

IN RE WASHINGTON TOWNSHIP,)
MERCER COUNTY,)
MOTION TO INCREASE)
ASSESSMENTS ON MODERATE)
INCOME UNITS)

COUNCIL ON AFFORDABLE HOUSING
DOCKET NO. COAH 92-400

OPINION

This matter was brought to the Council on Affordable Housing (COAH), by Andover Glen at Foxmoor Condominium Association (Association). The Association (representing unit owners within an inclusionary development in Washington Township, Mercer County) seeks COAH's approval to increase the annual assessment fees to its moderate income unit owners from an amount that currently equals 50 percent of the annual assessment fees charged the Association's fair market value owners to one that equals 100 percent of the fair market value owner's annual assessment fees.

The Association argues that pursuant to the public offering statement, moderate income owners had been permitted to pay a lesser fee in exchange for a smaller percentage interest in the common elements of the Association. However, moderate income owners receive access to the common elements in the same manner as the fair market units. Additionally, the Association contends that moderate income owners fees can increase to the level paid by fair market units if their interest in the common elements equals the fair market units.

The Association notes that the Foxmoor Condominium Association is divided into several sub-developments. Every other sub-development in Foxmoor, pursuant to the public offering statement, requires moderate income owners to pay the same fees as fair market owners. The Association also notes that Washington Township does not object to the motion.

However, seventeen moderate income owners that would be affected by any increase in fees have objected to the motion. Many indicated that with their limited incomes a 50 percent increase in fees would represent a hardship. Also, they indicated that they purchased these units with the understanding that they would pay a fixed percentage of the fee paid by the market unit owners and that this percentage would never increase.

In responding to this motion, the Council begins with a review of its rules on pricing low and moderate income units. N.J.A.C. 5:92-12.12(as) states:

Municipalities shall require that the initial price of a low and moderate income owner-occupied single family housing unit be established so that after a downpayment of 10 percent, the monthly principal, interest, taxes, insurance and condominium fees do not exceed 28 percent of an eligible gross monthly income. Municipalities shall by ordinance, require that master deeds of inclusionary developments regulate condominium or homeowner association fees or special assessments of low and moderate income purchasers at a specific percentage of those by market purchasers. Once established within the master deed, the percentage shall not be amended without prior approval from the Council.

Thus, the pricing of sales units is a function of several factors including: downpayment, current interest rates, term of the loan, income of eligible households, taxes, insurance and condominium fees. The intent of the Council was and remains to create affordable units that low and moderate households can afford over time. As the rule is constructed, the municipality has freedom in establishing the percentage of the condominium fees paid by low and moderate income purchasers. They may pay no condominium fee, an amount equal to whatever the market purchasers are paying or some amount in between. The higher the condominium fee, the less money is available for principal and interest. Therefore, a higher fee results in a lower purchase price for the low and moderate income purchaser.

The rule is very clear that once the percentage of a condominium homeowners fee is established, the percentage shall not be amended without Council approval. It is understood that the costs of providing services increase over time. As these costs increase, low and moderate income owners are expected to pay their share of this increase, as defined by the percentage of the condominium and homeowners association fee for which

they are responsible.

However, low and moderate income households have limited disposable income. To increase their responsibility in supporting the Association could easily create a hardship that conceivably could lead to foreclosure. If foreclosure should take place the controls on affordability on the units expire. The "affordable" units may be placed on the open market and sold at prices "beyond the reach" of low and moderate income households.

It would be contrary to the principles enunciated by the Supreme Court and the legislature to allow the Association to impose an increased share of costs on the moderate income households. Washington Township, the Council and the citizens of this State have expended a great deal of time, effort and money in creating "affordable" units. It would be contrary to the general welfare to jeopardize that effort. It could also jeopardize Washington Township's substantive certification.

In addition, each low and moderate income unit owner was granted reduced fees in exchange for a reduced interest in the common elements. N.J.S.A. 46:80-11 provides in part "unless otherwise provided therein, no amendment shall change a unit unless the owner of record thereof and the holders of record of any liens thereon shall join in the execution of the amendment or execute a consent thereto with the formalities of a deed. Therefore the percentage interest in the common elements and the percentage fee paid by the low and moderate income owners may not increase without the consent of the unit owner and the mortgagee.

Even if the unit owner and the mortgagee would consent to an increased percentage of fees, the Council determines that such an arrangement would be contrary to the public interest. Since the initial purchase price is indexed over time for purposes of long term affordability a significant increase in fees would jeopardize the affordability of the unit for future low and moderate income purchasers.

After submitting its motion, the Association supplemented its request.

The Association requested, if the Council does not agree to increasing the fees on the present moderate income owners, that the increase be imposed on future moderate income owners. Again, the Council cannot agree to increasing the percentage of fees paid by moderate income owners. As indicated, the price of an affordable unit was initially set based on a specific share of the Association's fees. That initial price is indexed over time based on increases in median income. This index allows the moderate income owners a "controlled" return on investment while still maintaining the relationship between the income and the sales price of the unit. The prospect of at least a limited return is an added incentive for owners of "affordable units" to maintain them.

Long term affordability is jeopardized by factors beyond the Council's control. An increase in the general tax rate or in interest rates could make it very difficult for income eligible households to afford units upon resale.

The percentage of the condominium or homeowner fee paid by income eligible households is within the Council's control. To allow that percentage to increase would jeopardize long term affordability, similar to an increase in taxes or an increase in interest rates. The Council cannot permit such an increase.



Ara Hovmanian, Acting Chairman

DATED: June 4, 1992

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