

IN THE MATTER OF THE PETITION
FOR SUBSTANTIVE CERTIFICATION
OF ALEXANDRIA TOWNSHIP,
HUNTERDON COUNTY

COAH DOCKET NO. 07-1904

This matter comes before the Council on Affordable Housing (COAH) on the application of Alexandria 80, LLC (A80), an objector to Alexandria Township, Hunterdon County's petition for substantive certification. A80 seeks an order imposing a scarce resource restraint on all development and/or expansion in Alexandria. Basically, A80 asks COAH to declare all land, water, sewer and other infrastructure necessary to any development to be a scarce resource in Alexandria and restrict any use of such resources. Alexandria opposes the motion. For the reasons set forth herein, COAH denies A80's motion.

COAH granted Alexandria's petition for first round substantive certification on February 6, 1991. Alexandria received second round substantive certification on October 4, 2000. The Township filed a petition for third round substantive certification with COAH on September 26, 2006. On November 27, 2006, A80 filed objections to Alexandria's third round housing element and fair share plan, objecting to various components of the Township's plan. On January 25, 2007, the New Jersey Superior Court, Appellate Division issued its decision in IMP Adoption of N.J.A.C. 5:94 and 5:95,390 N.J. Super. 1, (App. Div. 2007), certif. den., N.J. (2007), in which the court invalidated various portions of COAH's third round regulations and remanded the matter to COAH for action consistent with the opinion.

In support of its motion, A80 argues that IMP Adoption of N.J.A.C. 5:94 and

5:95 in no way abrogates or minimizes Alexandria's continuing constitutional obligation to provide for its fair share of affordable housing and resources that may be necessary to meet that obligation must be preserved while COAH addresses the remand. A80 argues that Alexandria has the burden of proof to demonstrate that it can comply with its obligation and that Hills Dev. Co. V. Bernards Tp. 103 N.J. 1 (1986) authorizes COAH to impose scarce resource restraints to preserve resources that "will probably be essential to the satisfaction of its Mount Laurel obligation." Hills, supra, 103 N.J., at 63. A80 relies on general statements concerning affordable housing made by DCA Commissioner Bass Levin regarding IMP Adoption of N.J.A.C. 5:94 and 5:95 in support of its claims that resources are scarce in Alexandria. A80 does not offer any facts specific to Alexandria. Alexandria opposes the motion, pointing out that A80 has not set forth any facts specific to resources, or the lack thereof, in the Township.

Pursuant to Hills, COAH has the authority to issue restraints to preserve scarce resources that may be necessary to satisfaction of a municipality's fair share obligation. Hills supra, 103 N.J., at 61. These restraints may be issued upon a finding that the resource in question may be essential to the satisfaction of a municipality's affordable housing obligation and that, without the restraints, the municipality may not be able to satisfy its need. Ibid. In this case, A80 does not allege that there are resources in Alexandria that, if used, will prevent Alexandria from satisfying its need. Rather, A80 relies on statements in a press release concerning the availability of land generally throughout the State. A80 does not set forth any facts specific to Alexandria that would indicate that any resource in Alexandria is scarce. Given the fact that A80 does not allege any facts specific to the alleged lack of resources in Alexandria, there is no need to consider the test for

injunctive *relieve* set forth in Crowe v. DeGioia, 90 N.J. 126 (1982).

Under these circumstances, there is no basis for relief. Indeed, there are no facts presented for COAH to even consider. Accordingly, A80's motion to impose scarce restraints upon all development in Alexandria is denied.


Renee Retes
Secretary, Council on
Affordable Housing

Dated: A ^ H ^3 ;2JOQ7