

IN RE TOWNSHIP OF SPRINGFIELD) COUNCIL ON AFFORDABLE HOUSING
MOTION FOR DISMISSAL FILED) DOCKET NO. 01-1311
BY SPRINGCO, L.L.C.) OPINION

This is a motion filed by Springco, L.L.C. ("Springco"), a contract purchaser of land in Springfield Township, Burlington County ("Springfield" or "the Township") seeking to dismiss Springfield's petition for substantive certification and to remove Springfield from the jurisdiction of the New Jersey Council on Affordable Housing ("the Council" or "COAH"). Springco is the contract purchaser of Block 1903, Lot 1.01, a 53.9-acre parcel of land, which is adjacent to the Borough of Wrightstown and located in Springfield's first-round Planned Residential Development ("PRD") Overlay Zoning District. Springco proposes to develop 215 units of housing with 43 affordable units on its site. However, Springfield adopted a zoning ordinance amendment on November 13, 2001 eliminating the PRD Overlay Zoning District. On that same date Springco filed this motion seeking Springfield's dismissal from COAH's jurisdiction.

Springfield received first-round substantive certification from the Council on October 8, 1992 for an obligation of 67 units of affordable housing. The Township petitioned COAH on October 6, 1998 to address its second-round obligation of 68 units (15 rehabilitation units and 53 new construction units). No objections were received to Springfield's petition.

After receiving a September 10, 1999 COAH Report Requesting Additional Information, Springfield submitted an amended plan and repeteritioned COAH on December 23, 1999. During the 45-day comment period, COAH received one objection to Springfield's repetition from Sod Farm Associates, L.L.C. ("Sod Farm"). In addition, on January 24, 2000 Sod Farm filed a motion with COAH to dismiss Springfield's petition for substantive certification. The Sod Farm motion was heard on the papers at COAH's April 5, 2000 meeting, and tabled until the completion of mediation. The Sod Farm motion is being decided contemporaneously with this motion.

COAH issued a second COAH Report Requesting Additional Information dated March 8, 2000. Mediation between the Township

and Sod Farm began on April 14, 2000 and initially concluded on December 4, 2000. During the course of mediation, Springfield proposed to revise its plan. The proposed plan required a waiver from COAH's regulation limiting accessory apartments to ten units. N.J.A.C. 5:93-5.9. The Township requested the waiver by motion in April 2001. After oral argument, COAH denied Springfield's waiver request on July 10, 2001 and instructed the parties to return to mediation.

Prior to the start of the reopened mediation, Springfield submitted a draft plan to address its 68 unit obligation through a group home (4 credits and 4 rental bonuses), a 34-unit Regional Contribution Agreement ("RCA"), a 15-unit rehabilitation program, a 10-unit accessory apartment program and a 1-unit write-down/buy-down program. By letter of September 28, 2001 Sod Farm withdrew from mediation because Springfield stated that it had no intention of including the objector's site in its plan.

Mediation therefore ended without an agreement between Springfield and Sod Farm. COAH issued a Mediation Report dated October 11, 2001 which concluded that there were no material contested issues of fact that necessitated a transfer of the matter to the Office of Administrative Law ("OAL") and also concluded that the Township must amend its plan and repetition to add the 1-unit write-down/buy-down program. During the 14-day comment period necessitated by COAH's October 11 Mediation Report, COAH received comments from Sod Farm and from Springco. Springco had not previously participated in the COAH process and commented as an interested party.

The COAH mediator presented the COAH October 11 Mediation Report, as well as a COAH Response to Comments Report dated November 5, 2001 to the COAH Board at its November 7, 2001 board meeting. The mediator's responses to Sod Farm and Springco's comments concluded that comments to the October 11 Mediation Report did not materially affect the mediators recommendation made in the October 11 Mediation Report. Further, the November 5 report concluded that the Township must amend its housing element and fair

share plan no later than January 7, 2002 to include the 1-unit write-down/buy-down program.

In COAH's November 5, 2001 Response to Comments Report the COAH mediator responded to Springco's comments. The Report is attached and incorporated herein. With regard to the PRD Overlay Zoning District, Springco had stated in its comments that Springfield proposed to adopt a zoning ordinance on November 13, 2001 which would eliminate the PRD Overlay Zoning District on Springco's property. In response, COAH stated that in its March 8, 2000 COAH Report, COAH had informed Springfield that the Township would receive no credit in COAH's second round for the PRD overlay zone, if the proposed zoning continued to be overlay zoning and not "by right" zoning. Further, COAH's September 10, 1999 COAH Report had not given Springfield credit for the proposed PRD Overlay Zoning District, for the same reason.

