

**RESOLUTION GRANTING MOTIONS FOR STAYS RECEIVED BY THE COUNCIL
ON AFFORDABLE HOUSING (COAH) IN RESPONSE TO THE OCTOBER 8, 2010
APPELLATE DIVISION DECISION IN THE MATTER OF THE ADOPTION OF
N.J.A.C. 5:96 AND 5:97 BY THE NEW JERSEY COUNCIL ON AFFORDABLE
HOUSING**

COAH DOCKET #10-2265, 10-2264, 10-2257, 10-2263, 10-2261

WHEREAS, on October 8, 2010, the Appellate Division issued its decision in the appeals of COAH's revised third round rules at N.J.A.C. 5:96 and 5:97; and

WHEREAS, in its decision, the court reversed and remanded portions of COAH's third round rules, including the use of the growth share methodology for determining third round prospective affordable housing obligations; and

WHEREAS, the court upheld COAH's determination of municipal present need and prior round affordable housing obligations in its revised third round rules; and

WHEREAS, the court did not issue a "blanket stay" of proceedings before COAH or the courts and instead, left it to COAH, or in the case of a court town, the court, to determine whether to issue a stay of proceedings reviewing a municipality's affordable housing plan; and

WHEREAS, the court stated that a municipality or interested party may apply to COAH or the appropriate court, as the case may be, for a stay of proceedings and such application "should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances"; and

WHEREAS, COAH will determine, on a case-by-case basis by way of a motion for a stay submitted by the municipality, whether to proceed with the review of the portions of affordable housing plans addressing present need and prior round affordable housing obligations and objections to those portions of municipal affordable housing plans; and

WHEREAS, COAH received motions requesting a stay of COAH proceedings concerning the prospective need for the following municipalities that have petitioned COAH for substantive certification:

Montgomery Township/Somerset County
Bridgewater Township/Somerset County
Lafayette Township/Sussex County
Colts Neck Township/Monmouth County; and

WHEREAS, COAH received motions requesting a stay of COAH proceedings for the following municipalities that received third round substantive certification from COAH:

South Orange Village Township/Essex County
Middletown Township/Monmouth County; and

WHEREAS, COAH staff has reviewed the status and compliance of the municipalities listed above, in regard to their present need and prior round obligations (Attached Summary); and

WHEREAS, these municipalities have addressed and/or have a plan in place that complies with applicable COAH regulations to address their municipal present need and prior round affordable housing obligations; and

WHEREAS, in light of the Appellate Division decision, COAH is refraining from further review of the third round prospective growth share obligations of any municipal third round plans because there are no standards to guide COAH due to the court's invalidation of the growth share portion of the third round regulations; and

WHEREAS, municipalities that have received third round substantive certification or have petitioned COAH pursuant to N.J.A.C. 5:96 and 5:97 continue to be under the jurisdiction of COAH; and

WHEREAS, COAH staff presented the above stay motions to a COAH Task Force on December 1, 2010; and

WHEREAS, the COAH Task Force recommends a finding that that these municipal motions for a stay of COAH proceedings regarding the third round prospective obligation be granted based on the facts presented by COAH staff; and

WHEREAS, COAH encourages municipalities to continue their pursuit of realistic affordable housing opportunities and is available to assist municipalities with the implementation of affordable housing mechanisms, including expending monies from municipal affordable housing trust fund accounts for affordable housing activities.

NOW THEREFORE BE IT RESOLVED that the Council hereby determines that the stay motions submitted concerning COAH proceedings involving the third round prospective obligations are granted in light of the Appellate Division's invalidation of the third round growth share methodology; and

BE IT FURTHER RESOLVED that going forward municipalities are not required to seek a stay from COAH proceedings concerning third round prospective growth share obligation; and

BE IT FURTHER RESOLVED that the municipalities listed above are currently in compliance with their present need and prior round affordable housing obligations; and

BE IT FURTHER RESOLVED that municipalities that have received third round substantive certification or have petitioned COAH pursuant to N.J.A.C. 5:96 and 5:97 continue to be under the jurisdiction of COAH; and

BE IT FURTHER RESOLVED that COAH will make itself available to work with municipalities to plan for and provide additional affordable housing opportunities for future prospective affordable housing needs and that the Council and Council staff will provide any assistance or facilitation to municipalities towards providing additional affordable housing, including conducting mediation if so requested.

I hereby certify that this resolution was
duly adopted by the Council on Affordable
Housing at its public meeting on December 8, 2010

A handwritten signature in cursive script that reads "René Reiss". The signature is written in black ink and is positioned above a horizontal line.

