

COUNCIL ON AFFORDABLE HOUSING
DOCKET NO. 94-646

Morel & Segal, Inc. v.)
Lopatcong Township,)
Greenwich Township and)
Toll Brothers, Inc.)

Civil Action

OPINION

On December 29, 1994 Morel & Segal, Inc. filed a motion with the New Jersey Council on Affordable Housing ("Council" or "COAH"). Morel & Segal is the owner and developer of the Overlook Townhouse Development, a site zoned for inclusionary development in the Township of Lopatcong, Warren County. The site is included in Lopatcong's certified fair share plan to provide 22 units of affordable housing, which is the township's entire 1987-1993 fair share obligation. In its motion Morel & Segal claimed that Lopatcong failed to allocate sewer capacity to the Overlook site and exhibited bad faith by not exerting its best efforts to obtain sewer capacity for the Overlook project from a sewage treatment plant located in the Town of Phillipsburg. As a result, Morel & Segal contended that Lopatcong was in violation of the Council's grant of substantive certification.

Morel & Segal further claimed that Greenwich Township, Warren County, which is contiguous to Lopatcong, denied the developer access to a pump station which would in turn provide

access to the sewage treatment plant in Phillipsburg. Therefore, in its motion Morel & Segal requested that the Council order Greenwich Township to permit access to the pump station.

Lopatcong and Greenwich filed answering papers to Morel & Segal's motion on February 6, 1995 and February 27, 1995, respectively. On numerous occasions the parties requested that oral argument in the matter be postponed because negotiations were taking place in an effort to resolve amicably the matter. Ultimately, however, oral argument was held on August 2, 1995 at the Council's regularly scheduled monthly meeting. At that meeting Morel & Segal and Lopatcong told the Council that they had reached an agreement. However, Morel & Segal stated that the claims against Greenwich were unresolved and requested that the Council hear the motion with regard to Greenwich. On August 2, the Council scrutinized the potential settlement offered by Lopatcong and Morel & Segal, heard oral argument from all parties and, ultimately, decided to continue the matter to its September 6, 1995 meeting. The purpose of the continuance was so that Morel & Segal, upon the Council's order, could join Toll Brothers, Inc., the owner of the Greenwich Township pump station, as an essential party to the motion. Morel & Segal did so and Toll Brothers responded to the order with a motion to dismiss. That motion was heard at the

Council's September 6, 1995 meeting, along with the remainder of the oral argument in the Morel & Segal motion.

BACKGROUND

Lopatcong was granted substantive certification by COAH on September 4, 1991. Lopatcong had a 1987 to 1993 precredited need of 62 low and moderate income housing units. As part of its certification, Lopatcong received 40 units of credit for a Section 202 senior citizen housing project which was constructed jointly with Harmony and Lopatcong Townships. This resulted in a final fair share number of 22 units, all of which were indigenous need. The Overlook site was designated in the certified fair share plan to provide these 22 units of affordable housing.

The Morel & Segal Overlook site is located along County Route 519 in the eastern portion of Lopatcong Township. The site contains a total of 65 acres and is to be developed at a density of 6.2 units per acre, for a total of 398 units: 376 market rate units and the 22 affordable units. The site is located on Lopatcong's municipal boundary with Greenwich Township.

Sewage treatment for Lopatcong is provided by the Phillipsburg sewage treatment plant, which is located on the Delaware River in Phillipsburg. At the time Lopatcong was granted substantive certification, the Phillipsburg treatment plant was

under a sewer connection ban instituted by NJDEP. As a result, Lopatcong was granted a durational adjustment due to the lack of sewer capacity.

