

RESOLUTION MEMORIALIZING COAH'S
DECISION ON JACK NEUGARTEN'S
REQUEST FOR INTERLOCUTORY REVIEW
OF ALJ JAMES A. OSPERSON'S RULINGS
IN NEUGARTEN V. WEST PATERSON,
OAL DOCKET NO. CAH 2328-89

WHEREAS, by motion dated January 25, 1990, Jack Neugarten petitioned the Council on Affordable Housing for interlocutory review of rulings of James A. Ospenson, ALJ, in Neugarten v. Borough of West Paterson, COAH transfer No. 89-3, OAL Docket No. CAH 2328-89; particularly, oral rulings on January 23 and 24, 1990, that limited the cross examination of West Paterson's expert witness, Michael Kauker, and that prohibited Neugarten from marking certain extrinsic evidence into identification; and

WHEREAS, Neugarten sought interlocutory review of the above-mentioned ruling asking COAH to reverse the ALJ and to allow Neugarten to pursue a line of cross examination pertaining to reports prepared by the expert witness in other land use matters, or, in the alternative, to allow Neugarten to mark the extrinsic evidence for identification; and

WHEREAS, under the OAL regulations, West Paterson's time to respond to Neugarten's Motion for Interlocutory Review did not expire until January 31, 1990; and

WHEREAS, at its public meeting on January 29, 1990, COAH heard from both West Paterson and Neugarten on the Motion; and

WHEREAS, after consideration of the presentations of both parties, COAH determined that before rendering any decision on whether to entertain Neugarten's Motion, West Paterson should be allowed the full time, until January 31, 1990, to file its response; and

WHEREAS, since COAH was not going to decide whether to entertain Neugarten's Motion until after allowing West Paterson the time permitted under the OAL regulations to file a response, and since the OAL hearing was scheduled to proceed on January 29 and 30, 1990 and was expected to conclude on January 30, 1990, before COAH could render a decision, COAH ordered that the OAL proceedings be stayed until such time that COAH rendered a decision on the Motion; and

WHEREAS, COAH scheduled an emergency meeting on February 1, 1990 to consider the Motion; and

WHEREAS, this Resolution is intended to memorialize the decision rendered orally at the meeting on February 1, 1990; and

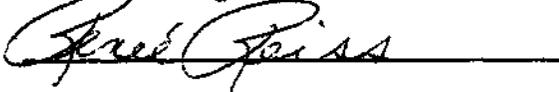
WHEREAS, after consideration of both parties' arguments, COAH determined not to entertain Neugarten's Motion for the following reasons:

Interlocutory review should be rarely granted because of the strong policy against piecemeal adjudications. Thus, interlocutory review of ALJ's rulings should be granted sparingly, only in the exceptional case. The

present case is not an exceptional one that would require such extraordinary review. The ruling sought to be reviewed is an evidential one which can be properly reviewed at the conclusion of the hearing, as part of the normal process. At this time, it is speculative at best as to whether the ruling will have any bearing on the case. If COAH, after review of the entire hearing, determines that the ALJ was incorrect and this ruling was material to the case, COAH always can remand the matter for further testimony. It does not warrant interference with the administrative process to review an ALJ's ruling on whether a certain line of cross examination can be allowed. Accordingly, this case does not present an exceptional case and COAH will not disrupt the administrative process to entertain Neugarten's request;

NOW THEREFORE BE IT RESOLVED that for the reasons set forth orally at the COAH meeting on February 1, 1990 and for the reasons set forth above, COAH will not entertain Neugarten's Motion for Interlocutory Review of ALJ Ospenson's rulings on January 23 and 24, 1990.

I hereby certify that this
Resolution was duly adopted
by the Council on Affordable
Housing at its Public Meeting
on February 26, 1990

A handwritten signature in cursive script, appearing to read "Fred J. S. S.", is written over a horizontal line.