

HAYLEY RUN LIMITED PARTNERSHIP,	)	
	)	OAL DKT. NO CAH 08895-98S
Petitioner,	)	COAH DKT. NO. 98-1003(a)
	)	
v.	)	
	)	
TOWNSHIP OF EAST GREENWICH,	)	<u>FINAL DECISION</u>
	)	
Respondent.	)	

On February 16, 2000, an Initial Decision in Haley Run Limited Partnership v. Township of East Greenwich, OAL Docket No. CAH 08895-98S, was filed with the Council on Affordable Housing ("the Council" or "COAH") by Administrative Law Judge Jeff S. Masin. Both parties to the matter, Haley Run Limited Partnership ("Haley Run") and the Township of East Greenwich ("the Township" or "East Greenwich") filed comments and exceptions dated March 6, 2000 to the Initial Decision. The two parties also filed replies to each other's comments and exceptions. After careful consideration of the Initial Decision and of the comments and exceptions filed to that Initial Decision, the following is the Council's Final Decision in this matter.

The Council accepts as its Final Decision pages 1 through the last full paragraph on page 24 of the Initial Decision. However, the Council rejects the paragraph of the Initial Decision, and the conclusions of law contained therein, that begins on page 24 four lines from the bottom and extends onto page 25 for seven lines. In this paragraph ALJ Masin holds that Greenwich Township's actions of April 1999 properly ratified what he determined to be an ineffective and void September 1997 adoption of its housing element and fair share plan.

The Council does not adopt this paragraph as its Final Decision because it is the Council's view that it does not have the authority or jurisdiction to make this determination, which is based upon the common law principle of ratification, as explicated in decisions relied upon by ALJ Masin such as Houman v. Mayor and

Council of the Borough of Pompton Lakes, 155 N.J. Supra 129 (Law Div. 1997). In Alexanders Department Stores, et al. v. the Borough of Paramus, et al., 125 N.J. 100 (1991) the New Jersey Supreme Court stated that "COAH has no authority over ordinances generally or over determining the prerequisites for their valid enactment." Id. at 114. Therefore, the Council does not believe that it has the authority, pursuant to Alexanders, to accept ALJ Masin's recommendation with regard to ratification and to thereby hold that it has jurisdiction over East Greenwich's housing element and fair share plan.

In the Council's September 2, 1998 motion opinion which transferred this matter to the Office of Administrative Law for a fact finding on the issues raised by the parties with regard to COAH's jurisdiction, this Council stated:

The developers also argue that issues involving the municipal adoption of a housing element and fair share plan under the criteria of the MLUL must be determined in the Superior Court....However, this matter has been specifically transferred to COAH to determine issues related to COAH's jurisdiction by Judge Francis in his April 30 Order. Moreover, COAH is quite used to dealing with issues relating to the MLUL and interpreting provisions of that act. Therefore the Council will follow its normal practice and send this matter to the Office of Administrative Law ("OAL") for an adversary hearing with regard to the issue of the MLUL requirement at N.J.S.A. 40:55D-10(b) was met when East Greenwich adopted its housing element...In ordering this matter to be transferred to the OAL, COAH believes that it is complying with the specific intent and wording of Judge Francis' Order of April 30, 1998.

Having complied with Judge Francis' Order, and having received ALJ Masin's Initial Decision in this matter, it is now clear to COAH that it cannot further proceed with this matter. The Alexanders decision states that "determinations of general legal

questions" such as the application of the common law principle of ratification to this matter are the responsibility of the Superior Court. Alexanders, supra, 125 N.J. at 115. However, that decision also recognizes that disputed factual issues may be resolved by an administrative agency and thereafter be relied upon by the courts. Id. at 115, 116; citing Boss v. Rockland Electric Company, 95 N.J. 33 (1983) and Thornton v. Potamkin Chevrolet, 94 N.J. 1 (1983). Therefore, when the Council transfers this matter back to Judge Francis, it will also transfer to the court the transcript of the OAL hearing, as well as all exhibits introduced in that hearing, for the convenience of the court.

Further, in holding that it does not have jurisdiction to determine the issue of ratification raised by East Greenwich, COAH does not wish to imply that if Judge Francis holds that ratification properly applies in this matter, the Council would not be prepared to exercise its jurisdiction over the East Greenwich housing element and fair share plan. The Council's decision here is that it reads the Alexanders decision to hold that it does not have the authority to determine the legal issue of ratification raised by East Greenwich and, therefore, that it does not have the authority to determine whether or not it has jurisdiction over East Greenwich's housing element and fair share plan. Clearly, however, the Superior Court does have that power and COAH will comply with any decision made by the Superior Court with regard to COAH's jurisdiction over East Greenwich's housing element and fair share plan.

With regard to the remainder of the Initial Decision, COAH accepts the Initial Decision as its Final Decision from the first full paragraph on page 25 beginning with the words "The remaining issue..." through to the last paragraph prior to the caption "Conclusion" on page 26. The Council rejects the remainder

of the Initial Decision and substitutes the following as its "Conclusion."

CONCLUSION

For the reasons stated, the New Jersey Council on Affordable Housing holds that it cannot assume jurisdiction at this time over the housing element and fair share plan of the Township of East Greenwich. Therefore, this matter is transferred back to the Superior Court, Law Division, consistent with this Final Decision.

  
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Council on Affordable Housing

Dated: June 7, 2000