

NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING
DOCKET NO.

IN THE MATTER OF THE
TOWNSHIP OF MILLBURN

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Civil Action

OPINION

This matter comes before the Council on Affordable Housing on the application of the Township of Millburn seeking to withdraw its petition for substantive certification.

By resolution of participation dated October 25, 1985 Millburn indicated its intention to participate in the administrative process outlined in the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. and procedural regulations, N.J.A.C. 5:91-1 et seq. Subsequently, Millburn complied with Council regulations by filing a letter of intent on September 3, 1986; a draft housing element and fair share plan, on October 30, 1986; and a final housing element and fair share plan, on January 1, 1987. By letter dated March 3, 1987 Millburn voluntarily petitioned the Council for substantive certification. No objections were received during the statutory 45-day period, which expired on April 23, 1987. On May 4, 1987 the Council returned the plan to Millburn to correct certain deficiencies. By letter dated June 24, 1987 Millburn requested that it be permitted to withdraw its petition. Included was a copy of a June 23, 1987 resolution of the Township Committee seeking such a withdrawal.

It is the Council's determination that the request to withdraw should be granted. Millburn is a voluntary participant before the Council. Pursuant to N.J.S.A. 52:27D-309(a), it filed a resolution of participation within four months of the enactment of the Fair Housing Act (i.e., prior to November 2, 1985); and submitted its final housing element and fair share plan within five months of the Council's enactment of its substantive rules (Millburn filed its plan on the last day, January 5, 1987). Thus, pursuant to N.J.S.A. 52:27D-316(b), Millburn is entitled to exhaust the mediation and review process of the Council, in the event it is later subject to a Mt. Laurel suit. This protection is not dependent on the Township filing a petition for certification. Under N.J.S.A. 52:27D-313, a municipality that has voluntarily filed a housing element has a period of six years from that date in which it may file a petition. However, it is not compelled to do so.

Neither the Act nor regulations specifically deal with the issue of a municipal withdrawal. However, in light of the particular circumstances of this case, it is the Council's conclusion that such withdrawal is appropriate. As noted, Millburn's participation before the Council is completely voluntary. Similarly, its decision to petition for certification was voluntary. By withdrawing that petition, and in effect returning to its prior position, it has gained no advantage. As noted above, Millburn is entitled to the protection of the exhaustion of administrative remedies by virtue of its timely filing of a resolution of participation and a housing element. The filing of the petition for

certification conferred no additional protection. Thus, the Council feels the request to withdraw should be granted.

The Council wishes to emphasize, however, that its decision is limited to the specific facts of this case. It is not dealing with a situation where it has expended a great amount of time in review of the municipality's plan; where there are objectors to the plan; or where the municipality is not voluntarily before the Council. The Council is offering no opinion on withdrawal in cases outside the scope of this specific factual situation.

For all of these reasons, the Council will order that the request to withdraw will be granted.

COUNCIL ON AFFORDABLE HOUSING

By: _____



Arthur R. Kondrup
Chairman

DATED: JULY 20th, 1987