René Reiss, Secretary
Council on Affordable Housing

ADVISORY, CONSULTATIVE, DELIBERATIVE

MEMORANDUM

To: COAH Members

From: Maria Connolly, PP/AICP

Date: December 8, 2010

RE: Montgomery Township's/Somerset County motion requesting a stay on proceedings before COAH.

Introduction

On October 8, 2010, the Appellate Division issued its decision in the appeals of COAH's revised third round rules at N.J.A.C. 5:96 and 5:97. In its decision, the court reversed and remanded portions of COAH's third round rules, including the use of the growth share methodology for determining third round prospective affordable housing obligations. The court upheld COAH's determination of municipal present need and prior round affordable housing obligations in its revised third round rules. In accordance with the court's decision, COAH will refrain from further review of the growth share obligations of any municipal third round plans.

The court did not issue a "blanket stay" of proceedings before COAH or the courts and instead, left it to COAH, or in the case of a court town, the court, to determine whether to issue a stay of proceedings reviewing a municipality's affordable housing plan. The court stated that a municipality or interested party may apply to COAH or the appropriate court, as the case may be, for a stay of proceedings and such application "should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances." As a result, COAH will determine, on a case-by-case basis by way of a motion for a stay submitted by the municipality, whether to proceed with the review of the portions of affordable housing plans addressing present need and prior round affordable housing obligations and objections to those portions of municipal affordable housing plans. This motion summary reviews the request for a stay that was submitted in a motion filed by the Township of Montgomery, Somerset County, on October 22, 2010.

Issue

Whether COAH should grant Montgomery's motion for a stay of proceedings before COAH pursuant to the Appellate Division's decision.

Procedural History

Montgomery Township received a first round Judgment of Compliance on July 31, 1985, and second round substantive certification from COAH on March 5, 1997. On December 30, 2008, Montgomery petitioned COAH for third round substantive certification of its Housing Element and Fair Share Plan. Montgomery's third round affordable housing obligation consists of a rehabilitation obligation of 11 units, a prior round obligation of 307 units and a projected growth share obligation of 501 units. Objections were filed by Country Club Meadows, LLC. A Pre-mediation Report Requesting Additional Information (RRAI) was issued on February 3, 2010, and one mediation session took place between the parties. No agreement was reached as a result of mediation.

Montgomery has received four extensions to respond to the RRAI and has responded with most of the items requested. On November 25, 2010, Montgomery adopted an amended Housing Element and Fair Share Plan.

Montgomery's motion

October 22, 2010

Kristina P. Hadinger, Esq. on behalf of Montgomery Township

On October 22, 2010, Montgomery transmitted to COAH a motion requesting that COAH provide a temporary stay of proceedings of Montgomery's application for substantive certification until such time as new third round rules are completed. Montgomery indicates that it has a proven track record of consistently exceeding its affordable housing obligations and has continued to undertake significant efforts to provide for new affordable housing during the third round despite the uncertainty regarding COAH's rules. The Township maintains that it will suffer irreparable harm if the stay request is not heard on an emergent basis because the Township has a November 29 deadline to submit a re-petition to COAH. Because of the November 29 deadline, the Township indicates that it now finds itself in the predicament of

having to submit a re-petition based on what it assumes the new rules will be or not submit a re-petition and risk being dismissed from the COAH process.

Opposition

No opposition briefs were received.

Compliance

Montgomery has addressed its entire prior round obligation with 230 post-1986 credits and 77 bonuses, totaling 307 credits. The Township has two rehabilitation credits and a program in place with Somerset County to address the remaining nine unit rehabilitation share.

Recommendation

The motion was presented to a COAH task force on December 1, 2010. The task force recommends that the stay motion submitted by the Township of Montgomery concerning COAH proceedings involving the third round prospective obligation be granted in light of the Appellate Division's invalidation of the third round growth share methodology. Further, the task force notes that Montgomery is currently in compliance with its rehabilitation share and prior round affordable housing obligations and remains under the jurisdiction of COAH.

ADVISORY, CONSULTATIVE, DELIBERATIVE

MEMORANDUM

To: COAH Members

From: Pamela Weintraub, Principal Planner

Date: December 8, 2010

RE: Bridgewater Township, Somerset County, motion to stay its application for Substantive Certification pending adoption of Third Round Rules in accordance with the October 8, 2010 Appellate Decision

Issue

Whether COAH should grant Bridgewater Township's motion for a stay of COAH's review of the Township's Fair Share Plan pending before COAH until COAH adopts new third round regulations pursuant to the October 8, 2010 Appellate Decision.

