

IN RE PETITION FOR
SUBSTANTIVE CERTIFICATION
OF LITTLE SILVER
BOROUGH

) COUNCIL ON AFFORDABLE HOUSING
) DOCKET NO. COAH 88-119

OPINION

The Council on Affordable Housing (Council) raised this matter sua sponte by Notice dated August 15, 1988 which required the Borough of Little Silver to come before the Council and show cause as to why the Council should not accelerate denial of Little Silver's petition for substantive certification due to Little Silver's failure to comply with deadlines for submission of a revised housing element and fair share plan (plan). A hearing was scheduled for September 6, 1988 at which time Little Silver appeared before the Council. Little Silver did not dispute the fact that it had missed numerous deadlines for submission of a revised plan. Rather, the Borough asked for additional time to submit the plan. The Council granted that request, however, the plan finally submitted was inadequate. Accordingly, given the numerous deadlines ignored by Little Silver and its failure to ultimately submit a satisfactory plan, the Council finds that it has no alternative but to accelerate denial of Little Silver's petition for substantive certification.

The facts of this matter are undisputed. Little Silver voluntarily petitioned the Council for substantive certification of its housing element and fair share plan on April 26, 1987. One party, Mr. & Mrs. Robert Sickles, filed objections to the plan and consequently mediation was commenced on July 7, 1987. The Sickles owned a site in Little Silver and mediation centered

around the possible use of that site as a component of Little Silver's plan. Mediation was unsuccessful in resolving the objection and was concluded on August 17, 1987. The Council determined that the unresolved objection constituted a contested case and therefore, the issue regarding the use of the Sickles site was transferred to the Office of Administrative Law (OAL). Specifically, the Council transferred the issue of the number of units the objector's site was capable of accommodating.

Prior to the hearing in the OAL, Little Silver and the Sickles entered into a settlement agreement. The settlement agreement was presented to the Administrative Law Judge presiding over the case who accepted the settlement and issued an Initial Decision-Settlement. The OAL forwarded the Initial Decision to the Council for a final decision. Upon review of the settlement agreement, the Council discovered that it did not comport with Council regulations or the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., and therefore, by decision dated January 19, 1988, the Council rejected the settlement. However, as noted in the Final Decision, Little Silver indicated that it would revise the settlement agreement, and hence its plan, to comport with Council regulations and the Fair Housing Act. Therefore, rather than remand the matter for a hearing on the issue transferred, the Council allowed Little Silver time to revise its plan.

The Final Decision did not establish a deadline for submission of the revised plan, but did state that it should be submitted "within an appropriate time." Little Silver did not

submit it "in appropriate time" thereby forcing the Council to issue several letters establishing deadlines. However, these deadlines were not complied with and Little Silver continually defied Council requests to submit a revised plan.

The Council's Final Decision of January 19, 1988 failed to elicit the filing of a revised plan despite Little Silver promise that it would do so. Accordingly, by letter dated March 28, 1988, the Council instructed Little Silver to submit the revised plan by April 29, 1988. This letter also indicated that the Borough originally had promised to submit a revised plan by the end of January, 1988, which of course was not done.

Little Silver did not file its revised plan by April 29, 1988. However, by letter received by the Council on May 2, 1988, Little Silver forwarded a progress report and outline of the revised plan. In light of the submittal of a progress report, the Council, by letter dated May 9, 1988, informed Little Silver that the revised plan should be submitted no later than May 25, 1988. Subsequently, Little Silver requested a two week extension and by letter dated May 23, 1988, Little Silver was informed that its extension request was granted and the plan should be filed no later than June 3, 1988.

Little Silver did not submit its revised plan by June 3, 1988. Instead, Little Silver submitted a resolution adopted by its governing body on June 6, 1988 that stated the Borough's intent to submit a revised plan to the Council by August 15, 1988. The Council determined to allow Little Silver until

August 15, 1988 to submit its plan. However, as on all previous occasions, Little Silver failed to submit its plan by the deadline it had established itself.

The Council afforded Little Silver five separate opportunities to submit its plan. Little Silver failed to comply with all of the deadlines. Accordingly, at its public meeting on August 15, 1988, the Council determined to notify Little Silver that it should come before the Council and demonstrate why the Council should not accelerate denial of Little Silver's petition for substantive certification in light of the Borough's repeated failures to submit a revised plan. A hearing date was scheduled for September 6, 1988, the Council's next meeting.

