

CEDAR GROVE MOBILE HOME)	COUNCIL ON AFFORDABLE HOUSING
PARK HOMEOWNER'S ASSOCIATION)	
)	COAH DOCKET NO. 98-1013
v.)	
)	MOTION DECISION
CEDAR GROVE MOBILE HOME PARK)	

This is a motion filed by the Cedar Grove Mobile Home Park Homeowner's Association ("Homeowner's Association") before the New Jersey Council on Affordable Housing ("COAH") requesting that COAH order the Cedar Grove Mobile Home Park ("Cedar Grove"), a 178 unit mobile home community containing 70 affordable units located in Mantua Township, Gloucester County ("Mantua"), to rescind a rent increase imposed upon the affordable housing units, and authorized by COAH's rules, see N.J.A.C 5:93-9.15(b), that was not allowed to be imposed upon the market rate units by the Mantua Township Rent Leveling Board. As such, the motion raises an issue of first impression, that of the relationship between COAH's authority over municipal fair share plans and the affordable units created pursuant to these plans and the authority of local rent leveling boards over the rental developments that include affordable units.

BACKGROUND

Mantua received substantive certification from COAH on May 6, 1998. Mantua's 1987-1999 precertified need is 342 units, 291 new construction units and 51 rehabilitation units. The obligation is being addressed through new construction, zoning and rehabilitation. Cedar Grove, which is limited to owners 57 years and older, was included in Mantua Township's certified fair share plan and contains 30 senior affordable units.

On or about March 24, 1998, Cedar Grove sent a notice to residents of its market units advising them of a rent increase consistent with the consumer price index (CPI) for the Philadelphia area. On April 10, 1998 the residents requested a hearing on Cedar Grove's application in accordance with Mantua's Rent Control Ordinance, Ch. 128, Rent Control, adopted on April 25, 1975. The hearing request was based upon lack of repair work to storm drains

causing a health and safety hazard in the park. Previously, on May 1, 1997 the Rent Leveling Board had approved a CPI rent increase for the prior year, but conditioned the approval upon Cedar Park making "a good faith effort to analyze drainage problems at the site and take the steps necessary to remediate these problems."

Hearings were held before the Mantua Township Rent Leveling Board on Cedar Grove's application for a CPI increase on May 7, 1998 and June 4, 1998. The Homeowner's Association opposed this application and several residents testified about the drainage problems which existed in Cedar Grove. The residents expressed concern regarding the flooding of Cedar Grove's streets, especially in cold weather, which caused icing and slippery conditions. Concerns were also expressed regarding pedestrian safety in the senior citizen community due to the flooding and icing, as well as the ability of residents to safely drive an automobile through Cedar Grove in these conditions.

On June 4, 1998, the Mantua Township Rent Leveling Board denied Cedar Park's requested CPI increase for 1998. The board found as a fact that Cedar Grove "had not made a good faith effort to analyze and remediate" the pre-existing drainage problems in the common areas "and had not provided proof of same at the hearing." Further, the board found as fact that "a significant problem with drainage existed which caused the common areas of the property to be in an unsafe and unsanitary condition." Based upon these findings the board denied the request of Cedar Grove for a rent increase for 1998 based upon the CPI. The board decision was unanimous.

Cedar Grove appealed this decision to the Mantua Township Committee. After a de novo review of the record, the committee by resolution R-169-98 dated September 8, 1998 denied Cedar Grove's appeal, affirmed the June 4, 1998 decision of the Rent Leveling Board and further determined "that the CPI increase should be denied based on its finding that the landlord failed to properly analyze and remediate the drainage conditions at the site and that such conditions as they currently exist constitute a hazard to the

safe and sanitary conditions of the [Cedar Grove] Park its [sic] residents." This determination was based upon the following findings of fact:

