

IN RE TOWNSHIP OF SOUTHAMPTON, )	COUNCIL ON AFFORDABLE HOUSING
BURLINGTON COUNTY MOTION FOR )	DOCKET NO. <b>COAH 02-1408 / 98-1005</b>
RECONSIDERATION FILED BY )	
LTD, LLC )	OPINION

This is a motion filed by L.T.D., L.L.C. ("LTD"), the contract purchaser of a 226-acre tract in Southampton Township, Burlington County, seeking reconsideration of a decision by the Council on Affordable Housing ("COAH" or the "Council"). On June 5, 2002, the COAH Board denied a motion by LTD seeking accelerated denial of Southampton's remanded petition for substantive certification, or, in the alternative, amending the Township's plan for site specific relief. Instead, COAH directed the Township to repetition COAH with an amendment to its previously certified and remanded housing element and fair share plan by September 5, 2002. COAH memorialized its decision in an opinion issued July 16, 2002, which is attached and incorporated by reference herein. Southampton Township repetitioned COAH and submitted an amended plan on August 23, 2002. The amended plan does not include LTD's site. Several objections have been received during the 45-day comment period which expired on October 7, 2002. LTD filed a timely objection.

On August 12, 2002, Sharon A. Morgenroth, Esq., filed the present motion for reconsideration with COAH on behalf of LTD. LTD now requests that COAH enter an Order: (1) Compelling inclusionary rezoning of the LTD tract to permit small lot single-family detached housing and multi-family housing; (2) Compelling the Township's cooperation in the provision of sewer and water infrastructure for the LTD tract; and (3) Compelling the Township to cooperate in obtaining an extension of the designated Vincentown Village Center by the State Planning Commission to include the LTD tract.

LTD argues that in light of the Township's history with COAH and its repeated failure to achieve a realistic affordable housing plan, "...it is essential that COAH provide the Township with specific instruction in amending its Compliance Plan." LTD further argues that the grant of site-specific relief is appropriate because (a) extraordinary circumstances exist warranting site-specific relief; (b) LTD offers a Site that is available, approvable, developable and suitable; (c) COAH should compel the Township to cooperate in the provision of infrastructure to the LTD tract (i.e., water, sewer, and extension of Vincentown Village Center); and (d) COAH's failure to grant site-specific relief would be contrary to the Supreme Court in West Windsor.

As in the original motion, LTD cites N.J.A.C. 5:91-3.6(a) as permitting site-specific relief in an "extraordinary situation," and relies on Helen Motzenbecker v. Bor. of Bernardsville (Docket No. COAH 87-18). LTD also relies on the Supreme Court's recent West Windsor opinion and so was not relied on by LTD in its original motion. LTD asserts that "the West Windsor case stresses the importance of the builder's remedy in assuring the development of affordable housing in New Jersey." LTD argues that because COAH has already determined that Southampton's remanded compliance plan does not provide a realistic opportunity for the creation of affordable housing, it has successfully met the first requirement necessary to obtain a builder's remedy. Furthermore, by presenting a site that is available, approvable, developable and suitable, LTD argues that it meets the remaining two requirements to obtain a builder's remedy, i.e. proposing a substantial affordable housing project and a suitable site.

In a letter dated August 20, 2002, Ronald C. Morgan, Esq., responded to LTD's Reconsideration Motion on behalf of Southampton Township. The letter incorporates by reference the contents of the Township's prior briefs, submissions, and arguments and highlights the following key points.

Southampton Township asserts that it has not sidestepped or avoided its affordable housing compliance obligations but rather, "has followed every directive that COAH has ever imposed." The Township argues that the fact that its first and second-round plans have not produced any "new construction" units is due to the lack of centralized sewage treatment and capacity, as evidenced by the durational adjustment granted by COAH during the first round. The Township further explains that LTD was the original contract purchaser of the majority of properties within the RR-1 parcel. Thus, the Township asserts that LTD, and not the Township, should be blamed for any failure to produce new affordable units because LTD could have secured sewer service for those RR-1 parcels by connecting to a nearby Mount Holly line or by constructing an on-site groundwater disposal system.

