

Resolution Denying Winslow Township's Motion to Revoke Taylor Woods' Exemption from the Scarce Resource Restraint in Winslow Township and Granting in Part and Denying in Part Taylor Wood's Cross Motion for Priority and Other Relief

COAH Docket # 09-2119

WHEREAS, on October 29, 2008, the Council on Affordable Housing (COAH) found that sewer service capacity is a scarce resource in Winslow Township, Camden County (Winslow or Township) and imposed a Scarce Resource Restraint; and

WHEREAS, the Restraint was imposed in response to a motion filed by Taylor Woods, LLC (Taylor) requesting that the Council issue an order restraining Winslow Township from allocating available or future sewer capacity in the Township and also requesting that Taylor be given priority for remaining sewer capacity; and

WHEREAS, COAH granted the motion for a scarce resource restraint and denied the motion for priority without prejudice, stating in its decision,

“After consideration of the papers filed as well as oral argument, COAH finds that it is appropriate under the facts of this case to restrain Winslow from issuing sewer allocation pending COAH's grant of substantive certification of a Third Round Housing Element and Fair Share Plan, to be submitted by December 31, 2008.”; and

WHEREAS, the decision goes on to say,

“As such, Winslow is restrained from allocating sewer capacity until such time that the Council grants substantive certification to Winslow's third round Housing Element and Fair Share Plan. The Winslow Planning Board is restrained from acting upon any development applications other than developments proposed to include affordable housing. Single and two family residences shall be exempted from this scarce resource restraint. Based on the facts presented to COAH, Taylor is also exempt from the scarce resource restraint. Any other affordable housing developer that seeks an exemption from the scarce resource restraint may move before COAH for relief until such time as Winslow receives third round substantive certification.”; and

WHEREAS, on December 2, 2008, Winslow Township submitted a motion to COAH requesting reconsideration and clarification of the Restraint; and

WHEREAS, in response to that motion, the Council clarified the application of the Scarce Resource Restraint on April 8, 2009, In Re Winslow Township Amendment and Clarification of Scarce Resource Restraint, COAH Docket No. 08-2029; and

WHEREAS, the clarification states that the Scarce Resource Restraint is applicable to all development applications in both the Cedarbrook and Sicklerville Sewer Service Areas, regardless of whether the project is proposing the use of individual septic systems. Applicants on the Township's waiting list for sewer capacity are not exempt from the Restraint, and individual projects seeking a waiver of the restraint may apply to COAH pursuant to N.J.A.C. 5:96-13 and N.J.A.C. 5:96-15; and

WHEREAS, the decision goes on to say,

"Pursuant to N.J.S.A. 52:27D-329.9, for all developments consisting of newly-constructed residential units located, or to be located, within the jurisdiction of the Pinelands Commission, it is required that 20 percent of the units constructed are to be reserved for occupancy by low or moderate income households. Therefore, notwithstanding any exemption to the Restraint, a project that did not receive approvals prior to July 17, 2008 and is to be located within the jurisdiction of the Pinelands Commission is required to provide a 20 percent set-aside to the extent this is economically feasible. If an applicant requires an economic feasibility determination such request shall be made to COAH pursuant to N.J.A.C. 5:96-13"; and

WHEREAS, Winslow petitioned COAH for third round certification under N.J.A.C. 5:97 and N.J.A.C. 5:96 on December 31, 2008; and

WHEREAS, the petition was deemed complete on June 24, 2009, and notice was published on July 1, 2009, commencing the public comment period; and

WHEREAS, Winslow submitted a motion to revoke Taylor Woods' exemption from the scarce resource restraint on April 20, 2009; and

WHEREAS, Winslow argues that the exemption granted to Taylor Woods should be revoked due to the fact that Taylor Woods is not the true owner of the property; and

WHEREAS, Winslow maintains that Taylor filed false applications before the Township's Planning and Zoning Boards, all of which have now been withdrawn; and

