

RESOLUTION DENYING DOVER TOWNSHIP'S MOTION TO DISMISS THE OBJECTION FILED BY SYDNEY KRUPNICK, THE SUBURBAN AGENCY, WHITING PINES REALTY CORP., INC., AND THE KRUPNICK FAMILY TRUST AND GRANTING SYDNEY KRUPNICK'S CROSS MOTION TO INCLUDE SITES 7 AND 8 IN THE TOWNSHIP'S 1987-2014 PETITION FOR SUBSTANTIVE CERTIFICATION.

(LofrH 85-IT, (/

WHEREAS Dover Township, Ocean County, received a first round judgment of compliance on December 31, 1992, and thereafter, Dover petitioned the Council on Affordable Housing (COAH) for Second Round substantive certification on December 30, 1998; and

WHEREAS an August 14, 2001 COAH Mediation Report was prepared wherein COAH directed Dover to submit a re-petition addressing the Township's obligation by November 5, 2001; and

WHEREAS the Township thereafter re-petitioned on four different occasions, on December 5, 2001, in April of 2003, September 27, 2004, and on October 29, 2004; and

WHEREAS Dover adopted a resolution pursuant to N.J.A.C. 5:95-15.1(a), to remain under COAH's jurisdiction and committed to petition for third round substantive certification on January 25, 2005; and

WHEREAS the relevant procedural history between Dover and Krupnick, the owner of Sites 7 and 8, and the subject of this motion is as follows:

- In 1987, Weiner Homes Corporation and North Point Hollow, Inc. initiated builders' remedy lawsuits against Dover;
- In 1988 the Hon. Eugene Serpentelli entered Consent Orders establishing that the Township had a responsibility to create a realistic opportunity for the creation of low and moderate income housing;
- To comply with its affordable housing obligation, the Township proposed to rezone Sites 7 and 8 for inclusionary development;
- On December 31, 1992, Judge Serpentelli entered a Judgment of Repose which reserved judgment on Krupnick's objections under paragraph R of the Judgment of Repose;
- Dover states that Krupnick commenced a suit against the Township, while Krupnick certifies that he did not file such a suit;
- The 1992 Judgment of Repose included Sites 7 and 8 as part of the Township's compliance plan; and

WHEREAS on September 27, 2005 Lori Grifa, Esq., on behalf of Dover Township, submitted a motion requesting that COAH issue a decision as to whether Sites 7 and 8,

owned by Sydney Krupnick, should be included in Dover Township's 1998 Housing Element and Fair Share Plan; and

WHEREAS the Council received a brief in opposition and a Cross Motion from Henry Kent-Smith, Esq., on behalf of Sydney Krupnick, the Suburban Agency, Whiting Pines Realty Corp., Inc., and the Krupnick Family Trust; and

WHEREAS the Council reviewed and considered the arguments set forth in the submitted briefs; and

WHEREAS Dover argues that since the Judgment of Repose was issued, Krupnick has refused to construct affordable housing on Sites 7 and 8; and

WHEREAS Dover states that in May 1998, representatives from the Township contacted Krupnick and asked him to construct senior affordable housing on Site 7 and that in response Krupnick made a number of conditional requests that Dover rejected; and

WHEREAS on November 23, 1998, Krupnick made a number of statements under oath at the Township's Planning Board Meeting which Dover claims amounted to him agreeing to remove his sites from Dover's 1998 Master Plan; and

WHEREAS Dover claims that subsequent to the November 23, 1998 Planning Board Meeting, the 1998 Master Plan was passed with an ordinance that rezoned Sites 7 and 8 in a manner consistent with Krupnick's statements at the Planning Board Meeting and thereafter, Dover filed a petition with the Court to address its cumulative 1987 - 1999 affordable housing obligation; and

WHEREAS Dover maintains that Krupnick filed an objection to the plan with CO AH, ignoring the fact that the commercial portion of Site 7 and all of Site 8 were rezoned at his request and with his consent; and

WHEREAS Dover submits that Krupnick did not contact the Township to discuss his property until April, 2005, when Henry Kent-Smith, Esq., submitted a request on Krupnick's behalf to participate in mediation; and

WHEREAS Dover argues that Krupnick should not be afforded protection from the rezoning of Sites 7 and 8 pursuant to N.J.A.C. 5:93-5.13(b) and that the designation of Sites 7 and 8 as suitable for inclusionary zoning was not part of a negotiated settlement in court with Krupnick; and

WHEREAS Dover argues N.J.A.C. 5:93 - 5.13(b)(1) was not intended to afford protection to owners that objected to inclusionary zoning and resisted constructing affordable housing, and maintains that the intent of the protection given by N.J.A.C. 5:93-5.13(b)(1) is to protect owners of sites that consent to the designation of their site for inclusionary development from sudden rezoning while in the process of building affordable housing; and

