

NEW JERSEY COUNCIL
ON AFFORDABLE HOUSING
DOCKET NO. COAH 89-210

IN RE PETITION FOR SUBSTANTIVE)
CERTIFICATION FILED BY FLORENCE) OPINION
TOWNSHIP, BURLINGTON COUNTY)

This matter comes before the Council on Affordable Housing (COAH) upon the application of AQN Associates (AQN) for an Order that requires Florence Township to amend its proposed housing element and fair share plan so as to include property owned by AQN or, alternatively, for an Order that transfers AQN's unresolved objections to the Office of Administrative Law for an evidentiary hearing.

Florence filed its housing element and fair share plan with COAH and voluntarily petitioned for substantive certification of that plan on January 5, 1987. This proposed housing element and fair share plan was returned to Florence for the correction of certain deficiencies and Florence submitted a revised plan on May 25, 1988. Prior to the filing of any objections with COAH to this plan, however, at a public hearing on the revised plan, Florence residents expressed opposition to the plan. Florence ultimately adopted a second revised plan (plan) which it filed with COAH on July 29, 1988. Florence published notice of its petition for substantive with this plan. Four parties, including AQN, filed

objections to the plan. As a result of the objections, COAH engaged in mediation with Florence and all objectors from September 21, 1988 to April 3, 1988. All parties, except AQN, resolved their objections with Florence and withdrew their objections.

AQN filed an objection by letter dated August 8, 1988. Its objection stated that AQN had offered its site for affordable housing but Florence had chosen not to include the site in its plan. Without explanation, AQN indicated that it felt Florence's plan did not provide "a realistic plan for the development of low and moderate income housing within the community.

AQN participated in mediation in an attempt to resolve its objection to Florence's plan. The mediation report indicated that the thrust of AQN's objection was that use of AQN's site to provide for Florence's entire fair share of low and moderate housing income was more realistic than that proposed by the Township. AQN affirmed this in its comments to the mediation report. AQN's comments focused on the fact that the AQN site had not been chosen to provide for Florence's fair share and AQN argued that its site could receive necessary sewer and water from neighboring Burlington Township to develop the site. AQN also indicated that it did not think it was appropriate for Florence to satisfy a portion of its fair share obligation through a regional contribution agreement (RCA) when AQN proposed to construct the entire fair share on its site. AQN argued that the legality of RCAs was in question and therefore Florence should be made to use

the AQN site and construct the entire fair share in town on the AQN site. AQN did not submit any report or documentation during the course of mediation, or any-time shortly thereafter, either attacking the validity of Florence's plan or supporting the use of its site.

In this motion, AQN for the first time raises specific objections to Florence's plan. Before, AQN simply complained that Florence had not chosen its site for inclusionary development. AQN also submitted a planning report prepared by Barovick & Associates, Inc. dated October, 1989, six months after the close of mediation, which questions the suitability of the inclusionary sites and indicates that more information is necessary to evaluate Florence's plan. AQN argues that in light of these objections, the matter should be referred to the OAL for an evidentiary hearing. AQN also argues that COAH should require Florence to amend its plan so as to include the AQN site.

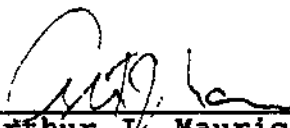
In response to the motion, Florence first argues that AQN's objections did not contain the necessary information in compliance with N.J.A.C. 5:91-5.1 and therefore COAH should not consider AQN's proposal. Next, Florence argues that it properly rejected use of the AQN site for affordable housing because use of the site is inconsistent with the master plan, "Section 208" water quality management plans and sewerage availability. Florence contends that given these problems with the AQN site, there were other more appropriate sites for affordable housing. Under these circumstances, Florence argues that there are no disputed facts

that would require a transfer to the OAL. Florence also objects to the planning report as being too late.

COAH has considered AQN's position and Florence's response thereto. In this case, it is COAH's opinion that the most appropriate course is to reopen mediation. After review of AQN's and Florence's papers, COAH is concerned that Florence's plan does not include all necessary information to ensure that Florence's plan provides the requisite realistic opportunity. AQN legitimately points out that information is lacking in Florence's plan. The realistic opportunity in this case is somewhat questionable at this time. It appears from the mediation report that this was not fully explored during the initial mediation. Therefore, the most appropriate course at this time is to reopen mediation in order to enable all parties to discuss and hopefully resolve the unexplored issues as they relate to Florence's plan. All parties who participated in the original mediation are permitted to participate in this reopened mediation.

Since COAH has determined to reopen mediation, there is no need to consider AQN's request to transfer the matter to the OAL. Additionally, there is no need to consider AQN's request to require Florence to use its site to satisfy its entire fair share obligation. COAH notes, in addition, that it will not order Florence at this time to zone the AQN site, which would effectively constitute the award of a builder's remedy. COAH's authority to order such relief as a condition of substantive certification is unquestioned. However, the present case does not present an

extreme situation such as Motzenbecker v. Bernardsville, COAH 87-18, where COAH ordered a builder's remedy due to the municipality's repeated recalcitrant behavior, and its refusal to follow COAH directives and create a complying housing plan. Moreover, it should be noted that AQN argues that its plan for satisfaction of Florence's fair share obligation should be used over Florence's plan because AQN feels its plan is better than Florence's plan. This is not a legitimate reason for rejecting a municipal plan. A municipality must devise a realistic plan for satisfaction of its fair share obligation. As long as the plan is realistic, it satisfies the requirements of the Fair Housing Act and the fact that there may be other methods of compliance is of no moment. Allan-Deane Corp. v. Bedminster Tp., 205 N.J. Super. 87, 113-114 (Law Div. 1985).



Arthur J. Maurice
Chairman

Dated: