

In The Matter Of
Marlboro Township,
Monmouth County

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New Jersey Council on Affordable Housing

OAL Docket No. CAH 264-03
COAH 03-1506

FINAL DECISION

This case comes before the New Jersey Council on Affordable Housing (“COAH” or the “Council”) for consideration of an initial decision rendered by Administrative Law Judge Douglas H. Hurd (“ALJ”) granting the motion of respondents Monmouth Housing Alliance (“MHA”) and Alfred Bluh and Joseph Batelli, to dismiss the re-petition for substantive certification, as well as the case pending in the Office of Administrative Law (“OAL”). The ALJ determined that the matter transferred to OAL by COAH involved a re-petition for substantive certification that was no longer factually accurate. Specifically, the ALJ found that the re-petition of Marlboro Township sought to meet the Township’s affordable housing obligation based upon prior existing structures that were no longer being considered by the Township. As a result, the ALJ granted the motion to dismiss, noting that the Township had acknowledged that it was seeking credit for affordable housing units for proposed facilities that were not in the re-petition filed with COAH and currently before the OAL for consideration. The ALJ ordered that the Township’s 1998 re-petition be dismissed, and that a new petition for substantive certification be filed with COAH, with a new referral by COAH to OAL that complies with COAH’s regulations. COAH must now decide whether to adopt, reject or modify the recommendation of the ALJ.

The lengthy procedural and factual history of this matter are well documented in COAH’s opinion dated August 14, 2002 (Docket No. CAH 9170-01) (see attached). The relevant portion of the procedural and factual history in this matter is that Marlboro’s 1998 re-petition for substantive certification relied on an amended housing plan which included “alternative living arrangement” for two facilities known as the “New Hope” and “Discovery” facilities in Marlboro. Marlboro sought to obtain credits for bedrooms at these alternative living arrangements. The New Hope and Discovery facilities were existing facilities on a site in Marlboro. The Township’s re-petition for substantive certification using these sites was submitted to COAH on August 21, 1998.

Subsequent to the township's 1998 re-petition, Marlboro determined that it would seek credits for bedrooms at new proposed New Hope and Discovery facilities, and not the existing facilities of New Hope and Discovery located on the grounds of the former Marlboro State Hospital. As a result, the issues involving the amended housing plan and re-petition pending in the OAL, concerning the appropriate credits to be given to bedrooms at the prior existing New Hope and Discovery facilities were no longer relevant. Marlboro did not update its 1998 re-petition to reflect this change. Based on Marlboro's decision to seek credits for bedrooms at the proposed New Hope and Discovery facilities and not at the prior existing facilities, the ALJ determined that he could not consider these matters which were not in the re-petition that was before him for consideration.

The ALJ's decision is based on the fact that Marlboro seeks credit for the proposed New Hope and Discovery facilities in Marlboro, and not the prior existing facilities. Since these facilities are not part of the re-petition filed in August 1998, the ALJ found that "the re-petition filed in 1998 is now clearly deficient because it sought approval, without the proper specificity, for the existing facilities, and violated the regulations requiring specific information for new construction and alternative living arrangements. N.J.A.C. 5:93-5.1 and N.J.A.C. 5:93-5.8." The ALJ further held that "a review by the OAL of the proposed facilities would be fundamentally inconsistent with the COAH regulations and notions of administrative fairness." The ALJ held that as a result of the Township's decision to seek credits for the proposed facilities and not for the prior existing facilities, a re-petition would be necessary "to allow for the full COAH process of public participation to occur." Therefore, the ALJ ordered that the 1998 re-petition of the Township be "dismissed pending a new petition for substantive certification and a new referral to OAL by COAH that complies with COAH's governing statute and regulations."

ORDER

The Council must decide whether to adopt, reject or modify the recommendation of the ALJ that the re-petition of Marlboro Township be dismissed. The Council hereby adopts the legal analysis of the ALJ in his initial decision but modifies his conclusion and order. It is the decision of the Council that rather than dismiss the re-petition of Marlboro Township, that the Council orders Marlboro to submit a new re-petition with an amended housing element and Fair Share Plan that provides a complete and accurate description of its affordable housing plan. The Township shall

also submit all necessary documentation, as required by N.J.A.C. 5:93-5.1 and 5:93-5.8, for all new construction and alternative living arrangements upon which Marlboro Township is relying upon in order to fulfill its affordable housing obligation. The Council further orders that Marlboro Township file its re-petition meeting the above requirements, within 90 days of this decision. In the interim, pending the filing of a re-petition by Marlboro Township, COAH will retain jurisdiction of the Marlboro petition that is on file, but will conduct no further review.



Renée Reiss, Secretary
New Jersey Council on Affordable Housing

Date: *October 1*, 2003