

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

COUNCIL ON AFFORDABLE
HOUSING
DOCKET NO. 89-20

Civil Action
OPINION

At its public meeting on March 20, 1989, the Council on Affordable Housing (COAH) denied MRFS Realty Corp. and Renay Salamon (objectors) motion to review the Administrative Law Judge's decision to limit the hearing in the Office of Administrative Law (OAL) or, in the alternative, to supplement the transfer to have the hearing include the issues of financial feasibility of the projects in questions. COAH set forth its basis for th denial orally at its meeting on March 20, 1989. This opinion simply is intended to memorialize that oral decision.

Objectors made a similar motion before the ALJ and by opinion dated February 24, 1989 the ALJ denied the motion. The objectors then moved before COAH for interlocutory review of the ALJ's decision pursuant to N.J.A.C. 1:1-14.10. At its public meeting on March 13, 1989 COAH decided that it would consider the objector's request. All parties were given an opportunity to submit papers and at its meeting on March 20, 1989, COAH allowed oral argument as well. COAH rendered an oral decision denying the objector's motion and this opinion merely is intended to memorialize the decision. This decision does not limit in anyway the basis for the denial COAH set forth orally.

COAH transferred review of three inclusionary sites to the OAL as a contested case. By opinion dated January 9, 1989, COAH clarified that referral and indicated that the scope of review included a determination of whether the three sites are "approvable", "developable" and "suitable" as set forth in COAH regulations. The objectors argue that those terms essentially include a review of whether the proposed projects are financially feasible. They argue that "approvable" must include a review of whether the proposed senior citizens rental housing

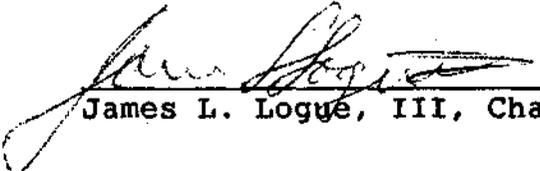
project qualifies for construction financing by the Farmers Home Administration and is "approvable" by that agency. They argue that "developable" and "approvable" must include a determination of whether Readington can actually develop the site. They argue that the ALJ must examine whether the project is viable if the FmHA does not fund the project. Finally, they argue that the ALJ must consider whether generally the plan comports with the Fair Housing Act and COAH regulation.

Readington and Trammel Crow, developer of the proposed senior citizen project, argue that the ALJ correctly decided the original motion to limit the hearing. They argue that the term "approvable" as set forth in COAH regulations does not include approvable by agencies for funding but rather means approval by necessary state and local agencies such as the Department of Environmental Protection and local planning boards. They further agrees that the terms "developable" and "suitable" doe not include review of financial feasibility but rather pertain directly to the characteristics of the site.

The ALJ in his decision indicated that he agreed with Readington's arguments and concluded that financial feasibility was not transferred. COAH argues with the ALJ's conclusion and the positions set forth in Readington's papers. COAH did not intend to transfer financial feasibility. It is undisputed that Readington in addition to seeking FHA funding also has pledged to bond for any monies necessary. Readington has submitted evidence of its bonding capacity and a resolution of the governing body indicating its intent to bond if necessary. This is all COAH requires of any municipality. If the FHA funding is not available, Readington has indicated that it will bond to pay for the project.

Accordingly, for the foregoing reasons and the reasons set forth in its oral decision, COAH will not modify or revise the ALJ's decision nor will COAH supplement the transferred.

COUNCIL ON AFFORDABLE HOUSING


James L. Logue, III, Chairman

DATED: *10/2/89*

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