

NEW JERSEY COUNCIL ON  
AFFORDABLE HOUSING  
DOCKET NO. 0-87-16

IN THE MATTER OF )

Civil Action

~~MIDDLETOWN TOWNSHIP~~ )

OPINION

This matter comes before the Council on Affordable Housing on two separate applications seeking essentially the same relief. The first application, filed by the Middletown Township Planning Board, and the second, filed on behalf of Phil Leone and 42 other residents of Middletown Township, are hereby consolidated for purposes of this opinion and order.

The procedural background of this case is undisputed. Middletown is presently before the Council for review of its housing element as a court transferred municipality. Middletown thus filed with the Council on January 5, 1987 a proposed final housing element and fair share plan, following open public meetings held in Middletown to discuss the plan on December 4 and December 29, 1986. Apparently, a great deal of public comment was received at the meetings. As a result, the plan was submitted to meet the January 5 deadline, although one of the applications notes that it was passed with the "condition" that it could be subsequently amended.

The Planning Board's motion asks that the Council stay acceptance of its final plan and extend the time in which the township must file a petition for substantive certification, until such time as further public hearings can be held and the plan can be amended. The Planning Board argues that it had insufficient time to consider all the comments it received and properly amend the plan, and that it was thus forced to adopt the plan before it was ready in order to meet the Council's deadline.

The second motion, filed by a group of Middletown residents, asks that the Council issue an order extending the time for Middletown's filing of its final housing element and petition for substantive certification or, in the alternative, that Middletown now be permitted to amend its plan. This application similarly argues the inadequacy of the time given to prepare the plan, which resulted in a plan passed without adequate public input, and with the knowledge that there were numerous outstanding objections. The application adds that the plan was only passed with the understanding that it could be amended, and that the mediation process was never designed to cope with the type of objections that will now be raised.

Thus, in effect, both motions seek the same relief. The Council is asked to treat the January 5 submission as an interim or draft plan, rather than as Middletown's final Mt. Laurel plan, and to extend the time permitted Middletown to file its final plan and to petition for substantive certification. In the alternative, the Council is asked to stay the substantive certification process in order to allow Middletown to amend its January 5 plan.

The Fair Housing Act provides that transferred municipalities (such as Middletown) must file their housing element and fair share plan with the Council within five months of the date of transfer, or promulgation of the Council's guidelines, whichever is later. N.J.S.A. 52:27D-316(a). Middletown was transferred to the Council prior to the effective date of the Council's substantive rules (August 4, 1986.) Thus Middletown's final plan was due on January 5, 1987. The Act further provides that if a court transferred municipality fails to file its plan with the Council in a timely manner, that "jurisdiction shall revert to the court." N.J.S.A. 52:27D-316(a). There is thus no leeway for the Council to extend Middletown's time to file its plan, as by statute a late filing deprives the Council of jurisdiction.

Nor can the Council permit a court transferred municipality to simply amend its final plan following submission. This is because the filing of the plan by a court transferred municipality also acts as a petition for substantive certification. N.J.A.C. 5:91-4.2; Hills Dev. Co. v. Bernards Tp. in Somerset Cty, 103 N.J. 1, 57 (1986). The public notice of such petition begins running the 45 day period for formal objections to the proposed plan. N.J.S.A. 52:27D-314. Legitimate objectors who properly file within this period will take part in the mediation process conducted by the Council to review the proposed plan. If a court transferred municipality were permitted to amend its plan during the 45 day period, it would deprive potential objectors of the full statutory period allowed. Finally, the Act clearly does not contemplate an extension of that objector period.

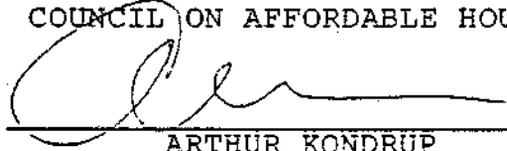
Thus, for the reasons set forth above, it is the Council's conclusion that it cannot extend Middletown's date for filing its Mt. Laurel plan, nor can it authorize unilateral amendments by Middletown subsequent to filing. The Council recognizes the Middletown Planning Board's concern with involving all municipal residents in the planning process to the fullest extent possible. However, as noted, the five month period provided for this process is set by statute, and all municipalities were presumably aware of the time constraints from the start. While Middletown's plan may have been passed under the misapprehension that it could be amended by the town, this cannot be used to bind the Council. Further, the Council notes that a town's housing element may be amended as part of the review process, either due to Council input or as part of mediation, if there are objectors. Interested parties who have objections to the plan may attain the status of objectors by complying with the applicable regulations. The Act contemplates that there will be objectors other than the builder responsible for bringing the original Mt. Laurel litigation, in an effort to involve all parties with legitimate objections in the process.

Thus, the Counsel will order that the motions for an extension of time for the filing of Middletown's Mt. Laurel plan

and petition for substantive certification, or in the alternative for permission to unilaterally amend that plan, be denied.

COUNCIL ON AFFORDABLE HOUSING

By:



ARTHUR KONDRUP  
CHAIRMAN

Dated:

2/17/87