

# Hillsborough Litigation

6/15/99

Fax materials from expert to Distribution List

- Letter re Fair Share Report to Judge
- Case Management Order
- Letter to Judge re COAH proposals
- COAH Newsletter
- Letter to Judge re omission from Fair Share report

Pgs. 13

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Mt. d. II*

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**COPY**

June 15, 1999

HAND DELIVERED

The Honorable Roger F. Mahon, JSC  
 Hunterdon County Court House  
 Park Avenue and Capner Street  
 Flemington, New Jersey 08822

Re: Hillsborough Township Consolidated Mount Laurel II  
 Litigation

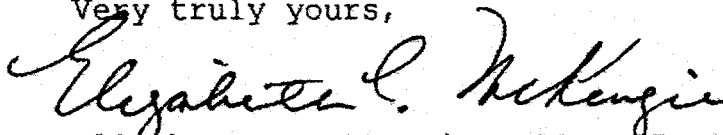
Dear Judge Mahon:

Enclosed please find two (2) copies of my Fair Share Report for Hillsborough Township. The report is submitted for Your Honor's consideration in connection with the Hillsborough Township litigation.

If additional documentation or explanation is required in support of any of my conclusions, I will be happy to provide whatever is needed.

The parties to the litigation will each be receiving two copies of the report by Federal Express tomorrow morning. The second copy is for their experts to review should they wish to have them do so. I am also sending one (1) copy directly to John Middleton, Hillsborough Township Administrator.

Very truly yours,



Elizabeth C. McKenzie, AICP, PP

cc: Distribution List and  
 John Middleton, Hillsborough Township Administrator

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The Honorable Roger F. Mahon, J.S.C.  
Superior Court of New Jersey  
Hunterdon County Court House  
P.O. Box 502  
Flemington, New Jersey 08822

SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION  
HUNTERDON COUNTY

Docket No. HNT L-000409-98

\*\*\*\*\*  
KRAMÉ DEVELOPMENT COMPANY,  
INC., a New Jersey Corporation,

Plaintiff,

vs.

TOWNSHIP OF HILLSBOROUGH,  
a Municipal Corporation of the  
State of New Jersey located in  
Somerset County, New Jersey,  
the TOWNSHIP COUNCIL of the  
Township of Hillsborough and  
the PLANNING BOARD of the  
Township of Hillsborough,

Defendants.  
\*\*\*\*\*

\*\*\*\*\*  
PEC BUILDERS, INC., a New  
Jersey Corporation and  
SKP LAND, INC., a New Jersey  
Corporation,

Plaintiffs,

vs.

TOWNSHIP OF HILLSBOROUGH,  
a Municipal Corporation of the  
State of New Jersey, located in  
Somerset County, New Jersey,  
the TOWNSHIP COUNCIL of the  
Township of Hillsborough and the  
PLANNING BOARD of the  
Township of Hillsborough,

Defendants.  
\*\*\*\*\*

Docket No. HNT L-000411-98

**CASE MANAGEMENT ORDER**  
**(CONFERENCE OF**  
**JUNE 11, 1999)**

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\*\*\*\*\*

HILLSBOROUGH ALLIANCE FOR  
ADULT LIVING, LLP and  
U. S. HOME CORPORATION,  
intervenor plaintiff,

Plaintiffs,

vs.

TOWNSHIP OF HILLSBOROUGH and  
FRIENDS OF HILLSBOROUGH, INC.,  
intervenor defendant,

Defendants.

Docket No. HNT L-000492-98

\*\*\*\*\*

FRIENDS OF HILLSBOROUGH, INC.,  
a Corporation of the State of New  
Jersey,

Plaintiff,

vs.

TOWNSHIP COMMITTEE OF THE  
TOWNSHIP OF HILLSBOROUGH,  
PLANNING BOARD OF THE  
TOWNSHIP OF HILLSBOROUGH,  
U.S. HOME CORPORATION and  
HILLSBOROUGH ALLIANCE FOR  
ADULT LIVING, LLP,

Defendants.

Docket No. HNT L-000502-98

\*\*\*\*\*

\*\*\*\*\*  
THE BIELANSKI GROUP, a New  
Jersey Partnership,

Plaintiff,

vs.

