

IN RE PETITION FOR SUBSTANTIVE	)	COUNCIL ON
CERTIFICATION FILED BY	)	AFFORDABLE HOUSING
LAFAYETTE TOWNSHIP, SUSSEX COUNTY	)	
	)	COAH DOCKET NUMBER
MOTION TO ACCELERATE THE DENIAL	)	
OF LAFAYETTE’S PETITION FOR	)	09-2176
SUBSTANTIVE CERTIFICATION AND	)	
FOR AN ADMINISTRATIVE ORDER	)	
DISMISSING LAFAYETTE FROM	)	<u>MOTION DECISION</u>
COAH’S JURISDICTION	)	

This matter comes before the Council on Affordable Housing (COAH or Council) by way of motion filed by Nouvelle Associates (Nouvelle). Nouvelle’s motion asks the Council to accelerate the denial of Lafayette’s petition for substantive certification and to issue an Order dismissing Lafayette Township (“Lafayette” or the “Township”) from COAH’s jurisdiction. The parties appeared for oral argument at the Council’s January 13, 2009 meeting, where the matter was referred to a task force.

Procedural History

Lafayette petitioned the New Jersey Council on Affordable Housing (“COAH” or the “Council”) on December 29, 2008 with a Third Round Housing Element and Fair Share Plan (“HE/FSP”) to address its cumulative affordable housing obligation, which consists of a rehabilitation obligation of three units, a prior round fair share obligation of 27 units and a net projected growth share obligation of 94 units of affordable housing. According to the Council’s pre-mediation report of July 15, 2009, Lafayette proposes to address its rehabilitation obligation through the creation of a local Rehabilitation Program which bring both owner-occupied and renter-occupied affordable units up to local and state rehabilitation codes at a maximum cost of \$12,000 per unit with additional funding up to \$20,000 per unit available to correct failing septic systems. The prior round obligation will be addressed by 20 post-1986 credits and bonuses and with a new project called Woodland Farms of Lafayette which will provide five units of Permanent

Supportive Housing. Lafayette addresses its growth share obligation through a number of mechanisms, including 15 credits from the Woodland Farms of Lafayette project, 9 credits through an accessory apartment program, and an inclusionary zoning ordinance addressing the balance of the growth share obligation which is 70 units. Nouvelle Associates, LLC (“Nouvelle”) filed the sole objection to Lafayette’s HE/FSP.

In the Pre-Mediation Report, COAH requested information and documentation from the Township in order to move the Township toward substantive certification of its Housing Element and Fair Share Plan. Among the additional information requested by COAH, the key issue of contention between the Township and the objector/developer, Nouvelle, is the realistic opportunity afforded by Lafayette’s inclusionary zoning ordinance.

Lafayette proposes to address 70 units of its 94-unit growth share obligation through a growth share inclusionary zoning ordinance. The Township’s draft inclusionary zoning ordinance<sup>1</sup> requires a 20% affordable housing set-aside in return for a 40% density increase in all residential zones where a development with five or more units is proposed, and provides for a clustering provision inclusive of the density bonus and 20 percent set-aside. In addition, as an alternative to building on site, developers seeking to develop five or more units may provide the units elsewhere within the municipality or make a payment in lieu equal to \$180,267 for each affordable unit. In addition, developers subject to the inclusionary zoning ordinance may receive additional financial incentives as necessary at the Township’s discretion.

As set forth in the Pre-Mediation Report, based on the Township’s analysis of existing conditions, only 4,514 acres of a total 11,520 acres in Lafayette are unconstrained and developable. Of this number, 118 acres are within a sewer service area. Based on existing zoning in the Township, a total of 12.5 acres are required to accommodate five or more units in the R-2.5 zoning districts; 20 acres in the R-4.0 zoning districts and 25 acres in the R-5.0 zoning districts. Although 4,514 acres of the Township is currently developable, a review of the Township’s Open Space and

---

<sup>1</sup> In its Pre-Mediation Report, COAH requested that Lafayette submitted a revised inclusionary zoning ordinance pursuant to N.J.A.C. 5:97-6.4(b) that specifies the zoning districts to which the inclusionary zoning provisions apply and which includes minimum presumptive densities and maximum affordable housing set-asides for existing and/or proposed sewer service areas outside of Planning Areas 1 and 2. Lafayette submitted a revised Ordinance that addresses these issues on September 18, 2009.

Recreation Plan, which includes constrained and developable acreages in the Township that are prioritized for open space acquisition, indicates that less developable land will be available in the future. In the Pre-Mediation Report, COAH also required Lafayette to demonstrate that its inclusionary zoning provisions will realistically accommodate 70 affordable units. In addition, the inclusionary provisions would only apply once a threshold of five or more units are proposed.

In the Township's September 19, 2009 response to COAH's Pre-Mediation Report, Lafayette submitted an inventory of vacant residential and non-residential properties and a build-out analysis based on current zoning that demonstrates build-out obligation of 277 affordable units based on the capacity of vacant land consistent with NJDEP's HUC 11 septic densities. Based on its build-out analysis, the Township contends that only 44 of the total affordable units are likely to be built by the end of the third round certification period. Lafayette further contends that due to its lack of sewer and water infrastructure, it is limited in its ability to fulfill its growth share obligation.

Lafayette has 118 acres that are currently included in its DEP approved sewer service area (SSA). Pursuant to N.J.A.C. 5:97-6.4(b)iii, inclusionary zoning in existing or proposed sewer service areas outside of Planning Areas 1 and 2 must permit a minimum density of four units per acre with a maximum 25 percent set-aside for affordable units. The remaining 4,396 developable acres are outside of a sewer service area. Pursuant to N.J.A.C. 5:97-6.4(b)iv, inclusionary zoning outside of a sewer service area in Planning Areas 3, 4 and 5 shall permit a presumptive density increase of 40 percent over the existing zoning. The presumptive maximum affordable housing set-aside shall be 20 percent of the total number of units in the development. Lafayette submitted a build out analysis, based on the existing zoning, which shows sufficient developable acreages for the development of 277 affordable units. The Township also submitted a draft inclusionary zoning ordinance that permits clustering and incorporates a 40% density bonus and a 20% set-aside.

Nouvelle is the owner of 320 acres, of which 140.73 are buildable, located at the intersection of Route 15/94 and Sunset Inn Road in Lafayette. The property is designated on the Township tax maps as Block 9, Lots 6, 7, 17, and 21.01 and Block 10, Lots 3, 3.02, and 4. The property is zoned as Highway Commercial (HC). In July 2005 Nouvelle

submitted an application to the Lafayette Land Use Board (“Board”) for a proposed 65,000 square foot retail/market building and a 14,000 square feet retail/restaurant building, requiring the development of 14 acres. The application was denied in February 2006. Subsequently Nouvelle filed a lawsuit challenging the denial and in October 2006 the Court remanded the application back to the Board. In January 2007 the Board again denied the application and Nouvelle again filed a lawsuit challenging the denial. In August 2007, Nouvelle and Lafayette agreed to stay the litigation in attempt to negotiate an agreement. After nine months of negotiations no agreement was reached and litigation was continued. In August 2008, the Court reversed the town’s denial and approved the project. Nouvelle is currently seeking for Lafayette to amend its DEP approved sewer service area and to permit a wastewater treatment plant based on the approval received.<sup>2</sup>

On October 19, 2006 Lafayette adopted the Lafayette Gateway Plan (“Gateway Plan”), which was subsequently amended February 15, 2007. The Gateway Plan establishes a connection between the Highway Commercial zone district located at the corner of Route 15 and Route 94 and the historic village of Lafayette. Lafayette has stated the plan “is critical to the preservation of the Township’s rural character.” The Gateway Plan envisions a total of 216,000 square feet of commercial space and 39 residential units and sets forth design and layout goals. The Gateway plan also seeks to preserve natural vistas and open space while creating a ‘hard edge’ boundary for the existing historic village. The area which the plan intends to preserve is currently zoned R-4.0 and R-5.0 and contains approximately 263 acres of undeveloped land, 97 acres of which are constrained by wetlands. The area which the plan seeks to develop with residential housing is approximately 17 acres, which are currently zoned R-4.0, along the easterly side of Route 15. The plan proposes the rezoning of this area to Village Residential which would require a minimum lot size of .42 acres as compared to the current minimum lot size of 4 acres. In addition the Gateway Plan also creates a Village Commercial Area, a Light Industrial Area and a Highway Commercial Area. Nouvelle’s property is located in the Highway Commercial Area, which may be developed with a

---

<sup>2</sup> On March 11, 2010, the Policy Advisory Committee (“PAC”) of the Sussex County Water Quality Management Agency voted to recommend the amendment of the Wastewater Management Plan to permit a new discharge to groundwater totaling 14,900 gallons per day to service the restaurant and 65,000 square foot retail store.

floor area ratio of 0.20, and must comply with the commercial design standards. All development must be designed to include affordable housing pursuant to the town's inclusionary zoning ordinance ("Ordinance").