With regard to Springco's comment that Springfield "has no intention" of providing a realistic opportunity for the development of affordable housing, COAH's response was that Springfield had hired a housing consultant to administer its accessory apartment program, as well as its rehabilitation program and its proposed write-down/buy-down program. Further, COAH noted that the Township had agreed to fund its 34-unit RCA and stated that "Should COAH grant Springfield's substantive certification, COAH will monitor all these components of Springfield's plan." In response to Springco's comment that Springfield's housing rehabilitation program had been proposed for 14 years without one unit being rehabilitated, the response was that COAH had not previously required Springfield to hire an experienced administrator in the first round or to commit to fund the programs in the first round. The report then stated that Springfield had hired an experienced housing administrator to administer the program and Springfield had committed to bond to cover any funding shortfalls. Also, the COAH report stated that should COAH grant substantive certification to Springfield ... "the progress of the program will be monitored." With this and other responses to

Springco's comments, COAH concluded that Springfield must amend its housing element and fair share plan "no later than January 7, 2002."

This motion was filed on November 13, 2001. In support of the motion a letter brief was filed by Springco's attorney, Henry Kent-Smith, Esq., who also submitted an affidavit in support of the motion. Also, there were supporting affidavits filed by Michael Higgins, a member of Springco, and Creigh Rahenkamp, P.P. Springco's motion seeks to dismiss Springfield from COAH's jurisdiction and to intervene in Sod Farm's motion filed on January 21, 2000 to dismiss or deny Springfield's housing element and fair share plan. However, Springco did not join in the portion of Sod Farm's motion which claimed the PRD Overlay Zoning District was unrealistic and should not be given COAH credit. Rather, Springco objected to the Township's abandonment of the PRD Overlay Zoning District and all inclusionary zoning in the Township.

In its motion Springco argued that Springfield had filed with COAH "paper" affordable housing plans and that not one affordable unit had been constructed or rehabilitated in Springfield since 1987. Springco cited the example of the Danmik site, which the Township had removed from its affordable housing plan as soon as a developer expressed interest in developing the property for affordable housing. Also, Springco stated that the Township's delays in implementing its plan had left the Township without a certified second-round plan. Further, Springco noted that it had filed a builders' remedy lawsuit in Superior Court on November 9, 2001 to preserve Springco's rights to develop its site in accordance with the PRD zoning of the site.

Springco stated that it believed its site in the PRD zone would provide a realistic opportunity for affordable housing because there are no environmental constraints and because public sewer and water was available through the Wrightstown Municipal Utility Authority. However, Springco noted that the Township had not entered into an interlocal service agreement with the Wrightstown MUA to make public sewer a reality on its site.

Springco asserted that various court cases require Wrightstown and Springfield to work together to provide sewer on the Springco site.

Springfield filed its opposition to Springco's motion on December 3, 2001 with a letter brief from its attorney, Dennis P. McInerney, Esq., and a certification of its planner, Philip Caton, P.P. Springfield stated that Springco's planner, Rahenkamp, had previously been Danmik's planner and had provided a certification that the PRD Overlay District was unrealistic for affordable housing when serving in that capacity. Further, Springfield noted that it had been in litigation with Danmik and in order to settle the lawsuit the Township had provided Danmik with zoning and infrastructure access, but that the developer never had applied for development approvals.

Springfield stated that it did in fact eliminate the PRD Overlay District on November 13, 2001 and that this elimination was based upon the two COAH Reports dated March 8, 2000 and September 10, 1999 where COAH stated that there would be no credit for the zoning district because it was proposed as an overlay zone. Springfield asserted that COAH did not require it to enter into an interlocal services agreement with the Wrightstown MUA as part of the Township's first-round substantive certification and that no developer had ever requested the Township to enter into such an agreement.

Springfield argued that Springco lacked standing to object to the elimination of the PRD zone, because Springco had not filed a development application pursuant to N.J.A.C. 5:93-5.13. In addition, Springfield noted that Springco only entered into a contract to purchase its site as of November 1, 2001 and thus lacked standing to dismiss the Township's petition, because it did not object to either of the Township's filed second-round plans. Springfield claimed that its filed fair share plan was a viable means to address its affordable housing obligation in the second round and that the PRD Overlay District was not deemed acceptable by COAH for credit in the second round.

In its reply brief Springco reasserted its readiness and willingness to build affordable housing on its site. Rahenkamp, on behalf of Springco, explained that his opinions expressed in his certification for Danmik were not inconsistent with his Springco certification with regard to the PRD zone, because there had been a change of circumstance. He stated that if Danmik had been included in Springfield's plan, affordable units would have been built. Now, he asserted that the Springco site was the best opportunity for affordable housing to be built in the Township.