Procedural History

Bridgewater Township ("Bridgewater" or the "Township") petitioned New Jersey Council on Affordable Housing ("COAH" or the "Council") for second round substantive certification of its Housing Element and Fair Share Plan and received certification on December 6, 1995. The Township petitioned COAH on December 30, 2008 with a Third Round Housing Element and Fair Share Plan to address its cumulative affordable housing obligation which consists of a rehabilitation obligation of 97 units, a prior round fair share obligation of 713 units and a net projected growth share obligation of 860 units of affordable housing.

Bridgewater proposes to address its rehabilitation obligation with 59 credits for units rehabilitated after April 1, 2000 and the Bridgewater Rehabilitation Program which brings both owner-occupied and renter-occupied affordable units up to local and state rehabilitation codes at a minimum cost of \$12,000 per unit. The prior round obligation will be addressed by 713 post-1986 credits and bonuses. Bridgewater proposes to address its growth share obligation with 447 surplus credits and through a number of mechanisms, including three 100 percent affordable developments, a market to affordable program, several group homes, extension of expiring controls and three inclusionary developments.

Stephen Eisdorfer Esq., on behalf of Joaned Properties; Francis P. Linnus Esq., on behalf of Eden Wood Properties; and Adam M. Gordon Esq., on behalf of the Fair Share Housing Center; filed objections to Bridgewater's Housing Element and Fair Share Plan on April 14, 2009.

Mediation took place between Joaned Properties, Eden Wood Properties, Fair Share Housing Center and the Township and was concluded on May 11, 2010 without an agreement. A mediation report was issued on August 3, 2010. The Township submitted additional information as a result of mediation and was in the process of completing a technical amendment to its Fair Share Plan.

On October 8, 2010, the Appellate Division issued its decision in the appeals of COAH's revised third round rules at N.J.A.C. 5:96 and 5:97. In its decision, the court reversed and remanded portions of COAH's third round rules, including the use of growth share for determining third round prospective affordable housing obligations. The court upheld COAH's determination of municipal present need and prior round affordable housing obligations in its revised third round rules. In accordance with the court's decision, COAH will refrain from further review of the prospective growth share obligations of any municipal third round plans.

The court did not issue a "blanket stay" of proceedings before COAH or the courts and instead, left it to COAH, or in the case of a court town, the court, to determine whether to issue a stay of proceedings reviewing a municipality's affordable housing plan. The court stated that a municipality or interested party may apply to COAH or the appropriate court, as the case may be, for a stay of proceedings and such application "should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances." As a result, COAH will determine, on a case-by-case basis, whether to proceed with the review of the portions of affordable housing plans addressing present need and prior round affordable housing obligations and objections to those portions of municipal affordable housing plans.

Bridgewater's motion to Stay Application for Substantive Certification Pending Adoption of Third Round Rules Following Appellate Decision

October 26, 2010

Darren J. Leotti, Esq., on behalf of Bridgewater Township

On October 25, 2010, Bridgewater Township submitted to COAH a motion to stay its application for Substantive Certification pending adoption of Third Round Rules following the Appellate Decision. Bridgewater indicates that it has complied with COAH's regulations, and has not only satisfied its prior round obligation, but has 447 credits which can be used toward a future housing obligation. The Township has fully participated in mediation with its objectors and mediation was concluded and a mediation report was issued on August 3, 2010.

Compliance Review

Bridgewater is addressing the prior round obligation with 518 post-1986 credits and 195 bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11. In addition, Bridgewater is addressing its rehabilitation obligation with credits and the continuation of the Bridgewater Rehabilitation Program which brings both owner-occupied and renter-occupied affordable units up to local and state rehabilitation codes at a minimum cost of \$12,000 per unit.

Post-1986 Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Vanderhaven	1987	family, sale	69			69
Crossroads	1987	family, sale	81			81
Meadowbrook	1987	family, rental	80	rental	80	160
Bridgewater Oaks	1988	family, sale	26			26
ARC	1989	alternative living arrangement	20 br	rental	20	40
Beacon Hill	1990	family, sale	8			8
Bridle Club	1990	family, sale	70			70

Centerbridge I and II	1994	age-restricted	140	rental	71	211
Villages I	1998	family, rental	7	rental	7	14
Villages II	1998	family, rental	17	rental	17	34
TOTALS			518		195	713

Prior Round Obligation Parameters

Bridgewater has satisfied the applicable Prior Round parameters as follows:

Prior Round Rental Obligation:¹ 178 Units

Development/Project Name	Type of Affordable Unit	# Units
Centerbridge I and II	age-restricted	71
ARC	alternative living arrangements	20
Meadowbrook	family	80
Villages I*	family	7
Villages II*	family	17
TOTAL		195