Nouvelle filed an objection to Lafayette's HE/FSP with the Council on April 16, 2009 and mediation was held on August 4, 2009. Appearing for Nouvelle were Robert Kasuba, Esq., Sills Cummis; Art Bernard, P.P., Bernard and Nebenzahl; and Luciano Bruni and Peter D'Antonio from Nouvelle. Nouvelle objects to Lafayette's plan, stating that Lafayette has not identified whether any land affected by the Ordinance is suitable for affordable housing. Furthermore, Nouvelle argues that it will not be financially feasible for developers to build the affordable units. Nouvelle submitted two reports with its objection, a "Planners Report" prepared by Art Bernard, P.P. and a report entitled "Technical Evaluation Report: Proposed COAH Growth Share Ordinance" prepared by Suburban Consulting Engineering, Inc. The Suburban Report asserts that Lafayette's proposed fair share ordinance does not work because developers will not benefit from the 40% density increase. Nouvelle maintains this is the case because Lafayette's residential densities range from 0.2 dwelling units per acre to .4 dwelling units per acre.

#### Nouvelle's Motion

On October 12, 2009, Nouvelle submitted a motion requesting that the Council accelerate the denial of Lafayette's petition for substantive certification and for an Administrative Order dismissing Lafayette from COAH's jurisdiction.

#### Nouvelle's Site

Nouvelle states that it has control over approximately 320 acres of land in Lafayette, located at Block 9, Lots 6, 7, 17, 21.01 and Block 10, Lots 3, 3.02 and 4 ("Nouvelle Property"). Nouvelle points out that part of its site is located within Lafayette's Gateway Commercial District, which permits a variety of office and retail uses. Under the existing zoning, Nouvelle may build approximately 180,000 square feet

of office and retail uses. This development may not be served by septic and therefore a wastewater treatment plant would be developed on site.

Nouvelle states that the remainder of the site is zoned R-5, which permits single family homes on five acre lots. This portion of the site may be developed with a total of 39 residential units under the existing zoning. Nouvelle argues that it has been attempting to develop the site as a compact, mixed-use development but has been unable to reach an agreement with the municipality.

In 2005 Nouvelle offered to develop the property as an inclusionary development so as to satisfy a significant portion of Lafayette's affordable housing obligation. Nouvelle filed a motion to dismiss Lafayette's 2004 HE/FSP and filed objections to Lafayette's 2005 and 2006 HE/FSPs. Nouvelle has also attempted to have its property designated as a village center. In 2006 Nouvelle proposed to extend the existing Village Center, which is not identified by the State Development and Redevelopment Plan, to include Nouvelle's site which was met with resistance.

In May 2006 Nouvelle filed an application to develop a portion of its commercial property with 65,000 square foot retail store and restaurant. The Land Use Board of Lafayette denied the development application two times, which decisions were then overturned by the trial court, which approved Nouvelle's commercial application under an earlier zoning ordinance.

In order to develop the commercial portion of the development, Nouvelle must install a wastewater treatment plant. It has submitted an application to amend the Wastewater Management Plan to permit the installation of a treatment plan on the portion of the property that was the subject of the commercial development application. Review of the amendment of the Wastewater Management Plan to permit new discharge is ongoing with the PAC voting to recommend the amendment on March 11, 2010. Lafayette's engineering consultants have recommended that the property be included as a SSA in the applicable wastewater management plan.

Nouvelle proposes to develop 180,000 square feet of commercial space and 350 residential units, including 70 affordable units on its site. Of the 350 residential units, there will be a total of 280 townhouse units and 70 affordable duplexes. The gross density of the development would be 1.1 units per acre. Nouvelle states that it will

provide the infrastructure to make the development possible by providing a wastewater treatment plant to treat and dispose of the wastewater and by installing a potable water line to connect the development to Sparta's potable water system, which has already been approved by Sparta.

