meeting that same constitutional obligation in a different, yet permissible way, and thereafter, at the last moment, several years later, simply walk away and say, in effect, "I choose not to comply with either the courts or the administrative agency set up by the Legislature." We believe the Legislature never intended such a result and presume the Council will not permit it.

Surely, the Court's observation is accurate. So was COAH's, as to Hillsborough's obligation to the HAAL site. To remit HAAL at this point to a new lawsuit combined with a lengthy appeal process in the pending COAH proceedings is unjust and counterproductive with respect to the production of affordable housing. Moreover, COAH ignored the fact that the essential controversy over the HAAL site is very much alive and continuing.

June 17, 1998
Page 9

In addition, the issue with respect to a waiver of COAH regulations, specifically N.J.A.C. 5:93-5.4(c) respecting the State Plan, is not moot, contrary to COAH's assertion. See Ra29-30 and Rb at 8.

This issue was raised in the remand order of January 7. See RaHAAL2. HAAL had argued on its merits brief in this appeal close to a year ago that COAH had no need to grant a waiver of center designation since the rule which should have applied, N.J.A.C. 5:93-5.4(d) merely encouraged, but did not require sites in Planning Area 2 and centers. Thus, HAAL asserted the rule which COAH waived, 5.4(c), was not applicable anyway since it only applied to communities which were entirely within the boundaries of Planning Areas 3, 4 and 5, which was not the case as to Hillsborough as a whole, or the HAAL site in particular. The Appellate Division was concerned about this argument because it was the one specific issue that it asked be addressed on remand.

This issue has not been mooted by the COAH decision. The COAH motion brief, Rb8, and the COAH opinion itself, Ra27, all state that no waivers will be granted. Thus, the issue of whether 5.4(c), rather than (d) applies and whether a waiver would then be required for the HAAL site unless it is redesignated Planning Area 2 or a center is still very much alive since COAH has decreed in advance that there will be no waivers. Accordingly, the Appellate

June 17, 1998
Page 10

Division's question, acknowledged by COAH, Rb3, with respect to the need for a waiver, is still very much on the table by virtue of the anti-waiver language in the COAH opinion and motion brief.² Thus, the specific question posited by the Appellate Division with respect to the COAH regulations has not been mooted.

Based on the above, HAAL respectfully requests that the motion to dismiss the pending appeal be denied. Instead, HAAL asks that the Appellate Division manage this case so as to produce an expedited resolution of it. Specifically, HAAL recommends that the motion to dismiss be held in abeyance pending resolution of the June 12, 1998 motion by Hillsborough for reconsideration of the June 3 decision. Under the COAH Rules, this motion which is not returnable until COAH's August monthly meeting, tolls the requirement for filing of a notice of appeal if COAH chooses to accept it. R. 2:4-3(b) Obviously, if some form of reconsideration is granted, then the contours of this case, and the arguments with respect to its mootness could change drastically.

If the motion for reconsideration is denied or dismissed, then this Court should set an expedited schedule for resolution of any appeals resulting therefrom. There must be finality brought to this matter. It should not continue on for years both from the Law

² Though reciting this anti-waiver language, HAAL reserves the right to contest its propriety.

June 17, 1998
Page 11

Division and Appellate Division with respect to a project first approved in early 1992. After all, the Courts are supposed to be in the business of expediting the resolution of issues affecting all low and moderate income housing. To follow COAH's proposed course of action, which would involve lengthy and extended proceedings in this Court, which would not even commence until some time after August, when COAH may determine the motion to reconsider, is clearly unjust and contrary to the dictates of the Supreme Court as set forth in the language from Hills, supra.

CONCLUSION

Accordingly, for the reasons stated, the motion to dismiss as moot should be denied, at least pending a decision by COAH on the motion for reconsideration. Instead, this Court issue an order providing for the management of any challenges to the June 3, 1998 decision in an expeditious manner.

Respectfully submitted,



PETER A. BUCHSBAUM

PAB/pas



CHRISTINE TODD WHITMAN
Governor

State of New Jersey
COUNCIL ON AFFORDABLE HOUSING
PO Box 813
TRENTON NJ 08625-0813
609-292-3000
FAX: 609-633-6056
TDD#: (609) 278-0175

JANE M. KENNY
Chairman
SHIRLEY M. BISHOP, P.P.
Executive Director

February 5, 1998

Peter A. Buchsbaum, Esq.
Greenbaum, Rowe, Smith, Ravin
Davis & Himmel LLP
Metro Corporate Campus One
PO Box 5600
Woodbridge, NJ 07095-0988

**RE: IN THE MATTER OF THE PETITION FOR SUBSTANTIVE CERTIFICATION
OF THE HOUSING ELEMENT AND FAIR SHARE PLAN OF THE TOWNSHIP
OF HILLSBOROUGH, SOMERSET COUNTY
COAH DOCKET #COAH 97-905**

Dear Mr. Buchsbaum:

On February 5, 1998, the Council on Affordable Housing (COAH) approved a Resolution Memorializing the COAH Decision of October 3, 1997, regarding the above captioned matter. A copy of the Resolution is enclosed.

If you have any questions, please feel free to call me at 609/292-4323.

