

IN RE PETITION FOR SUBSTANTIVE )  
CERTIFICATION FILED BY BOROUGH )  
OF HADDONFIELD, CAMDEN COUNTY, )  
MOTION FOR SCARCE RESOURCE )  
RESTRAINTS )

COAH DOCKET NO. COAH  
04-1605

IN RE PETITION FOR SUBSTANTIVE )  
CERTIFICATION FILED BY BOROUGH )  
OF HADDONFIELD, CAMDEN COUNTY, )  
MOTION TO AMEND SUBSTANTIVE )  
CERTIFICATION )

COAH DOCKET NO. COAH 04-1605(a)

OPINION

This matter comes before the Council on Affordable Housing (COAH or Council) by way of two separate motions filed by the Fair Share Housing Center, Inc. (FSHC). By letter dated May 31, 2004, FSHC filed a motion asking the Council to issue an Order restraining the Borough of Haddonfield's Planning Board and Zoning Board from issuing any development approvals and requiring the Borough of Haddonfield (Borough or Haddonfield) to submit a vacant land inventory within 30 days. By letter dated October 25, 2004, FSHC filed a motion asking the Council to direct Haddonfield to amend its substantive certification and/or void the substantive certification. Through this Opinion, COAH decides both motions.

Haddonfield had a first round fair share obligation of 284. COAH granted Haddonfield's petition for substantive certification for its first round fair share obligation by Resolution adopted June 6, 1989. The Borough received a vacant land adjustment that reduced the new construction component of its fair share obligation to zero based upon a finding that there was no available, developable or suitable vacant land in Haddonfield. The Borough met its 21 unit rehabilitation component through rehabilitation.

Haddonfield's second round fair share obligation was 255 units, which consisted of a 192 unit new construction component and a 63 unit rehabilitation component. Haddonfield again claimed a lack of vacant land to meet its new construction component and, accordingly, submitted a housing element and fair share plan (plan) which sought a realistic development potential (RDP) of zero. The plan addressed the rehabilitation component through credits and other means. Haddonfield petitioned for substantive certification of its plan on March 11, 1997. As a result of objections filed and subsequent mediation, the Borough re-petitioned with an amended plan, which still maintained an RDP of zero.<sup>1</sup> COAH granted Haddonfield's petition by Resolution adopted July 7, 1999, which included a finding of an RDP of zero and an unmet need of 192 units.

#### FSHC MOTION

On May 31, 2004, the FSHC filed a motion asking COAH to impose a scarce resource Order and temporary restraints prohibiting Haddonfield from granting any development approvals. FSHC also asked that COAH require Haddonfield to file a vacant land inventory within 30 days. In its papers, FSHC advised COAH that the Borough was scheduled to hear an application for a nine unit residential development above existing offices on June 1, 2004. FSHC further advised COAH that Haddonfield already had approved a 20 unit residential development on top of retail space in the Central Business Zone on or about April 26, 2004 and had recently approved a 12 unit development on another site. None of the developments include any affordable units. FSHC asserts that restraints to prohibit further development are warranted under N.J.A.C. 5:91-10.1 and 12.4 because

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Haddonfield's initial plan included an overlay zone for a site that was owned and used by Christ the King parish. Mediation resulted in the removal of the site since the site was part of a functioning parish and the church had no intention of selling the property.

Haddonfield is developing without providing for affordable housing while it has a large unmet need and it received an RDP of zero. FSHC relies upon Holmdel Builders Association v. Township of Holmdel, 121 N.J. 550, 565-66 (1990) , Fair Share Housing Center v. Cherry Hill, 173 N.J. 393 (2002); and Hills Development Co. v. Bernards Tp., 130 N.J. 1, 62-63 (1986), as well COAH's actions regarding Wanaque Borough in support of its position.

In further support of its position, FSHC notes that Haddonfield has not complied with the terms of its substantive certification as the Borough has not completed two studies required by the terms of its substantive certification. One of these studies concerned the expansion of the business district . FSHC argues that the failure to produce these studies may void certification in view of the final paragraph of the July 7, 1999 resolution stating "that any changes to the facts upon which this substantive certification is based ... which affects the ability of Haddonfield Borough to provide for the realistic opportunity of its fair share of low and moderate income housing ... may render this certification null and void." FSHC argues that these omissions, coupled with the ongoing development, provide a basis for the entry of an Order prohibiting Haddonfield from issuing any further development approvals. FSHC also references the Council's prior actions with regard to Wanaque Borough which received a vacant land adjustment and a corresponding reduction in the RDP, where after certification the Borough rezoned the property increasing the RDP but did not increase the obligation.

#### HADDONFIELD RESPONSE

Initially, in its response, the Borough advises COAH that its boards will not issue any development approvals for multifamily projects of five or more units until such time as the Borough can formulate a planning response to the issues raised by the motion and COAH accepts that

response. Haddonfield notes that it has hired special counsel and a planner with Mt. Laurel expertise and has created a committee to respond to the issues.