The Phillipsburg sewage treatment plant is owned and operated by the Town of Phillipsburg. The other communities served by the plant include Lopatcong Township, Alpha Borough, Greenwich Township and Phillipsburg. An inter-municipal agreement executed in June 1988 governs fees and capacity allocations for the plant. At the time of certification Lopatcong was allocated 177,000 gpd. Greenwich Township is currently allocated 300,000 gpd. NJDEP lifted the sewer ban on the Phillipsburg plant in March 1993. At that time Lopatcong granted capacity allocations to six developments. These allocations totaled 118,700 gpd, leaving the township with 58,300 gallons of unallocated capacity. However, Morel & Segal was not among the six developers allocated capacity in March 1993.

In September 1993, when Lopatcong's fair share plan was certified, the Morel & Segal site was not located in either the existing or planned sewer service area of the Phillipsburg plant. Morel & Segal had received conditional preliminary site plan approval for the Overlook development in December 1990 and full preliminary approval from the township planning board in February

1991. In late 1991 Morel & Segal was informed by Lopatcong that the township's wastewater management plan would have to be amended to incorporate the Overlook site and that Morel & Segal would have to pay for this amendment and also commit to paying for its fair share of the costs of the capacity allocation. At that time, Morel & Segal was requesting a 70,000 gpd allocation.

An amendment to the wastewater management plan incorporating the Overlook site was approved by NJDEP in March 1993. However, Morel & Segal was then informed by Lopatcong that the township's allocation had already been committed, with the bulk of that allocation reserved for the Bradley Park development, in accordance with a 1982 settlement agreement entered into between that development and Lopatcong. Bradley Park is currently planned as a 400 unit single family detached subdivision and was granted an allocation by Lopatcong in 1993 of 75,000 gpd, which was sufficient for the first two phases of the development. Lopatcong claims that it was mandated to allocate this capacity pursuant to the settlement agreement. Also, in March 1993 Morel & Segal was informed by Lopatcong that no capacity could be allocated to the Overlook Development unless Morel & Segal had secured a "viable" or "approved" method of access to the Phillipsburg treatment plant.

In 1991 at the time of its preliminary approval, Morel & Segal had indicated to the Lopatcong Planning Board that it intended to connect to the Phillipsburg treatment plant by running pipes from its development through Greenwich Township and then securing a connection to a pump station that was at that time scheduled to be constructed by Toll Brothers, Inc. in Greenwich. From that pump station, effluent would be transmitted by a force main and additional pump stations to the Phillipsburg treatment plant. In 1991 Toll Brothers was in the process of obtaining NJDEP approval for the pump station and force main system. Subsequently, Morel & Segal sought the approval of Greenwich for access to the Toll Brothers pump station. Greenwich denied the request because it was concerned that the 70,000 gallons of effluent from the Overlook development would create capacity problems in the line and prevent future development in Greenwich. Morel & Segal, however, claim that there is sufficient existing capacity in the pump station and associated lines and that the 70,000 gpd from Overlook will not be credited against Greenwich's 300,000 gpd allocation from Phillipsburg.

THE MOTION

In its December 1994 motion, Morel & Segal sought an allocation of sewer capacity from Lopatcong. It claims that Lopatcong violated the Council's grant of substantive certification by allocating sewer capacity to other developers, including Brakely Park, while not providing an allocation to the Overlook site. With regard to Greenwich Township, Morel & Segal requested that the Council order Greenwich to allow the developer to construct a sewer line through the township to the Toll Brothers pumping station. Morel & Segal offered to pay for any costs incurred by Greenwich's professionals and to pay for any upgrade to the pump station and hookups to the Phillipsburg plant. With regard to Toll Brothers, Inc., Morel & Segal amended its motion at the Council's request to include Toll Brothers as an essential party and sought access to the pump station from Toll Brothers.

