

NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING
DOCKET NO. COAH

FAIR SHARE HOUSING CENTER,)
INC.; NEW JERSEY COUNCIL OF)
CEURCHES; 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,)

Defendant,)

v.)

ROUSE & ASSOCIATES -)
457 HADDONFIELD ROAD LAND)
LIMITED PARTNERSHIP,)

Affected Property Owner.)

Civil Action

OPINION

This matter was initiated by the Council on Affordable Housing (Council) in order to clarify the terms of the Council's Amended Order dated June 1, 1987 in the above captioned matter. The Council became aware of certain problems with the interpretation of the aforementioned Order as it relates to a particular piece of property in Cherry Hill known as Lots 4 and 7, Block 176, on the Tax Maps of the Township of Cherry Hill and owned by Rouse and Associates (Rouse). Rouse owns the aforementioned property on

which presently stands a vacant restaurant. Rouse intends to raze the restaurant and construct on this site an office building. Rouse argues that it is not subject to the terms of the Order since the land is not vacant by virtue of the restaurant which is located on the site. However, the Fair Share Housing Center argues that the property is exempt only insofar as demolition of the restaurant is concerned and once the restaurant is demolished the land becomes subject to the terms of the Order. As a result of this controversy, the Council requested both parties to appear before it and address the issue of whether the property known as Lots 4 and 7, Block 176 on the Tax Maps of the Township of Cherry Hill is exempt from the terms of the Council's Amended Order dated June 1, 1987. Additionally, all objectors and interested parties were notified as well and given an opportunity to be heard. Jo-Can, Inc. was the only party that availed itself of this opportunity.

The facts of this matter are rather simple. On April 20, 1987 the Council entered an Order restraining

"the Township of Cherry Hill, the Township of Cherry Hill Planning Board, Board of Adjustment and Zoning Board and any other person, agent or employee who has the authority to grant any type of development approvals ... from granting any type of development approval for the development of any parcel of land of two acres or more in size ...".

Further, the Order exempted from its terms any properties which previously had received preliminary or final site plan approval and any properties where the owner sought to add to an already existing structure. It was subsequently brought to the Council's attention that while the Opinion referred to vacant land being restrained, the Order did not contain such language. Consequently, the Council

amended the Order on June 1, 1987 to specify that the restraints applied to the granting of approvals "for the development of any parcel of vacant land in excess of two acres". Additionally, the Council added to its list of properties exempt from the terms of the Order those properties where the owner seeks to demolish a structure as well as simply add to it.

Rouse owns a parcel of land consisting of approximately 5.8 acres. Located on the property is a nonfunctioning restaurant. Rouse has clearly stated that it intends to demolish the restaurant and erect an office building. Rouse argues that it is not subject to the terms of the Order for several reasons. Rouse first argues that, based upon the Council's Opinion of April 20, 1987 the Council never intended to include properties with existing structures within the scope of its Order. Rouse further argues that it is not "appropriate" within the meaning of the term as used by the Court in the Hills Development Co. v. Bernards Tp., 103 N.J. 1 (1986), and as adopted by the Council, to impose a blanket restriction upon the development of land. Rouse points out that while it concedes that it is within the intent of the Council's Order to apply to properties with minor structures located on them, it is inappropriate to apply the terms of the Order to properties with major improvements, such as the restaurant, located upon them.

The Fair Share Housing Center argues that while the terms of the Order do not apply to the demolition of the restaurant located on the site, the Order does apply once the restaurant is demolished since the land has now become vacant. The Fair Share Housing Center contends that inapplicability of the terms of the

Order to the Rouse property would violate the intent of the Council's Order since such a result would provide a loophole to the Council's Order which obviously was intended to preserve land suitable for low and moderate income housing. At oral argument, the Fair Share Housing Center indicated that it was of the position that the Rouse property was suitable for low and moderate income housing.

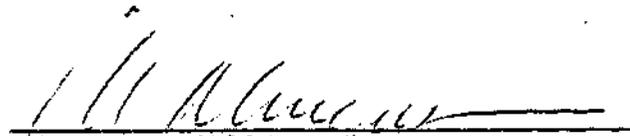
Jo-Can, Inc., an interested party in this matter, also filed a response. Jo-Can argued that since the term "vacant" as used in the Council's Order is not defined, the term must be interpreted as broadly as possible. Jo-Can, therefore, contends that the term as used in the Council's Order should be interpreted to apply to situations where a structure may exist on the land, however, that structure is unoccupied and not being utilized for any purpose. Accordingly, Jo-Can argues that the Rouse property is "vacant" in terms of the Order. Jo-Can argues that any other result would frustrate the purpose of the Council's Order.

There is no dispute that Rouse may demolish the restaurant located on the site without seeking an exemption from the terms of the Council's Order. It is clear from the Amended Order that whatever permits and approvals are necessary for the demolition of an already existing structure may be granted without reference to the Order. However, once that site is demolished, the land is now vacant and subject to the terms of the Council's Order, provided, of course, the property is in excess of two acres and preliminary or final site plan approval was not received prior to April 20, 1987. To interpret the Order in any other manner, the

Council finds would frustrate the intent of the Order which was to ensure that suitable sites for low and moderate income housing were not dissipated.

The Council cannot distinguish between the Rouse property and the Jo-Cas property, for which an exemption was denied even though some abandoned farm buildings remained on the site. To permit a site to possibly be lost simply because some unutilized buildings exist on the site cannot be allowed. Such a result would allow a party to circumvent the intent of the Order.

This Opinion, of course, in no way deals with the issue of whether, once the restaurant is demolished, an exemption may be appropriate. The Council merely is stating that, once the building is demolished, the property is subject to the terms of the Order. The Council would invite Rouse to make a motion for an exemption, if Rouse is so inclined.


William Angus
Acting Chairman
Council on Affordable Housing

Dated: *January 19, 1988*