

IN RE BOROUGH)
OF OLD TAPPAN)

OPINION

This motion was filed before the New Jersey Council on Affordable Housing ("COAH") by the Borough of Old Tappan ("borough" or "Old Tappan") as an emergent motion on September 8, 1998. The motion was originally scheduled to be decided by COAH at its meeting of October 7, 1998. In the motion the borough seeks to replace 12 units of affordable for-sale units in the "Le Chateau" development with eight affordable family rental units and also seeks other relief.

On October 5, 1998, Hildegard Ampssler ("Ampssler"), who had been an objector to Old Tappan's certified fair share plan and who is the plaintiff in a prerogative writ action against the borough, protested that she had not been served with a copy of the motion and asked that the matter be postponed from the October COAH meeting so that she could respond. Deciding to err on the side of caution, COAH did postpone consideration of the motion - now treating it as a non-emergent motion - and gave Ampssler an opportunity to reply to the motion, which she did on October 12, 1998. The motion was considered on the papers by COAH at its November 4, 1998 monthly meeting. This is COAH's decision in the matter.

BACKGROUND

The Borough of Old Tappan, Bergen County was first granted substantive certification by COAH on January 9, 1991. The borough's 1987-1993 precredited need was 144 units, all inclusionary. The certified plan included a Planned Residential

Development (PRD) conditional overlay option in all RA single-family residential districts in the borough. COAH approved an amendment to the borough's substantive certification on June 22, 1993 to provide for a seven-unit regional contribution agreement (RCA) with Jersey City.

The borough's fair share obligation during COAH's second round was calculated to be 98 units. The borough's planning board adopted a second-round housing element and fair share plan on May 4, 1995 which addressed its reduced 12-year cumulative obligation. Planning board approval had been granted on developments that would produce 87 affordable units (including bonus credits) and the borough entered into an additional RCA contract with Jersey City that brought the number of units transferred to 21 units. With a total of 108 units included in the second round plan, COAH approved the termination of the PRD overlay option and granted substantive certification on February 7, 1996.

On January 8, 1997, COAH granted approval of an amendment to the Old Tappan fair share plan. The borough's amendment reduced the number of units on one site from 14 to nine. The borough originally had a 10-unit surplus which was accordingly dropped to a five unit surplus providing 103 units of affordable housing.

THE MOTION

In its motion the borough seeks to replace 12 units of affordable for-sale units with eight affordable family rental units in the "Le Chateau" development. The borough, as a result of the change from for-sale to rental units, indicates that the eight

rental units will all be in one building, rather than scattered throughout the development as had previously been planned when for-sale affordable units were to be built. Also, the borough seeks to reallocate rental credits within its certified plan. The motion is made pursuant to N.J.A.C. 5:91-13.1(c) because the sought amendment to Old Tappan's fair share plan is of a minor, technical nature and does not materially alter the terms of COAH's February 7, 1996 certification.

With regard to the reallocation of rental credits, the borough's rental obligation was met in its certified plan by the construction of 29 age-restricted units. Pursuant to N.J.A.C. 5:93-5.15(d)2, these age-restricted units qualified for a one-and-one-third unit rental bonus credit resulting in an additional 10 credits. The motion requests that only 21 of the 29 units be granted bonus credits so that the eight family rental units proposed for Le Chateau qualify for a two-for-one rental bonus credit. The two-for-one rental bonus credit afforded by N.J.A.C. 5:93-5.15(d)1 will result in 12 units being replaced by eight family rental units and eight bonus credits, providing a total of 104 affordable units (including bonus credits) in the borough's plan. The borough's certified plan provides for 103 units (including bonus credits), which is a surplus of five units over the borough's 98 unit calculated need. The amendment for which the borough seeks COAH's approval does not alter the number of market rate units included in the Old Tappan plan.

The borough filed a letter in support of its motion and stated that the amendment sought for the Le Chateau site was the result of a settlement agreement between the borough and the owners of the adjacent "Dorotocky's Run" project, which has owners in common with Le Chateau. The settlement agreement is intended to resolve litigation between the borough and the Dorotocky's Run owners. A future fair share plan amendment affecting Dorotocky's Run is also a component of the settlement and will be the subject of a petition to COAH in the near future, states the borough. In the interim, both the developer and the borough are anxious to have the Le Chateau development move forward. Le Chateau was under construction but the borough states that construction activity halted pending the resolution of this motion. This halt in activity has resulted in what the borough and local residents have classified as "dormant" and "rapidly deteriorating" conditions. Therefore, the borough requests that COAH grant its motion.

On October 12, 1998 Ampssler filed a letter in opposition to the relief requested by the borough. Ampssler objected to the fact that the new site plan for Le Chateau would place all eight affordable rental units into one building rather than spreading them throughout the development, as had been the prior plan for the prior for-sale units. Further, Ampssler opposes the motion because she wants the prior site plan to be built as approved, with no changes. She characterizes the borough's motion as catering "to developers who want to squeeze every dollar possible from these sites" in contravention of the prior approved plan.

THE DECISION

COAH grants the motion of the Borough of Old Tappan. The amendment does not constitute a change in site, involve a substantial increase in density or a fundamental change in approach to the borough's zoning to meet its fair share obligation. Neither the switch from for-sale to rental units, nor the new site plan configuration are fundamental changes in zoning that require a new petition. They are minor changes and the motion procedure is proper pursuant to N.J.A.C. 5:91-13.1(c).

Further, the fact that the amendment arises out of litigation between the developer and the borough and from an agreement to settle the litigation is a reason to grant the motion. Clearly, the developer believes that the proposed family rental units are developable and marketable. COAH understands that there is a chronic need state-wide for affordable family rental units and is pleased that such units will now be created in Old Tappan. COAH has sought to encourage the building of rental units with its two-for-one rental bonus credit. N.J.A.C. 5:93-5.15(d)1. Therefore, the fact that much needed affordable family rental units will be built in Old Tappan is a convincing reason to grant the motion.

Because the motion is consistent with COAH's regulations that encourage the production of much-needed affordable rental housing, COAH grants the motion of the Borough of Old Tappan.

Dated: 11/4/98


Renee Reiss, Council Secretary