

PATRICK CATANZARETI )  
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 VS. )  
 )  
 HIGH BRIDGE )

COUNCIL ON AFFORDABLE HOUSING  
DOCKET NO. 95-707

OPINION

Patrick Catanzareti is the owner of a site zoned for an inclusionary development in the Borough of High Bridge in Hunterdon County. He moved before the Council on Affordable Housing for relief with regard to what he contends are cost generating provisions of High Bridge's land development ordinance. High Bridge, however, maintained that the Council does not have jurisdiction over Catanzareti's requests and urged that the Council not decide the issues presented. Oral argument was held on this matter at the Council's meeting of May 3, 1995. The decision which this opinion memorializes was made at the Council's June 7, 1995 meeting.

On March 20, 1987 Catanzareti and High Bridge entered into a mediation agreement which required the Borough to "take all reasonable steps to foster development on the Catanzareti property". This agreement was incorporated into the Council's grant of substantive certification of High Bridge's housing element and fair share plan dated April 4, 1988. Based upon the agreement and the Council's grant of substantive certification, the Catanzareti site was zoned for an inclusionary development which permitted Catanzareti to develop a total of 170 units on his site, including 34 low and moderate income units. These units could either be rental or for-sale units at the developer's option.

In Section 5(b) of the March 20 mediation agreement it states:

The Borough shall take all reasonable steps to foster development...including cooperation with Catanzareti in the provision of utility service, including sewer, water, natural gas, etc., provided that the Borough and Planning Board shall be entitled, during the development review process, to require Catanzareti to bear the costs of on-site, off-site and off-tract infrastructure, roads, sewers, water lines, etc., to the extent permitted by the Municipal Land Use Law.

It is this paragraph that is the primary basis for the dispute between the parties. Specifically, Catanzareti claims that there are three areas of costs that the borough is trying to impose upon his development that are burdensome and jeopardize the provision of affordable housing: (1) the cost of providing a water supply to the site, (2) a \$1,500 per unit water connection fee, and (3) the cost of required improvements to Dewey Avenue. In opposition to Catanzareti's

motion, the Borough of High Bridge claims that this Council does not have jurisdiction over the dispute, but that the matter should be heard in Superior Court.

With regard to the jurisdiction issue, the Council believes that it does have jurisdiction. The agreement was entered into during the Council's mediation process, and was appended to the grant of substantive certification. Moreover, the settlement agreement is the major generator of affordable housing in High Bridge. High Bridge claims that the disputed issues before the Council require consideration of provisions of the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 et seq., which is referenced in the settlement agreement, and the County and Municipal Water Supply Act, N.J.S.A. 40A-31 et seq., and that because of this the Council should not take jurisdiction. However, consideration of these statutes does not present a bar to the Council exercising its jurisdiction in this matter.

The MLUL is referenced in the Fair Housing Act, as well as in the Council's rules. The Council is well aware of its provisions and is fully capable of reading and interpreting the MLUL with regard to deciding the issues before it. Moreover, the Council has often been called upon to impose scarce resource orders on various municipalities with regard to sewer and water issues. Therefore, the fact that reference to provisions of the County and Municipal Water Supply Act may be necessary to resolve parts of this dispute, does not prevent the Council from hearing the matter.

The main issue before the Council is whether costs imposed by the Borough on Catanzareti will prevent affordable housing from being produced on the Catanzareti tract. This is precisely the kind of decision that COAH is required to make when granting substantive certification. The standards for substantive certification, set out at N.J.S.A. 52:27D-314, require the Council to make a determination that the "combination of the elimination of unnecessary housing cost generating features from the municipal land use ordinances and regulations" along with the municipality's affirmative measures in the housing element and implementation plan "make the achievement of the municipality's fair share of low and moderate income housing realistically possible". The issues before the Council in this motion require the same type of expertise required by the Fair Housing Act in granting substantive certification. Furthermore, the Council's rules at N.J.A.C. 5:93-10.4(b) provide a procedure for a municipality or developer to seek the Council's aid in resolving disputes regarding the specific development standards to apply to an inclusionary development. Therefore, it is clear that this matter is within the jurisdiction of the Council. It is the Council's further decision that this matter be transferred to the Office of Administrative Law (OAL) for a fact finding hearing. This decision is based upon the existence of several outstanding factual disputes between the parties which need to be resolved before the Council can make a final determination with regard to the issues presented.