Haddonfield argues that it is in compliance with its substantive certification and, therefore, there is no basis to act based on FSHC's allegations that the Borough has violated the terms. Haddonfield points out that COAH did not include any conditions in its grant of substantive certification. The Borough submits that even though certain issues were referenced in the staff report, since the Council did not specifically include any conditions in the resolution, did not set forth the reasons for any conditions in the resolution, and did not require the Borough to refile within 60 days with any changes, the Borough has acted in accordance with the resolution granting substantive certification. Respondent further states that the fact that no developer even applied for multifamily redevelopment until 2003 demonstrates that an overlay zone in the business district would not have created a realistic opportunity for affordable housing.

#### RESPONSES FROM KING'S COURT AND JAMES RHOADS

COAH also received responses from two property owners. King's Court at Haddonfield, LLC, filed a letter dated July 13, 2004 advising COAH that the Planning Board approved its project to construct residential units above existing retail space in the downtown historic district on April 26, 2004, with a memorializing resolution adopted on June 1, 2004. King's Court argues that, pursuant to the Municipal Land Use Law (MLUL), N.J.S.A. 40:55D-1 et seq., its development is immune from any restraining order by virtue of its Planning Board approval.

By letter dated July 15, 2004, 110 Ellis Street, LLC, 501 Haddon Avenue, LLC and James Rhoads, as principal, filed a joint response. According to the response, 110 Ellis Street received final site plan approval on April 20, 2004. Accordingly, with regard to this site, the

response states that the MLUL renders the approval immune from any restraints that may be entered.

According to the response, 501 Haddon Avenue was waiting only for a final vote from the Planning Board as all testimony on the application had been completed. The 501 Haddon Avenue project involves the construction of two stories above existing offices to create nine rental units. 501 Haddon Avenue asserts that affordable units cannot be incorporated into the plan given the small scale of the project, although a payment in lieu could be explored.

COAH scheduled oral argument on the motion for August 11, 2004. COAH adjourned the matter at the parties' request to allow the parties an opportunity to resolve the matter. COAH ultimately heard oral argument at its public meeting on October 13, 2004. During oral argument, FSHC stated that it did not seek to have restraints imposed against projects that have received preliminary or final site plan approval. COAH reserved decision and directed a task force to review the submissions in greater detail.

#### FSHC MOTION #2

Thereafter, by letter dated October 25, 2004, FSHC filed a motion asking COAH to direct Haddonfield to amend its substantive certification and/or to void the substantive certification. FSHC argues that the relief it seeks is warranted because circumstances have changed since COAH granted Haddonfield's petition for substantive certification in 1999. While the certified plan called for an RDP of zero, Haddonfield is now issuing development approvals as a result of zoning which allows redevelopment in the downtown area. Therefore, according to FSHC, the premise upon which COAH granted a zero RDP is no longer valid. FSHC points to language in the Resolution granting Haddonfield's petition for substantive certification which states that "changed circumstances" may render a certification null and void.

## HADDONFIELD RESPONSE

In its November 8, 2004 reply, Haddonfield sets forth several arguments as to why COAH should deny FSHC's motion. Initially, the Borough argues that FSHC's motion in reality is an improper attempt to re-argue its motion for imposition for scarce resource restraints. Haddonfield points out that, as argued in its response to the first motion, Haddonfield has not violated the terms of its substantive certification. Haddonfield further asserts that the proper way to address the current development is through the third round growth share methodology.

Citing N.J.S.A. 52:27D-301.1, Haddonfield further argues that COAH cannot require land that is not vacant to be used for affordable housing. Haddonfield argues that this provision does not apply to properties with existing structures that are not being demolished to provide for redevelopment. Haddonfield relies upon FSHC v. Cherry Hill, COAH Docket No. COAH 87-7(c), which the Borough argues stands for the proposition that land is not considered vacant until any existing structure has been demolished.

Haddonfield also argues that the "changed circumstances" paragraph from the certification relied upon by FSHC does not empower the Council to now retroactively change the terms of the substantive certification. According to Haddonfield, there must be a violation of "the terms and conditions of the certification" or "changes to the facts upon which certification was granted." The Borough has not violated the terms of its certification, nor has FSHC presented facts so grievous as to warrant revocation. The Borough further asserts that it is a discretionary, not a mandatory, act of the Council to change the terms of certification, and that the issues in the filed objection have already been decided during the review of the municipality's petition for certification and cannot be raised again. Haddonfield points out that FSHC has not specified the changes that COAH should mandate

and has not demonstrated why changes to the certification are necessary, nor has FSHC demonstrated that it is a “party” entitled to request an amendment to the certification pursuant to N.J.A.C. 5:91-13.1.

### DISCUSSION

COAH first will address FSHC’s motion to amend and/or void Haddonfield’s substantive certification. Contrary to Haddonfield’s claims that the relief sought is not warranted because the Borough is complying with terms of its substantive certification and circumstances have not changed so as to justify such relief, it is COAH’s opinion that circumstances have indeed changed. As a result of these changed circumstances, COAH will require Haddonfield to amend its substantive certification to reflect those changed circumstances.

