

COUNCIL ON AFFORDABLE HOUSING
DOCKET NO. 89-207

ANDERSON, ET AL.,)
v.)
SAUGATUCK ASSOCIATES,)
INC., ET. AL.)

CIVIL ACTION
OPINION

The present matter arises out of actions taken by the Township of Scotch Plains planning board, which were subsequently appealed by plaintiffs, a group of homeowners, to the Superior Court, Law Division. A motion to transfer the case to the Council on Affordable Housing (Council) was filed by defendant Saugatuck Associates, Inc. (Saugatuck), which motion was granted by the Superior Court on December 16, 1988. The basic facts of this matter are seemingly not in dispute.

Scotch Plains is presently before the Council as the result of a petition for substantive certification of its housing element and fair share plan. Because there were valid objections to the plan the Council initiated mediation in July 1987. As of the present date mediation has not yet concluded. However, during the pre-mediation/mediation period Scotch Plains reached agreement with Saugatuck, a developer/property owner who had filed as an objector to the Township's plan. The basic agreement, dated January 29, 1988 provided for an increase of density on Saugatuck's site, in return for an "in lieu" contribution to the Township to be used in implementing the Township's plan. The agreement was reviewed by a Council task force as to compliance with Council regulations, specifically N.J.A.C. 5:92-8.4, (which section requires that there be a reasonable relationship between any in lieu contribution and increased density given to a site), and given tentative approval by that task force. The developer agreement contained numerous other terms, including a plan for Saugatuck's site that included Ravenswood Lane as a through street.

As per the agreement, Saugatuck filed an application for preliminary major subdivision approval. The application was discussed by the planning board at a public meeting on June 6, 1988. The planning board approved the application (including the through street), subject to

certain enumerated conditions. This action was memorialized by resolution adopted July 18, 1988. The last condition listed requires that Saugatuck comply with the terms of the January 29, 1988 developer agreement "as the same may be from time to time amended."

Plaintiffs, owners of property in Scotch Plains, apparently participated in the planning board discussions of the Saugatuck application, and subsequently filed a compliant, dated and amended September 27, 1988 challenging the action by the planning board. Plaintiffs' interest is solely based on their desire to see the through street contained in the Saugatuck application replaced with a cul-de-sac. Plaintiffs' amended complaint contains three counts. The first argues that the last condition imposed by the planning board, cited above, was added by the planning board at plaintiffs' insistence, in order to insure that, following completion and consideration of a traffic impact study, Saugatuck be required to amend its plan to add the cul-de-sac. The second count is similar, and contends that at its July 18, 1988 public meeting the planning board made a finding that Saugatuck was required to amend its plan as plaintiffs wish. The third count alleges that the planning board's action was arbitrary and unreasonable, on the grounds that:

- i) the application actually required a variance;
- ii) notice of the hearing was inadequate;
- iii) the planning board mistakenly thought it was bound to approve any application by Saugatuck, without consideration; and
- iv) the application failed to comply with "statutory requisites and municipal ordinances."

The Complaint adds that the planning board could not lawfully commit itself, in advance, to approve the Saugatuck application.

By motion dated November 2, 1988 Saugatuck requested that the Superior Court transfer the entire matter to the Council, on the ground that plaintiffs were attacking the developer agreement reached as part of the Council's mediation and review process. Saugatuck argued that the matter had been entrusted to the Council by the Legislature, and that primary jurisdiction required that the Council hear the matter. Plaintiffs should not be permitted to "circumvent" the Legislative scheme embodied in the Act. Saugatuck added that the Council's rules permit developer agreements, and that the Council task force had approved the present agreement, which could not be amended by the Court.

In an Order dated December 16, 1988 the Superior Court granted the motion to transfer, and noted that the issues presented "appear to be issues that should be first resolved by the Council..." By letter dated January 9, 1989 the Court amplified on its decision. The Court stated that, because the case raised issues never previously addressed, and which implicated the Council, the matter should "initially" be transferred. Judge Beglin went on to say that he did not wish to indicate to the Council his own opinion on which issues raised in the complaint were appropriate for Council review, and which were suitable for the Law Division. Judge Beglin concluded that:

"Essentially, due to the virgin territory now being explored, I believe all parties' interests best covered by the transfer to COAH without any suggestion of jurisdictional limitation and without any suggestion from the Law Division that COAH is or is not the proper forum for consideration of some of the questions plaintiffs have raised."

