

IN RE MOTION FOR
INTERVENTION FILED BY ELON
ASSOCIATES, L.L.C.:
HOWELL TOWNSHIP

) COUNCIL ON AFFORDABLE HOUSING
DOCKET NO. COAH 98-1001

)
Civil Action

)
OPINION

On April 3, 1998 Elon Associates, L.L.C. ("Elon") moved to intervene as a party in Howell Township's ("Howell") substantive certification petition and also requested that the New Jersey Council on Affordable Housing ("COAH" or "the Council") dismiss Howell's petition, issue accelerated denial of Howell's petition or direct mediation between Elon and Howell so that Howell's fair share plan could include the rezoning of the Elon property at six units per acre to provide affordable housing. Elon had never previously filed as an objector to any of Howell's several fair share plans. The Council denied Elon's motion at its meeting of May 6, 1998, after oral argument. This opinion memorializes that denial.

At the time of Elon's motion, Howell's petition for substantive certification, which had been pending before COAH since February 1995, was scheduled for conditional substantive certification action on May 6, 1998, the return date for the Elon motion. After denying Elon's motion, the Council unanimously voted to grant conditional substantive certification to Howell's plan and concluded that the plan would present a realistic opportunity for 1,109 units of affordable housing, after certain conditions were addressed. The COAH decision required that all conditions be addressed within 60 days of conditional certification. The conditional certification, therefore, was not a final COAH decision. However, if the conditions were met COAH would issue a grant of substantive certification.

The Motion: Elon

Elon's property contains 44 acres and is currently zoned for two acre zoning. According to Elon, the site has "easy access to sewer service" and "easy access to water." Elon proposed in its motion that its site be zoned for a 240 unit rental inclusionary development (six units to the acre) that would include 48 affordable units. Elon stated that its site was available, approvable, suitable and developable.

In its motion Elon reviewed the Howell plan, discussed various components of the plan and concluded that the Howell plan did not provide a realistic opportunity for affordable housing. Elon specifically questioned whether the following components of the plan would provide a realistic opportunity for affordable housing: the Oak Hill Mobile Home Park development, rehabilitation

credits, the Wyndham at Howell/Weiner development-Site 7, the regional contribution agreements (RCA), Credits Without Controls, the Write Down-Buy-Down Program, the Hovbilt Site development (Site #1) and senior bonus rental credits.

Elon also addressed procedural issues. Elon stated that COAH's regulations provide towns with two opportunities to submit compliant plans and that Howell had not done so. Elon stated that Howell's 1997 revised plan (Howell's third plan) required a 45-day comment period, that no comment period was afforded and that there was no repetition. Elon, consequently, requested that COAH now require a 45-day notice and a repetition.

Elon also noted that Howell had on March 12, 1998 filed an interlocutory appeal in the Appellate Division contesting COAH's ruling on the Hovbilt motion and stated that this interlocutory appeal was evidence of Howell's recalcitrance to comply with its affordable housing obligation.

Finally, Elon asked that its property be rezoned as an inclusionary development because the site would provide a realistic opportunity for affordable non-age-restricted rental units and because Elon was ready, willing and able to proceed with the development. Elon noted that it contacted Howell representatives by two letters in February and March 1998 and that Howell's counsel said that "it was unlikely that Howell was interested in considering the property as part of its compliance plan."

For all of these reasons, Elon requested that it be allowed to intervene and that the Howell petition be dismissed or denied on an accelerated basis or mediation on Elon's site be ordered by COAH.

Howell

In response to Elon's motion, Howell took the position that Elon's request to intervene was not timely. Howell stated that consistent with COAH's rules the township had published notice on December 5, 1997 and that the notice provided a 14-day comment period, as the result of the plan being amended during mediation. One comment to the plan was made. No comments were submitted by Elon. Therefore, Howell concluded that Elon was "well out of time for submitting comments or attempting to intervene in this matter."

Howell stated that Elon's allegations concerning Howell's plan were substantially in error and should not be considered by COAH. Howell also claimed that there were many problems with the Elon site as a proposed site for affordable housing.

Howell stated that the Elon site was in a two acre single family zone and that rezoning for multi-family housing at six units per acre was inappropriate and not compatible with the established and emerging pattern of development within the area. Howell disputed that the Elon site had easy access to sewer and water.

