

inclusionary component of 183 as well as the indigenous need of 82. Readington's plan indicated that it proposed to rehabilitate its indigenous need at a cost of \$10,000. per unit. Readington's plan proposed to address its inclusionary component as follows:

- Cushetunk Commons30 units
- Van Horne Hill at Cushetunk Lake70 units
- Whitehouse Estates14 units
- Senior Citizens Rental Project57 units

Readington claimed a one-third rental bonus credit for the senior citizens project which accounts for the remaining twelve units. N.J.A.C. 5:92-14.4. In regards to the inclusionary component of Readington's plan, the objectors challenge only the senior citizens rental project.

Initially, the Council previously rendered an oral decision on the objector's motion. At its public meeting on March 7, 1988, a Council task force recommended to the full Council that the objectors' motion be denied. The recommendation centered on the fact that Readington's plan had proceeded through the mediation and review process and the Council had never requested certain information from Readington regarding its plan and therefore it was not appropriate to impose the extraordinary measures of accelerated denial or site specific relief without first providing the Township the opportunity to supply further information. The full Council accepted the task force's recommendation and voted to deny the objectors' motion. The Council also directed staff to send a letter detailing the information needed and giving Readington 45 days in which to supply it. The purpose of this opinion is simply to reduce to writing the Council's oral decision of March 7, 1988.

Prior to setting forth the basis for the Council's decision, it would be helpful to summarize the motion and responses thereto. The objectors argued that Readington's plan does not provide the requisite "realistic opportunity" called for in the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. for essentially three reasons. First, they argued that Readington's plan does not set forth a sufficient funding mechanism for its rehabilitation component and the senior citizens project. The objectors also question whether \$10,000 per unit for rehabilitation of its indigenous need, the figure Readington utilizes in its plan, is adequate. Finally, on this point, the objectors argued that the employment of developers' contributions to fund the rehabilitation component and the senior citizens project is too speculative and further the bonding pledged by Readington in the event the developer contributions are not forthcoming is likewise too speculative. Second, the objectors question the viability of the senior citizens project. The objectors point out that neither a pro forma nor feasibility study has been presented for the project to indicate that it is a viable proposal. Additionally, the objectors argue that the site may not be available in light of the option agreements. Third, the objectors complained that Readington failed to consider their site as a site for affordable housing.

Readington argued that the plan is a viable plan and the motion should therefore be denied. Readington pointed out that use of the \$10,000 as the figure for rehabilitation comports with the Council policy. Readington further argued that donation

of the site for the senior citizens project is not too speculative but rather is based upon a binding agreement. Additionally, Readington pointed out that cost estimations for the senior citizens project was based upon the advice of an experienced planner. Readington also pointed out that the senior citizens project will be completed by either Geneton, Inc., an experienced developer of such housing, or the present owner of the site and therefore the project is not speculative. Readington further indicated that it considered the objectors' site, but rejected it because it was not as suitable as other sites. Finally, Readington argued that accelerated denial is moot because the mediation process has concluded.

Amerigo Checcio, on behalf of Checcio Associates, filed a certification in opposition to the objectors' motion. Mr. Checcio argued in his certification that his site, known as Cushetunk Commons, is an appropriate site for low and moderate income housing. He further indicated that the project will be built and therefore his site should not be displaced by the objectors' site.

Although not explicitly stated in the Council's oral decision, the Council would take this opportunity to note that Readington's crossmotion for dismissal of the objectors' motion for accelerated denial is denied. This is implicit in the Council's oral decision since the Council reached and decided the objectors' motion. Contrary to Readington's assertions, accelerated denial is not moot simply because the mediation process has concluded. In this instance, Council review of Readington's plan continued subsequent to mediation and in fact is still ongoing. Accelerated denial may be appropriate at any time during

the administrative process.