WHEREAS, Winslow argues that since Taylor has no pending development application before Winslow Township, is not the true owner of the subject real estate, and is guilty of unclean hands, its exemption from the Restraint should be revoked; and

WHEREAS, Winslow maintains that pursuant to N.J.A.C. 5:96-12.1, "At any time upon its own determination or upon the application of any interested parties, and after consideration of that application by the Council, the Council may issue such orders as may be necessary to require that a municipality take appropriate measures to reserve scarce resources that may be essential to fulfill the municipality's fair share obligations"; and

WHEREAS, Winslow argues that when the Council made its decision denying Taylor's request for priority without prejudice and permitting it to resubmit its motion after Winslow petitioned COAH with a compliant plan December 31, 2008, the Council was under the impression that Taylor owned the site; and

WHEREAS, Winslow also maintains that COAH also based its decision on Taylor's readiness to move forward expeditiously with the project; and

WHEREAS, Winslow states that after it became apparent that Taylor did not own the site, Taylor withdrew all of its development applications and that since Taylor has withdrawn its applications it is not an interested party under COAH's rules; and

WHEREAS, further, Winslow argues that Taylor has not demonstrated any deed or act that indicates that it is ready to move forward expeditiously with its inclusionary family rental project; and

WHEREAS, Winslow cites to Hills Dev. Co. v. Bernards Tp., 103 N.J. 1, 61-63 (1986), in which the N.J. Supreme Court stated that, "COAH may take appropriate measures to preserve scarce resources, namely, those resources that will probably be essential to the satisfaction of its Mount Laurel obligation." Winslow states that the Court went on to state that "'appropriate' refers not simply to the desirability of preserving a particular resource, but to the practicality of doing so, the power to do so, the cost of doing so and the ability to enforce the condition...As stated before, these conditions are not for the benefit of any builder, but simply designed to protect and assure the municipality's future ability to comply with Mount Laurel obligation"; and

WHEREAS, Winslow argues that Taylor should no longer be the beneficiary of an exemption from the restraint since it is not the owner of the entire parcel of land as Taylor's proposed project is to be located at Block 2504, Lots 4 and 4.05, and that in 2006, Lot 4, currently developed with a gym called Shapes to Come Fitness Center, was vested to Hai Tran and Tien Nguyen ("Tran") by deed from Taylor Real Estate Partnership; and

WHEREAS, Winslow maintains that the deed, dated July 25, 2006, purports to create a subdivision of the then existing Lot 4, which at that time consisted of 21.230 acres (the "Mother parcel"); and

WHEREAS, the deed creates Lot 4, approximately five acres, without a subdivision approval and as a result, the conveyance was an illegal subdivision; and

WHEREAS, Winslow also maintains that Taylor Real Estate Partnership, LP filed for and received minor subdivision approval from the Winslow Planning Board in 2007, which application included an Affidavit of Ownership indicating that it owned Block 2504, Lot 4; and

WHEREAS, further, in its preliminary site plan application, submitted October 15, 2008, Taylor included an Affidavit of Ownership which indicates that Taylor is the owner of Block 2504 Lots 4.05 and 4; and

WHEREAS, on February 13, 2009, Taylor submitted an application for preliminary major subdivision approval for Block 2504, Lots 4 and 4.05, consisting of 21.23 acres; and

WHEREAS, Winslow argues that Taylor did not have the consent of Tran and Nguyen Holding, LLC, the record owner of Lot 4 (the five-acre parcel where Shapes to Come Fitness Center is located) when it filed its application with Winslow or its request for a Restraint with the Council which has been admitted to by Taylor's attorney by way of letter dated March 30, 2009; and

WHEREAS, Winslow maintains that Taylor would not have brought any of this information to the attention of the Council had the municipality not filed its motion, and as a result, Winslow believes that Taylor can no longer be seen as a reliable builder of affordable housing that will assist the Township in meeting its fair share obligation, nor should it be seen as an interested party with an ability to move forward expeditiously with an inclusionary family rental project; and