Sod Farm also filed a response to Springco's motion. Sod Farm stated that COAH should decide Sod Farm's motion and that COAH should decide the motion based upon the facts that existed when Sod Farm's motion was made, or at least when mediation was terminated, and not when the Township amended its plan. Also, Sod Farm stated that Springfield should not be permitted to remove the PRD zoning because it had previously represented that it would make the PRD District mandatory, and not overlay zoning.

Oral argument was held on Springco's motion at COAH's January 9, 2002 meeting. In attendance were attorneys for Springco, Springfield and Sod Farm. After oral argument a joint stipulation of facts agreed to by all parties was submitted to the Council on January 22, 2002.

COAH's decision in the Sod Farm motion is being issued contemporaneously with this decision and should be read in pari materia with this decision. After careful consideration, the New Jersey Council on Affordable Housing denies Springco's motion to intervene in the Sod Farm motion and denies its motion to dismiss Springfield from the Council's jurisdiction. Springco is not an objector to Springfield's housing element and fair share plan. Because it is not an objector, the Council has an obligation to consider the information presented by Springco with regard to the Springfield plan, but it is not obligated to give Springco the full

rights and privileges, including that of mediation, that an objector enjoys.

Springco in its motion presents no reasonable basis upon which COAH may dismiss Springfield from its jurisdiction. In particular, Springco's arguments with regard to the PRD Overlay Zone do not constitute a justification for COAH to dismiss Springfield from its jurisdiction. The Council has consistently told Springfield with regard to its second-round petition that if it wished to make the PRD Overlay Zone mandatory, it could receive credit for it. However, Springfield has never in COAH's administration of its second-round housing element and fair share plans been told by the Council that it should retain the PRD Overlay Zoning or that the PRD Overlay Zoning provided a realistic opportunity for affordable housing.

A reading of N.J.A.C. 5:93-5.13 makes it clear that Springco had no entitlement or expectation that the PRD Overlay Zoning could not be changed by Springfield or that COAH would exert its jurisdiction concerning Springfield's housing element and fair share plan to retain the PRD Overlay Zoning on Springco's site. Rather, Springfield had indicated to the Council in its filed second-round fair share plans that it wished to address its affordable housing obligation through means other than the inclusionary zoning of sites within the municipality. In COAH's October 11, 2001 and November 5, 2001 reports subsequent to mediation, it was clearly stated that Springfield was close to achieving a certifiable fair share plan. However, it was necessary that Springfield repetition to add a new element, a 1-unit write-down/buy-down program, to that plan before it could be certified. Consequently, at the conclusion of the November 5, 2001 COAH Report, Springfield was told to file a repetition for certification

with an amended housing element and fair share plan. Springfield has subsequently done this.

Springco points out in its motion that Springfield has not achieved a single unit of affordable housing since 1987. The Council is well aware of this, and stated in the November 5, 2001 report that it plans to subject Springfield, should it be certified in the future, to rigorous monitoring with regard to the Township's implementation of its housing element and fair share plan. Further, the Council has noted that in the past it did not require the Township to hire an independent experienced administrator for its plan. In the future the Council will make certain that Springfield does comply with all requirements of any fair share plan certified by the Council. What has happened in the past with regard to Springfield's plans will not happen in the future.

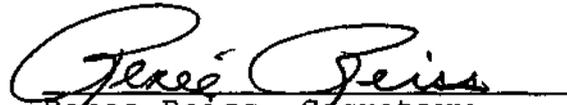
In conclusion, Springco's motion does not establish a basis by which this Council must dismiss Springfield from its jurisdiction. Springco's arguments with regard to the PRD Overlay Zone are not material to Springfield's second-round affordable housing compliance efforts. Therefore, Springco's arguments with Springfield over the retention of the PRD Overlay Zone do not present the Council with the basis for dismissing Springfield from its jurisdiction. Therefore, the Council denies Springco's motion to dismiss the Council from its jurisdiction.

Also, the Council denies Springco's motion to intervene in Sod Farm's motion to dismiss Springfield from its jurisdiction. Springfield presented no information material to COAH's determination of Sod Farm's motion that necessitated intervention. In fact, Sod Farm argued that COAH's decision with regard to its motion should only consider the status of Springfield's plan prior to Springco's date of purchase of its contract with regard to its

*Both Sod Farm and Springco have objected to that refiled plan. They have also filed new motions for COAH to dismiss Springfield from its jurisdiction. These objections and motions will be dealt with by the Council in the coming months.

Springfield property. Therefore, Springco was not able to add anything to the Council's consideration of Sod Farm's motion.

For all these reasons, Springco's motion to intervene in Sod Farm's motion to dismiss Springfield's housing element and fair share plan and Springco's motion to dismiss Springfield from the Council's jurisdiction are hereby denied.


Renee Reiss, Secretary
New Jersey Council on
Affordable Housing -

DATED: March 6, 2002