

HIGHLANDS AT MORRIS, INC. )  
 )  
 vs. )  
 )  
 ROCKAWAY TOWNSHIP, )  
 MORRIS COUNTY )

COUNCIL ON AFFORDABLE HOUSING  
Docket 95-~~9~~14

PRELIMINARY SCARCE RESOURCE ORDER

WHEREAS, Highlands at Morris, Inc., ("Highlands") on December 6, 1995 through its attorney, Gary S. Rosensweig, Esq., moved before the New Jersey Council on Affordable Housing ("COAH" or "the Council") for the imposition of a scarce resource restraint against the Township of Rockaway ("township"); and

WHEREAS, Highlands is the owner and developer of an inclusionary development in the township which is currently zoned to permit the construction of 1,600 residential units, including 368 units of affordable housing and 95,000 square feet of commercial and retail space and which is estimated to require approximately 220,000 gpd in sewer service capacity; and

WHEREAS, Highlands has requested the Council to order the township to reserve all unallocated sewer capacity for Highlands' development when such capacity becomes available from the Rockaway Valley Regional Sewage Authority (RVRSA) in order to guarantee implementation of the township's fair share plan in accordance with Rockaway Township's judgment of compliance and repose and the terms of a settlement agreement between the township and Highlands; and

WHEREAS, the township was served with Highlands' motion for a scarce resource restraint and responded to the motion on February 28, 1996 through its attorney, John H. Dorsey, Esq.; and

WHEREAS, the township in its response noted that the township in 1993 had allocated 50,000 gpd of sewer service to Highlands development within the RVRSA treatment facility and further noted that "... the Township does not object to a scarce resource order in terms of its actions vis-a-vis Highlands at Morris, subject, of course, to the resolution of the underlying dispute with the RVRSA and subject to a resolution of the total number of units to be included within the development."; and

WHEREAS, the township has included Highlands in its petitioned fair share plan for substantive certification, but for a reduced development of 1,100 units, including 100 units of affordable housing; and

WHEREAS, Highlands is not currently included in the RVRSA sewer service area and has instituted litigation in the Superior Court challenging the decision of the RVRSA not to include the Highlands' development in the RVRSA sewer service area; and

WHEREAS, on March 6, 1996 at its regularly scheduled meeting, the Council heard oral argument on Highlands' motion for a scarce resource order with Mr. Rosensweig representing Highlands and Douglas Cabana, Esq. representing the township; and

WHEREAS, the Council, after considering the oral argument, as well as the papers filed by all parties, and for other good cause, decided by resolution, duly moved, seconded and passed by a unanimous vote of the Council, to impose the following Preliminary Scarce Resource Order.

It is on this <sup>6<sup>th</sup></sup> day of March 1996 hereby ordered that:

1. The Township of Rockaway shall hereby be restrained until June 5, 1996 from allocating sewage service capacity to any applicant other than Highlands until sufficient capacity is reserved for Highlands to build its previously zoned for and approved project consisting of 1,600 residential units, including 368 units of affordable housing, and 95,000 square feet of commercial and retail space.

2. This order may be continued beyond June 5, 1996 by further vote of the Council.

3. This is a preliminary order because the inclusion of Highlands' site in the sewer service area of the RVRSA is in question and the subject of ongoing litigation and because the number of affordable and market rate units to be provided on Highlands' site is currently the subject of mediation by the Council. The township has included the site in its fair share plan with a proposed reduced zoning and Highlands objected to the township's petition for certification of its fair share plan because of the change in the zoning.

4. This Preliminary Scarce Resource Order may be modified by the Council for good cause at any time upon the motion of any party to this matter, with all other parties being served, or upon this Council's own initiative.

5. Mediation pursuant to N.J.S.A. 52:27D-315, between the township and Highlands shall begin as soon as practicable and shall proceed on an expedited basis.

6. The moving papers of Highlands, the response by Rockaway Township and this Preliminary Scarce Resource Order shall be served by the movant on the RVRSA and the New Jersey Department of Environmental Protection (DEP), so that the RVRSA and DEP may respond to the information upon which this order is based.

7. This Preliminary Scarce Resource Order does not prevent any other applicant possessing a development approval from filing for an allocation of sewer service within Rockaway Township and does not prevent Rockaway Township from approving such application, subject to COAH approval, and does permit such applicants to seek approval from COAH, by filing a motion. Applications for relief shall be made by motion to COAH, with notice to all service list parties.

8. Rockaway Township shall take all steps necessary to seek and obtain from the RVRSA and the DEP a waste water management plan containing a sewer service area which includes sewer service to Highlands property and to otherwise cooperate with the developer in obtaining sewer service to Highlands property.

  
Harriet Derman, Chairperson

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