1. Based on its own independent review of the facts and its findings, the Board determines that the landlord did make some effort to analyze the drainage problems at the site, but that the effort was minimal, untimely and incomplete so as to arrive at a satisfactory solution to the drainage concerns evident in the Park. The landlord's efforts at analyzing the problem were minimal. The landlord engaged a landscaper to review the drainage system. The inspection conducted by the landscaper was limited to simply viewing each storm drain to determine that the drain was or was not blocked. No investigation was begun to view whether the drains themselves were obstructed or whether the drains were sufficient from a design standpoint to meet the drainage needs at the site. The landscaper himself was not qualified to make this inspection or to determine whether the drains were capable of meeting the drainage requirements for the Park. While the landlord engaged an engineer to review drainage, the focus of the engineering inspection and report were limited to one area and the engineer was not directed to inspect the entire site. Although the engineer was qualified to make an appropriate inspection and to arrive at trained conclusions, the landlord failed to widen the engineer's scope of work to properly analyze the site. The Committee concludes that the landlord failed to provide a complete analysis of the overall drainage problems throughout the site and that it failed to satisfy the condition mandated by the Rent Control Board's prior approving resolution.

2. The Township Committee further concludes that under any circumstances, the landlord's efforts to remediate the problem at the site were at best limited, and in reality, insufficient to satisfy the Rent Control Board's [May 1997] condition of approval. Remediation efforts were focused solely to the area in front of the community center. However, the Committee concludes from a review of the record that the drainage difficulties

at the housing community are wider spread throughout the Park and are perpetual throughout the year with each significant event of precipitation or thawing. No remediation efforts were pursued other than in front of the Community Center. This conclusion is supported by the testimony of the residents of the community which the Committee find to be credible based on these witnesses' day to day occupancy in and observations of the Park. The Committee is of the opinion that the landlord did not make the effort needed to satisfy the requirement contained in the Rent Control Board's approving resolution to remediate the various drainage problems in the Park. As such, the drainage system in the neighborhood is still unsatisfactory. Furthermore, the Committee concludes that any efforts made by the landlord to analyze and remediate were performed in an untimely manner with the appearance that such efforts were completed solely to put a better light on a renewed application. The landlord had over a year in which to engage an engineer to conduct an appropriate inspection of the full site in an effort to resolve the drainage issues. Even to this date, no overall engineering has been ordered to finally arrive at a trained and considered opinion directed to solving the drainage problems. The lack of effort for nearly a year following the Board's conditional approval denotes and evinces a lack of effort to satisfy the requirements of the Board and the Rent Control ordinance standards.

3. Storm sewer backups and pooling of water in the roadways causes icing and slippery conditions on the travelway which jeopardizes the safety of both vehicular and pedestrian travelers. The lengthy pooling of water also creates unsatisfactory sanitary conditions, a proliferation of insects, and is particularly dangerous when it extends over front yards and into nearby households, making the latter unlivable and dangerous. The Committee determines that the drainage problems found to exist at the Park and the resulting circumstances produce an unsafe and unsanitary condition at the site. Therefore, the Committee determines that the landlord has

failed to satisfy the requisite condition for a rent increase that the park be in a safe and sanitary condition.

4. Based thereon, the Township Committee is of the opinion that the determination made by the Rent Leveling Board denying the CPI increase is based on the developer's failure to comply with the prior conditions of the Board's approvals mandating that the landlord fully analyze the drainage problems and satisfactorily remediate those problems is a just and correct determination. The Township Committee further determines based on its own independent review and findings that the landlord's analysis of the problems at the site were untimely, improperly performed and limited in nature and therefore insufficient, that the landlord's attempts to remediate the problems were too focused on one area and were not dedicated to correcting the conditions throughout the park, that no effort was made to remediate the Park wide drainage problem, and that the present conditions for drainage at the site constitute a detriment to the safety and sanitary conditions of the site.

While Cedar Grove was applying for and being denied a CPI rent increase from Mantua, it sent notices to the residents of its 30 affordable units on April 22, 1998 stating that they would receive a rent increase of 3.12 percent, effective June 1, 1998. This increase was based upon N.J.A.C. 5:93-9.15(b), which states:

With the exception of rentals constructed pursuant to low income tax credit regulations, the rent of a low or moderate income housing unit may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low income tax credit regulations shall be indexed pursuant to the regulations governing low income tax credits.

The notice of the CPI rent increase to the residents of affordable units stated that the 3.12 percent increase "is the annual increase authorized by Affordable Housing."