Lopatcong filed a brief on February 6, 1995 in response to the Morel & Segal motion and objected to the relief Morel & Segal sought. Lopatcong argued that Morel & Segal's requested allocation of sewer capacity should not be granted because at this time there is no way to connect the Morel & Segal site to the Phillipsburg sewage treatment plant. It would, therefore, be a waste of Lopatcong's minimal available capacity to allocate a

portion of this capacity to Morel & Segal before a connection to the Phillipsburg plant is assured. Lopatcong also argued that the Town of Phillipsburg was an essential party to the motion and was indispensable to the resolution of the matter because it is the owner and operator of the Phillipsburg Sewage Treatment Plant. It is, therefore, claimed Lopatcong, the only entity that can provide Morel & Segal with the capacity it needs for the Overlook development. Lopatcong claimed that it had met its obligation with regard to the Morel & Segal site and that it was only from Phillipsburg that sufficient sewer capacity could be made available to Morel & Segal. Consequently, Lopatcong argued that the Morel & Segal site was not at the present time a realistic one for Mount Laurel housing because of the lack of infrastructure and sewage capacity. Lopatcong further argued that it was the developer's responsibility to find a way to provide access to sewage services in Phillipsburg for the site.

Negotiations between Morel & Segal and Lopatcong proceeded between February 1995, when Lopatcong filed its brief with the Council, and August 2, when the motion was argued before the Council. In that interim a negotiated settlement between the two parties was reached in which Lopatcong would immediately pass the appropriate ordinances to allocate Morel & Segal 25,000 gallons

of sewage capacity to be utilized for the Overlook development. In addition to these 25,000 gallons, it was also thought by the parties that an additional 10,000 to 15,000 gallons could be obtained for the Overlook development through improvements to existing lines through inflow/infiltration remediation, which would be conducted and paid for by Morel & Segal. The 25,000 gallons of sewage capacity would allow Morel & Segal to build approximately 85 units of the Overlook project and Morel & Segal, ultimately, agreed to provide six low and moderate income units from these 85 units.

In a letter to the Council dated August 30, 1995 Lopatcong through its attorney stated that it found this proposed settlement to be reasonable and urged that it be approved by the Council. Lopatcong in this letter responded to comments from some of the members of the Council made at the August 2 oral argument which questioned whether the proposed settlement provided a sufficiently realistic opportunity for low and income housing within Lopatcong, because of the number of affordable units to be provided with the proposed allocation of 25,000 plus gallons of capacity. Therefore, the Lopatcong attorney stated that the proposed solution:

...assumes that COAH will allow Morel & Segal, Inc. to run its lines through Greenwich. If COAH rejects this portion of Morel's Motion,

the settlement really doesn't make much sense. Under that scenario, Lopatcong would be placed in a position where it has reserved capacity for a developer to advance the township's affordable housing objectives under circumstances where Morel & Segal, Inc. cannot, as a practical matter, take advantage of that capacity. Therefore, before Lopatcong signs the settlement agreement and ties up 25,000 gallons indefinitely, the Township of Lopatcong needs to know whether COAH will insist upon reviewing the settlement and reject the settlement or whether COAH will take any other action that would hurt the interests of a municipality proceeding in good faith.

Alternatively, Lopatcong suggested in its August 30 letter that if the Council were to reject the proposed settlement, there were other developers in Lopatcong able to provide the 22 units of affordable housing currently to be provided on the Morel & Segal site. Lopatcong stated that it was committed to meeting its Mount Laurel responsibilities and would alter its affordable housing fair share plan, should COAH hold that such action were necessary.

The Township of Greenwich filed a brief on February 27, 1995 in opposition to Morel & Segal's motion and filed a supplemental brief on July 18, 1995. Greenwich's position was that the Council lacked jurisdiction to order it to provide access for the Overlook project. Greenwich noted that it had acquired from the Phillipsburg sewage authority 300,000 gallons per day of sewage

treatment capacity as part of its own affordable housing obligation and that that capacity could be severely impacted by the possible addition of the Overlook sewer capacity. Further, the pumping station and connecting lines from Greenwich to Phillipsburg were constructed by Toll Brothers pursuant to a Mount Laurel mediation agreement that received approval from the Council as part of the substantive certification that the Council granted to Greenwich's fair share plan. Therefore, to order Greenwich to allocate sewage capacity to Morel & Segal could have a negative impact on Greenwich's ability to meet its own affordable housing needs. Further, in its supplemental brief of July 18, 1995, Greenwich cited two prior decisions of the Council, In Re Warren Township, COAH Docket No. 87-22 and In Re Borough of Roseland, COAH Docket No. 88-110 in which relief such as that being requested from Greenwich by Morel & Segal was denied by the Council. Based upon these two decisions, Greenwich argued that the Council had already decided that in a situation similar to that presented by Morel & Segal, it did not have jurisdiction over either a neighboring municipality or a regional sewage authority with regard to ordering such entities to assign sewer allocations to a developer to help meet a fair share obligation in another municipality.

In addition to arguing that COAH lacked jurisdiction, Greenwich argued that Toll Brothers, Inc. was an essential party because the pump station to which Morel & Segal sought access was owned by Toll Brothers and controlled by it. Although there is an agreement that at some point in the future Toll Brothers would dedicate the pump station to Greenwich, that transfer had not yet been made and there was no predictable point in the future when it would be done. Therefore, the pump station and the sewer lines "...remain within the control of Toll Brothers and have not been accepted by Greenwich Township. The Township and Toll Brothers have worked together, and continue to work together, toward the use of the system and the acceptance by Greenwich." However, it was anticipated by Greenwich that it would not accept the pump station and sewer lines for "approximately two years". This was written in February 1995. Until such time as Greenwich accepted the pump station and sewer lines "...Toll Brothers will remain responsible for the operation of same, with Greenwich working with Toll Brothers, but still making Toll Brothers an indispensable party." Greenwich also argued that COAH did not have the authority to order Greenwich to contract for needed sewer capacity based upon N.J.S.A. 40:63:70 and N.J.S.A. 40:63-74.

At oral argument on August 2, 1995 the Council ordered Morel & Segal to serve and join Toll Brothers, Inc. as an indispensable party. Toll Brothers responded with a notice of motion to dismiss all claims against it because the Council lacked jurisdiction over the corporation. In its brief in support of the motion for dismissal, Toll Brothers argued that even if the Council decided to overturn its Warren decision, the Council would still not have jurisdiction over Toll Brothers. This is because Toll Brothers is a private entity, not a municipality, and that the Fair Housing Act only gives the Council jurisdiction over municipalities. Toll Brothers argued that the Council could overrule the Warren decision and impose conditions upon Greenwich, perhaps, but "it is a quantum leap to argue" that COAH had statutory jurisdiction to enter an order against a private property owner such as Toll Brothers to appropriate the use of its property, its pumping station, to meet a municipal affordable housing obligation.

Further, Toll Brothers emphasized that the pump station was constructed pursuant to a settlement agreement achieved during consideration of Greenwich's fair share plan and that COAH reviewed and approved the settlement agreement by resolution dated March 1992. If Morel & Segal objected to this agreement, it should have

appealed the Council's approval of it to the Appellate Division in March 1992 and challenge COAH's grant of certification in that forum at that time. Since it did not do so, it was barred by res judicata from now challenging the settlement agreement. Similarly, R. 4:69-6 requires that an action in lieu of prerogative writ challenging a municipal action be commenced no later than 45 days after the right of review. Morel & Segal could also have challenged the settlement agreement between Greenwich and Toll Brothers in an action in lieu of prerogative writ. However, because Morel & Segal chose not to do so, the R. 4:69-6 statute of limitations now precludes Morel & Segal's claim from being brought against Greenwich and Toll Brothers. Therefore, Toll Brothers argued, not only did COAH lack jurisdiction over Toll Brothers but also that Morel & Segal failed to challenge in a timely fashion COAH's grant of substantive certification to Greenwich or Greenwich's implementing ordinances. Therefore, the relief sought by Morel & Segal from Toll Brothers should be denied.

THE DECISION

Lopatcong received substantive certification on September 4, 1991. The township's final fair share number was 22 units of low and moderate income housing, all of which represent indigenous need. Lopatcong's fair share plan included the Overlook site to

provide 398 units, including Lopatcong's entire obligation of 22 affordable units. At the time of substantive certification, a sewer ban was in place with regard to the Phillipsburg sewage treatment plant. Therefore, the Council granted Lopatcong a durational adjustment pursuant to N.J.A.C. 5:92-8.5(c) and N.J.A.C. 5:93-4.3(c)(1), which required Lopatcong to "reserve and set aside new...sewer capacity, when it becomes available, for low and moderate income housing, on a priority basis." However, in 1993 when the Phillipsburg Sewage Treatment Plant sewer ban was lifted by NJDEP Lopatcong did not allocate a portion of its remaining sewer allocation to the Morel & Segal site. Lopatcong stated that this was due to the fact that Morel & Segal did not have access to the Phillipsburg sewage treatment plant. Morel & Segal did not have access because Greenwich Township would not approve access to the Toll Brothers pump station, nor would Toll Brother's allow Morel & Segal to use the pump station. In this motion Morel & Segal seeks an order of the Council ordering Greenwich and Toll Brother's, Inc. to provide the necessary access to the pump station and use of the pump station.

GREENWICH AND TOLL BROTHER'S INC.

Both Greenwich Township and Toll Brothers, Inc. argue that this Council does not have jurisdiction with regard to the

relief Morel & Segal seeks. Both cite two prior motion decisions of this Council, In Re Township of Warren and In Re Borough of Roseland to support this contention. A review of these two decisions and the policies articulated in them clearly supports a determination that this Council does not have jurisdiction over either Greenwich or Toll Brothers.

In In re Warren Township the Council in 1987 was requested by a developer, Top Of The World (TOTW), to condition a grant of substantive certification to Warren Township's fair share plan on Warren's agreement to provide sewer capacity to TOTW's site, which was located in the adjacent municipality of Greenbrook. At that time Warren had petitioned for substantive certification from the Council but had not yet received substantive certification. TOTW was an objector to the Warren fair share plan, based upon Warren's refusal to provide sewer to TOTW's Greenbrook site. In its decision the Council refused to condition its grant of substantive certification to Warren's plan upon the willingness of that municipality to provide sewer capacity to the Greenbrook site.

The Council's decision was squarely based on the Fair Housing Act, which gives the Council statutory responsibility to review municipal housing elements and fair share plans for the

purpose of ascertaining whether such submissions will satisfy a municipality's Mount Laurel obligation. If a municipality's fair share plan meets its affordable housing obligation, the Council "shall" certify that plan. N.J.S.A. 52:27D-314. TOTW, however, argued that because a municipal fair share plan must be consistent with the low and moderate income housing needs of its housing region and because Warren's sewer policies affected the low and moderate income housing need of the region, the Council could condition its grant of substantive certification on Warren's willingness to provide sewer to TOTW.

While stating that TOTW "has raised an issue of serious concern" the Council felt "constrained by the language of the Fair Housing Act to deny TOTW's motion." The Council noted that Greenbrook could receive certification of its own plan without access to the Warren Sewerage Authority because it could receive a durational adjustment pursuant to N.J.A.C. 5:92-8.1 et seq. The Fair Housing Act required the Council to review fair share plans for substantive certification and did not mandate that the Council resolve municipal disputes regarding the allocation of scarce resources. Such municipal disputes over limited amounts of sewer or water capacity could involve the competing claims of several municipalities and it was very possible that several necessary

parties might not be before the Council. Also, the Council noted that a municipality controlling capacity, such as Warren, could already have received substantive certification, and, thus, the Council could be asked to void a grant of substantive certification because of the refusal of one municipality to provide sewer to another. The Council found no authority for such action in the Fair Housing Act and, therefore, denied TOTW's application.

