

FAIR SHARE HOUSING CENTER,)
INC., NEW JERSEY COUNCIL OF)
CHURCHES, CAMDEN COUNTY BRANCH)
OF THE N.A.A.C.P. and SOUTHERN)
BURLINGTON COUNTY BRANCH OF)
the N.A.A.C.P.,)

Plaintiffs,)

v.)

TOWNSHIP OF CHERRY HILL, NEW)
JERSEY,)

Defendants.)

COUNCIL ON AFFORDABLE HOUSING
DOCKET NO. COAH87-7c

Civil Action

OPINION

This Matter comes before the Council on Affordable Housing (Council) upon the application of JoCan, Inc., for an Order granting relief from the Council's Order Imposing Restraints upon the Township of Cherry Hill dated April 20, 1987 and Amended Order dated June 1, 1987. On April 20, 1987, the Council found that land was a scarce resource in Cherry Hill and ordered that Cherry Hill be restrained from granting any development approvals for vacant parcels of land in excess of two acres. JoCan specifically requests that it be exempted from the terms of the Order.

The procedural history of this matter is more fully set forth in the Council's opinion dated April 20, 1987. In addition to the procedural history set forth in the previous opinion, it also should be noted that on April 20, 1987 the Council determined that Cherry Hill's housing element and fair share plan was incomplete and returned it to Cherry Hill to cure the deficiencies.

Cherry Hill's revised housing element and fair share plan was due on July 2, 1987 and the Township submitted it on time. The revised housing element does not include JoCan's property as part of the compliance plan and in fact zones only three sites for low and moderate income housing in order to meet its fair share obligation of 1,000 as capped.

The facts of this matter are basically undisputed. JoCan is the equitable owner of a 159.4 acre tract of land in Cherry Hill. The property is located to the southwest of Route 73 and is bordered to the east by Springdale Road and County Road and to the west by Marlkress Road. The property in question is located in an area which is zoned R1 for residential use. Only single family detached homes may be constructed under the zoning ordinance and the minimum lot size is 13,000 square feet for an inside lot and 15,000 square feet for a corner lot. A portion of the property borders an R-10 zone which is comprised of multi-family housing. On May 5, 1987 JoCan filed an application for a major subdivision approval with the Cherry Hill Planning Board. JoCan's application requested approval to subdivide the property into 330 residential lots. JoCan intends to construct 330 single family homes on the lots, none of which are low or moderate income houses. The application was not acted upon due to the Council's Order.

During oral argument, JoCan modified its proposal for construction and stated that it would divide the property into two areas consisting of approximately 72 acres and 62.2 acres. Approximately 25 acres cannot be developed due to environmental constraints. It would construct 173 single family homes on the 72

acre parcel and on the 62.2 acre parcel, if necessary, it would construct an inclusionary development of approximately 960 units of which 20% would be low and moderate units. However, JoCan stated that it would proceed first with the single family homes and then construct the inclusionary development only if Cherry Hill required it to satisfy its fair share obligation. JoCan admitted that it was taking a risk that Cherry Hill would not require its property to satisfy its fair share obligation and therefore JoCan would never have to construct the low and moderate income units. JoCan felt that by the time it finished construction of the single family units, Cherry Hill's plan will have been reviewed by the Council and its property will never be made part of Cherry Hill's housing element.

The Council already has found vacant land to be a scarce resource in Cherry Hill. In light of that finding, JoCan's property should be exempted from the restraints only if it appears that the parcel will not be essential to the satisfaction of Cherry Hill's fair share obligation. Contrary to JoCan's contentions, a review of the facts does indeed indicate that JoCan's property may indeed be necessary to the satisfaction of Cherry Hill's fair share obligation.

JoCan has conceded that its property is suitable for residential development. It presently has an application pending for development of 330 homes. Additionally, JoCan's proposal to construct an inclusionary development which would produce approximately 192 low and moderate income units indicates that the property is suitable. During oral argument all parties agreed that the

property was suitable for residential development and not one party voiced the opinion that the site was not appropriate for low and moderate income housing. In fact, all parties indicated that the land was appropriate for such development. The location of the property as evidenced by the maps JoCan submitted indicates that the property has good access roads and is in close proximity to transportation and shopping. This coupled with the fact that the property already borders a high density zone leads the Council to conclude that the entire parcel of land is especially suitable for construction of low and moderate income housing.