Southampton Township also disputes LTD's claim, that the new LTD tract is "suitable" and "developable." The Township's conclusion is based on a meeting held on August 13, 2002, with staff from the Township, DEP's Division of Water Quality Planning, and COAH, at which DEP advised all present that the sewage treatment plant owned and operated by the Pinelands Wastewater Company (PWC) does not possess capacity to service the new LTD Tract (or the RR-1 Parcel).

Finally, the Township states that its Planning Board approved an amended Compliance Plan on August 13, 2002, which "fully satisfies Southampton's twelve (12) year cumulative housing obligation without even relying upon the RR-1 or TC-1 parcels" and

demonstrates the Township's commitment to satisfy its affordable housing obligation.

In a letter dated September 13, 2002, Ms. Morgenroth, on behalf of LTD, replied to the Township's comments.

LTD asserts that the Township's claim that it has acted in good faith to meet its affordable housing obligation is irrelevant here. LTD alleges that Southampton's failure to produce affordable housing demonstrates that the Township's attempts at compliance are weak and fatally flawed and asserts the Township's newly adopted 2002 housing element and fair share plan is similarly flawed and incomplete. In regard to the Township's claim that LTD could have developed its RR-1 parcels, LTD states that "COAH should not lose sight of the fact that LTD abandoned those properties because they did not have adequate infrastructure and were not developable."

In response to Southampton's argument that the PWC treatment plan does not have enough capacity to service the LTD tract, LTD claims that the plant is at capacity only on paper in that it assumes 350 additional senior units at Leisure Towne and 186 units in the TC-1 zone in its 2014 projection and relies on a letter from Richard Risoldi, President of PWC, for the assertion that there is sufficient capacity to accommodate the LTD tract. Nonetheless, LTD acknowledges that an amendment to the WMP would be required to service the LTD tract.

LTD also relies on its formal objection to Southampton's 2002 plan, which it alleges, addresses the deficiencies of that plan in detail. LTD asserts that "(I)t is only as a result of LTD's participation in the COAH process and LTD's appeal from COAH's certification of the prior plan, that Southampton revised its Compliance Plan." LTD again notes the importance of the builder's remedy in promoting the development of affordable housing in New Jersey.

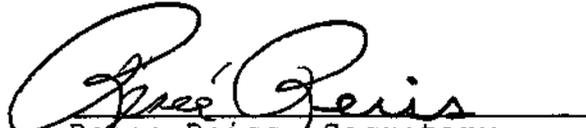
The Council notes that many of the arguments raised by LTD in its present motion for reconsideration are essentially the same as those raised in its initial motion. Specifically, LTD's arguments regarding extraordinary circumstances and site-specific relief; the availability, approvability, developability and suitability of the LTD Site; and compulsion of infrastructure to the LTD site. Accordingly, these arguments are rejected by the Council for the reasons previously set forth in COAH's July 16, 2002 opinion, incorporated by reference herein.

In addition, LTD now relies on the Supreme Court's recent decision in Toll Bros. v. West Windsor, 173 N.J. 502 (2002), for the proposition that LTD is now entitled to a builder's remedy. While the Council acknowledges that the West Windsor case upheld the imposition of a builder's remedy in certain cases, the Council disagrees that the West Windsor decision requires imposition of a builder's remedy given the facts at issue here. Rather, the Council notes that Supreme Court explained in that case that West Windsor "chose not to submit to COAH's jurisdiction" and as a result was subject to the builder's remedy. 173 N.J. at 566. Thus, the Court explained that "a municipality...which does not avail itself of the COAH process and protections...remains vulnerable to a Mount Laurel challenge." Ibid. Here, as explained in detail in the Council's July 16, 2002 opinion, Southampton did avail itself of the COAH process. Accordingly, the Council disagrees that the Court's decision in West Windsor requires the imposition of a builder's remedy here. Thus, the Council finds LTD's reliance of the West Windsor decision misplaced, and therefore does not find the same justifies reconsideration adequate to reconsider its previous decision on LTD's motion.

Finally, the Council notes that any objections which LTD has to Southampton's amended plan can be addressed through COAH's

review and mediation process. This process is set forth by the Fair Housing Act as an alternative to the builder's remedy.

For the foregoing reasons, LTD's motion for reconsideration is denied, as previously decided at the Council's November 6, 2002 meeting.

  
Renee Reiss, Secretary  
New Jersey Council on  
Affordable Housing

DATED: *December 4, 2002*