

IN RE PETITION FOR)	COUNCIL ON AFFORDABLE HOUSING
SUBSTANTIVE CERTIFICATION)	COAH DOCKET NO. 00/97-908
OF CHESTERFIELD TOWNSHIP,)	
BURLINGTON COUNTY)	OPINION
)	
)	ON MOTION FOR RECONSIDERATION

Chesterfield Township, Burlington County, ("Chesterfield" or "the Township") petitioned the Council on Affordable Housing ("COAH" or "the Council") on October 29, 1997 with a fair share plan to address a second-round obligation of 68 units of affordable housing. There was one objection submitted to Chesterfield's fair share plan by Crosswicks Ellisdale L.P. ("Crosswicks").

Shortly after filing its objection, Crosswicks filed a motion with the Council alleging that Chesterfield's petition was "so patently flawed and inadequate as to represent a mockery of the Act and rules". Crosswicks asked that COAH dismiss the petition or in the alternative issue an order of accelerated denial because of the facial invalidity of Chesterfield's petition.

Crosswicks' motion was presented to the Council at its meeting of February 4, 1998. The motion was denied and an opinion dated February 4, 1998, attached, was issued. At the conclusion of the opinion COAH ordered the parties into mediation pursuant to N.J.S.A. 52:27D-315. Opinion, page 15. Also, the opinion noted that because of deficiencies in the Chesterfield fair share plan, "COAH staff will issue a COAH report requesting additional

information prior to the start of mediation, which will be forwarded to all on the Chesterfield service list, as per newly adopted N.J.A.C. 5:91-6.2(b)". The Council concluded, however, that the flaws in the Chesterfield plan "...are not such that would render mediation and review difficult or impractical." Opinion, page 11.

On March 5, 1998 a COAH Report prepared by Monica Etz, Principal Planner at COAH, was issued. The report was captioned "COAH Report - Request for Additional Information, Chesterfield Township, Burlington County." The report analyzed Chesterfield's submitted fair share plan and indicated the areas where additional information was necessary from the municipality.

In response to the report, Crosswicks filed on March 9, 1998 a Motion for Reconsideration and to Dismiss Chesterfield's petition. Essentially, the motion argued that the March 5, 1998 COAH Report constituted "...a broad and unrelenting indictment of the fair share plan submitted by the Township of Chesterfield" which "mandates dismissal of the petition, accelerated denial of the petition and reconsideration and reversal of the [COAH February 4, 1997] decision."

The motion for reconsideration was objected to by Chesterfield and was orally argued at COAH's monthly meeting of April 1, 1998. After the motion was argued by both parties, there was a discussion between the COAH board and the parties as to whether mediation should proceed while the Council was considering the motion. The parties agreed that mediation should begin and

continue while the Council considered Crosswicks' motion to reconsider. Therefore, the Council appointed a task force to consider the motion and mediation began.

Mediation between Crosswicks and Chesterfield has ended without the agreement of the parties. A COAH Mediation Report was prepared on October 25, 2000 and sent to the parties. The COAH Mediation Report and the comments of the parties to the report have been presented to the Council at its meeting of December 6, 2000. This motion is being decided contemporaneously with the Council's consideration of the COAH Mediation Report, which concludes that Chesterfield must file an amended housing element and fair share plan with COAH no later than January 31, 2001.

The Council has reviewed its decision of February 4, 1998 and affirms that decision. Therefore, Crosswicks' motion for reconsideration of that opinion and/or for an accelerated denial of Chesterfield's petition for substantive certification of its housing element and fair share plan is denied.

The Council's February 4, 1998 opinion made clear that Chesterfield had filed a housing element and fair share plan that was sufficient to invoke the Council's jurisdiction. There is nothing that Crosswicks presented in its motion that convinces this Council that its prior opinion's conclusions were erroneous. The March 5, 1998 COAH Report upon which Crosswicks based its motion for reconsideration did not point out deficiencies in Chesterfield's housing element or fair share such that COAH could not exercise its jurisdiction over Chesterfield's Mount Laurel

compliance efforts. Rather, the report detailed such deficiencies as are often found in filed fair share plans.

In its February 4, 1998 opinion the Council relied upon its Bethlehem motion decision to substantiate its conclusion that Chesterfield's housing element and fair share plan were sufficient to give COAH jurisdiction over Chesterfield's filed fair share plan. The opinion concluded that Chesterfield's submission to COAH, unlike the one at issue in Bethlehem, clearly constituted a "... 'plan or proposal' by which the municipality proposes to satisfy its obligation to create a realistic opportunity to meet its fair share of low and moderate income housing." Opinion at 13. The deficiencies set out in the March 5, 1998 COAH Report provide no reason to conclude otherwise.

The fair share plan initially proposed by Chesterfield has been the subject of mediation. It has evolved during mediation and Chesterfield will now file an amended petition with an amended plan, as it is permitted to do under COAH's procedural rules. N.J.A.C. 5:91-7 et seq. This amended plan will continue to include the transfer of development rights ("TDR") approach to the provision of affordable housing that was set forth in Chesterfield's initial filed fair share plan. However, the details of the TDR plan have evolved over the course of mediation. Therefore, the Council is requiring Chesterfield to repetition with an amended plan. As such, there is no basis to now conclude, as asserted by Crosswicks in its motion, that the Chesterfield plan is

so flawed that the Council cannot exercise its jurisdiction over Chesterfield.

Therefore, the Council will not now dismiss Chesterfield from its jurisdiction and affirms its opinion and decision of February 4, 1998.

COUNCIL ON AFFORDABLE HOUSING

By: 

DATE: 12/6/00