

|                              |   |                               |
|------------------------------|---|-------------------------------|
| STOKES HOLDING COMPANY, LLC. | ) | COUNCIL ON AFFORDABLE HOUSING |
|                              | ) |                               |
| v.                           | ) | DOCKET NO.00-1206             |
|                              | ) |                               |
| TOWNSHIP OF SOUTHAMPTON,     | ) | OPINION                       |
| BURLINGTON COUNTY            | ) |                               |

On July 18, 2000 the Stokes Holding Company, LLC ("Stokes") moved before the New Jersey Council on Affordable Housing ("COAH" or "the Council") to amend the fair share plan and zoning ordinances of the Township of Southampton ("the Township" or "Southampton") to delete the zoning of the Stokes property from Southampton's fair share plan as an inclusionary site for low and moderate income housing. The motion was supported by a letter brief and certifications.

The Township opposed the motion. The motion was supported by L.T.D., L.L.C. ("LTD"), a contract purchaser of land in Southampton. All parties filed numerous letters with the Council up to the date of the Council's decision in the matter, September 6, 2000. LTD filed a response to this motion because it has appealed COAH's grant of substantive certification to the Township's housing element and fair share plan. LTD's appeal has not yet been decided by the Appellate Division of the Superior Court. All briefs have been filed in the appeal and an oral argument date is expected shortly.

In its response letter dated August 4, 2000, the Township raised jurisdictional issues with regard to COAH's considering Stokes' motion. Consequently, on August 7, 2000 the Council's secretary sent a letter to all parties stating that "... COAH will initially review the jurisdiction issue at its September meeting and that this issue will be considered on the papers."

In its August 4, 2000 response to Stokes' motion, the Township states that COAH does not have jurisdiction to consider Stokes motion because Stokes "...failed to pursue an appeal with the Appellate Division after Substantive Certification was granted on July 1, 1998 in accordance with the timing requirements in R.2:2-3(a)(2). The appeal period has now of course long since expired." Further, the Township noted that Stokes had initiated

litigation against the Township and the Southampton Township Zoning Board contesting the denial by the zoning board of Stokes' application to determine whether its property was entitled to be utilized for non-residential purposes as a pre-existing nonconforming use, notwithstanding the current zoning of the property for residential use, including affordable housing.. The Township argued that Stokes had failed to exhaust its available remedies under its pending law division litigation, thus depriving COAH of jurisdiction over the matter. The Township therefore requested that COAH "...decline to exercise jurisdiction over Stokes' miscaptioned, misconceived and untimely Motion."

Both Stokes and LTD took the position that COAH did have jurisdiction to decide the Stokes' motion. N.J.A.C. 5:91-13.1(a) was cited to support this position. N.J.A.C. 5:91-13.1(a) states: "Amendments to the terms of substantive certification may be approved by the Council at any time following the grant of substantive certification.... Approval of any such amendment shall be solely at the discretion of the Council. Amendments may be requested by a municipality or any other party." Further, Stokes and LTD argued that this motion presents a legitimate factual issue to COAH with regard to the suitability of the Stokes site for affordable housing and that COAH must decided the issue. This position was succinctly set forth by LTD in its August 22 letter:

...it is clear that a factual issue has been raised in the context of a legitimate motion filed pursuant to COAH's rules. Those rules allow motions to amend certifications at any time. Procedurally, if there is a factual dispute, the matter should go into mediation and, if not resolved in mediation, to the Office of Administrative Law. Be that as it may, COAH certainly cannot summarily dismiss the motion....

After careful consideration of the positions of the parties and its own independent review of the applicable law, it is the decision of the New Jersey Council on Affordable Housing that it does not have jurisdiction over Southampton's fair share plan at

this time and, therefore, that it cannot decide Stokes' motion. The New Jersey Court Rules at R.2:9-1(a) states in part:

Except as otherwise provided..., the supervision and control of the proceedings on appeal or certification shall be in the appellate court from the time the appeal is taken or the notice of petition for certification filed. The trial court, however, shall have continuing jurisdiction to enforce judgments and orders pursuant R.1:10 and as otherwise provided....

Here, an appeal of COAH's grant of substantive certification to Southampton's housing element and fair share plan has been filed by LTD. All briefs have been filed in that litigation. Therefore, that appeal has deprived COAH of the jurisdiction to entertain Stokes' motion to alter the terms of Southampton's substantive certification. The "supervision and control" of actions such as Stokes' are in the appellate court; not COAH. COAH therefore cannot make further substantive factual determinations with regard to the suitability of the Stokes' site; nor can it order mediation or a hearing at OAL, as requested. Pursuant to R. 2:9-1(a) COAH only has jurisdiction to enforce the terms of its grant of substantive certification. Stokes' motion, on the other hand, requests that COAH alter the terms of its grant of substantive certification. Consequently, the Council must conclude that it does not have the jurisdiction to grant the relief requested by Stokes' motion. The motion is, therefore, dismissed.

  
NEW JERSEY COUNCIL ON  
AFFORDABLE HOUSING

DATE: *September 6, 2000*