The Council has recognized that accelerated denial and the use of site specific relief are extraordinary measures. The effect of accelerated denial is to remove a municipality from the administrative process prior to the conclusion of the process. Such a result runs counter to one of the purposes of the Act which is to provide an administrative alternative to lengthy, protracted Mt. Laurel litigation. N.J.S.A. 52:27D-303. While the Council clearly has the authority to accelerate denial, it is also clear that such a measure is extraordinary in light of its effect. Hills Development Co. v. Bernards Township, 103 N.J. 1, 56 (1986). Likewise, the use of site specific relief is extraordinary since it may result in the use of a site not chosen by a municipality.

In this instance, the Council finds that such extraordinary measures are unwarranted. The objectors rely heavily upon the Council's decision in Motzenbecker v. The Borough of Bernardsville, Council on Affordable Housing, Docket No. COAH 87-18, to support their position. However, Motzenbecker is not applicable to this case. In Motzenbecker, the Council made it clear that, despite repeated Council requests, Bernardsville failed to provide requested information which was necessary for the Council to evaluate its plan. Moreover, the information requested impacted upon the satisfaction of Bernardsville's entire fair share obligation and not merely a portion of it.

In the present case, Readington has not ignored Council requests for information nor has it acted in a manner so as to frustrate the administrative process. The Premediation Report da-

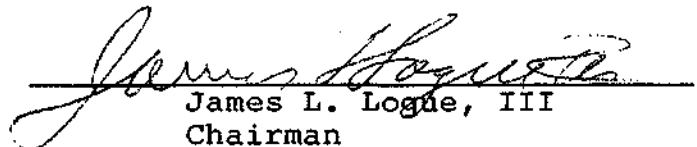
ted July 15, 1987 indicated that the Council needed some additional information pertaining to Readington's rehabilitation component and the inclusionary sites. Readington undertook to supply the necessary information and continued to supply it as more updated information became available. Moreover, the Premediation Report indicated that Readington's plan was basically adequate and therefore the Township has been proceeding through the administrative process under the assumption that its plan was satisfactory. Contrary to the objectors' claims, Readington's plan was not patently defective.

Likewise, the Council rejects the objectors' claim that Readington's rehabilitation component is inadequate and therefore forms a basis for the relief requested. The objectors contend that the rehabilitation component is insufficient because it lacks appropriate funding and the amount estimated for the rehabilitation may be insufficient. However, Readington's rehabilitation component comports with Council policy. The Council, at its public meeting on December 7, 1987 determined that each municipality would have to budget \$10,000 per unit for rehabilitation. The Council has directed the staff to prepare a rule for proposal and promulgation to this effect. Further, the Council consistently has required a municipality to have funds on hand sufficient to pay for at least two years' rehabilitation (one-third of the cost) with an explanation as to how the additional funds will be secured. In this case, Readington has budgeted \$10,000 per unit for rehabilitation for a total cost of \$820,000. Readington also has in hand \$305,000 which represents more than enough to fund two years of rehabilitation.

Accordingly, the Council does not feel it is appropriate to grant such extraordinary relief under these circumstances. While the Council does recognize and share some of the objectors' concerns, the Council feels that the appropriate way to deal with them is to give Readington an opportunity to supply necessary information. Specifically, the Council will require Readington to submit the following information which is necessary for Council review:

1. A copy of the agreement between Trammel Crow Co. and the owner(s) of the site on which the senior citizens project is proposed.
2. Evidence that the option is still valid and Trammel Crow has been complying with the terms of the option agreement. Also, a timetable as to when Trammel Crow will satisfy the requirements set forth in the option agreement sufficient to demonstrate that Trammel Crow will be able to comply with the agreement.
3. A pro forma for the senior citizens project.
4. Evidence of removal of the contract provision in the contract between Trammel Crow Co. and Geneton, Inc. which provides that the contract to sell is subject to all approvals required to develop the site being "unappealable".

The Council notes that it still must determine whether to transmit the issue of site suitability raised by the objectors to the Office of Administrative Law as recommended by the mediator. The objectors' claims that there is insufficient sewer for the senior citizens project impacts upon the site suitability issue and thus will be dealt with when the Council determines how to handle that issue.


James L. Logue, III
Chairman