

IN RE THE TOWNSHIP OF)
DENVILLE'S MOTION FOR)
A STAY OF THE COUNCIL'S)
ORDER OF MARCH 14, 1994)

NEW JERSEY COUNCIL ON)
AFFORDABLE HOUSING)
DOCKET NO. COAH 94-618)

At its meeting of March 14, 1994 the Council on Affordable Housing ("the Council") issued an order giving the Township of Denville 30 days within which to transfer a piece of property in the Township known as the McGreevy site to the Morris County Housing Authority ("the Housing Authority") and to otherwise comply with the terms of the Council's grant of substantive certification dated August 15, 1988 as amended on several subsequent occasions. Instead of complying with this order the Township on April 13, 1994 instituted an appeal challenging the order in the Appellate Division of the Superior Court. Denville now comes before the Council with a motion requesting the Council to stay its order pending a resolution of the legal challenge to the rule.

In order to justify the granting of a stay, Denville must demonstrate that it meets the following four separate conditions: (1) that there is a clear probability that Denville will prevail on the merits in the underlying controversy; (2) that Denville will suffer irreparable injury if the stay is not granted; (3) that when balancing the equities created by granting the stay, the probable harm to others is not greater than the probable harm suffered by Denville; and (4) that the public interest will not be adversely affected by the granting of the requested stay. Crowe v. DeGioia, 90 N.J. 126, 132-134 (1982); Zoning Board of Adjustment of Sparta v. Services Electric Cable Television of N.J., Inc., 198 N.J. Super. 370, 379 (App. Div. 1985).

In its brief filed with the Council justifying its requested stay, Denville acknowledges that the above-cited cases represent the standard to be applied in judging the merits of its application. Denville argues that it meets the standard to be applied for several reasons. The Township states that if the order to proceed with the terms of its fair share plan is not stayed, it "will lose all reasonable opportunity to investigate, suggest and proceed with an alternative method of satisfying its affordable housing obligation which...might provide a more realistic opportunity for the construction of housing." Denville claims that a more realistic plan would "shift the financial burden for the fulfillment of [its affordable housing obligation]...from the shoulders of the Township's taxpayers...". However, Denville does not state onto whose shoulders this burden should be shifted.

Further, Denville argues that if the stay is not granted it will lose the right to void its contract with the Morris County

Denville's list of harms is not persuasive. The increases in costs of schooling and infrastructure that would occur if the McGreevy project is built is not a valid reason for granting a stay. In fact such cost increases are minimized by a project such as the McGreevy project, which is only for 75 units of housing. One of the reasons Denville chose to meet its fair share obligation by the McGreevy project was because it was an alternative to zoning for inclusionary housing developments that would provide the required affordable housing by allowing about five times the housing to be built in order to subsidize the affordable housing. Denville did not want to zone for such large scale housing projects, which would probably have much greater schooling and infrastructure costs associated with them, and therefore chose a fair share plan that included building the McGreevy project. Thus Denville's argument that increased costs of schooling and infrastructure constitute irreparable harm is not persuasive to this Council.

Another part of Denville's irreparable harm argument is that if a stay is not granted Denville will be deprived of an opportunity to rethink its fair share plans in a way that will presumably eliminate the McGreevy project and also that it will be deprived of an opportunity to void its contract with the Morris County Housing Authority to build the McGreevy project. A major reason that this Council ordered Denville to comply with the terms of its fair share plan was so that Denville could not void its agreement with the Housing Authority and thereby put the \$6.5 million HUD grant and the \$1.1 million Balanced Housing grant in jeopardy. This argument is therefore not acceptable to the Council.

Moreover, the stated reason that Denville wishes to have the opportunity to rethink its fair share plan is to come up with a new "more realistic" plan that will not cost the taxpayers of Denville as much money as the McGreevy project. Denville makes this argument in its brief with no mention of the \$6.5 million HUD grant or the \$1.1 million Balanced Housing grant or the funds earmarked by the Housing Authority for the McGreevy project. Denville thereby begs the question as to how Denville could possibly refuse these public monies and yet create a reasonable opportunity for affordable housing in Denville with a different, cheaper plan. Further, this Council several years ago lifted the sewer ban in Denville and as a consequence there is a very limited available sewer capacity in Denville. Therefore, Denville cannot now zone for inclusionary developments to provide the units lost if the McGreevy project is not built, because there is no available sewer capacity for such inclusionary developments. This means that the affordable units must be created through a self build project on the McGreevy site extremely similar to the current project that Denville is now repudiating. Since the current project is being substantially paid for by government, Denville's stated aim to provide the same kind of project in a way that will be even less expensive to Denville's citizens must be seen by this Council as unrealistic.

exercised for the general welfare and must therefore provide reasonable opportunities for low and moderate income housing. Denville's fair share plan included at Denville's option and by Denville's choice the McGreevy project and was certified by this Council over five years ago. The project after much work by all concerned, including Denville, and the commitment of much public money is near to being built. If justice delayed is justice denied, then the same might be said for affordable housing. Therefore, the public interest clearly would best be served by the denial of Denville's requested stay and the continued viability of this Council's order that Denville proceed with the terms of its substantive certification including the transfer of the McGreevy property to the Morris County Housing Authority so that it may begin to build the long delayed McGreevy project.

Therefore, for all of these reasons Denville's motion for a stay of this Council's order of March 14, 1994 is denied.



Renee Reiss,
Council Secretary

Date: May 10, 1994