

IN RE PETITION FOR SUBSTANTIVE )  
CERTIFICATION FILED BY )  
PISCATAWAY TOWNSHIP/MIDDLESEX COUNTY)

OPINION  
COAH DOCKET NO.- 92-402

The Township of Piscataway comes before the Council on Affordable Housing for a waiver pursuant to N.J.A.C. 5:92-13.1 from the provisions of N.J.A.C. 5:92-11.5(d) as applied to a regional contribution agreement (RCA) between the Township of Piscataway (Piscataway) and the City of New Brunswick (New Brunswick). N.J.A.C. 5:92-11.5(d) states:

RCA's shall run concurrent with the sending municipality's period of substantive certification, not to exceed six years; contributions may be prorated in municipal appropriations with the certification period not to exceed six years.

In reviewing this request for the waiver, the Council notes that the Township received substantive certification on March 7, 1988. Following certification, Piscataway and New Brunswick began discussions to transfer 99 units of low and moderate income housing from Piscataway to New Brunswick. These discussions resulted in a memorandum of understanding between the two municipalities by mid-1988. However, before implementing the regional contribution agreement, Piscataway was required to seek a plan amendment before COAH. There were objections to the plan amendment that required mediation, but eventually COAH approved the requested amendment.

Piscataway and New Brunswick have now modified their initial memorandum of understanding. The agreement, transferring 99 units, will be funded by a private developer. The developer will provide money to Piscataway for immediate transmittal based upon an agreed upon schedule. The schedule is

based on the developer's assessment of his ability to build a development known as "Canterbury." The developer will secure its obligation to Piscataway with a surety bond. If necessary (that is if the developer, for some reason, fails to transfer money to Piscataway on time), Piscataway has adopted an ordinance to fund the regional contribution agreement with New Brunswick. The money that is eventually transferred to New Brunswick will reimburse New Brunswick for construction activity the City anticipates to complete prior to receiving all transferred funds. The transfer of all required funds to the City will occur within six years of entering into the regional contribution agreement; but will not occur during Piscataway's substantive certification period.

Piscataway requests that COAH waive its rule requiring all contributions to occur within the six year certification period. The Township argues that the Fair Housing Act (FHA) permits a regional contribution agreement to be entered into upon substantive certification or anytime thereafter, N.J.S.A. 52:27D-312(a). If a regional contribution may be entered into at any time after substantive certification, the legislature must have intended that the language in Section 12(f) of the FHA requiring the transfer of funds to occur over a six year period, to be interpreted as within six years of entering into a regional contribution agreement. Therefore, Piscataway states it is appropriate for COAH to waive N.J.A.C. 5:92-11.5(d).

In reviewing this request, COAH is presented with two willing municipalities that have agreed to implement part of Piscataway's housing

obligation through a regional contribution agreement, a mechanism expressly authorized and encouraged by the FHA. It is clear from the Act that regional contribution agreements may be entered into at any time after substantive certification. COAH has recognized this fact by permitting plan amendments to allow for regional contribution agreements, N.J.A.C. 5:91-14.3(c). It is logical to assume that such RCAs may be difficult to complete within the six year time limit. Therefore the six year payment limitation imposed by Section 12(f) of the FHA, may be interpreted to begin with the approval of the RCA, since Section 12(f) is silent as to when the period should begin.

This interpretation of the Act promotes the needs of low and moderate income households. If the Canterbury developer undergoes financial problems, Piscataway is responsible to assume the obligation and transfer payments, as required by COAH, to New Brunswick. COAH's resolution requiring payments shall be forwarded to the Division of Local Government Services in the Department of Community Affairs. The Division of Local Government Services shall not approve the Piscataway's budget unless the budget includes the money required to be transferred to New Brunswick. With regard to New Brunswick, COAH has specific enforcement powers to implement the RCA. Therefore, there are protections for low and moderate income households within the RCA process that do not exist when a municipality zones a site for inclusionary development.

Based on this analysis, COAH approves the waiver request pursuant to N.J.A.C. 5:92-13.1. It should be noted that this waiver is granted based solely on the merits of this particular case and should not be construed as an action encouraging such waiver. The payments from Piscataway to New Brunswick may occur over a six year period from the day of COAH's approval of the RCA.

  
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Ara Hovnanian, Acting Chairman

*Originally approved 5/6/92*  
DATED: *June 4, 1992 (Amended)*

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