#### Lafayette's Inclusionary Zoning Ordinance

Nouvelle charges that Lafayette's HE/FSP does not create a realistic opportunity for the creation of affordable housing. Nouvelle argues that to create a realistic opportunity a municipality must undertake affirmative action to make it realistically possible for lower income housing to be built. See Southern Burlington County N.A.A.C.P. v. Township of Mount Laurel (Mount Laurel II), 92 N.J. 158, 260-61 (1983). Regarding the Township's inclusionary zoning ordinance, Nouvelle argues that pursuant to the NJDEP, properties within Lafayette should not be developed at a density of more than 0.25 dwelling units per acre on septic systems. Nouvelle maintains that even properties currently zoned at 0.2 units per acre will effectively be prohibited from being developed at a density of 0.28 units per acre. Therefore, Nouvelle maintains, even properties in the least dense zones of Lafayette cannot benefit from the density increase. Nouvelle maintains that Lafayette must establish that each and every site zoned for inclusionary development meets the "site suitability" requirements in COAH's regulations at N.J.A.C. 5:97-3.13, which includes demonstration that the site can dispose of the wastewater for the proposed development. Nouvelle argues that there is no evidence that any of the sites in Lafayette's HE/FSP satisfy the site suitability requirements. Further, Nouvelle argues that Lafayette has not established that there is sufficient sewer capacity to service the inclusionary developments that the HE/FSP relies on. Nouvelle states that only eight properties are in an existing or proposed SSA and that each of the properties is developed as a non-residential use. None of them are available for inclusionary development. Nouvelle states that given Lafayette's refusal to provide information demonstrating that there is adequate sewer capacity, COAH cannot grant Lafayette substantive certification.

Nouvelle argues that DEP has adopted new WQMP regulations, at N.J.A.C. 7:15, that impose nitrate dilution standards for new developments and that will prevent Lafayette from satisfying its 70 unit growth share obligation through inclusionary developments built on septic systems. Nouvelle states that if Lafayette withdraws from the WQMP process all development in Lafayette will be limited to no more than 5 residential units regardless of the acreage of the parcel. Nouvelle argues that such a scenario would prohibit the development of affordable housing. The alternative, according to Nouvelle, is for Lafayette to comply with DEP's WQMP regulations, which require that two calculations be performed. First, Lafayette must calculate the number of equivalent dwelling units (EDU) that may be built in Lafayette, which requires an analysis of the undeveloped and underdeveloped acres in Lafayette divided by the number of acres per unit permitted by the NJDEP for the applicable HUC-11, which are 4.8 and 4.9 acres per unit in Lafayette. The second calculation requires an analysis of the number of undeveloped and underdeveloped areas to determine a build out analysis of Lafayette in EDUs. If the number of EDUs permitted by DEP exceeds the number of EDUs calculated by the municipality's zoning build out analysis, the municipality may distribute those excessive EDUs to properties within the municipality.

Nouvelle further argues that the 40% density bonus cannot be accommodated under DEP's WQMP regulations. Assuming all the inclusionary development occurs within the R-5 zone, which requires a minimum lot size of 5 acres, Lafayette needs at least 100 excess EDUs to dispense of the wastewater through septic systems<sup>3</sup>. Nouvelle maintains that Lafayette will not be able to distribute 100 EDUs for inclusionary development.

Nouvelle maintains that clustering does not provide a solution to the problem and actually creates more complications and results in the entire parcel being needed for the purposes of the EDUs. Further, Nouvelle argues that an inclusionary developer will not be able to use the development potential of other undeveloped and underdeveloped

---

<sup>3</sup> Nouvelle makes this calculation as follows: 1) 70 affordable housing units will require a total of 350 units assuming a 20% set-aside; 2) the 350 units in the inclusionary developments will need to be on property that could develop 250 residential units as per the base zoning (250 multiplied by 140% = 350); 3) the base zoning of the property uses approximately the entire number of permitted EDUs under DEP's WQMP regulations for the applicable HUC-11 (4.8 or 4.9 acres per unit).

parcels since under Lafayette's zoning ordinance, residential lots may include wetlands to satisfy minimum acreage requirements.