In light of the above, by letter dated May 1, 1989 the Council requested papers from all parties on the question of whether the Council was the proper forum for the issues involved. Responses were received from Saugatuck, plaintiffs, and the planning board. The question facing the Council is thus whether it is the appropriate forum for entertaining the issues raised in plaintiffs' amended complaint. The Court has permitted the Council an opportunity to initially address this question, as it is a matter of first impression.

As a preliminary matter, it should be noted that the Council has not yet approved the Scotch Plains compliance plan, or any of its components. The developer agreement at issue here was reviewed by a Council task force, in order to help facilitate the mediation process. However, this review does not constitute actual approval by the Council. Such action will occur at the time the Council acts to grant or deny certification to the Scotch Plains plan. If the Council certifies the plan at that time, such action will indicate that the Council's review indicates that the plan meets all statutory and regulatory requirements, and provides the requisite realistic opportunity.

There is no dispute as to the actual basis of the disagreement in the present case. Saugatuck's application for preliminary major subdivision approval includes Ravenswood Lane as a through street; plaintiffs would prefer the approach be replaced with a cul-de-sac, based on their concern over the traffic that may be generated by the new through street. The through street is alluded to briefly in the developer's agreement between Saugatuck and Scotch Plains (paragraph 14), and is set forth in greater detail in the Development Plan referenced in the agreement.

As noted above, the dispute over Ravenswood Lane is a direct result of an agreement negotiated through the mediation process established by the Fair Housing Act and N.J.A.C. 5:91-1 et seq., N.J.A.C. 5:91-7.3(c) is clear that the parties in mediation "shall be bound by any agreements entered into during the mediation." As mediation begins, all the Council's mediators instruct the parties that agreements entered into and signed by the parties are binding on them. If the agreements were not binding, there would be little reason to participate in the process.

In the Fair Share Housing Center, et al, v. Township of Cherry Hill, COAH Docket No. 87/88-7(u1, u2) (July 25, 1988), COAH determined:

"Presently parties negotiate in mediation with the understanding and good faith that if the agreements reached comport with the Fair Housing Act and Council regulations, those agreements will be honored. Council regulations lend support to this position. N.J.A.C. 5:91-7.3(c) provides that all parties shall be bound by any agreements reached in

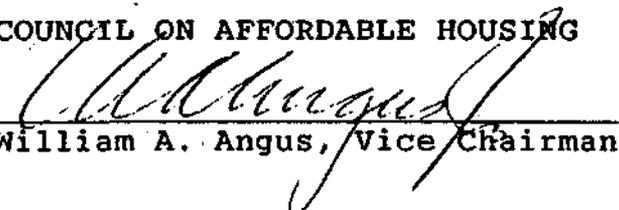
mediation if the matter is transferred to the OAL. Clearly, mediation agreements must mean something. However, if a municipality knew that despite the agreements reached in mediation, it could come before the Council and change its plan just prior to action on a petition for substantive certification, even if that plan had been recommended for approval, the purpose and significance of mediation would be questionable at best. The Council cannot allow a municipality to disregard the process in such a manner."

Therefore, although not every element of an agreement is crucial toward substantive certification, the Council does expect agreements to be implemented without unilateral changes made by one party or another.

The Council recognizes that the Municipal Lane Use Law delegates various responsibilities to planning boards that cannot be abrogated through negotiation. If the Planning Board conducted a hearing and decided to vary the terms of the agreement, the Council would determine the impact of the Planning Board's decision on the certification process.

With regard to the issues before the Law Division, the Council does not wish to act as a "super planning board" regarding the Planning Board's decision to approve Ravenswood Lane as a through street. Thus, the issues as to what occurred at the planning board meetings in question and what the planning board intended by addition of the last condition; and whether the planning board decision was, in the alternative, arbitrary and unreasonable, and whether plaintiffs adequately demonstrated the necessity for a cul-de-sac rather than a through street, are issues to be dealt with by the Law Division, rather than the Council. For all of the above reasons, the Council will return the matter to the Law Division for further proceedings.

COUNCIL ON AFFORDABLE HOUSING


William A. Angus, Vice Chairman

DATED: September 18, 1989

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