Having determined that the property is suitable for low and moderate housing, the Council now must consider whether the parcel may be essential to the satisfaction of Cherry Hill's fair share obligation. A review of the facts leads the Council to the invariable conclusion that JoCan's property may indeed be essential. Cherry Hill has submitted its revised housing element and fair share plan to the Council. A cursory review of Cherry Hill's revised housing element indicates that Cherry Hill has not designated JoCan's property for low and moderate income housing. However, at this time, the Council has not had the opportunity to fully review and evaluate Cherry Hill's plan and therefore is not in a position to conclude whether Cherry Hill's plan as submitted is satisfactory. Additionally, there are objectors to Cherry Hill's housing element and therefore mediation will have to be conducted. Mediation and review may indeed result in changes to Cherry Hill's plan. Such changes may very well require Cherry Hill to zone additional sites to satisfy its obligation. At this time,

the Council cannot say with any certainty how much vacant land Cherry Hill eventually will require in order to meet its fair share obligation after the plan was been fully reviewed. In light of this uncertainty and the fact that we know land is a scarce resource in Cherry Hill and JoCan's property is especially suited for low and moderate income housing, it would be irresponsible and in contravention of the mandate of the Fair Housing Act for the Council to accept Cherry Hill's housing element and fair share plan as it pertains to the need for utilization of vacant land simply on its face without a complete Council review. If the Council were to take such a position and ultimately the detailed Council review indicates that Cherry Hill must rezone more property than the housing element and fair share plan indicate, valuable vacant land will have been lost. The Council cannot abrogate its statutory duty in such a manner and accordingly we must ensure that Cherry Hill has sufficient vacant land to meet its entire fair share obligation until such time as the Council has had an opportunity to completely review Cherry Hill's housing element.

Cherry Hill's present precredited need number is 2,295. However, as all parties are aware, N.J.A.C. 5:92-7.1 limits Cherry Hill's fair share obligation to 1,000. Even with the 1,000 cap, land still is a scarce resource in Cherry Hill and JoCan's property cannot be exempted. Cherry Hill has an indigenous need of 191. Accordingly, the town must provide for at least 809 new units. Depending upon the amount of credits for rehabilitation that Cherry Hill requests and is granted, that number could be as much as 850 new units. At this time, in order to ensure full satisfaction of

Cherry Hill's fair share obligation, the Council must utilize the 850 number. Using 850 and applying N.J.A.C. 5:92-8.4(c) which states that land shall presumptively have a minimum density of six units to the acre with a 20% set aside, Cherry Hill will need approximately 708 acres of vacant land to satisfy its obligation through inclusionary developments. While Cherry Hill may not have to meet its entire obligation through inclusionary developments, at this time the Council cannot speculate as to how Cherry Hill eventually will meet its obligation. As previously stated, the Council must exhaustively review the housing element to determine if Cherry Hill's housing element complies with the Council's rules and provides a realistic opportunity for the satisfaction of its fair share obligation. If it does not, necessary changes will have to be made. Therefore, at this juncture, the Council must assume that Cherry Hill has sufficient land to meet its entire obligation.

As part of its revised housing element, Cherry Hill submitted a vacant land inventory. This inventory sets forth useable vacant sites in town. "Useable" does not mean "useable" for low and moderate income housing, but rather indicates generally that the sites can be developed, whether it be commercial, industrial or residential. The vacant land inventory states that there are 950.68 useable vacant acres in Cherry Hill. Of those 950.68 acres, approximately 100 acres are located in business or industrial zones which in most instances will mean that they are unsuitable for low and moderate income housing. Removing the industrially and commercially zones sites from consideration for the purposes of this motion, Cherry Hill has approximately 850 acres

which might be used for low and moderate income housing. Additionally, eleven sites are under five acres and six sites are between five and ten acres. Sites ten acres or less in size are less economical to develop at high densities and therefore the available acreage for low and moderate income housing may be reduced further. Moreover, many of the sites, including JoCan's, contain wetlands which reduce the developable acreage. In fact, JoCan admittedly loses approximately 20% of its site due to wetlands constraints. Finally, out of the 850 acres, the Council does not know at this time how many acres are affected by further environmental or other constraints that would foreclose development for low and moderate income housing. Thus, it is certain that a portion of the 850 vacant acres will be removed from consideration. To release either all or a portion of JoCan's property, which totals approximately 160 acres, at this time would reduce Cherry Hill's available vacant land below the necessary 708 acres or at least dangerously close to it. The Council cannot do this at this time.

JoCan's property is a large tract of land that is admittedly suitable for low and moderate income housing. Furthermore, based upon the foregoing, it is apparent that JoCan's property probably will be essential to the satisfaction of Cherry Hill's fair share obligation. While Cherry Hill ultimately may be able to meet its obligation without inclusionary developments, such a determination can only be made after a detailed review of the revised housing element and fair share plan. To do otherwise would be speculative and could result in the loss of valuable land neces-

sary to the satisfaction of Cherry Hill's obligation. Accordingly,
JoCan's motion is denied.

Dated:

9/28/87



Arthur K. Kondrup
Chairman