Prior Round Age-Restricted Maximum² : 187 Units

Development/Project Name	Type of Affordable Unit	# Units
Centerbridge I and II	rental	140
TOTAL		140

¹ Rental Obligation: N.J.A.C. 5:97-3.10(b) Rental Requirement = 25 percent (Prior Round Obligation – Prior Cycle Credits–Impact of 20 percent cap–Impact of the 1,000-unit limitation) = .25(713-0-0-0) = 178 units

² Age-Restricted Maximum: N.J.A.C. 5:97-3.10(c) Age-Restricted Maximum = 25 percent (Prior Round Obligation + Rehabilitation Share – Prior Cycle Credits – Rehabilitation Credits - Impact of 20 percent cap–Impact of the 1,000-unit limitation – Transferred or Proposed RCA Units for Prior Units) = .25 (713+97-0-59-0-0-0) = .25(751) = 187 units

Prior Round Rental Bonus Maximum : 195 Units³

Development/Project Name	Type of Bonus	# Bonuses
Centerbridge I and II	age-restricted	71
ARC	alternative living arrangements	20
Villages I	family	7
Villages II	family	17
Meadowbrook	family	80
TOTAL		195

Recommendation

The motion was presented to a COAH task force on December 1, 2010. The task force recommends that the stay motion submitted by Bridgewater Township concerning COAH proceedings involving the third round prospective obligation be granted in light of the Appellate Division's invalidation of the third round growth share methodology. Further, the task force notes that Bridgewater is currently in compliance with its rehabilitation share and prior round affordable housing obligations and remains under the jurisdiction of COAH.

³ Pursuant to N.J.A.C. 5:97-4.1(c), COAH will honor the 195 rental bonuses, which were included in the Township's second round substantive certification

ADVISORY, CONSULTATIVE, DELIBERATIVE

MEMORANDUM

To: COAH Members

From: Maria Connolly, PP/AICP

Date: December 8, 2010

RE: Colts Neck Township's/Monmouth County motion requesting a stay on action on Colts Neck's Housing Element and Fair Share Plan.

Introduction

On October 8, 2010, the Appellate Division issued its decision in the appeals of COAH's revised third round rules at N.J.A.C. 5:96 and 5:97. In its decision, the court reversed and remanded portions of COAH's third round rules, including the use of the growth share methodology for determining third round prospective affordable housing obligations. The court upheld COAH's determination of municipal present need and prior round affordable housing obligations in its revised third round rules. In accordance with the court's decision, COAH will refrain from further review of the growth share obligations of any municipal third round plans.

The court did not issue a "blanket stay" of proceedings before COAH or the courts and instead, left it to COAH, or in the case of a court town, the court, to determine whether to issue a stay of proceedings reviewing a municipality's affordable housing plan. The court stated that a municipality or interested party may apply to COAH or the appropriate court, as the case may be, for a stay of proceedings and such application "should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances." As a result, COAH will determine, on a case-by-case basis by way of a motion for a stay submitted by the municipality, whether to proceed with the review of the portions of affordable housing plans addressing present need and prior round affordable housing obligations and objections to those portions of municipal affordable housing plans. This motion summary reviews the request for a stay that was submitted in a motion filed by the Township of Colts Neck, Hunterdon County on October 18, 2010.

Issue

Whether COAH should grant Colts Neck's motion for a stay of action by COAH on Colts Neck's Housing Element and Fair Share Plan until such time as new third round rules are completed.

Procedural History

The Township of Colts Neck received a second round Judgment of Compliance on June 24, 2004. On December 29, 2008, Colts Neck petitioned COAH for third round substantive certification of its Housing Element and Fair Share Plan. Colts Neck's third round affordable housing obligation consists of a prior round obligation of 217 units and a projected growth share obligation of 55 units. Colts Neck does not have a rehabilitation obligation. Objections were filed by Patricia Bailey, Inc. and Red Fox Investment Partnership, LLC (Red Fox & Bailey) and Fair Share Housing Center (FSHC). A Pre-mediation Report Requesting Additional Information (RRAI) was issued on August 24, 2009, and one mediation session took place between the parties. No agreements were reached as a result of mediation.

Colts Neck's motion

October 18, 2010

Dominick M. Manco, Esq. on behalf of Colts Neck Township

On October 18, 2010, Colts Neck transmitted to COAH a motion requesting that COAH stay proceedings of Colts Neck's application for substantive certification until such time as new third round rules are completed. Colts Neck indicates that it is in compliance with all its first and second round obligations, but the Appellate Division decision makes it impossible for the Township to secure certification or court approval of any affordable housing plan until COAH either successfully appeals the decision, or new regulations are drafted by COAH and Colts Neck submits a revised plan in compliance with the amended regulations.

