COUNCIL ON AFFORDABLE HOUSING
DOCKET NO. 87-34

IN RE: HOWELL TOWNSHIP,
MOTION FOR ACCELERATED
DENIAL/BUILDER'S
REMEDY

CIVIL ACTION

OPINION

The present case is the result of motions for accelerated denial/builder's remedy filed with the Council on Affordable Housing (the Council) by several objector's to Howell Township's housing element and fair share plan.

Howell was the subject of several exclusionary zoning lawsuits filed prior to the enactment of the Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. Following passage of the Act, the Superior Court granted Howell's request for transfer to the Council in May, 1986 (Howell had previously filed a resolution of participation on November 4, 1985). Howell submitted a draft plan on November 3, 1986, and filed its final housing element and fair share plan with the Council on December 18, 1986. On March 11, 1987 the Council returned the plan to Howell for additional work, on the ground that it contained deficiencies making mediation and review impractical. Howell filed a revised final plan on May 7, 1987.

Due to the receipt of timely objections to the Township's plan, the Council initiated the mediation process on October 21, 1987. However, shortly thereafter, the present motions were filed by objectors Joseph Bonnano, Fort Plains Development, V.S. Hovnanian Group and R.S.L. Investment Group. Mediation continued following the Council's hearing of oral argument on the motions. At the present date, mediation has concluded. All objectors, with the exception of Bonnano, have withdrawn their motions in light of the outcome of mediation. The Council must now deal with the remaining motion.

In his brief, Bonnano asks the Council to grant his request for accelerated denial of the Township's petition for certification, thus ending

the administrative process and returning the entire case to the Superior Court. In the alternative, Bonnano asks that the Council condition any grant of certification upon inclusion of his site as a location for a Mt. Laurel inclusionary development; thus granting him a builder's remedy. Finally, Bonnano suggests that the Council could simply deny the Township's petition, thus returning the matter to the Superior Court (in effect, this would be the same as accelerated denial).

The Council's authority to award either of the reliefs requested (accelerated denial or a builder's remedy) has been affirmed by it in the past. Thus, a complete discussion of these points is unnecessary here. However, it is important to note that both are extraordinary remedies. Use of accelerated denial goes against the intent of the Fair Housing Act to have Mt. Laurel matters heard by the Council rather than the Superior Court. Accelerated denial cuts short the Council's administrative review, and ends any chance for a municipality to create a complying housing plan with input from both the Council and objectors. For these reasons, the Council has stated that it will utilize accelerated denial only in exceptional cases, where a municipality is not participating in a manner designed to expeditiously advance the certification process. Award of a builder's remedy, on the other hand requires the municipality to zone a particular site for a Mt. Laurel inclusionary development as a condition of receiving substantive certification. Use of the remedy is fully discussed in the Council's prior Motzenbecker and Van Dalen opinions.

The Council has concluded that the present case does not warrant imposition of the remedies requested. The Council's letter of March 11, 1987 returning the plan to Howell should not be seen as indicating more than that the plan needed additional work. The Council had concluded that it was impractical to proceed with mediation at that stage, until certain additional information was provided and changes made in the plan. Howell was not the only town to have its plan returned for such additional work. Such action by the Council did not indicate that accelerated denial or a builder's remedy were appropriate remedies at that time.

Actually, the present motions were not filed until after submission of the revised plan by Howell and the start of mediation. Bonnano's arguments in support of his motion are premised on what he views as a history of inappropriate plans submitted by the Township. However, review of the revised plan indicates that, while work remained to be done, the Township had responded to most items contained in the March 11 Council letter. This is borne out by the Council decision at that time to proceed with mediation (which it was unwilling to do prior to receipt of the revised plan).

The Council will only summarize the revised plan in this Opinion. First, Howell submitted the basic material called for in the Council's March 11 discussion of the defects in Howell's housing element. Second, the revised plan reduced the credits claimed by Howell to the figure set by the Council. The revised plan dropped the RCA component questioned by the Council. It also reduced the municipal construction project (which was later dropped from the plan in mediation). Most importantly, the revised plan contained specific identification of seven sites to be zoned for lower income housing. The information provided included site descriptions and maps, and lists of the elements and densities proposed. Further, potential developers were listed for several of the sites. Finally, the plan for the first time attempted to address Howell's full fair share obligation.

Thus, the revised plan, while requiring additional work in mediation, satisfied the majority of the Council's concerns as expressed in the March 11 letter. As noted, this is demonstrated by the fact that the Council concluded that mediation could commence at that point. Finally, nothing that occurred subsequently in mediation warrants imposition of the relief requested. Howell participated fully in mediation, and the plan was further amended during that process. In fact, as noted above, as a result of those amendments the remaining parties withdrew their motions.

For all of the above reasons, the Council has concluded that the extraordinary relief requested would be inappropriate under the facts of the present case. An appropriate order embodying the terms of this Opinion will be entered by the Council.

COUNCIL ON AFFORDABLE HOUSING

By _____
James L. Logue III
Chairman

DATED: November 28, 1988

D1658e