Sincerely,

Renee Reiss
Council Secretary

c: William Maloy, DAG
Monica Etz, COAH
Attached Service List



RESOLUTION MEMORIALIZING COAH DECISION OF
OCTOBER 3, 1997

WHEREAS, Hillsborough Alliance for Adult Living and U.S. Home Corporation ("HAAL") filed an emergent motion with the New Jersey Council on Affordable Housing ("COAH" or "the Council") requesting that COAH enforce its grant of substantive certification to the housing element and fair share plan of the Township of Hillsborough ("Hillsborough") and order Hillsborough to not alter the zoning on HAAL's Planned Adult Community/Health Care Facility ("PAC") site and to seek the necessary water and sewer approvals for the PAC site, as provided in a mediated agreement between Hillsborough and HAAL; and

WHEREAS, objections to the emergent motion were filed by Hillsborough, New Jersey Future, PEC Builder's, Inc., and the Friends of Hillsborough, Inc.; and

WHEREAS, oral argument was held on the emergent motion at the regularly scheduled COAH meeting of October 3, 1997; and


WHEREAS, the Council at its October 3, 1997 meeting considered the arguments of all parties, both oral and written, made in support of and in opposition to the HAAL emergent motion; and

WHEREAS, the Council at its October 3, 1997 meeting voted unanimously to deny the relief sought in the HAAL emergent motion because the Council's grant of substantive certification to

Hillsborough's housing element and fair share plan was currently on appeal to the Appellate Division of the Superior Court, the Appellate Division had denied the Council's motion to return jurisdiction of the case to the Council and Hillsborough's grant of substantive certification contained language requiring Hillsborough to continue to comply with the terms of its grant of substantive certification.

NOW, THEREFORE, BE IT RESOLVED that the New Jersey Council on Affordable Housing hereby memorializes its decision of October 3, 1997 denying the relief sought in the emergent motion filed by the Hillsborough Alliance for Adult Living.

I hereby certify that this Resolution was duly adopted by the Council on Affordable Housing on February 4, 1998.


Renee Reiss, Secretary
Council on Affordable Housing

L.L. Malloy

IN THE MATTER OF THE PETITION FOR
SUBSTANTIVE CERTIFICATION OF THE
HOUSING ELEMENT AND FAIR SHARE PLAN
OF THE TWP OF HILLSBOROUGH ET AL

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A -005349-95T3
MOTION NO. M -002158-97
BEFORE PART: A
JUDGE(S): LONG
KIMMELMAN
KLEINER

MOTION FILED: DECEMBER 05, 1997 BY: NJ FUTURE INC
ANSWER(S) FILED: DECEMBER 16, 1997 BY: COAH
DECEMBER 17, 1997 BY: HILLSBOROUGH ALLIANCE

SUBMITTED TO COURT: JANUARY 05, 1998

REC'D
APPELLATE DIVISION

JAN 12 1998

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON THIS

7 DAY OF January, 1998, HEREBY ORDERED AS FOLLOWS:

MOTION BY APPELLANT
- TO SUPPLEMENT THE RECORD

FILED
APPELLATE DIVISION
JAN 12 1998

GRANTED DENIED OTHER
(X) () (X)

SUPPLEMENTAL:

The motion to supplement the record is granted. The matter is temporarily remanded to COAH to consider all of the materials we have allowed to be added to the record before us (see our order on M-1289-97) along with such other facts as COAH deems relevant. See R. 2:5-5(b). Among other things, COAH shall consider whether, in view of recent actions by Hillsborough Township, the grant of substantive certification remains valid and whether any new issues requiring COAH resolution have been presented. COAH should also address the issue of whether the proposed development is governed by N.J.A.C. 5:93-5.4(d) or N.J.A.C. 5:93-5.4(c). Jurisdiction is retained.

GPS 33-99

FOR THE COURT:

JUMTH

Virginia Long
VIRGINIA LONG P.J.A.D.

GREENBAUM, ROWE, SMITH, RAVIN, DAVIS & HIMMEL LLP
Metro Corporate Campus One
99 Wood Avenue South
Iselin, NJ 08830
(732) 549-5600
Attorneys for Respondent, Hillsborough Alliance for Adult Living,
L.L.P.

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 31-99

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-5349-95T3

CERTIFICATION OF SERVICE

PATRICIA A. SYLVIA, of full age, upon her certification, says:

1. I am a legal secretary employed by the law firm of Greenbaum, Rowe, Smith, Ravin, Davis & Himmel LLP, attorneys for Respondent Hillsborough Alliance for Adult Living, L.L.P., with offices located at Metro Corporate Campus I, 99 Wood Avenue South, Iselin, New Jersey 08830-9998.

2. On June 17, 1998, I caused to be served via messenger on Emille R. Cox, Clerk, Superior Court of New Jersey, Appellate Division, Hughes Justice Complex, CN 006, Trenton, NJ 08625-006, an original and five copies of Respondent's letter brief in opposition to COAH's motion to dismiss.

3. On June 17, 1998, I caused to be served, via Federal Express, two copies of Respondent's letter brief in opposition to COAH's motion to dismiss on the following:

William P. Malloy, Deputy Attorney General
Office of the Attorney General
Hughes Justice Complex
25 Market Street
CN 112
Trenton, NJ 08625

Edward Lloyd, Esq.
Rutgers Environmental Law Clinic
15 Washington Street
Newark, NJ 07102

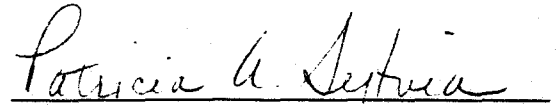
Ronald L. Shimanowitz, Esq.
Hutt & Berkow, P.C.
459 Amboy Avenue
Woodbridge, NJ 07095

James A. Farber, Esq.
DeCotiis, Fitzpatrick & Gluck
Glenpointe Centre West
500 Frank W. Burr Boulevard
Teaneck, NJ 07666

Edward Halpern, Esq.
Professional Center at Hillsborough
503 Omni Drive at Route 206
Somerville, NJ 08876

Stephen Eisdorfer, Esq.
Hill Wallack
202 Carnegie Center
Princeton, NJ 08543

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



PATRICIA A. SYLVIA

Dated: June 17, 1998