

IN RE MOTION TO RELEASE
SCARCE RESOURCE RESTRAINTS
FROM THE
BOROUGH OF HADDONFIELD.

COAH DOCKET NO.
05-1700/04-1605

OPINION

This matter comes before the Council on Affordable Housing (COAH or Council) by way of a motion filed by Commerce Bank, N.A. By motion filed December 29, 2004, Commerce Bank requested the Council on Affordable Housing (Council) to grant a waiver from the scarce resource restraining order issued by the Council on November 22, 2004 on an expedited basis to permit Commerce Bank to demolish an existing office building to expand the parking lot for the existing Commerce Bank. Through this Opinion, COAH decides the motion.

On May 31, 2004, Fair Share Housing Center (FSHC) submitted a motion to the Council to issue an Order restraining the Borough from issuing any further development approvals. On November 11, 2004, after several continuances, the Council issued a Motion Decision granting FSHC's motion in part. COAH imposed a scarce resource restraint to remain in effect until COAH acts on Haddonfield's amended plan.

Commerce Bank owns property at the corner of Haddon Avenue and Euclid Avenue, known as Block 130, Lots 6 and 9, that is improved with a Commerce Bank Branch. This tract is developed in accordance with the Central Business District Zone. The Bank is also the contract purchaser of Block 129, Lot 4 located south of the Commerce Lot on Euclid Avenue across a small access road known as Veterans Lane. This lot is in the Office District and the use is currently in conformance with the zoning. The lot is improved with a small two-story brick office building that the Bank proposes to demolish and use to enlarge the existing Bank lot for employee and customer parking. If developed with the Bank parking lot, the use would not be in conformance with the Office District and would require a use variance. Photographs were included in the attached certification.

Commerce Bank indicates that an application for a use variance and site plan approval for commercial development on the subject lot was submitted to the Borough Zoning Board on October 13, 2004 and was scheduled to be heard on December 21, 2004. The application

was not heard as a result of the restraints entered by the Council on November 22, 2004.

Movant also requested an expedited decision in that no public purpose would be achieved by delaying Commerce Bank's ability to make its proposed improvements and "no 'resource' related to the need to suitably and appropriately provide affordable housing in Haddonfield is diminished" by this motion.

Movant included a certification of J. Creigh Rahenkamp, AICP, PP in support of the motion. Mr. Rahenkamp provided four main reasons to support the Bank's motion:

- I. Neither property would be available for residential purposes if Commerce Bank could not proceed with its proposed demolition and development. Without their proposal, the office building would "continue its present use and would not be available in any way to support the provision of affordable housing."
- II. All of the lots in the surrounding area are developed with non-residential uses and therefore neither the Bank lot nor the office lot would be suitable for residential uses.
- III. "The aggregate level of employment that will result due to the demolition of an existing office building will decline." This then renders "the site utterly unsuitable for consideration as a Round II compliance site" and it would also play no role in creating or addressing a potential Round III obligation.
- IV. "No public purpose would be achieved by delaying the ability of the Bank to make these improvements and no 'resource' related to suitably and appropriately provide for affordable housing in Haddonfield is diminished by its proceeding. Were this a case in which I served as master, I would recommend to the Court its immediate release."
(sic)

On January 18, 2005, Fair Share Housing Center responded in opposition. The three major objections are as follows:

- I. Upon demolishing the existing office building, the parcel will become vacant in a municipality where vacant land is in extremely short supply. The objector asserted that COAH has found that once a site is demolished it becomes vacant and is thus subject to the scarce resource restraint. In

addition, in the COAH Cherry Hill decision and in the New Jersey Supreme Court, both reached the same conclusion and found that when a previously developed site becomes vacant it is now available for development and should, therefore, be included in the municipality's vacant land inventory as a potential site for meeting an unmet affordable housing obligation.

