

IN THE MATTER OF
THE PETITION OF)
THE TOWNSHIP OF RIVER VALE)
TO AMEND SUBSTANTIVE)
CERTIFICATION)

COUNCIL ON AFFORDABLE HOUSING
COAH DOCKET NO. 98-1008

OPINION

This is a motion filed by the Township of River Vale ("River Vale") with the Council on Affordable Housing ("COAH") for leave to place an Administrative Freeze "on all Mount Laurel subdivision and site plan development projects presently pending in the Township of River Vale." The motion is supported by a letter brief dated September 11, 1998 filed by the attorney for River Vale. The letter brief states that COAH may grant the requested relief based upon its general powers to issue restraining orders and cites N.J.A.C. 5:91-10.0 as the regulation relevant to River Vale's requested relief. Further, River Vale's letter brief states that its motion is akin to a request for a scarce resource order because "River Vale has a limited amount of land to develop and the manner of its development must be regulated by COAH to meet the objectives of the Fair Housing Act."

River Vale received substantive certification of a fair share plan pursuant to N.J.A.C. 5:93-1 on January 10, 1996 to meet a cumulative precredited need of 121 units of affordable housing. All 121 affordable units are inclusionary, new construction units. River Vale has adopted an amendment to its fair share plan and has petitioned for certification of that amendment on July 20, 1998. There were two objectors to the amendment petition.

In the letter brief filed in support of this motion, the attorney for River Vale states that the sought administrative freeze is necessary because River Vale's proposed amendment to its

fair share plan adds a Regional Contribution Agreement ("RCA") to the plan, which could replace affordable housing that is currently zoned to be built in River Vale. Therefore, without the administrative freeze, states the brief, "the Township could find itself in the untenable situation of being obligated to fund an RCA as if it were transferring the monetary equivalent of 60 affordable housing units, and at the same time be obligated to construct 32 of those units in the Township (24 from sites 3, 3A, 4, 4A and 8 from site 13), a result that the Fair Housing Act never intended." Therefore, the municipality argues that it is "more rational" to allow the township not to process any applications for Mount Laurel sites until the objections to the requested amendment to the housing element and fair share plan are resolved. Otherwise, states River Vale, it "may be compelled to vote on a site plan and subdivision application (or at the very least spend months and countless hours in plan review) when the final result from the Council or OAL is not yet known."

The motion was also supported by an affidavit from Roy Blumenthal, Township Administrator of River Vale. He states that during the past two years six Mount Laurel sites have been the subject of either subdivision and/or site plan applications before the River Vale Planning Board. These are sites 3, 3A, 4, 4A, 6 and 13. Site 13 is to be developed by Kalian at River Vale, LLC ("Kalian"), which has been granted final site plan approval. The remaining five sites are to be developed by River Vale Developers, LLC and United Properties Group, Inc. ("RVD"), which has a pending

application for preliminary subdivision and site plan approval before the River Vale Planning Board for the development of these five sites. It is RVD's pending applications which River Vale in its motion seeks COAH's authority to freeze.

An attorney for RVD filed a letter brief in opposition to this motion on October 7, 1998. RVD is also an objector to River Vale's petition to amend its fair share plan. With regard to this motion, the letter brief states that there is nothing presented in River Vale's motion, the letter brief filed in support of the motion or the Blumenthal affidavit that provides a basis for the relief being requested by River Vale. RVD states that River Vale's proposed amendment to its fair share plan would have the effect of potentially eliminating on-tract affordable housing on RVD's sites and replacing the affordable housing with financial contributions for RCA at the municipality's discretion. RVD continues:

River Vale avers that its own application has the effect of delaying its ability to undertake and complete negotiations with regard to RCAs. However, it is clear that the problem that River Vale has in undertaking RCA negotiations is inherent in its decision to file the Amendment. It has nothing to do with my client's pending application. In fact, to the contrary, if the application moves forward and the Council approves the Amendment and if River Vale undertakes the necessary zoning amendments, there is nothing to preclude construction of my clients' project in the identical manner as now being proposed. The effect would be that affordable units would be replaced with market rate units and an increased financial obligation would be applied.

Further, the attorney for RVD states that the Council does not have the statutory jurisdiction to grant the relief

requested by River Vale. RVD argues in its letter brief that the New Jersey Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq. ("MLUL"), gives municipal planning and zoning boards of adjustment the exclusive authority to review subdivision and site plan applications. The MLUL expressly provides time limits for planning boards and zoning boards of adjustment to undertake review of land use applications, N.J.S.A. 40:55D-10.3, -46(c) and -48(d), and these time limits cannot be extended or limited except under the terms provided in the MLUL. See N.J.S.A. 40:55D-46(c), -48(c), and -73(b). Further, RVD in its letter brief argues that the MLUL provides limited circumstances under which a municipality may impose a moratorium or a delay with regard to a development application, such as if "a clear imminent danger to the health of the inhabitants of the municipality exists". N.J.S.A. 40:55D-90. The requested administrative freeze, argues RVD, is therefore clearly outside of COAH's jurisdiction.

A letter brief in support of River Vale's motion was filed by Kalian, the developer that has already received final subdivision approval for its property. Also, reply briefs were submitted by RVD, Kalian and River Vale.

After careful review of the papers filed in support of and in opposition to this motion, COAH denies the motion. River Vale bases its motion on N.J.A.C. 5:91-10.0, "General Powers". None of the provisions of this subchapter provide for the relief that River Vale seeks. N.J.A.C. 5:91-10.1 provides that restraining orders may be issued by COAH "...as may be necessary to

require that a participating municipality take appropriate measures to preserve scarce resources that may be essential to the satisfaction of the municipality's obligation to provide for its fair share of its region's present and prospective need for low and moderate income housing. N.J.A.C. 5:91-10.3 states that the Council may issue an administrative order for a municipality to "take an action that expedites the Council's administrative process and/or the production of low and moderate income housing."

Neither of these quoted administrative provisions provide authority for the Council to freeze planning board applications; at least in the situation presented by River Vale. River Vale has not demonstrated in its brief or affidavit submitted in support of its motion that the sites which are affected by its filed amendment and which are the subject of pending planning board applications constitute a scarce resource within the intention of N.J.A.C. 5:91-10.1. Nor has the municipality demonstrated that the sought administrative freeze will expedite the Council's administrative process or the production of low or moderate income housing, as required by N.J.A.C. 5:91-10.3.

Therefore, for these reasons, River Vale's motion for leave to place an administrative freeze on all Mount Laurel subdivision and site plan development projects presently pending before the River Vale Planning Board is hereby denied.


Renee Reiss, Council Secretary

Dated: 12/2/98