In this case, Haddonfield’s first round fair share obligation new construction component was reduced from 271 to zero based on a lack of vacant land. Likewise, although Haddonfield’s new construction component for the second round was 192, it received an RDP of zero due to lack of vacant land. In 1992, Haddonfield adopted zoning which allowed redevelopment of the downtown business district so as to permit residential construction on the top of existing structures. At the time COAH reviewed and approved Haddonfield’s second round petition for certification, Haddonfield had represented to COAH that there were no pending applications for development under this ordinance and further that no developer had expressed an interest in developing under the 1992 ordinance. At that time, Haddonfield did not anticipate any such development in the near future. Based upon its review of the plan, COAH determined that an RDP of zero was appropriate.

At the time COAH granted Haddonfield’s petition, there was no appropriate vacant

land for development and it appeared that no developer was seeking to or would seek to develop on top of existing structures in the downtown business district. As evidenced by the recent development approvals granted and the applications pending, however, residential development is now occurring in the downtown. Specifically, according to Haddonfield, the Planning Board has approved four projects with a total of 40 units.<sup>2</sup> Presently pending before the Planning Board are applications for three more projects with a total of 39 units proposed.<sup>3</sup> None of the projects, either approved or pending, include affordable housing. Moreover, Haddonfield has no development fee ordinance so the projects are not contributing in any way towards the provision of Haddonfield's fair share.

Based upon the above, circumstances have changed to a degree that calls into question the terms of COAH's grant of substantive certification. A municipality that receives an RDP of zero and then devises a manner in which to create units despite that zero RDP should revisit its plan to determine how much of its unmet need it can in fact address. Haddonfield's unmet need does not disappear because of a zero RDP. Accordingly, COAH will require Haddonfield to amend its plan to address the new development occurring, as well as any other development that may occur.

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Those projects are: 30 Center Street, 3 units; 110 Ellis Street, 12 units; 146-148 King's Highway 20 units and 200 King's Highway East, 5 units.

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Those projects are: 501 North Haddon Avenue, 9 units; 114-116 King's Highway East, 18 units and Washington and King's Highway West, 12 units.



Regarding the motion for imposition of scarce resource restraints, after consideration of the papers filed as well as arguments made by the parties during oral argument, COAH finds that it is appropriate under the facts of this case to restrain Haddonfield from issuing any further development approvals pending COAH's review and approval of an amended plan. In Hills Dev. Co. v. Bernards Tp., 103 N.J. 1 (1986), the New Jersey Supreme Court found that COAH has the authority to require a municipality to preserve resources that may be necessary for the municipality to satisfy its fair share obligation. Id. at 61.<sup>4</sup> The Court stated that the Council can require a municipality to preserve a resource upon a finding that "further development or use of these facilities is likely to have a substantial adverse impact on the ability of the municipality to provide lower income housing in the future." Id. at 62. COAH codified this authority in N.J.A.C. 5:91-11.1 and N.J.A.C. 5: 91-13.

As discussed previously, Haddonfield, despite its zero RDP, is allowing residential development and is not providing for affordable housing as part of that development. Under these circumstances, if COAH does not act to restrain further development, the ability of the Borough to provide any affordable housing will be lost. Haddonfield is approving development on top of or adjacent to existing structures in the downtown. This redevelopment is finite as there are only a certain number of structures where this can occur. Accordingly, COAH finds that it is appropriate to

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For a detailed discussion of COAH's authority to impose scarce resource restraints see the Council's Opinion in Morris County Fair Share Housing Council, et al. v. Boonton Township, et al., COAH Docket No. 86-2.

restrain Haddonfield from granting any further development approvals. This restraint will not be limited to the downtown business district. Haddonfield has shown that it can be innovative in devising mechanisms to provide for development despite its lack of vacant land. Thus, any development that occurs must be considered in the context of affordable housing. COAH does not intend, however, to restrict individuals from making improvements to their property. Accordingly, single and two-family houses are exempt from the restrictions.

As stated above, COAH will require Haddonfield to submit an amended plan within 60 days that takes into account how it will address its unmet need. The restraints ordered here will remain in effect for 120 days or until COAH acts on that amended plan. These restraints are necessary to ensure that further opportunities for affordable housing are not lost. If any property owner feels that his or her property should not be subject to the restraints, that owner may move before the Council to seek an exemption from the restraints.

In conclusion, COAH grants FSHC's motion to require Haddonfield to amend its plan to account for the recent development in the Borough, as well as to address any other means to satisfy its unmet need of 192 within 60 days. Because the Council has granted the motion to require an amendment, FSHC's motion to declare Haddonfield's substantive certification null and void is deemed moot. COAH further grants FSHC's motion to restrain Haddonfield from granting any development approvals until COAH acts on Haddonfield's amended plan. Single and two-family homes are exempt. FSHC's request to require Haddonfield to submit a vacant land inventory is moot, as Haddonfield is required to submit an amended plan.

Dated: *November 22, 2004*