WHEREAS, Winslow states that in addition to Taylor not truly being an interested party when it made its motion and no longer being capable of moving forward with its inclusionary project, Taylor has made misrepresentations to both COAH and to the Township that show the developer has conducted a wrongdoing in connection with the relief granted by the Council; and

WHEREAS, Winslow further states that at this point in time Taylor is nowhere near assisting Winslow in providing a realistic opportunity for the construction of affordable housing and that Taylor appears to be delaying the construction of affordable housing while it attempts to hold sewer capacity in Winslow hostage; and

WHEREAS, Taylor submitted opposition to Winslow's motion and a cross-motion for sewer service and other relief on May 15, 2009; and

WHEREAS, in its opposition papers, Taylor argues that any issues regarding ownership of the approximately five acre parcel and the Mother parcel from which it was subdivided have been reconciled as the parties have worked together cooperatively to address the Planning Board's concerns relative to the Mother Parcel and as a result Tran has consented to the filing of both the gym subdivision applications necessary for the project; and

WHEREAS, Taylor argues that the ownership issues raised by the Township were not known by Taylor at the time of the first application for the Project and have since been resolved and that accordingly, the project application has been fully engineered and will be resubmitted to the Planning board for review and approval; and

WHEREAS, as a result, Taylor argues that the Township's motion is frivolous and should be denied; and

WHEREAS, in its cross-motion Taylor argues that Winslow has opposed its project since August 2008, which has jeopardized the viability of the project, since it cannot be constructed without sewer; and

WHEREAS, Taylor points out that while opposing its project, the Township nonetheless has included Taylor's site in its plan to COAH requesting credit for the affordable units that will be built; and

WHEREAS, Taylor states that it has spent significant resources in bringing its project to fruition, to date equaling \$750,000; and

WHEREAS, Taylor states that if it were not for its initial motion Winslow would have allocated all of its sewer capacity to non-inclusionary uses, and as a result Taylor is renewing its request that the Council grant Taylor first priority to available sewer treatment capacity given Winslow's desire for affordable housing to be constructed as expeditiously as possible; and

WHEREAS, Taylor states that the Township argues that the basis for revoking Taylor's exemption is that Taylor's project is being delayed but now the ownership issues relative to the project have been resolved, and Taylor requests that the Council grant the following relief:

1. Award Taylor first priority and reservation of the sewer treatment capacity necessary to serve the project.
2. Direct the Township at the time of Taylor's submission of its application for the project, to endorse the Treatment Works Approval (TWA) necessary for approval of sewer service to the project; and

3. Direct the Planning Board to simultaneously consider the separate applications for the gym subdivision; and

WHEREAS, Taylor states that under the current process, the subdivision for the gym parcel must proceed before the application for the project because the gym parcel needs to be conveyed to Tran; and

WHEREAS, absent separate application, the ability to transfer the gym parcel would be unnecessary and delayed until final approval, so to avoid that inequitable result, Taylor requests that the applications proceed separately; and

WHEREAS, however, since the properties and lot lines with respect to the gym and project applications are identical, the Planning Board should consider the applications simultaneously; and

WHEREAS, Winslow submitted a reply on May 28, 2009; and

WHEREAS, Winslow replies to both Taylor's opposition and cross-motion by arguing that Taylor has failed to provide any evidence that it is able to reliably provide affordable housing and also fails to refute the ownership problems regarding the site; and

WHEREAS, Winslow maintains that Taylor did not have ownership rights to the subject property either before during or after its applications to the Winslow Township Zoning and Planning Boards; and

WHEREAS, Winslow states that Taylor does not provide documentation in support of its arguments and that Taylor is unable to confirm who the current owner of the site is; and