THE MOTION

On November 19, 1998 Sean F. Dalton, Esq., filed a motion on behalf of the Cedar Grove Mobile Home Park Homeowner's Association requesting that COAH rescind authorization for the CPI increase for the affordable units at Cedar Grove and credit the affordable units for the CPI increase that had been assessed and paid since June 1, 1998. On December 17, 1998 opposing papers were filed by Christopher J. Hanlon, Esq., on behalf of the Cedar Grove Mobile Home Park owners, Joseph and Carol Frezza. On January 14, 1999, a reply brief was submitted by Dalton on behalf of the Homeowner's Association. Mantua Township did not respond to the motion. However, Mantua did attend the oral argument that was held on the motion at COAH's regularly scheduled meeting of February 3, 1999.

HOMEOWNER'S ASSOCIATION

The Homeowner's Association states that as a result of Cedar Grove's rent increase, the residents of the 30 affordable units are now paying a CPI increase, whereas the balance of the residents in market-rate units in Cedar Grove do not pay that increase. Therefore, "many individuals residing in affordable housing units are now paying more for their monthly rent than those individuals in units not designated as affordable housing in Cedar Grove Mobile Home Park." The Homeowner's Association points out that the drainage issues that were the focus of Mantua's denial of a CPI increase also apply to the residents in affordable units. However, only the affordable unit residents have been required, through the application of COAH's regulations, to pay a rent increase, even though Mantua has determined that the owners of Cedar Grove have not been cooperative or successful in resolving the drainage issues that have been the subject of actions before the Rent Leveling Board in both 1997 and 1998.

The Homeowners Association argues that implicit in the duties of COAH is the responsibility to ensure that affordable housing units meet certain adequate housing standards. The Homeowner's Association points to N.J.S.A. 52:27D-307(c)(1)(a) and

(b), which delegate authority to a municipality to issue certificates of occupancy and which require construction code officials to certify that an affordable unit is compliant with pertinent construction code standards. The Homeowner's Association then interprets these Fair Housing Act provisions as delegating to the municipality the responsibility to assure health and safety issues with regard to conditions of occupancy. As such, the Association argues that COAH should find that a municipality's decision to enforce local ordinances dealing directly with public health and safety should also apply to individuals residing in affordable housing units. Therefore, the action of the Mantua Rent Leveling Board in denying a rent increase to Cedar Grove should also apply to the owners of affordable units.

The Homeowner's Association cites the "Affordable Housing Act of 1983", the provisions of which were incorporated into the Municipal Land Use Law at N.J.S.A. 40:55D-100 et seq., to demonstrate that it is the public policy of New Jersey to promote the use of manufactured homes as affordable housing. N.J.S.A. 40:55D-101(f). Further, the Homeowner's Association cites the definition of "mobile home park" at N.J.S.A. 40:55D-102 to demonstrate that one of the services which is supposed to be regulated in a mobile home park is the provision of proper drainage of surface water from home sites in common areas. See, N.J.S.A. 40:55D-102(d)(5), which states:

"Mobile Home Park" means a parcel of land, or two or more parcels of land, containing no fewer than ten sites equipped for the installation of manufactured homes, where these sites are under common ownership and control for the purpose of leasing each site to the owner of a manufactured home for the installation thereof, and where the owner or owners provide services, which are provided by the municipality in which the park is located for property owners outside the park, which services may include but shall not be limited to:...

(5) provisions for the drainage of surface water from home sites in common areas.

The Homeowner's Association then refers to cases holding that mobile home parks are subject to regulation under the police powers of the municipality and that ordinances adopted pursuant to such powers are valid. Monmouth Junction Mobile Home Park, Inc. v. South Brunswick Township, 107 N.J. Super. 18, 24 (App. Div. 1969); Zullo v. Board of Health of Woodbury Township 9 N.J. 431 (1952). Based upon a municipality's police power to regulate mobile homes, the Homeowner's Association argues that Mantua's denial of a CPI increase for residents of market rate units was consistent with its police powers and that because of COAH's delegation of powers to Mantua with regard to issuing certificates of occupancy, COAH should find that Mantua's decision to enforce local ordinances regarding health and safety should also apply to the affordable housing units in Cedar Grove.