WHEREAS Dover further argues that even if N.J.A.C. 5:93 - 5.13(b)(1) were applicable, the Township was entitled to rezone Sites 7 and 8 pursuant to N.J.A.C. 5:93 - 5.13(c); and

WHEREAS N.J.A.C. 5:93-5.13(b) states that, "Sites zoned for inclusionary development in addressing the 1983-1993 housing obligation shall retain such zoning in the Petition addressing a 1987-1999 fair share obligation if (1) The site was subject to an agreement pursuant to the Council's mediation process or part of a negotiated settlement in court..."; and

WHEREAS N.J.A.C. 5:93 - 5.13(c) states that, "A municipality may propose to eliminate a site under N.J.A.C. 5:93-5.13(b) if there is a 12 year petition and a signed agreement between the municipality and the affected property owner of the site on a new, proposed zoning."; and

WHEREAS Dover finally argues that Krupnick agreed to rezone sites 7 and 8; and

WHEREAS Dover claims Krupnick made a written request on June 15, 1998 to rezone Sites 7 and 8 and gave sworn testimony before the Planning Board on November 23, 1998 that he consented to the rezoning of Site 7 and the removal of Site 8 from the plan; and

WHEREAS Krupnick submits that at the November 23, 1998 Planning Board Meeting to discuss the Township's proposed 1998 plan he was intimidated by the opposition at the Planning Board meeting and as a result made a statement regarding the rezoning of Sites 7 and 8 that he would not otherwise have made; and

WHEREAS subsequent to the November 23rd meeting, at the December 21, 1998 Planning Board Meeting, Krupnick maintains he retracted his November statements and requested a review of the entire matter, as well as a meeting with the Township planner and Krupnick argues that at no point did he enter into an agreement with Dover concerning the rezoning of Sites 7 and 8; and

WHEREAS Krupnick argues that N.J.A.C. 5:93-5.13(b)(1) is clearly applicable to Sites 7 and 8, and that the inclusion of the sites was the direct result of the Township's Settlement of the Pending Mt. Laurel Claims; and

WHEREAS Krupnick further argues that there is no question Sites 7 and 8 were part of the 1992 Judgment of Repose, which was a negotiated court settlement of claims related to the constitutionality of Dover Township's zoning ordinance and that the Court specifically included Sites 7 and 8 in the Judgment of Repose over Krupnick's objections to assure that the Township satisfied its First Round (1987-1993) affordable housing obligations; and

WHEREAS Krupnick maintains that there is no signed agreement between the Township and Krupnick consenting to the removal of Sites 7 and 8, and thus N.J.A.C. 5:93-5.13(c) does not apply; and

WHEREAS Krupnick argues that N.J.A.C. 5:93-5.13(c) applies only if Dover is able to produce a signed agreement with Krupnick evidencing that he agreed to new proposed zoning; and

WHEREAS Krupnick further argues that the inclusion of Sites 7 and 8 enables the Township to meet its second round fair share obligation, which is long overdue; and

WHEREAS contrary to Dover's allegations, Krupnick maintains that he remains ready, willing, and able to proceed with the development of Sites 7 and 8 and to produce the required affordable housing units; and

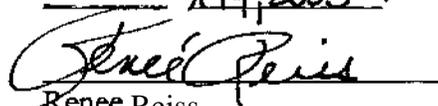
WHEREAS Krupnick has cross moved for an order compelling the Township to include Sites 7 and 8 in its Affordable Housing Compliance Plan in which he submits that CO AH regulations require that Sites 7 and 8 be retained in Dover's affordable housing compliance plan. Krupnick maintains that it is incumbent upon CO AH to order Dover to include Sites 7 and 8 in its December 2005 cumulative 1987-2014 Affordable Housing Plan submission.

NOW, THEREFORE, BE IT RESOLVED THAT as to Dover's motion the Council does hereby resolve that Sites 7 and 8, owned by Krupnick, are indeed included in the 1992 Judgment of Repeal, and therefore, as per COAH's rules, there must be a signed agreement between the Township and Krupnick consenting to the removal of the Sites in order for N.J.A.C. 5:93-5.13(c) to apply; and

BE IT FURTHER RESOLVED THAT in this case, the parties did not create a written agreement concerning the rezoning of Sites 7 and 8 pursuant to the Council's mediation, nor did they come to a negotiated court settlement; and

BE IT FURTHER RESOLVED THAT as to Krupnick's Cross Motion, the Council does hereby resolve that Dover is required to include Sites 7 & 8 in its cumulative 1987-2014 petition for substantive certification.

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on

_____ 11/4, 2005.

Renee Reiss
Secretary
Council on Affordable Housing