

IN RE PETITION FOR SUBSTANTIVE)
CERTIFICATION FILED BY FREEHOLD)
TOWNSHIP, MONMOUTH COUNTY)

COAH OPINION

COAH DOCKET NO. - COAH 91-300

At its public meeting on February 6, 1991, the Council on Affordable Housing (COAH) orally granted Weiner Homes Corporation's (Weiner Homes) request for a waiver from N.J.A.C. 5:92-14.2, Range of affordability for purchased housing (price stratification). This opinion is intended to memorialize the oral decision.

By letter dated October 18, 1990 and supplemented by letter dated December 14, 1990, Weiner Homes, the developer of Wyndham Place an inclusionary development in Freehold Township, requested a waiver from the strict requirements of N.J.A.C. 5:92-14.2. This regulation provides for the price stratification of affordable units so that the average price of a unit in an inclusionary development is affordable to a household at 57.5% of the median income. The regulation also provides for a nine tier price stratification, as best as practicable.

Subsequent to receiving substantive certification, it became apparent to the Council that there were marketing problems in Freehold. Specifically there were problems finding moderate income households that could afford the higher priced moderate income units that were interested in purchasing the moderate income units. To address this problem, the Council approved a six tier pricing system for Freehold. The six tiers resulted in lower priced moderate income units and the average unit remained at 57.5 percent of median income.

Weiner Homes is developing a 484 unit development in Freehold, Wyndham Place, of which 96 units will be low and moderate. The development is being built in six phases and the first three phases have been completed with a total of 48 low and moderate income units constructed. Phase VI is under construction and this phase will include the last 48 affordable units. Weiner Homes has been unable to sell the 48 low and moderate income units already constructed using the six tier

price stratification. The units are being marketed through the Affordable Housing Management Service (AHMS) of the Department of Community Affairs. AHMS indicated during oral argument on this motion that marketing problems persist in Freehold. The main problem still is in the higher priced moderate income units. It was AHMS recommendation to lower the price of moderate income units. Lowering the price it was argued, would make the moderate income units more attractive and affordable to more moderate income purchasers. In order that the units average price be no less than 57.5 percent (an economic consideration to ensure the viability of a housing development) it was suggested that the price of low income units be raised. A two tiered pricing system was proposed by AHMS and Weiner Homes.

The Public Advocate objected to the waiver because, by reducing the pricing stratification from six tiers to two tiers, the units will be priced so as to be affordable to a more narrow range of low and moderate income households. The Public Advocate argued that COAH is obligated under the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. and the New Jersey Constitution to see that the units are affordable to a variety of low and moderate income level households and the waiver would frustrate this obligation. The Public Advocate argued that COAH's reduction from the nine tier stratification system contained in the regulations to six tiers is sufficient relief. The Public Advocate further argued that Weiner Homes has not set forth any reasons or documentation to support its waiver request.

At oral argument of this motion on February 6, 1991, Ms. Betsey Harding of AHMS advised COAH that even with a six tier price stratification, the units at Wyndham Place were not being sold. AHMS's experience with the units it was marketing for Freehold, including those at Wyndham Place, was that the situation would persist if COAH did not grant the waiver. Accordingly, AHMS recommended that strict adherence to the six tier price stratification system COAH approved be relaxed. COAH places great weight on this recommendation and accepts it. AHMS is charged with insuring that affordable units are marketed to the appropriate households and it is in AHMS' interest as well as COAH's to insure sales to as wide a spectrum of incomes as possible. Even with the

two tier stratification, COAH will require that the units be priced so as to be affordable on average to those at 57.5% of the median income.

N.J.A.C. 5:92-14.2 states that municipalities should comply with the rule on price stratification "as best as practicable". The two tiers recognize marketing problems of moderate income units that have persisted in Freehold Township since it received substantive certification. It also recognizes that there are limits to the losses developers can be expected to absorb and still construct an inclusionary development. COAH's decision is heavily influenced by the experience and recommendation of AHMS, the State agency entrusted with marketing the low and moderate income units in Freehold. Given the difficulty in selling the units as expressed by AHMS, the Council is convinced that the units will be priced "as best as practicable". Accordingly, COAH hereby grants the request and all developments in Freehold Township may use a two tier system provided that the average sales price is affordable to a household at 57.5% of median income.



Charles Griffiths, Chairman
Kevin Quince, Vice Chairman

Dated: April 3, 1991

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