

STATE OF NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING  
DOCKET NO. 87-26 (a)

In Re:

PETITION OF READINGTON TOWN-  
SHIP, HUNTERDON COUNTY FOR  
SUBSTANTIVE CERTIFICATION

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Administrative Action

OPINION

At its public meeting on December 19, 1988, the Council on Affordable Housing (COAH) discussed and decided the Township of Readington's Motion for Clarification of Referral to the Office of Administrative Law (OAL). This opinion simply formalizes COAH's oral decision rendered at that meeting.

Initially, COAH notes that it decided and this opinion addresses only Readington's Motion for Clarification and not objector MRFS Realty Corporation's and Renay Salamon's Cross-Motion for a Stay. At the request of the Readington Township Planning Board, COAH adjourned the Cross-Motion for a Stay in order to give the Planning Board an opportunity to respond to the Cross-Motion. Thus, the Cross-Motion for a Stay will be addressed at a future date.

Readington Township proposes to provide for its precredited fair share obligation of 265 through inclusionary developments on four sites. The objectors challenge three of those four sites, namely the sites known as Cushetunk Commons Project, Cushetunk Lake Project and the Senior Citizen Project and claim that the three sites objected to are not appropriate for the development Reading-

ton proposes. At the conclusion of mediation, the issues involving the appropriateness of the three sites in question were not resolved. Subsequently, COAH considered the unresolved objections and determined the matter was a contested case and, accordingly, transmitted the matter to the OAL for a hearing. At the time of transmittal, COAH clearly was concerned with resolution of the issue of whether the three sites chosen by Readington were appropriate for development of low and moderate income housing. The COAH task force which recommended that the matter be transmitted to the OAL specifically raised questions regarding environmental constraints and the ability to secure necessary approvals for the projects.

COAH's Notice of Referral to the OAL stated:

At issue in this matter is the contention of the objector MRFS Realty Corp. and Renay Solomon, that three of the four sites are not approvable, developable or suitable in accordance with COAH rules. These three sites are the Cushetunk Commons Project, Cushetunk Lake Project, and the Senior Citizen Project. The Township, however, claims that the sites are approvable, available, developable and suitable, and that the sites are expected to receive all applicable approvals pertaining to wetlands, stream encroachment, sewer extensions and the reconstruction of the Cushetunk Lake dam.

The referral of site evaluation to OAL by COAH does not constitute a request for a builder's remedy nor is the Objector's site to be reviewed for site evaluation by OAL. It is solely the matter of the evaluation of site suitability, developability and approvability for the three development sites in Readington's housing element as mentioned above.

Readington claims that this referral is erroneous since COAH only intended to transmit the issue of site suitability as defined

in N.J.A.C. 5:92-1.3 and not the issues of approvability and developability. The objectors dispute Readington's claim and argue that the Nature of the Case as set forth in the Notice of Referral accurately reflects COAH's intentions.

The Nature of the Case as set forth in the Notice of Referral states precisely the issues COAH intended to transmit to the OAL for a hearing. Readington's arguments that COAH merely intended to transmit the issue of site suitability insofar as "suitable" is defined in N.J.A.C. 5:92-1.3 is too narrow an interpretation of COAH's actions. Accordingly, Readington's request to amend the Notice of Referral is hereby denied.

The Task Force memorandum which recommended transmittal to the OAL clearly stated that the Task Force was concerned not only with suitability of the sites but also the ability of the sites to receive necessary approvals, particularly environmental, for development. Although not explicitly stated in memorandum, the ability to secure required approvals necessarily goes to the developability of the sites since without necessary approvals, the sites cannot be deemed developable. See N.J.A.C. 5:92-1.3. COAH accepted the Task Force's recommendation and rationale for transmittal to the OAL. The intent of COAH clearly was to have suitability, developability and approvability of the three sites evaluated.

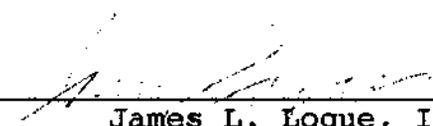
Moreover, given the Task Force's concern over the environmental characteristics of the sites and the ability of the sites to receive the necessary approvals, limitation of the hearing solely to the precise issue of site "suitability", without any considera-

tion to developability and approvability, would not resolve the dispute in this case. COAH's concern over the ability of the sites to secure necessary approvals and hence the ability of the sites to be actually developed would not be answered and the objectors' objections to the sites, which clearly go to the suitability, developability and approvability of the sites, would not be resolved. At the conclusion of mediation in this case, concerns regarding these factors that raised factual disputes remained and the issues must be resolved.

Finally, COAH realizes that Readington may have misunderstood COAH's use of the term "suitable" when discussing the transfer of the matter to the OAL. At the time of the discussions, COAH used the term "suitable" not in the strict technical sense as defined in the regulations, but rather as an indication of whether the sites were appropriate for low and moderate income development. Perhaps, in hindsight, COAH should have chosen a word such as "useable" or "buildable" when generally discussing the sites. In any event, the Task Force's memorandum, as well as COAH discussions at the public meeting clearly indicated that the Task Force and COAH were concerned with the suitability of the sites as defined in COAH regulations as well as the approvability - developability of the sites. Suitability, developability and approvability are interconnected and without all three characteristics present a site generally will not be an appropriate site for low and moderate income housing. It does no good to say a site is suitable for development of low and moderate income housing if that site can not or will not receive the necessary approvals for development. This is made clear by

COAH regulations which view the three criteria as interdependent rather than completely separate. See N.J.A.C. 1.3 and 5:92-8.1.

Accordingly, Readington Township's motion is hereby denied.

  
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James L. Logue, III  
Chairman  
Council on Affordable Housing

Dated: January 9, 1989