Nouvelle asserts that inclusionary development will be required to use a denitrification system to pre-treat the wastewater for any given development, which costs \$200,000 for a seven unit development. In addition, a developer must also amend the Wastewater Management Plan and obtain a Treatment Works Approval (TWA). Further, Nouvelle states there is insufficient subsidization of affordable units, and argues that no developer will voluntarily build the affordable units. Nouvelle argues the development trends in Lafayette indicate that only a portion of its growth share obligation would be addressed through the inclusionary zoning ordinance. Further, Nouvelle states that Lafayette's plan encourages sprawl because at least 625 acres throughout the Township need to be developed to provide 70 affordable housing units.

Nouvelle maintains that the better alternative is for Lafayette to create a realistic opportunity for the construction of the 70 affordable units by zoning 87.5 acres of Nouvelle's property for development at a density of four units per acre and a 20 percent set-aside.

Nouvelle maintains that to accomplish this, Lafayette should be required to designate Nouvelle's property and appropriate surrounding properties as a Village Center. Nouvelle maintains that its site is an ideal location for a Village Center.

#### Lafayette's Response to COAH's Pre-Mediation Report

Nouvelle argues that COAH is not required to make a finding that a municipality acted in bad faith in order to dismiss it from COAH's jurisdiction. COAH must only determine that there are deficiencies in the HE/FSP and that the municipality has failed to correct the deficiencies. Nouvelle points to the Council's decision in In Re Rockaway Township, Morris County, Docket No. 06-1817 (Nov. 7, 2007), where COAH dismissed Rockaway Township for failure to establish that a proposed affordable housing site would have access to potable water. In addition Nouvelle point to In Re Fair Lawn Borough, Bergen County, Docket No. 07-1924 (Nov. 7, 2007), where COAH dismissed a municipality that failed to adopt an overlay zone to meet the town's unmet need obligation. COAH did not find evidence of bad faith in either of those cases. Nouvelle

argues that Lafayette has had 25 years to petition COAH and obtain substantive certification and has failed to devise a plan.

Nouvelle argues that the Township's September 11, 2009 letter does not address any of Nouvelle's objections but instead blames COAH for Lafayette's ordinance not meeting DEP's WQMP standards. The Township's September 23, 2009 letter asserts that there are 4,514 developable and unconstrained acres within the municipality, which translates into 604 housing units and 4,033 jobs based on existing zoning, which create a growth share obligation of 372.8 units. The letter also cautions that the sewer service areas and planning areas were not considered as part of the build out analysis. Nouvelle argues that the letter does not address whether the zoning can realistically provide 70 affordable units by 2018.

#### Lafayette's Reply

On November 10, 2009 Lafayette submitted opposition to Nouvelle's motion, arguing that Nouvelle's project is oversized and ill-conceived for Lafayette Township. Lafayette maintains that Nouvelle's project as presently envisioned will never be built and is at odds with the rural and "idyllic" setting that has characterized Lafayette for over 150 years which the Township wants to maintain. Lafayette wishes to fulfill its constitutional obligation to provide affordable housing by working with the Council and without altering the essential quality of the Township.

Lafayette argues that nowhere in the Fair Housing Act is there a provision contemplating the short circuiting of the mediation and review process by accelerating the denial of a petition for certification. Lafayette states that the basis for halting the mediation process and accelerating a denial has its origin from dicta from the decision in The Hills Development Company v. Bernards Township 103 N.J. 1 (1986) where the court said, "Accelerated denial of substantive certification would presumably be reserved for a specific kind of case, one where the circumstances strongly persuaded the Council that its role in achieving compliance with Mount Laurel called for such unusual action on its part." 103 N.J. 1, 57 (1986).

Lafayette argues that the Council's regulations reflect the strong preference for mediation, which may last up to 120 days after the first mediation session and be extended for another 30 days for good cause. Throughout mediation the Council has the authority to determine issues that arise during this process. Unresolved objections of a material nature may be referred to the OAL as a contested case. The mediator is entrusted with the widest possible discretion as to the manner in which the mediation is conducted. It is an extraordinary remedy to accelerate the removal of a municipality from the administrative process prior to the conclusion of the mediation process. Lafayette argues that Nouvelle's application falls short of establishing that Lafayette has failed to participate in good faith.