WHEREAS, further, Winslow argues that it included Taylor's project in its third round plan only because of the issuance of the Restraint upon Winslow and Taylor's exemption from the Restraint and that if COAH revokes Taylors' exemption it will find another site with which to fulfill its affordable housing obligation; and

WHEREAS, Winslow addresses Taylor's argument that it is proceeding with its project, stating that Taylor does not have any application pending before the Winslow Township planning or zoning board, and that the only filing to date is a letter dated May 22, 2009 from Taylor's attorney asking for the Tax Assessment Report, and that further, as of May 27, 2009 Tran & Nguyen Holding LLC is the owner of the subject property; and

WHEREAS, Winslow argues that Taylor Woods' argument that it should be given priority to sewer treatment capacity in Winslow because Winslow has animus towards it is ludicrous and frivolous and that it is clear that the ownership issues concerning the subject site remain unresolved; and

WHEREAS, furthermore, Winslow states that its ordinances do not allow a developer to receive a TWA until it has at least received preliminary approval; and

WHEREAS, Winslow maintains that by granting priority to Taylor, the Council would be in effect preventing other affordable housing developers from going forward; and

WHEREAS, the parties appeared for oral argument at the Council's June 11, 2009 meeting at which time the matter was referred to a task force; and

WHEREAS, a task force convened on July 23, 2009 and considered the arguments submitted in Winslow's and Taylors' papers; and

WHEREAS, the task force recommends that Winslow's motion be denied, noting that any ownership issues regarding Lot 4 have been reconciled; and

WHEREAS, in addition the task force recommends that Taylor was initially exempted from the restraint due to the fact that it is a proposed inclusionary development and that the purpose of the restraint is to preserve sewer capacity for developments that are providing affordable units; and

WHEREAS, as such, regarding Taylor's request that it be awarded first priority to sewer capacity and that Winslow be required to reserve the sewer treatment capacity necessary to serve

the project, the task force recommends that Winslow be required to reserve capacity to meet the sewer service needs of all the projects included in its Housing Element and Fair Share Plan (HEFSP) currently under review by COAH, including Taylor Woods; and

WHEREAS, further, the task force recommends that Winslow be directed to expeditiously process Taylor's application in accordance with its local ordinances and the M.L.U.L.

NOW THEREFORE BE IT RESOLVED that the Council denies Winslow's motion to revoke Taylor's exemption from the scarce resource restraint due to the fact that Taylor's development is included in Winslow's HEFSP and will be providing Winslow a 15 percent affordable housing set-aside; and

BE IT FURTHER RESOLVED that the Council grants in part and denies in part Taylor's cross-motion for priority; and

BE IT FURTHER RESOLVED the Cedar Brook development, which was granted an exemption from the Restraint March 11, 2009, and amended on May 13, 2009, and any other development application that has been granted an exemption from the Restraint is entitled to receive its full allocation; and

BE IT FURTHER RESOLVED that Winslow is directed to reserve capacity out of the remaining gallonage available for all affordable projects proposed to be built in the Cedar Brook sewer service area that are included in its HEFSP, including Taylor Woods,; and

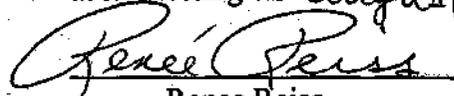
BE IT FURTHER RESOLVED that there is no specific priority attached to this reserved capacity at this time; and

BE IT FURTHER RESOLVED that Winslow shall support Taylor Woods' efforts to obtain sewer service approval for its inclusionary project, including its application for a Treatment Works Approval (TWA); and

BE IT FURTHER RESOLVED Winslow is ordered to expeditiously process Taylor's application in accordance with its local ordinances and the M.L.U.L.; and

BE IT FURTHER RESOLVED that Winslow is required to submit monthly written updates to COAH on the progress made with respect to Taylor Woods' TWA and pending application.

I hereby certify that
this Resolution was duly adopted by
the Council on Affordable Housing
at its meeting on *August 12, 2009.*



Renee Reiss
Council Secretary