However, in denying TOTW's motion the Council noted that the Superior Court had previously suggested that in cases such as the one presented by TOTW a judicial remedy may be appropriate. See, Urban League of Essex County v. Mahwah, 207 N.J. Super. 169, 258-259 (Law Div. 1984). Therefore, the Council stated that TOTW could institute an action in the Superior Court to seek a judicial remedy with regard to Warren's refusal to provide an allocation of sewer capacity to Greenbrook.

The Council followed the Warren decision with In Re Borough of Roseland, a decision involving a motion by Bellemead, a developer in Roseland, seeking a sewer allocation from a municipal sewerage authority owned by the Borough of Caldwell. The Council reiterated its Warren holding that it did not have authority under the Fair Housing Act to issue restraints against a municipality that was not before it. The Council again noted that an

application to the Superior Court for a judicial remedy to the dispute was appropriate and again cited the Urban League of Essex County case in support of this proposition.

The Council's Warren and Roseland decisions are clearly applicable to this decision. Morel & Segal seeks the Council's order to compel the Township of Greenwich, a municipality not currently before the Council and which has previously been granted substantive certification, to provide access to sewer lines in Greenwich. Applying COAH's two prior decisions to this matter, it is clear that the Council has decided that it does not have jurisdiction over municipalities such as Greenwich and, therefore, will not order Greenwich to provide Morel & Segal with access to the Toll Brothers pump station or to the Phillipsburg treatment facilities.

Similarly, the Council has no jurisdiction over Toll Brothers, Inc. As Toll Brothers had pointed out, it is a private corporation and the Fair Housing Act does not give the Council jurisdiction over private corporations. Morel & Segal's argument that eventually the pump station will be dedicated to Greenwich cannot, in the Council's view, obscure the fact that the pump station was constructed by and is currently owned and operated by a private entity, Toll Brothers. Therefore, the relief sought by

Morel & Segal with regard to Toll Brothers cannot be granted by the Council and Toll Brother's motion to dismiss is granted.

In both the Warren and Roseland decisions, the Council noted that because the affordable housing involved met a regional obligation and because the sewer services at issue were also subject to regional allocations, it would be appropriate for TOTW and Bellemead to consider instituting actions in the Superior Court to attempt to receive the sewer services that were needed to produce the affordable housing in those two developments. Similarly, Morel & Segal may consider the institution of such a suite in the Superior Court. Because COAH clearly cannot provide jurisdiction in this matter, the Superior Court may. The Council has certified the fair share plan of Lopatcong and the Morel & Segal Overlook townhouse development has been included in Lopatcong's certified fair share plan to provide 22 units of low and moderate income housing. Therefore, the Superior Court may be able and willing to grant the relief Morel & Segal has sought from this Council, but which the Council has no jurisdiction to give.

LOPATCONG

This motion was filed by Morel & Segal after Lopatcong refused to allocate sewer gallonage to the Overlook development. Initially, Lopatcong in a brief filed in February 1995 objected to

the relief sought by Morel & Segal and stated that it did not want to allocate sewer gallowage to the Overlook development because of the lack of infrastructure available to the site. In that brief Lopatcong also stated, in the alternative, that the lack of sewer service to the Overlook site called into question whether the fair share plan certified by COAH in 1991 continued to provide a realistic opportunity for low and moderate income housing in Lopatcong.

The Council's certification of Lopatcong's fair share plan, it must be emphasized, was of a fair share plan created by Lopatcong and the Morel & Segal site was selected by Lopatcong for the provision of low and moderate income housing to meet Lopatcong's Mount Laurel obligation. At the time of certification there was a durational adjustment in the fair share plan because of an NJDEP sewer ban imposed upon the Phillipsburg treatment plan. However, it was clear from the grant of substantive certification, that once the sewer ban was lifted, it was Lopatcong's responsibility to allocate an appropriate porion of a scarce resource, sewer capacity, to the Morel & Segal site, because of the low and moderate income housing obligation on that site.