Lafayette further argues that the relief sought by Nouvelle is unwarranted and the arguments contained in Nouvelle's brief are insubstantial as they fail to accurately describe Lafayette's plan and misstate the Township's position. Nouvelle argues that its Suburban Report establishes that the proposed inclusionary ordinance does not work since the 40% density bonus would not be permitted under DEP regulations and that it would be cost prohibitive given the expense of a de-nitrification system and amendment to the Wastewater Management Plan. Lafayette states that Nouvelle fails to acknowledge Lafayette's clustering provision which would result in a substantial portion of a tract under development being left as open space to satisfy DEP's regulations. Moreover, Lafayette states that Nouvelle's arguments are misleading as to the nature of DEP's regulations. Lafayette states that septic density is not calculated on a per lot basis but rather takes into account the nitrate dilution capacity of the entire HUC-11 watershed in which the property is located. Lafayette maintains that this means a density calculation can take into consideration other areas that will not be developed such as permanently protected farmland and other dedicated open space.

Lafayette also argues that the clustering provision of its ordinance will not encourage sprawl as there is a 60% reduction in lot size resulting in a large common area of open space. Lafayette further points out that COAH's workbook automatically adjusts for the development yield of a site based on the HUC-11 watershed and acreage. Based on the Council's Workbook, the Township has the potential to generate 70 units of

affordable housing, and the Township's ordinance identifies the zoning districts where the affordable housing set-aside would be required.

Lafayette further argues that the case relied upon by Nouvelle, Toll Bros. v. Twp. of W. Windsor 173 N.J. 502 (2002) has little relevance to the current motion as the decision in that case occurred after a trial and the appointment of a special master. Here, as demonstrated by the motion papers and documents on file with the Council, Lafayette has undertaken an in depth vacant land analysis which it used to complete the Council's Workbook C.

Lafayette argues that it has rejected Nouvelle's project not out of resistance to the creation of affordable housing or out of animosity towards Nouvelle, but rather on the merits of the project itself. Lafayette states that it does not wish to create a town center and extend it to Nouvelle's site. The Sussex County Development Plan likewise does not designate Lafayette as a center. Allowing Nouvelle to impose site specific relief by granting an accelerated denial would be contrary to the basic principles of the Fair Housing Act, the Council's regulations and its prior decisions.

#### Additional Correspondence

On March 31, 2010, Lafayette submitted a letter to Commissioner Grifa stating that, "Due to the pending Senate Bill S-1, the affordable housing task force report, the uncertainty of the Township's future affordable housing obligation number, and current budget constraints, *we respectfully request a 120-day delay in the COAH Task Force's recommendation.* Given the current fiscal constraints, this timeframe will allow for the municipality to reengage an engineering firm to support Lafayette's affordable housing and fair share plans, use budgeted funds toward active projects (such as Advanced Housing's 10 units), and minimize unnecessary rework by professionals resulting from recalculated affordable housing obligations."

Nouvelle responded to Lafayette's letter on April 12, 2010, stating that at oral argument counsel for Lafayette conceded that Lafayette's petition for substantive certification was deficient and that Lafayette would have to amend its HE/FSP. Nouvelle also argues that there is no reasonable guarantee that S1 or any other legislation regarding

affordable housing will be adopted in the near future, and that there is currently no legal basis for COAH to refuse to continue to implement its current substantive and procedural regulations.

### Discussion

In evaluating the relief requested by Nouvelle, the Council is mindful of the Fair Housing Act's overarching policy that affordable housing disputes are best resolved through the Council's review and mediation process, rather than through litigation. N.J.S.A. 52:27D-303. The Council notes that Lafayette voluntarily petitioned COAH to address its affordable housing obligation, and has, through compliance with COAH's regulations, produced affordable housing within the Township. Further, the Township's amended inclusionary zoning ordinance facially complies with COAH's regulations at N.J.A.C. 5:97-6.4(b)iii and iv. The issue at hand involves reconciliation of the presumptive densities required at N.J.A.C. 5:97-6.4(b)iv, which states that inclusionary zoning outside of a sewer service area in Planning Areas 3, 4 and 5 shall permit a presumptive density increase of 40 percent over the existing zoning and DEP's WQM regulations. COAH has performed a review of Lafayette's zoning, and has found that within the R-2.5 zoning district, a minimum of 12.5 acres is necessary for the inclusionary provisions to take hold. According to the residential inventory submitted by Lafayette, there are four properties large enough to accommodate inclusionary zoning developments. Based on the Township's residential vacant land inventory, a total of 11 affordable units can be accommodated within the R-2.5 zoning district in accordance with the Township's growth share inclusionary zoning ordinance and COAH's regulations pursuant to N.J.A.C. 5:97-6.4(b)iv. However, the overall zoning's density of .56 units per acre exceeds the maximum of .20 to .25 dwellings per acre permitted for septic systems per NJDEP's WQMP rules.

