

Final Draft

COUNCIL ON AFFORDABLE HOUSING
DOCKET NO.

IN RE REQUEST FOR OBJECTOR)
STATUS FILED BY DANMIK, INC.,)

Civil Action

OPINION

Springfield Township, Burlington County, petitioned the Council on Affordable Housing (COAH) for substantive certification of its housing element and fair share plan on February 2, 1989. Following an initial inadequate publication, Springfield published notice of its petition in the Burlington County Times on April 21, 1989. Pursuant to N.J.S.A. 52:27D-314, publication commenced a 45 day period during which any person could file objections to the municipal plan with COAH. Springfield's 45 day period expired on June 5, 1989.

Danmik filed an objection on June 13, 1989. On the same day, Danmik also filed with COAH a request to be granted objector status despite the late filing, on the ground that it had allegedly been given inaccurate information as to the filing date by COAH staff. Specifically, Danmik alleged that it had been given a filing date of April 29, 1989 (which would have given Danmik until June 13 to file its objection). Following a discussion at its public meeting on July 17, 1989 COAH voted to deny Danmik's request for objector status. In a letter dated July 21, 1989 and resolution dated August 7, 1989 COAH indicated that it was an interested

party's responsibility to ascertain the date of filing by reviewing the published notice of filing.

As a result, Danmik filed an order to show cause and verified complaint on August 17, 1989 with the Superior Court-Chancery Division, Burlington County. Danmik asked the Court to enjoin COAH from any further review of Springfield's plan until such time as the issue of Danmik's status was resolved. In addition, Danmik requested that the Court order COAH to accept its objection as timely. Following oral argument on September 13, 1989, the Hon. Martin L. Haines, AJSC, issued an order dated November 15, 1989, requiring that COAH provide Danmik with a forum for an evidentiary hearing, and that COAH then issue a decision fully setting forth the reasons for its decision. Any appeal of that decision would be to the Appellate Division. In the interim, the Court ordered that COAH not take further action on Springfield's petition. COAH held the required evidentiary hearing on February 26, 1990. Danmik also filed with COAH a brief, dated October 26, 1989.

The initial issue is thus whether Danmik was given inaccurate information by COAH staff. Danmik relied on the testimony of Creigh Rahenkamp, of John Rahenkamp Consultants, Inc., which company acted as a consultant to Danmik. Rahenkamp testified that on May 9, 1989 he telephoned COAH, and spoke with Jay Cordingley, COAH Principal Planner. During the telephone conversation, he asked Cordingley the date of publication of Springfield's petition. He stated that it was normal office practice to obtain this information from COAH; thus his firm did not contact the Township or

check the filing date published in the Burlington County Times. Rahenkamp further testified that Cordingley consulted the Springfield file, and provided him with the Township's filing date.

Rahenkamp stated that he did not recall the actual date given him by Cordingley. However, he introduced into evidence a copy of his time sheet for May 9, 1989, and testified that it memorialized his call to COAH and his subsequent action that day in amending his Springfield report to reflect the information Cordingley provided him. In addition, he introduced into evidence two versions of his Springfield report. Rahenkamp testified that the first version was the report prior to the May 9 conversation, and the second version was the report following his amendment on that day. The second version includes the additional sentence: "On May 9, 1989 Jay Cordingley, Principal Planner for [COAH] informed John Rahenkamp Consultants, Inc. (JRC) that acceptable notice was published on April 29, 1989." Rahenkamp stated that he first learned that the actual date of filing was April 21, 1989 in a telephone conversation of June 12, 1989 with Denton Layman, COAH Principal Planner.

Cordingley testified that he recalled Rahenkamp's May 9, 1989 telephone call. He stated that Rahenkamp asked him at that time for the Springfield filing date, and that he consulted the office file on Springfield in order to ascertain the exact date. Cordingley introduced into evidence a copy of the actual document he consulted -- the proof of publication filed with COAH by Springfield. That document contains the correct filing date of

April 21, 1989 (and does not contain the date of April 29, 1989 at any point). Cordingley testified that he did not recall the date he gave to Rahenkamp.

COAH finds that both witnesses were credible. However, neither can state that he knows what date was actually given Rahenkamp by Cordingley. It is equally possible that: i) Cordingley gave Rahenkamp the wrong date, or, ii) that he gave him the correct one, and Rahenkamp simply included the wrong date when amending his report that day. In light of this, COAH concludes that Danmik has not carried its burden of demonstrating that it was given inaccurate information from COAH staff.

Further, COAH wishes to reaffirm the fact that it is an interested party's responsibility to ascertain the correct date for filing of an objection, by reviewing the actual notice of publication. Both the Fair Housing Act (N.J.S.A. 52:27D-313 and 314) and the COAH regulations (N.J.A.C. 5:91-4.3 and 4.4) require publication by the municipality of its petition, thus starting the 45 day objector period. Parties reviewing the notice of publication can ascertain the exact date of filing, and can also determine the hours at which the proposed housing plan can be reviewed. All parties have equal access to such notice. Such review also avoids the type of problem exemplified by the present case. COAH does not want to be in the position of having to hear testimony from parties who allege that they received inaccurate information in a conversation. The possibility of abuse is also clear. Rather, COAH will adhere to the statutory requirement that all parties file within

the 45 day period. This balances the need to provide an opportunity for parties to participate in the COAH process with the necessity that the process adhere as best as possible to the statutory time frames.

Dannik argues that COAH can waive the statutory time period, and should do so under the facts of this case. While COAH may have that authority, it does not feel that the 45 day period should be extended. The most important reason, set forth above, is that it is a party's responsibility to ascertain the correct filing date. This is not excused by the receipt of allegedly inaccurate information. Thus, even if Dannik had demonstrated that it had been given inaccurate information, it would not have mandated a different result. Second, as detailed above, Dannik has not carried its burden of establishing that it even received inaccurate information. COAH also notes that there are factors mitigating against any extension of the time period in the present instance, as such an extension would clearly impact on a third party (Springfield). Given all of the above, COAH will not extend the 45 day period to grant Dannik objector status.

Finally, Dannik argues that, having given inaccurate information on the filing date, COAH should be estopped from repudiating that position now. However, Dannik has failed to carry its burden of establishing that such inaccurate information was given to it by COAH staff. There is thus no basis in the record for an estoppel. In addition, even if the requisite factual showing had been made, equitable estoppel against a public entity is

clearly disfavored. Skulski v. Nolan, 68 N.J. 179, 198 (1975); Glaum v. Bureau of Const. Code Enf., 221 N.J. Super. 79, 87 (App. Div. 1987). It should be utilized only to prevent manifest wrong, and where it would not hinder or prejudice essential government functions. In re Allstate Ins. Co., 179 N.J. Super. 581, 593 (App. Div. 1981). It is not clear that Danmik could meet these standards. However, COAH need not address this issue, for the reasons detailed above.

Thus, COAH will order that Danmik's motion for objector status be denied.

COUNCIL ON AFFORDABLE HOUSING

By: _____

Dated: