

IN RE TOWNSHIP)
OF HOWELL)
)

NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING
DOCKET NO. 97-908

This is a motion filed by Hovbilt, Inc. ("Hovbilt"), a developer, concerning the petition for substantive certification filed by Howell Township ("Howell") in Monmouth County before the New Jersey Council on Affordable Housing ("COAH" or "the Council"). The motion was filed in response to the denial by the Howell Township Planning Board of Hovbilt's application for preliminary site plan approval with three design waivers with regard to Hovbilt's site that is subject to a COAH mediated agreement. Hovbilt claims the planning board actions violate the mediated agreement and requests that COAH issue an order with the following relief:

1. reverse the Howell Township Planning Board's denial of Hovbilt's application for preliminary site plan approval;
2. grant Hovbilt's application and require the planning board to entertain Hovbilt's application for final site plan approval;
3. enjoin the planning board from interfering with the development of the Hovbilt tract or;
4. revoke Howell's substantive certification and grant accelerated denial of Howell's pending fair share plan;
5. declare that Howell is not protected by the Fair Housing Act and award a builder's remedy for the construction of 382 units on the Hovbilt site;
6. direct mediation on an emergency basis.

The motion was argued by the parties at COAH's December 3, 1997 meeting, at which time the parties were ordered to meet and engage

in expedited site acquisition negotiations because of Howell's response to the motion that it was contemplating a purchase of the site. These negotiations did not result in an end to the controversy. At its meeting of February 4, 1998, the Council considered the motion and decided it. This opinion memorializes that decision.

Howell received substantive certification from COAH on October 23, 1989 for a first round fair share number of 837. The Hovbilt site was in the plan as an inclusionary site. Howell filed its second round housing element/fair share plan and a petition with COAH on March 3, 1995. The Hovbilt site was again included in the plan as an inclusionary site. There was one objection to the plan and mediation resulted in the objection being withdrawn. There were no objections regarding the Hovbilt site. COAH staff issued a COAH report requesting additional information in June 1995 that resulted in Howell's amending its submitted plan based on the COAH staff report.

Howell adopted an amended second round plan in December 1995 and repetitioned. The amended plan again included the Hovbilt site for an inclusionary development. Mediation resulted in an agreement between Hovbilt and Howell for an all market development and a contributory fee.

Howell then submitted a third plan that was based on the mediation agreements from the second mediation. The plan addresses a 1,109 obligation. The revised plan was adopted by the Howell Township Planning Board on November 13, 1997. This plan includes

the Hovbilt site as a contributory site with no low/moderate income units.

The Hovbilt site consists of 36 acres and was included in Howell's first round certified plan to yield 372 multi-family units of which 20 percent or 75 were to be for low/moderate income households. In September 1995, Hovbilt filed for preliminary site plan approval. In order to avoid variances or design waivers, the number of units was reduced from 372 to 300. The application was deemed complete as of November 1, 1995. Then on November 27, 1995, Howell introduced an ordinance proposing to rezone the Hovbilt property to one acre single-family lots. Hovbilt filed a motion with COAH seeking to halt the rezoning. COAH heard the emergent motion, directed Howell to honor the terms of its previous certification and also directed the parties into mediation. Mediation resulted in an agreement on August 2, 1996. The agreement reduced the density to 208 market units, no low/moderate income units and a monetary contribution to Howell's housing trust fund. The agreement also provided for safeguards regarding a flood hazard area and a change in access.

In October 1996, Hovbilt amended its application for preliminary site plan approval to reduce the density to 208 units in 23 buildings with no variances. There were three design waivers requested: approval of an existing water main within a buffer area, parking in the front yard of one building within 100 feet of a public road and wood decks in front yards. There were seven public

hearings. On May 7, 1997, the Howell Township Planning Board denied the application and waivers.

As a result, Hovbilt filed a Complaint in Lieu of Prerogative Writ in Superior Court on July 31, 1997 regarding the planning board denial and thereafter this motion before COAH.

In its motion, Hovbilt states that the action of the Howell Township Planning Board is contrary to the mediated agreement which contemplated the waiver. Hovbilt also states that COAH has the power to take affirmative action to ensure that its goal is not compromised by recalcitrant municipalities. Hovbilt further states that Howell twice included the Hovbilt site in its plan as an inclusionary site and COAH regulations preclude the town from removing the site unless the owner agrees.

In response, Howell states that the township amended its original plan of December 1995 and now has a second amended plan that incorporates the elements of the prior fair share plan. The newly amended plan includes the Hovbilt site as a contributory site with 208 market units and no low/moderate income units. Howell states that "The township is currently considering acquisition of the site and is negotiating with the developer." Howell further states that the "acquisition is contemplated to be at fair market value which value shall take full consideration of the existing zoning of the Hovbilt property".

In its motion, Hovbilt stated that no serious negotiations had taken place regarding the acquisition and that the

township had made no formal offer for the property. In a letter dated January 20, 1998, Hovbilt states that this remains the same.

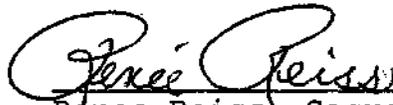
In conjunction with its review of this motion, COAH reviewed the status of the Howell Township housing element and fair share plan. There is a proposed regional contribution agreement (RCA) between Howell and Freehold Borough that is needed to satisfy a previously detailed shortfall before Howell's fair share plan can be certified. The RCA contract has not been finalized and the RCA has not been approved by COAH. Once this has been done, COAH concluded that a conditional substantive certification can be expeditiously granted to Howell's fair share plan.

After a careful review of the August 2, 1996 mediation agreement between Howell and Hovbilt, it is clear that the decisions of the Howell Township Planning Board dated May 7, 1997 with regard to the Hovbilt site are contrary to the settlement agreement. COAH supports mediated agreements that are entered into during the COAH process and will enforce those mediated agreements as a component of substantive certification. Therefore, if and when Howell's fair share plan is granted substantive certification by COAH, the mediated agreement will be appended to the certification and its terms incorporated into the substantive certification. Further, as a condition of certification Howell will be required to assure that the Hovbilt site receive planning board approval consistent with the settlement agreement no later than sixty (60) days after COAH's grant of conditional substantive

certification. Final substantive certification will therefore not be granted unless and until this condition is met.

Further, it is clear that Howell need only complete arrangements with Freehold Borough for a regional contribution agreement in order to have its fair share plan ready for COAH's decision on substantive certification to be made. Therefore, COAH orders Howell to finalize its RCA in such a way that the RCA can be scheduled for approval by COAH at its April 1, 1998 meeting. With this timetable, Howell's fair share plan can also be scheduled for substantive certification action at COAH's April 1, 1998 meeting.

This represents COAH's complete decision in this matter. All other relief requested by Hovbilt is hereby denied.


Renee Reiss, Secretary

Dated: March 4, 1998