- II. Permitting the redevelopment of the Commerce parcel threatens the status quo that is currently protected by COAH's scarce resource restraint. That status quo of protecting the scarce land resources likely necessary to provide affordable housing must be protected until COAH reviews the amendment to Haddonfield's certification that was required in the November 2004 motion decision.¹
- III. COAH should consider Haddonfield's past practices before granting the waiver. The Objector referenced the Willits Court condominium site in Haddonfield where an existing building was demolished and the site developed with nine condominiums with no affordable housing component. That site, like the Commerce Bank site, was zoned for office development and similar in its relatively small size (11,360 sq. ft.) to the Willits Court site (approximately 21,000 sq. ft.). And in the Willits Court site, a use variance was granted to permit construction of residential units in the Office Zone that does not permit them. Two other similar situations that occurred in the Borough are also discussed.

Fair Share Housing Center requested that the Council deny Commerce Bank's Motion for Waiver of Scarce Resource Restraints. FSHC also requested the opportunity to review the proposed amendment to the certified plan, since at the time of this objection to the motion the plan had not been adopted.

On January 28, 2005, Commerce Bank responded by letter to the legal arguments raised by FSHC. These three sections correspond to the three points in FSHC's objection as follows:

- I. FSHC relies upon COAH's decision in Fair Share Housing Center, et al. v. Township of Cherry Hill to support its contention that upon demolition of the office building the

The Borough filed the required amendment to its certified plan on January 24, 2005. The 45-day comment period will run until March 11, 2005, after which the council may take action.

property would become vacant and thus a potential resource to fulfill Haddonfield's affordable housing obligation. While that decision addressed similar issues, it cannot be broadly construed to preclude the current waiver application. In particular, vacant land was defined in four different ways:

1. Undeveloped and unused land area;
2. Any non-residential areas with significant amounts of land not covered by impervious surfaces on site, as determined by the Council;
3. Land suitable for redevelopment or infill at higher densities; and
4. Residential areas with lot sizes in excess of two acres where environmental factors permit higher densities.

Because COAH's Cherry Hill opinion did not indicate which of these four the decision was based upon, it cannot be construed that COAH held that once demolition occurred the property became "undeveloped and unused." Movant further indicated that it is undisputed that the property is presently developed and being used as an office and parking lot. The proposed demolition of the building will not render the property "undeveloped and "unused" and thus the lot will not be rendered "vacant" as that term is defined at N.J.A.C. 5:93-1.3.

II. The redevelopment of the parcel does not threaten "the status quo currently protected by the scarce resource restraints." Furthermore, the demolition of the building to expand a parking lot should not be viewed as "wholesale redevelopment" as FSHC contends. The parcel is a developed commercial location and accordingly, Haddonfield's amended plan will not include the property as it currently exists. Therefore, the status quo does not include the protection of this property as a scarce resource.

III. Movant asserted that Commerce Bank's proposal is not similar to the types of projects that were referenced by FSHC. The Bank simply "proposes to expand an existing parking lot" that will be of benefit to the community because adequate parking is a significant problem.

For these reasons and those contained in the original motion, Commerce Bank continues to request the waiver to permit the Bank to proceed with its development application.

In its November 22, 2004 Motion Decision. The Council stated in its findings that it was its intent to protect whatever land resources are available or could be made available until the Borough prepares and receives approval for an amendment to its certified Housing Element and Fair Share Plan. The relevant three concluding paragraphs in that Motion Decision are as follows:

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 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.

As stated above, COAH will require Haddonfield to submit an amended plan that takes into account new development and its unmet need. The restraints ordered here will remain in effect 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. Because [the Council] has granted the motion to require amendment, there is no need to address the motion to declare Haddonfield's substantive certification null and void. COAH further grants FSHC's motion to restrain Haddonfield from granting any development approvals until COAH acts on Haddonfield's amended plan.
(Emphasis added)

Consistent with its November 22, 2004 decision, the Council denies Commerce Bank's motion to grant a waiver from the scarce resource

restraining order to permit Commerce Bank to demolish an existing office building to expand the parking lot for its existing building. Subject to the submission of an amended plan by Haddonfield, the Commerce Bank property shall remain subject to COAH's vacant land restraint decision for the Borough of Haddonfield.



Renee Reiss
Council Secretary

Dated: March 9, 2005.