CEDAR GROVE

Cedar Grove argues that the market rate units in Cedar Grove are subject to the Mantua Rent Control Ordinance, which provides for rent increases which are not applicable to low and moderate income housing units. The affordable housing units are exclusively subject to the COAH-imposed percentage yearly increase, whereas the market units may qualify for rent increases based upon a combination of the CPI increase, utility increases, tax increases, capital improvement increases and hardship or rate of return increases (which Cedar Grove states are constitutionally mandated in New Jersey's rent controlled communities). Cedar Grove cites as an example the 1997 rent increase allowed by the Mantua Rent Leveling Board in which the market units qualified for a CPI increase of 3.3 percent and a tax increase pass through of \$15.02 per month per tenant. In contrast, the affordable units qualified in 1997 for a 2.69 percent increase pursuant to COAH's rules. Further, Cedar Grove noted that in 1998, because of the respective indexes used, the affordable housing units qualified for a higher increase than the market rate units. However, because of the actions of the Mantua Rent Leveling Board, no increases were permitted for the market units.

Cedar Grove argued that the central question before COAH is the question of the extent of the pre-emption imposed by COAH's regulations as it relates to municipal rent control ordinances. Cedar Grove candidly stated that "While this particular motion may present persuasive circumstances in favor of the tenants, the Council should not lose sight of the fact that the pre-emption effect must be one that is applicable year in and year out, regardless of the circumstances which result from a comparison of the respected indexes presented. In short, the Council cannot pick and choose when pre-emption affects applicability of the local regulatory scheme."

Further, Cedar Grove argues that COAH's regulations do not impose maintenance levels as a criterion for rent increases, while the Mantua rent control ordinance does. Cedar Grove argues that COAH's provisions with regard to rent increases have pre-empted Mantua's Rent Control ordinance and, therefore, because COAH's regulations are silent with regard to the maintenance level required for affordable units, a rent increase cannot be denied by COAH on that basis. In contrast, however, Cedar Grove acknowledges that the Mantua Rent Control ordinance does condition rent increases upon "a demonstration of certain maintenance levels."

In conclusion, Cedar Grove argues that the Council should deny this motion and not permit a "selective pre-emptory effect of the local rent control ordinance. The low and moderate units are either pre-empted from it or not. If not, then, they should be paying the same rent increases that the non-affordable residents in the community pay pursuant to the provisions of the applicable rent control ordinance." Cedar Grove states that the occupants of the affordable units should not be permitted "to pick and choose benefits of pre-emptive scheme, otherwise, it is not pre-emptive, it is just selectively and arbitrarily applied to the property owner."

HOMEOWNER'S ASSOCIATION - REPLY

The Homeowner's Association submitted a reply brief in which it stated that Cedar Grove's attempt to portray this motion

as dealing with the regulating of rents was inaccurate. Rather, the Homeowner's Association stated that the motion was to determine "whether a local ordinance dealing with health, sanitation and safety should apply equally to affordable units as well as market units in the absence of any State law or regulation governing the same. The Homeowner's Association stated that Cedar Grove's characterization of the Mantua Rent Control ordinance was inaccurate and that the ordinance provides that a landlord may apply for a "rate of return increase" or a CPI increase "but not both." It pointed out that other rent control ordinance provisions dealing with capital improvements and tax increases are not rent increases, but rather charges incurred by the owner that must be passed through to the residents. Finally, the Homeowner's Association stated that it does not object to the COAH rules for determining rent levels, but that its motion is to provide residents living in affordable units "the same protection afforded their neighbors in market units" with regard to health, safety and sanitation issues.

Oral argument was held on this motion on February 3, 1999 before COAH at its regular monthly meeting. In addition to the Homeowner's Association and Cedar Grove, the Township of Mantua was represented. However, the Township of Mantua did not take any position with regard to the motion. The arguments presented by Cedar Grove and the Homeowner's Association, were essentially the arguments that were included in their briefs. Additionally, the owner of the Mobile Home Park, Joseph Frezza, addressed the Council. He described the efforts he had made to comply with the requirements of the Mantua Rent Leveling Board with regard to the flooding problems in his mobile home park.