Opposition

November 24, 2010

Adam M. Gordon, Esq., on behalf of FSHC

Craig M. Gianetti, Esq., on behalf of Red Fox & Bailey

COAH received opposition to Colts Neck's motion from FSHC and Red Fox & Bailey on November 24, 2010. FSHC states that the Township should continue to implement its fair share plan; however, FSHC argues that the motion is not clear as to what the Township wants to do with regard to its third round projects. FSHC indicates that the Township has not implemented its growth share ordinance, accessory apartment, or market to affordable program, and has not executed redevelopment agreements for the Meridian Academy and the Colts Neck Hotel sites. FSHC maintains that the Township should clarify its current progress on these projects and that COAH should require that these projects be implemented within a period of time as a condition of the granting of the stay. In the absence of a clarification from the Township, FSHC argues that COAH should deny the stay.

FSHC also argues that the RCA between Colts Neck and Long Branch was invalidated by the Appellate Division as indicated in its objection to the Township's 2008 petition and, therefore, Colts Neck is not in compliance with its prior round obligations.

Red Fox & Bailey states it is not necessary opposed to a stay in connection with the Township's overall petition; however, Red Fox & Bailey request that a follow-up mediation to the fall 2009 mediation be scheduled. Red Fox & Bailey indicates that the Township's total prospective need is unknown at this time, and that it is ready, willing and able to develop an inclusionary development on its property. Red Fox & Bailey request that the motion for stay be denied as applied to its objection and that mediation be rescheduled to address its development proposal.

Compliance

Colts Neck has addressed its entire prior round obligation with 217 post-1986 credits, totaling 195 credits and 22 bonuses. The Township does not have a rehabilitation obligation. COAH responded to FSHC's assertion that the RCA between Colts Neck and Long Branch is no longer valid in the August 24, 2009 Pre-mediation RRAI. Based upon all of the facts presented in the RRAI, COAH staff finds it is appropriate to consider the 107 RCA units transferred from Colts Neck to Long Branch as appropriate credits to address Colts Neck's prior round obligation.

Recommendation

The motion was presented to a COAH task force on December 1, 2010. The task force recommends that the stay motion submitted by the Township of Colts Neck concerning COAH proceedings involving the third round prospective obligation be granted in light of the Appellate Division's invalidation of the third round growth share methodology. Further, the task force notes that Colts Neck is currently in compliance with its rehabilitation share and prior round affordable housing obligations and remains under the jurisdiction of COAH.

ADVISORY, CONSULTATIVE, DELIBERATIVE

MEMORANDUM

To: COAH Members

From: Ramond Joseph, Senior Planner

Date: December 8, 2010

RE: Lafayette Township, Sussex County (“Lafayette” or the “Township”), motion to stay its application for Substantive Certification pending adoption of Third Round Rules in accordance with the October 8, 2010 Appellate Decision

Issue

The issue before the Board concerns Lafayette Township’s motion for a stay and whether the New Jersey Council on Affordable Housing (“COAH” or the “Council”) should grant the Township’s motion for a stay of COAH’s review of the Township’s Housing Element and Fair Share Plan until such time as new third round rules are completed.

Procedural History

Lafayette petitioned COAH for second round substantive certification of its Housing Element and Fair Share Plan on November 17, 2004. The Township petitioned COAH on December 29, 2009 for Third Round Substantive Certification. The Township’s affordable housing obligation consists of a rehabilitation obligation of three units, a prior round obligation of 27 units and a net projected growth share obligation of 94 units of affordable housing.

Robert Kasuba, Esq., of Sills Cummis & Gross, on behalf of Nouvelle Associates, LLC (“Nouvelle”), filed an objection to Lafayette’s Housing Element and Fair Share Plan on April 16, 2009. Nouvelle is the owner of 320 acres of property, of which 140.73 are buildable, located at the intersection of Routes 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 an attempt to reach an agreement. After nine months of negotiations no agreement was reached and the litigation was continued. In August 2008 the Court reversed the town's denial and approved the project. The Policy Advisory Committee of the Sussex County Water Quality Management Agency recommended amendment of Lafayette's Wastewater Management Plan to permit a new discharge to groundwater of 14,900 gallons per day on Nouvelle's property based on the approval received.