TOWNSHIP OF HILLSBOROUGH,  
a Municipal Corporation of the  
State of New Jersey,  
TOWNSHIP COUNCIL of the  
Township of Hillsborough and the  
PLANNING BOARD of the  
Township of Hillsborough,

Defendants.  
\*\*\*\*\*

Docket No. HNT L-000575-98

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THIS MATTER having come before the Court on June 11, 1999 for a Case Management Conference, it is on this 14<sup>th</sup> day of June, 1999,

**ORDERED that:**

1. Any motions regarding the calculation of Hillsborough's fair share number by the Master in her report to be issued June 14, 1999 shall be filed by July 16, 1999 and will be scheduled as per the rules of court;
2. No discovery shall be filed with the court except as related and relevant to specific issues in formal motions;
3. The parties shall, to the extent possible, informally attempt to resolve any objections to discovery among themselves by August 13, 1999; the logistics for meetings shall be agreed upon by the parties;
4. The Master shall be provided with copies of written discovery on an ongoing basis;
5. All motions regarding discovery objections which cannot be resolved informally shall be filed by September 3, 1999;

6. It is estimated that all "paper" discovery shall be completed by October 1, 1999;

7. It is estimated that all depositions of fact witnesses shall be completed by December 31, 1999;

8. It is estimated that all expert reports shall be submitted by April 2, 2000;

9. It is anticipated that this matter shall be ready for trial by May 3, 2000;

10. All estimated dates subject to review at later case management conferences;

11. A case management conference shall be held on the return date of the discovery motions;

12. The Order previously entered by the court on June 7, 1999 in the Krame Development matter, docket number HNT L-409-98, is hereby vacated; same shall be resubmitted to the court on five days notice to all parties



ROGER F. MAHON, P.J. Ch.



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June 17, 1999

The Honorable Roger F. Mahon, J.S.C.  
Superior Court of New Jersey  
Hunterdon County Court House  
P.O. Box 502  
Flemington, New Jersey 08822

Re: Hillsborough Township Consolidated Mount Laurel II Cases -  
COAH's Proposed Rule for Interim Certifications

Dear Judge Mahon:

As you requested, I spoke to Shirley Bishop, Executive Director of the Council on Affordable Housing, about the new Rule COAH will be proposing at its July meeting to address Interim Certifications until COAH issues its new numbers (probably in 2001). Here is what COAH proposes:

1. Any municipality that petitions on or before June 6, 2000, may receive a six (6) year Substantive Certification, based on a Housing Element and Fair Share Plan addressing the 1993-1999 fair share allocation.
2. COAH may grant an Interim Certification to any municipality that petitions after June 6, 2000, and such interim Certification will be valid for up to one (1) year after the adoption of COAH's third round methodology and fair share allocations. This petition would also be based on a Housing Element and Fair Share Plan addressing the second round fair share allocation.

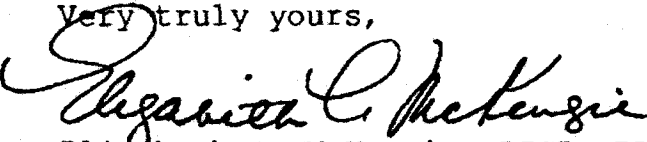
## ELIZABETH C. MCKENZIE, P.P., P.A.

The Honorable Roger F. Mahon, J.S.C.  
June 17, 1999  
Page Two of Two

3. For all of those towns that already received Substantive Certification in the second round whose Certification will expire after June 6, 2000, COAH will extend such Certification for up to one (1) year after the adoption of the third round methodology and fair share allocations without the need to submit a new plan, provided the governing body, by resolution: a) requests such extension; b) commits to continuing to implement its second round Housing Element and Fair Share Plan; and c) commits to petitioning for Substantive Certification of its third round Housing Element and Fair Share Plan within one year after COAH's adoption of the third round methodology and fair share allocations.

A copy of an article in COAH's latest newsletter addressing Interim Certifications is enclosed. Please let me know if there is anything further I can provide to the Court at this time.

Very truly yours,



Elizabeth C. McKenzie, AICP, PP

Enclosure

cc: Distribution List (w/ enclosure)



# Council On Affordable Housing NEWSLETTER

June ■ 1999

## COAH Clarifies Development Fee Policy

At the request of Lawrence Township, Mercer County, the Council on Affordable Housing (COAH) clarified its policy regarding the use of development fees for predevelopment costs. The requirements for a municipality to be permitted to expend development fees on predevelopment costs are:

- The proposed development has support from the municipal governing body;
- Either the municipality or the entity that will develop the housing has site control;
- The site will be developed by an experienced for-profit or nonprofit group;
- COAH has reviewed and approved the pro forma for the proposed development;
- There is general support for the proposed development from the surrounding neighbors and/or general community; and
- The use of development fees for predevelopment costs can ultimately be folded into hard costs for the development.

If the project fails to develop, the municipality would not be held liable for the development fees expended on predevelopment costs that meet the above criteria.