With regard to the borough's charges for bringing a water supply to the Catanzareti property, there is a factual dispute with regard to whether the borough can require Catanzareti to pay for the

cost of installing the water mains and service lines to the property. The settlement agreement states that Catanzareti should bear the costs of "on-site, off-site and off-tract infrastructure, roads, sewers, water lines, etc. to the extent permitted by the Municipal Land Use Law". However, Catanzareti claims that at the time of mediation the High Bridge municipal ordinance stated that the municipality would bear such costs. The borough, in opposition, states that its ordinance from the period of mediation onward has always stated that the developer would bear the costs. However, it acknowledges that its ordinance was codified incorrectly and that the published copy was as the developer states. Further, in a certification by the municipal clerk, Claire R. Knapp, the borough claims that the developer was aware of the correct provisions of the ordinance. Therefore, the outstanding factual issues to be determined by OAL with regard to water supply charges are: What was the intent of the parties with regard to the settlement agreement as to the costs of bringing a water supply to the site? What were the provisions of the relevant municipal ordinance in effect at the time of the settlement agreement? What are the provisions of the ordinance currently in effect? What ordinance should control with regard to imposition of charges on the Catanzareti development? Also, although Catanzareti has claimed that charges such as the disputed water supply charges jeopardize the provision of affordable housing on his site, he has made no proof with regard to these claims. Therefore, at the hearing Catanzareti must show that the water supply charges imposed by the borough are unduly burdensome relative to the provision of affordable housing.

With regard to the \$1,500 per unit water connection fee, Catanzareti also claims that this charge is burdensome with regard to the provision of affordable housing. Such a fee is allowed under N.J.S.A. 40A:31-11, but only to the extent that a municipality can justify its fee under the criteria of that act. N.J.S.A. 40A:31-11 states:

In addition to rates and rentals, a separate charge in the nature of a connection fee or tapping fee for each connection of any property with the water supply system may be imposed upon the owner or occupant of the property so connected. The connection charges shall be uniform within each class of users and the amount thereof shall not exceed the actual cost of the physical connection plus an amount computed in the following manner...

Therefore, as long as the municipality is able to justify at the OAL hearing that the \$1,500 fee imposed upon each unit in Catanzareti's development meets the criteria of the County and Municipal Water Supply Act, the Council will allow the fee. Developments in New Jersey pay such a fee, which is allowed by statute, and, because the fee is uniform "within each class of users", it cannot be considered

to be an unnecessary burden on the development.' It will also be Catanzareti's obligation here, as it was with the water supply charges, to show that the amount charged by the borough with regard to the water connection fee is burdensome with regard to the provision of affordable housing.

Finally, Catanzareti argues that the settlement agreement does not contemplate the charges the borough seeks to impose with regard to the improvements to Dewey Avenue necessitated by the development. Clearly, there is an outstanding factual issue requiring fact finding with regard to the intent of the parties at the time they entered into the settlement agreement with regard to the roadway improvements. Also to be tried at OAL is the issue of what is the effect of the provisions of the MLUL referenced in the settlement agreement relative to the road improvement charges. Again, it is also necessary that Catanzareti produce evidence that the charges for the improvement of Dewey Avenue contemplated by the Borough impact adversely upon the provision of affordable housing within his developments.

Therefore, the Council holds that it has jurisdiction over this matter and that it be transferred to OAL for fact finding. Prior to trial, however, the Council would request that OAL attempt to mediate the dispute among the parties for a limited 30 day mediation period. If mediation is unsuccessful, a full trial on the contested issues should be conducted. Once OAL has determined the contested factual issues as outlined in this decision, the Council will be better able to make a final decision with regard to the Catanzareti motion.

  
Council Secretary

Dated: August 2, 1995

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\* The Council notes that municipal connection charges "shall be uniform within each class of users", which clearly allows a municipality to charge a lesser connection fee to low and moderate income units within a development.