Little Silver had been notified that the Council planned to discuss the situation at its August 15, 1988 meeting and a representative of Little Silver was present at the meeting. The Council afforded the representative an opportunity to speak and set forth the Borough's position before the Council made any decision. However, the representative indicated that she was not authorized to seek any further extensions and offered no opposition to the Council's position that accelerated denial might be an appropriate remedy in this case.

On September 6, 1988, Little Silver appeared before the Council in response to the Notice. Little Silver did not dispute any of the facts and, in fact, conceded that it had failed to comply with all of the deadlines. Little Silver's sole response to the Notice was a request for more time. The Borough indicated

that it had prepared a plan which was scheduled for municipal action the next day. Therefore, Little Silver asked that it be given time to act upon the revised plan and submit it to the Council. The Council adjourned any action on Little Silver and allowed Little Silver until September 9, 1988 to submit the plan.

Little Silver submitted the revised plan on September 8, 1988, however, the plan was inadequate. In fact, the revised plan failed to address deficiencies of which Little Silver previously had been advised. Specifically, although Little Silver intended to enter into a Regional Contribution Agreement (RCA) no memorandum of understanding or alternate plan to the RCA was submitted. See N.J.S.A. 52:27D-311(c); N.J.A.C. 5:91-12.1(b). Little Silver's failure to include these items in the settlement agreement were reasons why the Council rejected the OAL's Initial Decision. Thus, Little Silver knew in January, 1988 that a memorandum of understanding and alternate plan was required, although Little Silver should have been aware of these requirements even before that since they are contained in the Fair Housing Act and Council regulations.

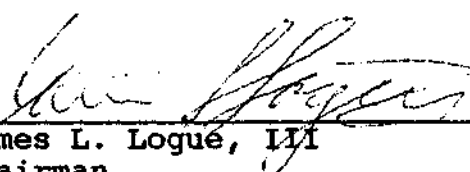
Moreover, Little Silver did not include necessary information regarding the adjustment of its fair share obligation and the inclusionary sites proposed for development. Little Silver did not include a current land use map which indicated all vacant sites and the reason those sites were not appropriate for development. See N.J.A.C. 5:92-8.1 et seq. Thus, based upon the information submitted, it was impossible for the Council to

determine whether Little Silver properly adjusted its obligation. Likewise, no aerial map of the Borough was submitted to aid in this process. Further, no information regarding the availability of sewer and water was submitted. N.J.A.C. 5:92-1.4. Little Silver also failed to include a copy of the fair share plan including the affordability controls, bedroom distribution and range of affordability as required by Council regulations. See N.J.A.C. 5:42-12.1 et seq., 14.1, 14.2. Finally, although the revised plan indicated that Little Silver would undertake to rehabilitate some of its need, it did not submit any information regarding the administration of the rehabilitation program. See N.J.A.C. 5:92-12.3, 17.1.

In short, although Little Silver initiated the administrative process in April, 1987, as of September, 1988 the Borough still had a deficient plan which did not comport with Council regulations. This despite the fact that Little Silver was given five opportunities over the course of eight months to remedy that situation. As of September 8, 1988, the Council still had not received a plan that it could properly evaluate.

Generally, the Council is hesitant to impose the extraordinary measure of accelerated denial upon a municipality that voluntarily initiates the administrative process. However, under the circumstances of this case, the Council is convinced that it has no choice. As described above, Little Silver consistently failed to meet deadlines and submit its plan. In recognition of the fact that Little Silver petitioned voluntarily and the fact

that the Council is concerned with the provision of affordable housing, the Council repeatedly extended the deadline for Little Silver to submit its plan. These extensions were ignored. In fact, Little Silver failed to even comply with the deadline of August 15, 1988 which it had established for itself. Before rendering a decision in this matter, the Council even allowed Little Silver one final opportunity to submit an adequate plan. Instead, Little Silver submitted a deficient one. Little Silver was not participating in the administrative process in a manner designed to result in a plan which would eventually provide low and moderate housing. Instead, Little Silver continually delayed the process. The Council cannot sit back and let such behavior continue. The Council cannot allow a municipality to ignore the Fair Housing Act, Council regulations and Council directives. Given Little Silver's actions in this case, the Council has no alternative but to accelerate denial of its petition for substantive certification.


James L. Logue, III
Chairman

DATED: October 17, 1988