

In the Matter of)	New Jersey Council on
the Township of)	Affordable Housing
Parsippany-Troy Hills)	
)	Docket No. 01-1305
v.)	
)	Motion Decision
Mazdabrook Developers)	

On April 20, 2001, Mazdabrook Developers, L.L.C., ("Mazdabrook") filed a motion with the New Jersey Council on Affordable Housing ("the Council" or "COAH") for an order enforcing the mediation agreement between the Township of Parsippany-Troy Hills ("the Township") and Crow-Foody Central ("Crow-Foody") /Mazdabrook Developers. The mediation agreement at issue was entered into on March 30, 1990 between Crow-Foody and the Township. Specifically at issue is Section 6(b) of the mediation agreement which states:

[N]o hereafter enactment of township construction standards or township specifications for improvements required in connection with subdivision or site plan approvals shall apply to the development if the effect of such ordinances imposes an additional cost on the developer.

Mazdabrook's motion is prompted by the fact that the Township has imposed a sewer connection fee of \$3,263 per unit and Mazdabrook claims that the intent and meaning of Section 6(b) is that the sewer connection fee should be based upon the fee in existence in 1990, which was \$12.50 per unit.

The Township filed a brief in opposition to the Mazdabrook motion and argues, inter alia, that Mazdabrook has not established on the record that it is the successor in interest of Crow-Foody and that COAH has no jurisdiction over the issue presented. With regard to the jurisdiction issue, the Township argues that there is no relationship between COAH's grant of substantive certification to the Township and the March 30, 1998 mediated agreement. Also, the Township argues that Alexander's Department Stores in New Jersey, Inc. v. the Borough of Paramus, 243 N.J. Super. 157 (App. Div. 1990), aff'd 125 N.J. 100 (1991), bars COAH's exercising its jurisdiction over this dispute.

Finally, the Township states that if COAH exercises jurisdiction in this matter, then the matter should be transferred to the Office of Administrative Law ("OAL") to address the many outstanding factual issues raised.

The Council has considered all of the briefs and legal papers submitted in support and opposition to this motion by all parties. It is the Council's decision that it will transfer the matter in its entirety to the OAL for a full factual hearing on all issues raised in the motion.

The Council believes that it clearly has jurisdiction over the mediated agreement that is at issue. The mediated agreement is a fact upon which the Council granted substantive certification to the Township on August 7, 1996. In that certification there was a paragraph that stated "any change in the facts upon which this certification is based or any deviation from the terms and conditions of this certification, which affect Parsippany-Troy Hills Township's ability to provide for the realistic opportunity of its fair share of low and moderate income housing in which Parsippany-Troy Hills fails to remedy, may render this certification null and void." Because the terms of the mediated agreement are "facts" that the Council has considered when granting substantive certification to the Township, and because Mazdabrook alleges that the facts of the mediated agreement have changed since substantive certification, the Council can exert its jurisdiction over this matter.

Also material to COAH's decision to transfer this case to the OAL is the fact that there is another case similar to this one before the Council involving a similar dispute over sewer connection fees between the Township and another developer, Lake Lenore Estates, L.L.C. In that dispute the relationship between the Township's sewer connection fees and a mediated agreement between the Township and Lake Lenore is at issue. Contemporaneously with the transfer of this motion filed by Mazdabrook to the OAL, the Council is also transferring the

contested case between Lake Lenore and the Township. It is clear that the mediated agreements at issue in these two cases are different. However, there are similar factual issues in both cases and the same Township sewer connection fee is at issue in both cases. If the parties believe that the two cases should be consolidated for reasons of efficiency and economy once they are at the OAL, they are free to make a motion upon transfer to the OAL judge for consolidation.


Renee Reiss, Secretary
New Jersey Council on
Affordable Housing

Date: *July 10, 2001*