## Raritan Borough Receives COAH Certification

At its June 2, 1999 meeting, the Council on Affordable Housing (COAH) granted substantive certification to Raritan Borough, Somerset County. Raritan Borough had a 12-year cumulative second round obligation of 115 units. However, since the borough received a vacant land adjustment in the first round, Raritan Borough's new construction component was reduced from 81 units to 24 units for an unmet need of 57 units. The rehabilitation component remained 34 units.

Raritan Borough addressed its obligation with a 34-unit housing rehabilitation program and 24 affordable units constructed at the 119-unit Cardinal Woods development. Cardinal Woods contains 95 single family homes and 24 affordable duplex units. The borough addressed its unmet need with a development fee ordinance and overlay zoning on three sites.



## COAH Proposes Interim Substantive Certification Rule

The Council on Affordable Housing (COAH) is in the process of determining its third round methodology and developing new rules. It is anticipated that COAH's new rules will be effective in 2001. As COAH's present affordable housing obligations cover a 12-year period from 1987-1998, the following provisions will cover the intervening two +/- years before the third round affordable housing obligations are effective:

If a municipality files an adopted housing element and fair share plan together with a petition for substantive certification on or before June 6, 2000, COAH may grant a six-year certification pursuant to N.J.A.C. 5:29 g 2.2.

If a municipality files an adopted housing element and fair share plan pursuant to N.J.A.C. 5:29 g 2.2, and petitions for substantive certification after June 6, 2000, COAH may grant

an Interim Substantive Certification that is valid for up to one year after the adoption of COAH's third round methodology and rules. To remain under the jurisdiction of COAH, municipalities that receive Interim Substantive Certification must petition before the one year date to address a third round obligation.

Municipalities that have second round certifications that expire prior to or within one year after the adoption of COAH's third round methodology and rules may have their second round certifications extended for up to one year after adoption of COAH's third round methodology and rules if there is a resolution from the governing body that commits to continuing to implement the COAH certified second round plan and to addressing a third round obligation with a new adopted housing element and fair share plan.

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June 17, 1999

The Honorable Roger F. Mahon, J.S.C.  
Superior Court of New Jersey  
Hunterdon County Court House  
P.O. Box 502  
Flemington, New Jersey 08822

Re: Hillsborough Township Consolidated Mount Laurel II Cases -  
Fair Share Report

Dear Judge Mahon:

In speaking to Shirley Bishop, Executive Director of the Council on Affordable Housing, about an entirely different matter yesterday, I realized that there is an omission in my June 15, 1999, report which I would like to correct. The omission does not affect the calculation of Hillsborough's remaining fair share obligation. It does affect the discussions on pages 15 and 18 of the report concerning rental bonus credits for the existing group homes.

According to Ms. Bishop, any group homes created after June 6, 1994, when COAH issued its current Substantive Rules, must be covered by a 30 year deed restriction to qualify for rental bonus credits.

COAH is more flexible in its policies regarding rental bonus credits for the group homes that came into existence after December 15, 1986, but prior to the issuance of the current Rules. The entitlement of these facilities to receive rental bonus credits is evaluated on a case-by-case basis. Rental bonus credits may be issued for group homes established after December 15, 1986, but prior to June 6, 1994, without a 30 year deed

## ELIZABETH C. MCKENZIE, P.P., P.A.

The Honorable Roger F. Mahon, J.S.C.  
June 17, 1999  
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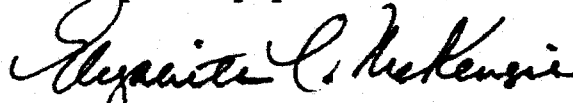
restriction, if the provider owns the property (as is the case with the four group homes in Hillsborough) or has a long term lease as well as a long term contract or funding commitment.

The implications of the foregoing in Hillsborough's case is that the 3 bedrooms in the Arc facility established in 1998 would only qualify for rental bonus credits if there is a 30 year deed restriction on the property. If not, they would still qualify for one credit each, but would not be eligible for any rental bonus credits. The two facilities constructed in 1989 and 1992 would, however, be permitted to receive not only a credit for each bedroom but also an additional rental bonus credit for each bedroom.

The effect this information has on my report is that Hillsborough has 4 extra rental bonus credits that can probably be "banked", and the Township may be entitled to another 3 "banked" rental bonus credits against its third round rental obligation if it turns out that the 1998 Arc facility is covered by a 30 year deed restriction.

Even though this information does not affect Hillsborough's current fair share calculation, I wanted to clarify the record to ensure that the meaning of my report and any ruling Your Honor makes with respect to the fair share will not be misconstrued.

Very truly yours,



Elizabeth C. McKenzie, AICP, PP

cc: Distribution List