

COUNCIL ON AFFORDABLE HOUSING
DOCKET NO.

IN RE HOLMDEL TOWNSHIP -)
MOTION TO MODIFY RESOLUTION)
DENYING SUBSTANTIVE)
CERTIFICATION)

Civil Action
OPINION

On February 1, 1988 the Council on Affordable Housing issued a Resolution Denying Substantive Certification to Holmdel Township. As per N.J.S.A. 52:27D-314(b) the Resolution contained a list of the reasons for the denial, and provided Holmdel with a period of 60 days in which to refile its petition with changes satisfactory to the Council.

By Motion dated February 16, 1988 the Public Advocate (who was an objector to the Holmdel housing element and fair share plan, and who had participated in mediation) requested that the Council amend its Resolution to add two additional conditions. The Public Advocate had previously appeared at the Council's public meeting of January 19, 1988, and requested at that time an opportunity to file a response to the Council review report (issued on December 12, 1987) prior to the Council's action on certification. The Council granted the request for additional time to file a response, without setting a specific time limit. However, no response had been received

prior to the Council's Resolution of February 1, 1988. The Public Advocate then filed the present motion.

As noted, the Public Advocate requests that the Council add two additional conditions to its Resolution: first, requiring Holmdel to eliminate its 50% residency preference from its plan; and second, requiring Holmdel to delete all (or a portion) of its proposed Regional Contribution Agreement (RCA) with the Borough of Keansburg. The Public Advocate's rationale for this request is that both provisions of the plan perpetuate existing patterns of racial discrimination and exclusionary zoning. In support, the Public Advocate cites the present percentage of minorities in Holmdel, which is lower than the regional average; as well as the fact that Keansburg has at present a higher proportion of the region's lower income housing than does Holmdel. For the reasons set forth below, it is the Council's determination that the motion should be denied.

A municipality is permitted to transfer up to 50% of its fair share obligation to another municipality in its region through an RCA. N.J.S.A. 52:27D-312(a). Holmdel's proposed RCA does not exceed the permissible limit set by the Act. Similarly, N.J.A.C. 5:92-15.1 permits a municipality to make up to 50% of lower income limits to be provided in inclusionary developments available on an initial basis only to eligible municipal residents and eligible households that work in the municipality and reside elsewhere. Again, Holmdel's

final housing element is in compliance with the regulation. The Public Advocate admits these facts, yet contends that the Council should not permit Holmdel to utilize either the RCA or the residency preference, for the reasons set forth above.

The Fair Housing Act, N.J.S.A. 52:27D-301 et seq., is specifically designed to provide an administrative mechanism under which municipalities may satisfy their Mt. Laurel obligations. N.J.S.A. 52:27D-302 and 303. That obligation, as set forth by the Supreme Court, is the requirement that each municipality provide the requisite realistic opportunity for its fair share of the region's need for low and moderate income housing, So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., (Mount Laurel II) 92 N.J. 158, 208 (1983) and was the result of municipal exclusionary zoning that effectively excluded lower income housing from many municipalities. Id. at 210. Municipal regulations that fail to provide that requisite realistic opportunity conflict with the general welfare and are unconstitutional. Mount Laurel II, 92 N.J. at 208-209. As a result, every New Jersey municipality must provide for its present indigenous need up to the regional average (lower income households living in deficient housing within the municipality); growth area municipalities have a further obligation to provide for their fair share of the region's reallocated present and prospective need. Id. at 214-215; 243-244. Under the Act, this obligation is met by providing for the municipality's specific fair share obligation, as determined pursuant to the

Council's methodology, N.J.A.C. 5:92-5.1 et seq., through the elimination of unnecessary land use restrictions and the use of affirmative governmental devices. Mount Laurel II, 92 N.J. at 217.

Thus, the Mt. Laurel doctrine is premised on removing restrictive economic barriers that exclude lower income persons from many communities. It is not designed to address the question of racial disparities between municipalities. In fact, the Supreme Court noted this point at the time of So. Burl. Cty. N.A.A.C.P. v. Tp. Mt. Laurel, 67 N.J. 151 (1975) (Mount Laurel I), when it stated that minorities were "not the only category of persons barred from so many municipalities, by reason of restrictive land use regulations." Id. at 159. The Court added that it would thus "consider the case from the wider viewpoint that the effect of Mount Laurel's land use regulation has been to prevent various categories of persons from living in the township because of the limited extent of their income and resources." Ibid. To the extent that a party's concerns arise out of alleged racial disparities between municipalities, such actions are beyond the Council's mandate as set forth in the Fair Housing Act, and the Council concludes that it is thus an inappropriate forum in which to seek to redress such grievances.

As noted, the Fair Housing Act was enacted to provide a statutory framework under which municipalities may meet their

Mt. Laurel obligations. By meeting that obligation and receiving substantive certification, a municipality will earn both a six year period of repose, and a presumption of validity in any subsequent exclusionary zoning case brought against it. N.J.S.A. 52:27D-317(a). The constitutionality of the Act was upheld by the Supreme Court in Hills Dev. Co. v. Bernards Tp. in Somerset Cty., 103 N.J. 1 (1986). As one possible method of meeting its fair share obligation, the Act permits a municipality to utilize an RCA. However, a municipality may only use an RCA in partial satisfaction of its obligation; it may transfer no more than 50% of its obligation to another municipality, and must still provide for the remainder of the units internally.

Further, although 50% of the non-transferred units may initially be offered subject to a residency preference, all of these units will constitute new lower income units in Holmdel. It should also be noted that the residency preference also includes individuals who work in the municipality and presently reside elsewhere. Further, in the event the units are not filled by groups within the preference, they will be made available to all eligible applicants. Thus, assuming it satisfactorily addresses the conditions contained in the Resolution, Holmdel will have provided a realistic opportunity for its fair share obligation, in compliance with the Act and regulations. Under those circumstances, it is the Council's conclusion that Holmdel will have done all that is required

