

RESOLUTION MEMORIALIZING COAH DECISION ON
HARMONY TOWNSHIP AND DOWEL ASSOCIATES MOTIONS FOR
INTERLOCUTORY REVIEW OF THE PREHEARING ORDER

WHEREAS, the Council on Affordable Housing (COAH) transferred unresolved mediation issues concerning Harmony Township, Hunterdon County to the Office of Administrative Law (OAL) for an evidentiary hearing by transmittal notice dated August 22, 1989 which notice is incorporated by reference herein; and

WHEREAS, that notice contained the issues that were transferred for an evidentiary hearing; and

WHEREAS, the OAL held a prehearing conference on October 10, 1989; and

WHEREAS, as a result of the prehearing conference, Joseph Lavery, ALJ, issued a Prehearing Order and Partial Order of Abandonment, OAL Docket No. CAH-6324-89, Agency Docket No. COAH transfer 89; and

WHEREAS, the Prehearing Order set forth the nature of proceedings and issues to be resolved which stated that the issue generally is "... whether Harmony Township is entitled to the substantive certification for which it has petitioned the Council on Affordable Housing"; and

WHEREAS, the Prehearing Order also listed seven subissues to be addressed; and

WHEREAS, Harmony Township filed a petition for interlocutory review of the Prehearing Order with COAH by letter dated November 15, 1989; and

WHEREAS, Dowel Associates filed a Notice of Motion for Grant of an Interlocutory Appeal to amend the Transfer Order to the OAL, by Notice of Motion dated November 16, 1989; and

WHEREAS, Harmony Township asked COAH to direct the OAL to limit its consideration to the issues transferred which did not include the ultimate question of substantive certification and which are not limited solely to the Dowel site; and

WHEREAS, Dowel Associates has asked COAH to direct the OAL to limit the hearing to the issues transferred only as they pertain to the Dowel site; and

WHEREAS, COAH at its public meeting on November 27, 1989, determined to consider the Interlocutory Review; and

WHEREAS, the OAL granted COAH a 20-day extension for COAH to consider the merits of the motions by order dated December 5, 1989; and

WHEREAS, COAH considered the motions at a public meeting on December 21, 1989; and

WHEREAS, COAH set forth its decision on the motion orally at the public meeting; and

WHEREAS, this Resolution simply is intended to memorialize that decision; and

WHEREAS, COAH's decision was as follows:

1. The ALJ's decision that the issue transferred is whether substantive certification should be granted is rejected. COAH did not transfer that issue to the OAL. After mediation, there were certain unresolved issues that were transferred. It is not necessary to decide the

ultimate question of substantive certification in order to resolve the outstanding objections. The purpose of the evidentiary hearing in this case is to make a determination on the unresolved objections thereby resolving those objections. Accordingly, the Prehearing Order insofar as it considers the question of whether substantive certification should be granted is reversed and that issue shall not be considered; and

2. The Prehearing Order insofar as it sets forth subissues #1 through #6 is affirmed. The Prehearing Order lists certain issues which are properly subissues of the two unresolved objections transferred. The subissues do not present new issues, but rather, set forth certain questions which are appropriately addressed in the hearing. Contrary to Dowel's arguments, the issues are not limited solely to the Dowel site; and

3. There is no need for COAH to participate as a party in this hearing. COAH will make a final decision after review of the Initial Decision, as is the normal procedure.

NOW THEREFORE BE IT RESOLVED THAT for the reasons set forth above, as well as those set forth orally at the December 21, 1989 public meeting, the Prehearing Order is reversed on the issue of whether substantive certification should be granted and that

issue shall not be an issue in this case; the Prehearing Order is affirmed as to subissues #1 through #6; and COAH shall not participate in the hearing.

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its public meeting on January 29, 1990.

Renee Reiss
Secretary