In the six months that transpired between the date Morel & Segal filed this motion and August 2, 1995, when it was initially

argued, a potential settlement was reached between Lopatcong and Morel & Segal with regard to the sewer allocation to the Overlook site. The township and Morel & Segal agreed that the township would allocate 25,000 gpd to the site and Morel & Segal would attempt to gain another 10,000 to 15,000 gpd through an infiltration/inflow remediation plan paid for by the developer. The 225,000 gpd was thought to provide enough gallonage for the first 85 units to be built on the Overlook site. Morel & Segal pledged that six of these 85 units would be low and moderate income units.

The Council on Affordable Housing acknowledges and accepts the proposed agreement between Lopatcong and Morel & Segal. The Council believes that the agreement fosters the creation of low and moderate income housing within Lopatcong. The Council also believes that because of this agreement, Lopatcong's fair share plan continues to provide a realistic opportunity for low and moderate income housing, as is required by the Fair Housing Act.

The Council makes this determination fully aware that Lopatcong has argued in the papers submitted to the Council in response to this motion (but Lopatcong did not emphasize this in oral argument before the Council) that if the Council does not assume jurisdiction over Greenwich and Toll Brothers, that

Lopatcong should not have to allocate the 25,000 gpd to the Morel & Segal site. Lopatcong has stated that it is a "waste" of its sewage allocation to allocate these 25,00 gpd to Morel & Segal without any certainty of Morel & Segal's ability to hook up to the Phillipsburg sewage treatment plant. Lopatcong has stated that if the Council does not assume jurisdiction over Greenwich and Toll Brother and order these parties to accept the allocated gallonage through its sewer pipes and pump station, then Lopatcong's fair share plan as certified by the Council no longer constitutes a realistic opportunity for affordable housing. Therefore, Lopatcong has claimed that it should be allowed to amend its fair share plan to allocate sewer gallonage to another developer who can more quickly build the affordable housing within the Township.

It is true that it is currently unclear how Morel & Segal will be able to access the Phillipsburg sewage treatment plant for the Overlook development. However, Morel & Segal may make an application to the Superior Court for an order for Greenwich and Toll Brothers to provide the required access. Morel & Segal may also be able to negotiate such access from Greenwich and Toll Brothers. Moreover, at oral argument Morel & Segal stated to the Council that there were other possible routes by which it may be able to provide sewer service to the Overlook development.

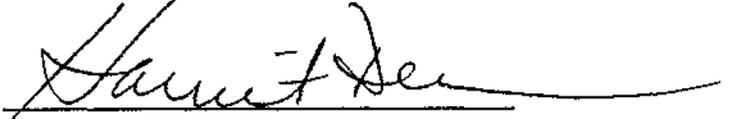
Therefore, while it is uncertain as to how sewage service will become available to the Overlook site, it is by no means clear that sewage service is unavailable to that site. This is especially so now that Lopatcong has agreed to allocate the 25,000 gpd to the Overlook site.

However, because it remains unclear as to how sewer service will be provided to the Overlook development, the Council believes that it should closely monitor this matter, as well as Lopatcong's continuing implementation of its fair share plan. Therefore, for the remainder of the duration of Lopatcong's substantive certification, the Council will require Lopatcong and Morel & Segal to provide quarterly reports with regard to all efforts to obtain access to sewage treatment facilities for the Overlook development. Hopefully, it will soon become clear as to how sewage treatment services will be provided to the Overlook site. Once that is the case, further quarterly reports should not be required. However, if at some point it becomes clear that there is no possible access to sewage treatment for the Overlook site or that such access will be definitively unavailable, it will at that point be necessary for Lopatcong to so inform the Council. Lopatcong will then have to amend its fair share plan to provide a

more realistic method whereby the Township will address its fair share obligation.

COUNCIL ON AFFORDABLE HOUSING

By:



Harriet Derman
Chairperson

DATED: October 11, 1995