

IN RE TOWNSHIP OF SPRINGFIELD ) COUNCIL ON AFFORDABLE HOUSING  
MOTION FOR DISMISSAL FILED ) DOCKET NO. 02-1401  
BY SPRINGO, 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"), seeking an order from the Council on Affordable Housing ("COAH" or the "Council") dismissing Springfield's December 2001 Petition for Substantive Certification ("December 2001 Petition"). 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 a motion to dismiss Springfield 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 repeticioned 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 Council denied Sod Farm's motion by opinion dated March 6, 2002.

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.

On November 13, 2001, Spingco filed a motion with COAH seeking Springfield's dismissal from COAH's jurisdiction. Oral argument was held on Spingco's motion at COAH's January 9, 2002 meeting. In attendance were attorneys for Spingco, 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. On March 6, 2002, COAH issued an opinion, attached and incorporated by reference herein, denying Spingco's motion. The March 6, 2002 opinion found that Spingco presented no reasonable justification to dismiss Springfield from COAH's jurisdiction.

On December 19, 2001, Springfield adopted a resolution authorizing the township to amend its housing element and fair share plan and repetition for substantive certification. Springfield then published notice of its Repetition and Amended Plan on December 23, 2001. Springfield filed its Repetition and Amended Plan with COAH on December 31, 2001. Thereafter, Spingco requested clarification from COAH as to whether Springfield's notice and petition had been properly published and filed, and, if so, when the objection period would close. Relying on the language of N.J.A.C. 5:91-3.3(a) which states that a municipal publication of a Notice of Petition must occur "within 7 days of the filing of the petition," as well as the rationale underlying New Jersey Court Rule 1:3-1, COAH's Executive Director advised, by way of letter dated January 18, 2002, that Springfield's filing was not improper.

Sod Farm and Spingco were further advised that any objection

should be filed on or before February 6, 2002, which was within 45 days of the date of publication of the notice.

On February 4, 2002, Springco filed the present motion. Sod Farm also filed a motion to dismiss Springfield's December 2001 petition on February 4, 2002. Springfield filed opposition to both motions on February 25, 2002. Springco and Sod Farm filed responses to Springfield's opposition on March 6, 2002. In support of Springco's present motion, Springco submitted a letter brief and certification of its attorney, Henry Kent-Smith, Esq. Springco argued that the Notice and Filing of Springfield's Petition were untimely and defective. Springco also claimed that Springfield's Petition was deficient on its face.

In support of its claims, Springco asserted that Springfield's December 2001 Petition should be dismissed because the Notice of the Petition was published prior to the filing of the Petition. Springco argued that allowing such sequencing had the potential to create a "smoke screen" by which potential objections might be revealed before a municipality filed its plan with COAH. In support of its contention that the notice and filing were improper in this matter, Springco relied on Island Club Condominium v. City of Atlantic City, 298 N.J. Super. 516 (Law Div. 1995), a case which held that notice of a city planning board's decision was insufficient where the notice was published prior to a written

resolution of the board's decision was adopted. Springco further alleged the sequencing at issue shortened the 45-day objection period to 38-days.

In addition, Springco argued that COAH has no jurisdiction to act on Springfield's petition because notice was published within 7 days of filing under N.J.A.C. 5:91-3.3(a). Springco asserted that COAH has strictly enforced deadlines in the past, and cited In re Request for Objector Status filed by Danmik, Inc., COAH Docket No. 89-212 (where objection was filed a week after deadline).

Springco also argued that Springfield's Petition is deficient on its face because Springfield has only provided for a \$20,000 per unit (rather than \$25,000 per unit) contribution for its proposed RCA. Springco further asserted that Springfield's plan is a "sham" and should be dismissed.

In response to Springco's motion, Springfield submitted a letter brief of its attorney, Dennis P. McInerney, Esq. Springfield argued that COAH has already properly concluded that Springfield's Petition for Substantive Certification was validly filed. Springfield relied on the January 18, 2002 letter from COAH's Executive Director which explained that N.J.A.C. 5:91-3.3 does not specify in what sequence a petition is to be filed and

publication made. Springfield further asserted that reference to R. 1:3-1 was appropriate, as the rationale behind that court rule has been applied to several different statutory schemes. Springfield noted the following examples, Mercer County Park Commission v. DiTullio Plumbing & Heating Co., 139 N.J. Super. 36 (App. Div. 1976) (the acceptance of bids under the public contract statute); State v. Jones, 181 N.J. Super. 549 (Law Div. 1981), (where a notice of tort claim is filed under the Tort Claims Act). Springfield argued that there is no reason why the Fair Housing Act should be treated any differently than the statutes in the above-referenced cases.

Springfield further claimed that Springco's allegations that objectors will be harmed by towns who attempt to "smoke" them out are merely hypothetical situations which need not be considered by the Council at this time. Additionally, the Township asserted that there has been no harm by the sequence of filing and publication of the Petition and Fair Share Plan at issue here. It claimed that in addition to the notice provided to the general public on December 23, 2001 by way of newspaper publication, the objectors were provided with Notice of the Publication, Notice of the Repetition, and supporting documents on December 28, 2001. Thus, Springfield argued that publishing the notice prior to the actual filing did not alter the time within which anyone could comment or object, and, therefore, asserted that the purpose of

N.J.A.C. 5:91-3.3(a) has not been abrogated by the filing and publication at issue here.

In response to Springco's argument that Springfield's December 2001 petition was deficient on its face, Springfield asserted that it is prepared to amend its RCA agreement to reflect a \$25,000 per unit agreement if COAH concludes that the same is required. In addition, Springfield claimed that its Housing Element and Fair Share Plan, read together with the Mediation Report of October 2001 and the November 2001 Response to Comments, propose a realistic opportunity for the creation of affordable housing in the township. Finally, Springfield argued that although its previous efforts did not create affordable housing units, its 1992 plan represented the best opportunity to create affordable housing at that time.

In response to Springfield, Springco reiterated its arguments that Springfield's plan is a sham and does not provide the requisite \$25,000 per unit contribution for its RCA.

#### **DISCUSSION AND DECISION**

The present motion raises issues which are not significantly different from those raised by Sod Farm in its February, 4, 2002 motion to dismiss Springfield's December 2001 Petition. Accordingly, for the reasons set forth in the Council's

decision on Sod Farm's February 4, 2002 motion to dismiss, the Council denies Springco's February 4, 2002 motion to dismiss. The Council attaches and incorporates by reference herein, its decision denying Sod Farm's February 4, 2002 motion to dismiss.

  
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Renee Reiss, Secretary  
New Jersey Council on  
Affordable Housing

DATED: *June 5, 2002*