Mediation took place between Nouvelle and the Township and was concluded on September 19, 2009 without an agreement. 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. The Council issued a decision denying Nouvelle's motion without prejudice on April 21, 2010. In its decision, COAH required Lafayette to submit a copy of its updated Wastewater Management Plan (WWP), which includes a build-out analysis for the Township to COAH by October 25, 2010. The Council determined that the build-out analysis for Lafayette is necessary for COAH to determine whether or not the densities permitted by Lafayette's inclusionary zoning ordinance exceed the HUC 11 septic densities. In addition, the Council required that Lafayette demonstrate why Nouvelle's site cannot accommodate more than the 39 units it is currently zoned for. All information requested in the Council's April 21, 2010 decision was required to be submitted by October 25, 2010, and Lafayette was ordered to appear at the November 2010 Council meeting.

On October 8, 2010, the Appellate Division issued its decision in the appeals of COAH's revised third round rules at N.J.A.C. 5:96 and 5:97. In its decision, the court reversed and remanded portions of COAH's third round rules, including the use of growth share for determining third round prospective affordable housing obligations. The court upheld COAH's determination of municipal present need and prior round affordable housing obligations in its revised third round rules. In accordance with the court's decision, COAH will refrain from further review of the prospective growth share obligations of any municipal third round plans.

The court did not issue a “blanket stay” of proceedings before COAH or the courts and instead, left it to COAH, or in the case of a court town, the court, to determine whether to issue a stay of proceedings reviewing a municipality’s affordable housing plan. The court stated that a municipality or interested party may apply to COAH or the appropriate court, as the case may be, for a stay of proceedings and such application “should be decided in light of the status of the individual municipality’s compliance with its affordable housing obligations and all other relevant circumstances.” As a result, COAH will determine, on a case-by-case basis, whether to proceed with the review of the portions of affordable housing plans addressing present need and prior round affordable housing obligations and objections to those portions of municipal affordable housing plans.

Lafayette’s motion to Stay Application for Substantive Certification Pending Adoption of Third Round Rules Following Appellate Decision

October 25, 2010

Richard I. Clark, Esq., on behalf of Lafayette Township

On October 25, 2010, Lafayette Township submitted to COAH a motion to stay its application for Substantive Certification pending adoption of Third Round Rules following the Appellate Division’s October 8, 2010 decision. Lafayette indicates that it has complied with COAH’s regulations, including the submission of all information requested in the Council’s April 21, 2010 decision. On November 23, 2010, Mr. Clark clarified that the Township is requesting a stay of the Growth Share.

Nouvelle’s Opposition

November 23, 2010

Robert Kasuba, Esq., of Sills Cummis & Gross

Robert Kasuba, Esq., of Sills Cummis & Gross, on behalf of Nouvelle, filed opposition to Lafayette’s motion for a stay of COAH’s review of the Township’s Fair Share Plan pending before COAH until COAH adopts new third round regulations pursuant to the October 8, 2010 Appellate Division Decision. Mr. Kasuba opposes Lafayette’s motion on procedural as well as

substantive grounds. Nouvelle notes that Lafayette did not file a Notice of Motion pursuant to N.J.A.C. 5:96-13.1(a). Nouvelle further avers that Lafayette did not serve all interested parties with the October 25, 2010 motion. According to Nouvelle, Lafayette has not supported its request for a stay as no affidavits, briefs, legal analysis and/or other supporting documents have been submitted by the Township. In addition to the above, Nouvelle makes several other points in opposition to Lafayette's motion for a stay of COAH's proceedings, including:

- granting Lafayette's stay would be in contravention of the Appellate Division's decision In re Six Month Extension of N.J.A.C. 5:91-1, 372 N.J. Super. 61 (App. Div. 2004) as COAH would not be conducting a detailed analysis as required by that decision;
- Lafayette's fair share obligation is likely to increase due to its location outside of the Highlands Region and as such the Township should continue to implement its fair share plan;
- COAH's motion to stay the Appellate Division's October 8, 2010 decision when combined with Lafayette's stay request, if granted, will doubly delay any meaningful review of Lafayette's compliance with its affordable housing obligations; and
- in promulgating new regulations to comply with the Appellate Division's October 8, 2010 decision, COAH will be dealing with the issues raised by Nouvelle in its objection to Lafayette's Fair Share Plan and as such should deny Lafayette's stay request in order to resolve said issues.

Compliance Review

As indicated in Appendix B of N.J.A.C. 5:97, Lafayette Township has a rehabilitation share of three units. The prior round cumulative 1987-1999 new construction obligation is 27 units according to Appendix C of N.J.A.C. 5:97. As previously mentioned, review of the prospective growth share obligations of any municipal third round plans is stayed in order for COAH to comply with the Appellate Division's decision.