Howell stated that there was no certainty that an existing sewer line could be extended to the Elon site and that wetlands maps showed the site to be "impacted by as much as 70% due to wetlands." For these reasons Howell stated that the Elon plan violated Howell's Master Plan and that the proposed zoning did not "preserve the rural character of areas within Howell Township outside of population centers..."

As to the Howell amended housing element, Howell believed its plan satisfied a 12-year obligation of 1,109 units, "one of the highest in the State of New Jersey." Howell stated that the township had 730 units of affordable housing that were completed, under construction, rehabilitated, transferred in RCAs or the focus of credits. Howell then addressed Elon's criticism of its plan.

1. Oak Hill Mobile Home Park. Howell stated that no credits were being granted for this project. Howell's approved RCA addressed the 35 initially requested credits for the mobile home project.

2. Rehabilitation. In 1997 Howell retained Community Action Services of East Brunswick to administer its rehabilitation program.

3. Site 7. Howell cited a letter from the owner of the site wherein the owner continued to pursue the development of Site 7. Howell further stated that the wetlands problems "have been and are continuing to be addressed and the production of 79 low and moderate income housing units continues to be a realistic opportunity." Howell attached a copy of the planning board resolution extending the approval of Site 7 to March 1999.

4. RCA. Howell had approved RCA contracts with both Freehold Borough and Belmar Borough to cover any plan shortfall.

5. Senior Bonus Credits. Howell stated it would receive a waiver to receive additional bonus credits.

6. Credits Without Controls. Howell stated it was not relying upon this program to meet its obligation at this time.

7. Write Down/Buy Down Program. Howell stated that the program will proceed and attached 30 pages of multiple listings to demonstrate feasibility.

8. Hovbilt site. The site is a contributory site, not an inclusionary site, and Howell acknowledged that there were difficulties between the owners and the township.

Finally, Howell stated that it believed that Elon's motion to intervene is inappropriate "and should be rejected on that basis alone." Howell also claimed that the Elon site would impair the rural character of the area, adversely affect wetlands, promote suburban sprawl and be contrary to the State Plan. Howell believed its plan provided a realistic opportunity for 1,109 housing units.

Elon - Reply

In its reply, Elon reiterated its contentions that the Howell plan contains procedural defects, that Site 7 could not yield 79 low/moderate income units because of wetlands and the cost of bringing sewer to the site and that the requested waiver to the age restricted component is unwarranted.

Elon again cited COAH's adopted rule of January 5, 1998 that deals with notice and claimed COAH should require a 45-day comment period before any action is taken on the petition for substantive certification.

The Decision

Elon's motion to intervene and for other relief is denied. The Fair Housing Act at N.J.S.A. 52:27D-314 states: "Unless an objection to the substantive certification is filed with the council by any person within 45 days of the publication of notice of the municipality's petition the council shall review the petition and shall issue a substantive certification." Elon did not file an objection at any time to the Howell plan. All of Howell's plans were the focus of 45-day objector periods. The third plan, which was amended as a result of mediation, provided public notice on December 5, 1997 and offered a 14-day comment period as per N.J.A.C. 5:91-74(b), which was the regulation in effect at that time. However, Howell also published a notice of repetition on December 26, 1997 in the Asbury Park Press which provided a 45 day comment period and Elon did not provide any comment within that 45 day period. At oral argument, Elon's attorney was asked when Elon became the contract purchase of the site. Elon's attorney conferred with his client who was in attendance and after talking to his client said to COAH "He advised me that they obtained an interest in January of this year." Therefore, Elon had an opportunity to file comments/objections to the third amended plan. There is no reason for COAH to grant Elon's requested intervention.

Further, Elon has based much of its motion on alleged deficiencies in Howell's fair share plan. However, on May 6, 1998 COAH voted to grant conditional substantive certification to Howell's fair share plan. That vote was based upon on analysis of the Howell plan contained in a COAH Compliance Report dated April 15, 1998, prepared by Mary Beth Lonergan, Principal Planner, attached. The analysis of the Howell fair share plan contained in that report is incorporated by reference into this decision and is adopted by the Council as a component of this decision to deny Elon's motion.

It should be noted that COAH's grant of conditional substantive certification is not a final COAH decision. If Howell complies with the conditions set out in the certification decision a final grant of substantive certification will then be issued by COAH.

Therefore, for all of the above reasons, Elon's motion to intervene the Howell certification process is denied.

COUNCIL ON AFFORDABLE HOUSING

BY: Genie Reiss

DATE: July 1, 1998.