

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

IN RE PETITION OF READINGTON)
TOWNSHIP, HUNTERDON COUNTY
FOR SUBSTANTIVE CERTIFICATION,)

OPINION

At its public meeting on January 30, 1989, the Council on Affordable Housing (Council) discussed and decided objectors MRFS Realty Corp.'s and Renay Salamon's cross-motion for a Stay of the Readington Township Planning Board's proceedings regarding the inclusionary sites contained in the Township's housing element and fair share plan. This opinion simply is intended to formalize and memorialize that decision.

The objectors' motion asked the Council to restrain the Readington Planning Board from granting or acting upon any approvals for the inclusionary sites named in Readington's housing element and fair share plan (plan). Essentially, the objectors argue that Readington is attempting to subvert the Council's review of its plan by allowing approvals to be granted for the inclusionary sites so that it may then claim that Council's review is unnecessary since the sites have received the necessary approvals. The objectors, therefore, argue that the status quo should be preserved while the Council continues its administrative process.

Readington argues that a stay should not be granted since no harm will result from the continuation of the planning board

process and, in fact, the provision of affordable housing will be expedited. The Readington Planning Board, which the Council granted leave to file a response to the motion, argues that COAH has no authority to stay the Planning Board's proceedings and, further, any challenges to the Planning Board's actions are properly lodged in the Superior Court, Law Division and not before the Council.

After consideration of all arguments advanced by the respective parties, the Council finds that the objector's motion should be denied. The Council is obligated under the Fair Housing Act, N.J.S.A. 52:27D-301 et seq., to evaluate a municipality's plan and determine whether that plan will provide a realistic opportunity for the provision of the municipality's fair share obligation. The Council will have to review Readington's plan with that statutory directive in mind. Review of the plan necessarily will include review of the inclusionary sites to ensure compliance with all statutory and regulatory criteria. The fact that the inclusionary may have received some or all necessary development approvals does not obviate the Council's obligation to fully review the inclusionary sites as a component of Readington's plan. The receipt of necessary approvals for the sites, of course, will be a factor the Council considers when weighing the realistic opportunity provided by the plan, however, receipt of the approvals will in no way relieve the Council of its statutory obligation to carefully and completely review Readington's plan. Readington cannot and will not be permitted to claim that the Council is precluded

from performing its statutory duties simply because the sites have received necessary development approvals. While the receipt of necessary development approvals ultimately may prove to be a significant factor in the Council's evaluation, the sites still must satisfy all statutory and regulatory criteria.

Moreover, the Council sees no benefit in halting the administrative process at this time. Allowing the planning board process to continue may indeed expedite the provision of low and moderate income housing since, if the sites are deemed to be suitable, developable and approvable, Readington will be that much closer to the commencement of construction. The approval process can be lengthy and the Council does not feel it is beneficial under these circumstances to further complicate the process. Of course, Readington assumes a certain risk by proceeding with the planning board process. If the Council ultimately determines any of the inclusionary sites are not appropriate, Readington may have granted approvals, with all attendant rights to the developer, for projects it cannot utilize to satisfy its fair share obligation. If Readington chooses to proceed with the approval process, it does so with this risk and must accept the consequences.



James L. Logue, III
Chairman

Dated: February 21, 1989