Lafayette is addressing its prior round obligation with 20 post-1986 credits and seven bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11. In addition, Lafayette is addressing its rehabilitation obligation through the creation of a local

Rehabilitation Program which brings 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. COAH approved Lafayette’s development fee ordinance and spending plan on February 26, 2009 and August 19, 2009 respectively.

Post-1986 Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	No. Units/Bedrooms	Bonus Type	No. Bonuses	Total Units/Bedrooms + Bonuses
Sussex County ARC	1991	Special needs rental	3	N/A	0	3
Sussex County ARC II	2009	Special needs rental	5	N/A	0	5
Willow Glen Group Home	1992	Special needs rental	3	Rental	3	6
Willow Glen Group Home II	1999	Special needs rental	4	Rental	4	8
Woodland Farms Permanent Supportive Housing	2010	Rental	5	N/A	0	5
TOTALS			20		7	27

Prior Round Obligation Parameters

Lafayette has satisfied the applicable Prior Round parameters as follows:

Prior Round Rental Obligation:¹ 7 Units

Development/Project Name	Type of Affordable Unit	No. Units Proposed
Sussex County ARC	Special needs rental	3
Sussex County ARC II	Special needs rental	5
Willow Glen Group Home	Special needs rental	3

¹ Rental Obligation: Pursuant to N.J.A.C. 5:97-3.10(b)1, the Prior Round Rental Requirement = .25(27 – 0) or 6.8 units.

Development/Project Name	Type of Affordable Unit	No. Units Proposed
Willow Glen Group Home II	Special needs rental	4
Woodland Farms	Permanent supportive rental	5
TOTAL		20

Prior Round Age-Restricted Maximum² : 8 Units

Development/Project Name	Type of Affordable Unit	No. Units Proposed
N/A	N/A	0
TOTAL		0

Prior Round Rental Bonus Maximum³ : 7 Units

Development/Project Name	Type of Bonus	No. Bonuses Proposed
Willow Glen Group Home	Special needs rental	3
Willow Glen Group Home II	Special needs rental	4
TOTAL		7

Recommendation

The motion was presented to a COAH Task Force on December 1, 2010. The Task Force recommends that the stay motion submitted by Lafayette concerning COAH proceedings involving the third round prospective obligation be granted in light of the Appellate Division's invalidation of the third round growth share methodology. Further, the Task Force notes that

² Age-Restricted Maximum: Pursuant to N.J.A.C. 5:97-3.10(c)1, the Prior Round Age-Restricted Maximum = .25(27 + 3 - 0 - 0) or 7.5 units.

³ No rental bonuses shall be granted for rental units in excess of the prior round rental obligation, therefore, PR Rental Bonus Maximum = PR Rental Obligation (N.J.A.C. 5:97-3.5)

Lafayette is currently in compliance with its rehabilitation share and prior round affordable housing obligations and remains under the jurisdiction of COAH.

ADVISORY, CONSULTATIVE, DELIBERATIVE

MEMORANDUM

TO: Council Members
FROM: Daniel Burton, Senior Planner
DATE: December 8 2010
RE: Motion from Township of South Orange Village/Essex County for a stay from implementing the third round elements of its approved Housing Element and Fair Share Plan

Introduction

On October 8, 2010, the Appellate Division issued its decision in the appeals of COAH's revised third round rules at N.J.A.C. 5:96 and 5:97. In its decision, the court reversed and remanded portions of COAH's third round rules, including the use of the growth share methodology for determining third round prospective affordable housing obligations. The court upheld COAH's determination of municipal present need and prior round affordable housing obligations in its revised third round rules. In accordance with the court's decision, COAH will refrain from further review of the growth share obligations of any municipal third round plans.

The court did not issue a "blanket stay" of proceedings before COAH or the courts and instead, left it to COAH, or in the case of a court town, the court, to determine whether to issue a stay of proceedings reviewing a municipality's affordable housing plan. The court stated that a municipality or interested party may apply to COAH or the appropriate court, as the case may be, for a stay of proceedings and such application "should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances." As a result, COAH will determine, on a case-by-case basis by way of a motion for a stay submitted by the municipality, whether to proceed with the review of the portions of affordable housing plans addressing present need and prior round affordable housing obligations and objections to those portions of municipal affordable housing plans. This motion summary reviews the request for a stay that was submitted in a motion filed by the Village of South Orange Township/Essex County ("South Orange") or ("Township") on November 4, 2010.

Issue

Whether COAH should grant a stay to South Orange permitting it to delay implementation of the third round elements of its approved Housing Element and Fair Share Plan.