DISCUSSION

Municipal fair share plans certified by COAH are presumed to present a realistic opportunity for low and moderate income housing. N.J.S.A. 52:27D-314. As such, substantive certification represents COAH's judgment that a municipal fair share plan is consistent with COAH's rules and criteria and "not inconsistent

with the achievement of low and moderate income housing needs." At N.J.S.A. 52:27D-311 the Fair Housing Act requires that a municipality provide in its housing element techniques for assuring that low and moderate income housing units remain affordable to low and moderate income households "for an appropriate period of not less than six years...". N.J.S.A. 52:27D-311(a)(3). Consistent with these responsibilities COAH has promulgated regulations designed to assure the continuing affordability of low and moderate income units in certified fair share plans. These rules are to be found primarily at N.J.A.C. 5:93-9 et seq. With regard to rental units, N.J.A.C. 5:93-9.15(b) allows for an annual rental increase based on the percentage increase in the Housing Consumer Price Index for the United States.

This motion is an issue of first impression dealing with the interrelationship between COAH's affordability regulations and a municipal rent control ordinance. Clearly, both COAH's rules and the Mantua Rent Control Ordinance have the same goal: the creation and preservation of affordable rental housing. However, in this particular case the Mantua Rent Control Ordinance has prevented a rent increase for market rate mobile home units based upon demonstrated health and safety concerns at Cedar Grove Mobile Home Park. In contrast COAH's affordability regulations have allowed a rent increase for the affordable units in the same mobile home development. At issue is whether COAH's affordability regulations pre-empt municipal regulation of rents in the Cedar Grove Park, even though Mantua has determined that there are health and safety issues with regard to Cedar Grove so serious that rental increases for the market units have been denied.

As Cedar Grove admits in its brief, the Homeowners Association motion provides a compelling set of facts for the affordable unit owners. Not only are some owners of affordable housing now paying more rent than market rate homeowners because of COAH's CPI increase, but the health and safety concerns which caused the Mantua Rent Leveling Board to deny Cedar Grove's requested rent increase affect all property owners in Cedar Grove

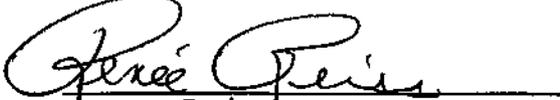
equally. However, as Cedar Grove also points out, the Mantua Rent Leveling ordinance provides rent increases and pass-throughs for the market rate units that are not charged the affordable housing unit owner. Therefore, Cedar Grove argues that COAH should not prevent Cedar Grove from imposing its 1998 rent increase on its affordable units, even though the Mantua Rent Leveling Board has prevented that increase because of health and safety concerns regarding the drainage and flooding problems at the mobile home park.

This is a very difficult issue for COAH to decide. Both the Rent Control Ordinance and the Fair Housing Act have the same goal in mind: provision of safe, decent, affordable housing. However, quite clearly, COAH's rule allows for an annual CPI increase in the rents of affordable units and does not condition the increase on health and safety issues such as those presented to the Mantua Rent Control Board. Therefore, COAH will allow the CPI increase for the affordable units in Cedar Grove. COAH's regulation is silent with regard to the health and safety issues presented to the Rent Leveling Board and COAH cannot now assume statewide jurisdiction over such issues with regard to rent increases. The Fair Housing Act does not create in COAH the power to become a statewide Rent Control Board, which is the potential result of the granting of the Homeowner's Association's motion.

Further, the health and safety concerns addressed by the Mantua Rent Leveling Board are the types of issues best left to local municipal authorities, who have the expertise and local knowledge to most promptly administer them. The owners of the affordable units in Cedar Grove will be among the beneficiaries of Cedar Grove's efforts to comply with the Mantua Rent Leveling Board's requirements for Cedar Grove to obtain a rent increase. Also, rental units other than mobile homes must be periodically inspected by municipal agencies pursuant to N.J.S.A. 52:13A-13b.

Therefore, COAH denies the motion of the Cedar Grove Homeowner's Association. COAH's affordability rules pre-empt the Mantua Rent Leveling Board's powers with regard to rents chargeable

to affordable units within the Cedar Grove Mobile Home Park. These rules do not provide for a rent abatement in the situation presented here.


Renee Reiss,
Council Secretary

Dated: April 7, 1999