

IN THE MATTER OF THE
BOROUGH OF CRESSKILL

COUNCIL ON AFFORDABLE
HOUSING

COAH #97-906

OPINION

This is a motion filed by the Borough of Cresskill ("Cresskill") to dismiss an objection to its fair share plan filed by Cresskill Hills, Inc. ("Cresskill Hills"), the owner of a 35.68 acre tract of land in Cresskill that is currently used for a 29.5 acre golf course and a six acre catering facility. At its meeting of November 5, 1997, the New Jersey Council on Affordable Housing ("Council") or ("COAH") denied the motion. This opinion memorializes that decision.

Cresskill was sued for exclusionary zoning by J.A. Construction Company in May 1994. The matter was transferred to the Council on Affordable Housing (COAH). Thereafter, Cresskill adopted a housing element and petitioned for substantive certification in May, 1995. In its plan, Cresskill proposed a density of six units per acre with a 20 percent setaside that would yield six affordable units on the J.A. Construction Company site. J.A. Construction filed an objection and the parties entered into mediation. Mediation ended three months later without agreement on density or the type of unit, rental or for sale. The matter was transferred to the Office of Administrative Law (OAL) and before an evidentiary hearing occurred, the parties entered into a settlement agreement that was subsequently modified. Cresskill amended its

plan to include the terms of the modified settlement, repeticioned for certification of the new plan and published notice of the repetition. Cresskill Hills objected to the new plan and in its objection asked that its site be included in Cresskill's plan as a site for affordable housing.

Cresskill has a precredited need of 75 affordable units, five rehabilitation units and 70 new construction units. The modified settlement between Cresskill and J.A. Construction included in Cresskill's repeticioned fair share plan provides J.A. Construction with zoning for 60 market units on a 4.64 acre site (13 units per acre) in exchange for building four affordable units on borough owned land and providing funding for an eight unit regional contribution agreement (RCA). This results in a 58-unit unmet need. Cresskill has requested a vacant land adjustment based upon its claim that there are no other vacant and suitable sites for affordable housing in Cresskill. However, in its objection Cresskill Hills claims its site may provide affordable housing. The Cresskill Hills site is in Planning Area 1. The golf course on the site is not owned by its members and is currently under a lease that runs until December 31, 2004 to the Tamcrest Country Club.

In its motion to dismiss Cresskill Hills' objection, Cresskill states that the Cresskill Hills' site was not available for the provision of low and moderate income housing during the current six year cycle and a rezoning would not therefore create a realistic opportunity for housing. The borough claims that the site is not vacant as it is currently developed as a golf course

and it is not available because it has a lease extending through 2004. The borough states that Cresskill Hills cannot unilaterally terminate the lease and thus the site is not available. The borough further contends that the site is designated for active recreation/open space in the borough's master plan and is designated for open space preservation in the Bergen County Master Plan. As the borough currently has 3.9 percent of its land area as recreation/open space, the inclusion of the Tamcrest Country Club site would place such acreage just over six percent, according to the borough.

Finally, Cresskill states that it is "currently taking active steps to explore acquisition of the property". In the alternative, if it is not acquired, Cresskill proposes to place an overlay zone on the property. Cresskill's planner in an accompanying certification states that Cresskill would consider a density of no greater than four units per acre for the site.

In reply to this motion, Cresskill Hills asks that COAH deny the borough's motion and allow the objection to proceed. Cresskill Hills acknowledges that there is a lease in effect through 2004, but states that the parties are in "negotiations at the present time with regard to an early termination of the lease". In the alternative, Cresskill Hills states that it is considering an action to terminate the tenancy.

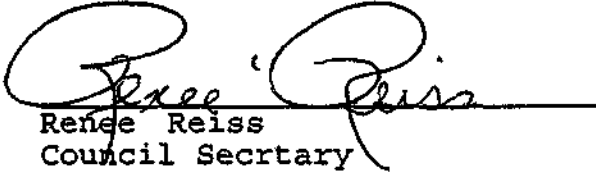
Cresskill Hills notes that the borough is requesting a substantial vacant land adjustment and that its site is not included in the vacant land inventory. However, Cresskill Hills

acknowledges that Cresskill is considering an overlay zone for its site but without a specific density. Cresskill Hills states that its property was improperly excluded from Cresskill's housing plan and cites N.J.A.C. 5:93-4.2(c) which states that golf courses not owned by their members may be included as sites for low/moderate income housing if they provide an opportunity for affordable housing. Cresskill Hills also submitted other arguments and documentation to demonstrate its contention that Cresskill did not want its property developed for residential purposes.

The Fair Housing Act at N.J.S.A. 52:27D-315 states that the Council "shall engage in mediation if an objection to a municipality's petition for substantive certification is timely filed". The Council's rules at N.J.A.C. 5:91-4.1 make clear that mediation is also required for a timely objection filed to a repetition such as Cresskill's. The rules set out the requirements for a valid objection at N.J.A.C. 5:91-4.1(a) 1-6. Cresskill has provided no basis in its motion for the Council to determine that Cresskill Hills has not filed a valid objection for which mediation is required by the Fair Housing Act. Rather, Cresskill has focused on the merits of the Cresskill Hills' site as a site for affordable housing and the appropriateness of the site being included in Cresskill's fair share plan. These are not reasons for the Council to dismiss Cresskill Hills' otherwise valid objection or for the

Council to deny Cresskill Hills the mediation required by N.J.S.A.
52:27D-315.

Therefore, Cresskill's motion is denied and the parties
are directed to begin mediation by November 26, 1997.


Renee Reiss
Council Secretary

DATED: December 3, 1997