

IN THE MATTER OF  
THE TOWNSHIP OF )  
TEWKSBURY: MOTION )  
TO SETTLE THE RECORD )

COUNCIL ON AFFORDABLE HOUSING  
COAH DOCKET NO. 98-1010

OPINION

COAH granted substantive certification to the housing element and fair share plan of the Township of Tewksbury on May 6, 1998. COAH's action was appealed by the Rutgers Environmental Law Clinic ("RELC") on behalf of various environmental groups. Subsequently, cross appeals were filed by the township and two developers, White House Partners and William Gurasich.

Consistent with Appellate Division rules, COAH filed a Statement of Items Comprising the Record ("SOI") in this matter. On the SOI were listed all documents COAH thought relevant to the appeal. The SOI constitutes the record in RELC's appeal from COAH's grant of substantive certification.

On September 28, 1998 RELC filed a motion to settle the record before COAH. It is RELC's contention that the following four documents were not included in the SOI, and should have been:

1. Letter dated December 4, 1997 from David Peifer at the Upper Raritan Water Shed Association ("URWA") to Shirley Bishop, Executive Director, COAH.
2. January 5, 1998 letter from Shirley Bishop to David Peifer, URWA.

3. February 23, 1998 letter from Edward Lloyd, Esq. to William Malloy, DAG.

4. Tewksbury Wastewater Management Plan ("WMP") (adopted April, 1991).

Two responses were filed to the motion, one by the attorney for Tewksbury and the other by the attorney for William Gurasich. Tewksbury does not object to the inclusion in the record of the first three items because Tewksbury believes they were in COAH's files and might be considered part of the record. However, the fourth item, the Tewksbury WMP was not part of the COAH record and Tewksbury believes it should not be made part of the record. Additionally, Tewksbury states that if the WMP is made part of the record, Tewksbury's recent amendment to the WMP should also be included because it involves the inclusionary development site that is at issue in the appeal.

The attorney for Gurasich does not object to items two and three being included in the SOI. However, Gurasich's attorney "strenuously objects" to the inclusion of item one, because it contains "self-serving characterizations of purported comments by" various participants in a COAH mediation session. Consequently, Gurasich concludes "the document lacks trustworthiness, has no probative values, creates a substantial danger of undo prejudice and confusion and has no place in the record." With regard to the WMP, Gurasich's attorney has no objection to it being placed in the record "provided that the plan is re-produced with all of its amendments so as to be complete".

It is COAH's decision that all four items be included in the SOI. Items two and three are not contested and were part of the record before the Council. Item one is contested by Gurasich. However, it was filed in response to a COAH Mediation Report and therefore should be included in the record. The WMP was pertinent to COAH's decision in this matter and is referred to in various documents. However, the SOI will make clear that all amendments to the WMP are also included.

  
Renee Reiss, Council Secretary

Dated: 12/2/98