

IN THE MATTER OF THE)
 TOWNSHIP OF HOLMDEL)
)

NEW JERSEY COUNCIL ON
 AFFORDABLE HOUSING
 DOCKET NO. COAH 94-624

A motion was filed by the Township of Holmdel seeking the approval of the Council on Affordable Housing for a waiver permitting Holmdel to spend prior to the Council's approval of Holmdel's spending plan a portion of the \$1,010,000 in development fees collected from Beauridge Associates.

N.J.A.C. 5:92-18.2 lists as one of the "Basic Requirements" for a municipal development fee ordinance that:

(c) No municipality shall spend development fees unless the Council has approved a plan for spending such fees.

Holmdel Township received substantive certification on May 16, 1988. Both before and after certification, Holmdel collected development fees. Many of those fees, however, have been contested both before COAH and in the courts. The Council has not yet approved the spending plan in accord with N.J.A.C. 5:92-18.2(c). Therefore, according to the Council's rules, Holmdel should not spend collected development fees.

However, on May 13, 1994 Holmdel moved before the Council on an emergent basis for an order granting Holmdel a waiver from N.J.A.C. 5:92-18.2(c). This motion was based on a certification of Joseph M. Annecharico, the Chief Financial Officer of Holmdel Township. Mr. Annecharico stated in his certification that it was his responsibility to prepare a budget for consideration by the Township Committee and secure the approval of the Department of Community Affairs for the budget. He stated that a developer in

the municipality, Beauridge Associates, had paid \$1,010,160.00 of development fees into the Township's affordable housing trust fund, and that Beauridge did not contest the Township's entitlement to that money. He further stated that if the Township cannot properly represent to the Department of Community Affairs that the Township will be able to expend at least a portion of this money to fund its obligations under its fair share plan, that the Township may be made to raise taxes. Specifically, the Beauridge money was needed to fund a portion of Holmdel's RCA with Keansburg and a municipal rehabilitation program. Further, Mr. Annecharico stated that the motion had to be heard on expedited basis at COAH's June 1 meeting because there was a public hearing on the Township's budget scheduled for June 13, 1994 and because the Township's tax bills had to be mailed out in June. Therefore, the Township could not wait until the Council's July meeting for a determination as to whether the Township could spend the money in its affordable housing trust fund.

Also attached to the motion was a letter from Henry West, President of Beaucorp, Inc., a general partner of the Beauridge Associates acknowledging that Beauridge Associates had paid the \$1,010,000.00 in development fees to Holmdel Township and stating that Beauridge would not contest the Township's right to this money in the future.

Holmdel's motion was sent to all interested parties, several of whom responded to the motion request. Acqaviva Ltd. sent a letter agreeing with Holmdel's request. Thomas Carroll, Esq., on behalf of Fox Run II and McCampbell Development, Inc. took

no position on the Township's request for a waiver but did object to the wording of the proposed form of order that Holmdel had submitted with its motion, because Mr. Carroll believed that the proposed order granted a blanket waiver to Holmdel to spend all development fee revenues collected by Holmdel at this time.


At its meeting June 1, 1994 the Council listened to an oral presentation by Jeffrey Surenian, Esq., attorney for Holmdel. However, the Council was not able to decide the matter at the June 1 meeting because of a lack of quorum. Therefore, an emergency phone meeting of the Council was held on June 7, 1994 to consider the motion. At that meeting the Council voted to grant Holmdel a limited waiver of the N.J.A.C. 5:92-18.2(c) requirement that the Council approve a spending plan for the municipality prior to allowing Holmdel to spend money collected as development fees.

THE DECISION

The Council grants the Township of Holmdel a limited waiver from the requirements of N.J.A.C. 5:92-18.2(c) so that it may use a portion of the \$1,010,000 collected from Beauridge Associates to implement the Holmdel housing element prior to the adoption and the submission by Holmdel and approval by the Council of Holmdel's spending plan. The Council understands that Holmdel needs to finalize its municipal budget and does not wish to raise taxes to implement its housing element. The Council further understands that the Township is confident that it will be able to retain the Beauridge development fees that have already been collected. Therefore, given the unique facts of this case, the Council will grant the Township of Holmdel a waiver of the requirements of

N.J.A.C. 5:92-18.2(c) so that it may spend the development fees collected to date from Beauridge Associates.

However, the Council wishes to be very clear that Holmdel spends the Beauridge money at its own risk. This decision is not a final decision by the Council as to whether Holmdel may retain the Beauridge development fees that it may choose spend. Until the Council completes its review of the development fees Holmdel has collected to date, it will not decide whether Holmdel will be able to retain the Beauridge development fees. Further, as a material condition of its decision, the Council instructs Holmdel to submit a spending plan pursuant to N.J.S.A. 5:92-18.2(c) within 90 days of this decision.


Renee Reiss,
Council Secretary

Date: July 20, 1994