

IN THE MATTER OF            )  
 THE BOROUGH OF            )  
 OLD TAPPAN                 )

COUNCIL ON AFFORDABLE HOUSING  
 DOCKET NO. 95-710(a), (b) and (c)

OPINION

On January 9, 1991 the New Jersey Council on Affordable Housing ("COAH" or "the Council") granted substantive certification to the housing element and fair share plan of the Borough of Old Tappan ("borough"). The plan addressed the borough's 1987 to 1993 fair share obligation of 144 units. The borough's certified plan included the establishment of a planned residential development ("PRD") conditional overlay option in which owners of sites of at least 10 acres would be provided the option of developing the property at a density of six units per acre with a 20 percent setback. At the time the plan was certified it was estimated that there were 11 sites in the borough comprising a total of 341 acres that could meet the conditions of the PRD option. According to the fair share plan approved by COAH, the PRD option would terminate when final approval was granted for the affordable unit which would result in the borough's achieving its 1987-1993 fair share obligation of 144 units.

Under the methodology established in N.J.A.C. 5:93-1 at seq., Old Tappan's cumulative fair share obligation for 1987 through 1999 is reduced from 144 to 98 units. On April 21, 1995 the borough filed a motion with the Council "to amend its housing element and fair share plan to address its 1987 to 1999 obligation". By so doing, the borough wished to reduce its fair share obligation to 98 units and, thereby, use the 98 unit obligation to sunset the planned residential development conditional use zoning in the borough.

There were four responses to Old Tappan's motion. The Kallian Companies, the contract purchaser of Lot 1, Block 502, known as the Ampsler property, objected to the motion as being contrary to N.J.A.C. 5:91-13.1 and urged that the Council deny the motion. Hildagard Ampsler, one of the owners of Lot 1 Block 502, which is affected by the PRD option, also objected to the housing element provisions.

Two motions for intervention were filed, one on behalf of Kevin Smyth, Gwen Smyth, Frank Arturi and Linda Arturi, neighbors of the Ampsler property, and the other by Marie and Robert Kober, owners of another property affected by the PRD option. In addition to the motion for intervention, the attorney for the Smyths and Arturis moved for substantive relief that was essentially similar to that requested by the borough. Specifically, the Smyths and Arturis requested that Old Tappan's precredited fair share number for 1987 through 1999 be determined by COAH to be 98 units; that COAH hold that Old Tappan is entitled to a reduction of its precredited fair share number by 107 units; that the Council decide that Old Tappan's calculated need number for 1987 through 1999 is zero; and that the Council authorize Old Tappan to implement the sunset provision of its PRD zoning ordinance.

Also, on May 15, 1995 the borough petitioned COAH for substantive certification of a housing element and fair share plan adopted by its planning board on May 4, 1995 which addressed Old Tappan's 12-year cumulative obligation for 1987-1999. The 45 day objector period for that petition ended on June 26, 1995. There were four objectors to the plan: Kalian, the Ampsellers, the Kobers and the Smyths and Arturis. All respondents to and intervenors in the motion filed by Old Tappan are now objectors to the Old Tappan petition for substantive certification of its cumulative fair share plan.

The Council scheduled consideration of Old Tappan's motion and the motions of the intervenors for its meeting of July 12, 1995. At that meeting the Council granted intervenor status to the Smyths and the Arturis and also to the Kobers.

The Council further decided to stay any action on Old Tappan's motion, as well as to the substantially similar substantive relief requested by the Smyths and Arturis, until statutory mediation pursuant to N.J.S.A. 52:27D-314 was completed relative to Old Tappan's petition for substantive certification of its housing element and fair share plan. The Council gave all objectors until July 26 to submit any supplemental objections to the plan prior to mediation. The Council further directed that mediation proceed on an expedited basis as per the Borough's request.

The Council based these decisions on N.J.A.C. 5:91-13.1(b) and (c), which state:

(b) A municipality seeking an amendment to substantive certification that requires a change in site, increase in density on a specific site or a fundamental change in approach to its low and moderate income housing obligation must file a petition for such an amendment.

(c) A municipality seeking a minor, technical amendment to its certified housing element and fair share plan that does not materially alter the terms of certification may request such an amendment by motion pursuant to N.J.A.C. 5:91-12.

The relief requested in the motion filed by Old Tappan materially alters the terms of its certified fair share plan, which currently addresses its 1987-1993 fair share obligation of 144 units. The motion requests the Council to allow Old Tappan to "amend" its housing element and fair share plan to address its 1987 to 1999 need of 98 units. This is a fundamental change in approach to Old Tappan's certified low and moderate income housing obligation. To grant the motion would be to establish Old Tappan's fair share obligation for a 12 year period, reduce that obligation from 144 units of low and moderate income housing to 98 units of housing and to alter the sunset provisions of Old Tappan's planned residential development conditional overlay zone that is at the heart of the dispute between Old Tappan and the objectors. Such a request is neither "minor" nor "technical" and therefore cannot be made by motion. N.J.A.C. 5:91-13.1(c).

Rather, pursuant to N.J.A.C. 5:91-13.1(b), Old Tappan's request to fundamentally change the terms of its substantive certification must be made by petition. Old Tappan has filed that petition. There are four objectors. The Council will, therefore, place the required mediation on a priority schedule and give the objectors 14 days from July 12, or until July 26, to submit supplemental objections prior to mediation. The Council will also stay this motion until after the mediation period is completed so that the Council will be able to continue to act expeditiously in this matter.

Dated:

*August 2, 1995*

*James' Peris*  
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*Council Secretary*

\*\*\*END\*\*\*