Concurrently, for inclusionary zoning to occur within the R-4.0 zoning district, a minimum lot size of 20 acres is necessary for inclusionary developments to occur in that zone. Based on the residential vacant land inventory submitted by the Township, there are 14 properties large enough to accommodate inclusionary zoning developments.

Given the number of vacant properties that are large enough to accommodate inclusionary development per Lafayette's growth share inclusionary zoning ordinance and COAH's regulations pursuant to N.J.A.C. 5:97-6.4(b)iv, a total of 48 affordable units can be accommodated within the R-4.0 zoning district at build out. However, the overall zoning density of .35 units per acre is inconsistent with the maximum permitted density for septic systems per the NJDEP's WQMP regulations.

Finally, for inclusionary zoning to occur within the R-5.0 zoning district, a minimum lot size of 25 acres is necessary for inclusionary developments to occur in that zone. According to the residential vacant land inventory submitted by Lafayette, there are 30 properties large enough to accommodate inclusionary zoning developments. Based on vacant unconstrained acreage alone, a total of 92 affordable units could be accommodated in Lafayette in the R-5.0 zoning district in accordance with its proposed inclusionary zoning ordinance and COAH's regulations pursuant to N.J.A.C. 5:97-6.4(b)iv. However, the overall zoning's density of .28 units per acre exceeds the maximum of .25 dwellings per acre permitted for septic systems per NJDEP's WQMP rules.

Presuming that all of the above inclusionary tracts are build out to the maximum permitted densities, a total of 151 affordable units can be accommodated within the Township's residential zones. While Lafayette has demonstrated to COAH that there is enough vacant acreage to accommodate its growth share inclusionary zoning requirements, the densities proposed may not be permitted by NJDEP as they exceed the HUC 11 densities for septic systems. However, depending on other variables, including the amount of preserved farmland, open space and parkland, Lafayette's proposed inclusionary zoning ordinance could potentially be accommodated within the HUC 11 densities. In order to make an accurate determination on the realistic opportunity provided by the Township's growth share inclusionary zoning provisions, a copy of Lafayette's updated Wastewater Management Plan (WWP) which includes a build-out analysis for the Township must be submitted. The build-out analysis for Lafayette is necessary for COAH to determine whether or not Lafayette's inclusionary zoning ordinance provides realistic densities that would be needed for inclusionary zoning to occur presently exceed the HUC 11 septic densities.

### Decision

For the reasons set forth above, the Council denies Nouvelle's motion without prejudice pending Lafayette's submission of its updated Wastewater Management Plan, including a build-out analysis for the Township. Lafayette Township must demonstrate that its inclusionary zoning is realistic given the nitrate dilution standards set forth in DEP's WQM regulations. In addition, Lafayette must provide information regarding whether its inclusionary zoning ordinance addresses its COAH affordable housing projection. In light of its current zoning and open space preservation plan, the Township is required to demonstrate show 70 affordable housing units will be created through this growth share zoning mechanism. In particular, Lafayette must demonstrate how 47 affordable family units and 23 age-restricted units will realistically be provided through its inclusionary zoning mechanism. In addition to specifying the zoning districts to which the inclusionary provisions apply, Lafayette's inclusionary zoning ordinance must include zoning provisions that are consistent with that required in DEP approved sewer service areas. The Township must demonstrate that each proposed inclusionary zoning district contains sufficient suitable acreage pursuant to N.J.A.C. 5:97-3.13 for the specific development yield anticipated. Further, Lafayette must demonstrate why Nouvelle's site cannot accommodate more than the 39 units it is currently zoned for.

Lafayette must submit the above information to COAH no later than October 25, 2010, and Lafayette is ordered to appear at the November 2010 Council meeting.

I hereby certify that this Decision was  
Duly adopted by the Council on Affordable  
Housing at its meeting on April 21, 2010.

A handwritten signature in cursive script that reads "Renee Reiss". The signature is written in black ink and is positioned above the printed name and title.

Renee Reiss  
Council Secretary