

IN RE MOTION TO DISMISS)	COUNCIL ON AFFORDABLE HOUSING
COAH'S PROCEEDINGS REGARDING)	DOCKET NO. 03-1501102-1409
CONFIRMATION OF PRICING)	OPINION
ON CERTAIN AFFORDABLE UNITS)	
IN BEDMINSTER TOWNSHIP,)	
SOMERSET COUNTY)	

This motion was filed by the Hills Parkside Associates ("HPA") on January 2, 2003. HPA seeks an order dismissing the proceedings related to the application filed by Bedminster Township, Somerset County ("Bedminster" or the "Township"), on September 2, 2002. That application asked the Council on Affordable Housing ("COAH" or the "Council") to confirm the pricing on certain affordable units in the Hills Development. In response to that application, HPA filed a cross-motion asking COAH to confirm the pricing of these units as "new." However, prior to receiving HPA's current motion, the Council voted at its December 4, 2002 meeting to confirm the pricing proposed by the Township's September 2, 2002 motion, and thereby denied HPA's cross-motion. In light of the foregoing and because HPA claimed that it had newly discovered evidence which justified dismissal of the Township's application, COAH decided at its January 8, 2003 meeting to treat HPA's present motion as a motion for reconsideration of COAH's December 2002 motion decision. The Board's December 4, 2002 motion decision, attached and incorporated by reference herein, was memorialized at the Council's January 2003 meeting. This opinion will rely on the procedural history set forth in the Council's January 8, 2003 opinion as if set forth at length herein.

Stephen Eisdorfer, Esq., counsel for HPA filed a letter brief with COAH on January 2, 2003, in support of its present application. HPA sought to bring a court order dated May 28, 1987 in the case of Alan-Deane Corp. v. Twp. of Bedminster to COAH's attention. HPA explained that this document had not been previously provided for COAH's review because the parties had not been able to

locate a copy of the same until that time. HPA contends that this court order shows that COAH had no jurisdiction over the pricing of the units in question in the Township's September 2002 motion. Specifically, HPA argues that the pricing controls at issue are governed by this newly discovered order, the Hills Parkside Affordable Housing Compliance Plan, and the court's December 30, 1987 order. HPA therefore contends that the enforcement, construction and modification of these orders are within the exclusive purview of the Superior Court. In contrast, HPA asserts that COAH jurisdiction is limited to determining whether municipal housing plans comply with the Fair Housing Act and the Mount Laurel doctrine. Moreover, HPA argues that COAH has no authority to modify or disregard the court orders here because the matter was not transferred to COAH prior to the grant of a final court judgment.

On January 17, 2003, in response to COAH's expedited briefing schedule in this matter, Jeffrey B. Lehrer, Esq., filed a letter brief on behalf of the Township in response to HPA's motion. The Township explains that many years after the initiation of Mount Laurel litigation, the court entered an order on May 29, 1996, transferring full jurisdiction over Bedminster's Mount Laurel and Fair Housing Act compliance to COAH. However, the Township notes that the court retained jurisdiction in this matter in order to "define the rights and responsibilities of the Township of Bedminster to the Bedminster Hills Housing Corporation and vice versa." The Township goes on to explain that the court entered a supplemental final order of compliance on December 22, 1997, wherein the court stated that the court would retain no further jurisdiction over this matter. Accordingly, the Township asserts that COAH had authority to hear the motion filed in this matter.

In addition, the Township asserts that because COAH has incidental jurisdiction over legal matters arising out of proceedings pending before it, COAH properly acted on the Township's September 2,

2002 application. Moreover, Bedminster argues that as the agency charged with furthering affordable housing policies, COAH was the appropriate forum to determine the method to be used in the resale calculations of certain affordable housing units. Pricing of affordable units and formulation of housing elements and fair share plans, the Township argues, are issues which go to the core purpose for COAH's existence. Thus, Bedminster argues that COAH properly asserted jurisdiction here.

On January 27, 2003, Stephen Eisdorfer, Esq., filed a letter brief and certification of John Kerwin, on behalf of HPA in reply to the Township's opposition to HPA's present motion.

HPA reiterates that COAH does not have the authority to construe or enforce a court order, and thus argues that the court orders submitted by Bedminster are not determinative of the jurisdictional question now posed by HPA. In addition, HPA asserts that COAH has attempted to construe the court's previous orders, a task which HPA argues COAH is not equipped to do because it does not have first hand access to what the Court knew at the time that it entered the orders in question. HPA also reiterates the arguments it made in opposition to the Township's motion to confirm the pricing on certain affordable units, and again explains the status and intent of the transfer of the affordable units at issue in this matter. Finally, HPA notes its objection to COAH's treatment of its present motion as a motion for reconsideration, stating that it does not believe it appropriate to treat the motion to dismiss "during the pendency of proceedings" as a motion for reconsideration. Without waiving this objection, HPA asks COAH to reconsider its December 4, 2002 determination and dismiss this matter for lack of jurisdiction.

The Council has had the opportunity to review the additional documents submitted by HPA and does not find that these documents require dismissal or reconsideration of COAH's January 8,

2003 opinion.¹ Nothing in the May 28, 1987 court order, and attached compliance plan, divested COAH of its jurisdiction in this matter. Clearly, the court had exclusive jurisdiction over Bedminster's Mount Laurel compliance at the time that this order was issued. Thereafter, however, the court relinquished its control over Bedminster's compliance and only retained jurisdiction in order to define certain rights and responsibilities vis-a-vis the Township and the Bedminster Hills Housing Corporation. Ultimately, though, it appears that the Court relinquished its jurisdiction in this matter entirely.

Moreover, the Council's January 8, 2003 opinion does not modify or disregard or otherwise interpret the court's previous orders in this matter. Rather, as explained at length in the Council's previous opinion, COAH granted second-round substantive certification to Bedminster based in large part on the excess number of units resulting from the court's previous judgment of repose. Thus, even though some of the mechanisms provided by the court's orders are not generally used by COAH in granting substantive certification, COAH nonetheless relied upon and honored the court-approved original deed restrictions, unit pricing and resale pricing procedures when it granted substantive certification. In granting the Township's motion to confirm the pricing on certain affordable units COAH has continued to honor these court-approved mechanisms, in particular the resale provisions set forth in the Parkside Declarations.

Finally, the Council notes that the Township's motion to confirm pricing on certain affordable units fell within COAH's

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COAH disagrees that it was inappropriate to treat HPA's motion as motion for reconsideration, and notes that at the time that HPA filed its motion with COAH, COAH had already made a formal determination on the pricing motions submitted by Bedminster and HPA at its December 4, 2002 meeting. While COAH planned to memorialize this determination via a formal written opinion at its January 8, 2003 meeting, there were no further proceedings pending on this matter. Accordingly, when HPA asserted that it had newly discovered evidence on this previously determined matter, COAH finds it was entirely appropriate to treat the same as a motion for reconsideration.

purview as the same clearly contemplated matters associated not only with Bedminster's affordable housing compliance plan, but also "fundamental social policy issues" associated with the provision of affordable housing in general.

For the foregoing reasons and for the reasons previously set forth in its January 8, 2003 opinion, the Council on Affordable Housing denies HPA's motion to dismiss proceedings related to the confirmation of pricing on certain affordable units in Bedminster and will not reconsider its previous decision.


Renee Reiss, Secretary
New Jersey Council on
Affordable Housing

DATED: *February 4, 2003*