Procedural History

On December 31, 2008 South Orange petitioned COAH for third round substantive certification of its Housing Element and Fair Share Plan. On January 13, 2010 South Orange received third round substantive certification of a plan that addressed the Township's affordable housing obligation of a 54-unit rehabilitation share, a 63-unit prior round obligation, and a 65-unit projected growth share obligation.

South Orange has a municipal rehabilitation program in place to address the remainder of its rehabilitation share and has fulfilled the entirety of its prior round obligation and has identified credits and mechanisms by which it will address the entirety of its growth share obligation.

South Orange's Motion for a Stay

On November 4, 2010, COAH received a motion request in the form of correspondence from Jeffrey R. Surenian, Esq. requesting that COAH grant a stay permitting South Orange to delay implementation of the "third round elements" of its approved Housing Element and Fair Share Plan.

South Orange's motion refers to the October 8, 2010 Appellate Division decision In re Adoption of N.J.A.C. 5:96 and 5:97, in which the Court stated any application to COAH for a stay "should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances." South Orange maintains that since it has already obtained third round substantive certification, the Township is positioned to secure a stay based upon the above cited Court language. The Township further contends that, until such time as COAH adopts new regulations, pursuant to the Appellate Division decision, South Orange is faced with uncertainty as to what actions "would be appropriate."

Opposition

No opposition to South Orange’s motion was received.

Recommendation

South Orange’s motion was presented to a COAH task force on December 1, 2010. The task force recommends that the stay motion submitted by South Orange concerning COAH proceedings involving the third round prospective obligation be granted in light of the Appellate Division’s invalidation of the third round growth share methodology. Further, the task force notes that South Orange received third round substantive certification and is currently in compliance with its rehabilitation share and prior round affordable housing obligations and remains under the jurisdiction of COAH.

ADVISORY, CONSULTATIVE, DELIBERATIVE

MEMORANDUM

To: COAH Members

From: Maria Connolly, PP/AICP

Date: December 8, 2010

RE: Middletown Township's/Monmouth County motion requesting a stay permitting the delay of implementation of the third round elements of its approved Housing Element and Fair Share Plan.

Introduction

On October 8, 2010, the Appellate Division issued its decision in the appeals of COAH's revised third round rules at N.J.A.C. 5:96 and 5:97. In its decision, the court reversed and remanded portions of COAH's third round rules, including the use of the growth share methodology for determining third round prospective affordable housing obligations. The court upheld COAH's determination of municipal present need and prior round affordable housing obligations in its revised third round rules. In accordance with the court's decision, COAH will refrain from further review of the growth share obligations of any municipal third round plans.

The court did not issue a "blanket stay" of proceedings before COAH or the courts and instead, left it to COAH, or in the case of a court town, the court, to determine whether to issue a stay of proceedings reviewing a municipality's affordable housing plan. The court stated that a municipality or interested party may apply to COAH or the appropriate court, as the case may be, for a stay of proceedings and such application "should be decided in light of the status of the individual municipality's compliance with its affordable housing obligations and all other relevant circumstances." As a result, COAH will determine, on a case-by-case basis by way of a motion for a stay submitted by the municipality, whether to proceed with the review of the portions of affordable housing plans addressing present need and prior round affordable housing obligations and objections to those portions of municipal affordable housing plans. This motion summary reviews the request for a stay that was submitted in a motion filed by Middletown Township, Monmouth County on November 3, 2010.

Issue

Whether COAH should grant Middletown’s motion for a stay permitting the Township to delay the implementation of the third round elements of its approved Housing Element and Fair Share Plan.

Procedural History

Middletown Township received first round substantive certification on March 3, 1994. Middletown received third round substantive certification on October 19, 2009, for a plan that addressed the Township’s third round affordable housing obligation consisting of a rehabilitation obligation of 154 units, a prior round obligation of 1,561 units and a projected net growth share obligation of 233 units.

Middletown’s motion

November 3, 2010

Jeffrey R. Surenian, Esq., on behalf of Middletown Township

On November 4, 2010, Middletown transmitted to COAH a motion a stay permitting the delay of implementation of the third round elements of its approved Housing Element and Fair Share Plan. Middletown maintains that despite invalidating certain regulations, the Appellate Division openly expressed its intent to protect municipalities like Middletown, that proceeded through COAH’s process in good faith and secured substantive certification: “We have no doubt municipalities should not be penalized for relying upon the original rules that we subsequently invalidated.” In addition, Middletown argues that since it has already received substantive certification, it has demonstrated its compliance with its affordable housing obligations as the Appellate Division indicated.

Opposition

November 24, 2010

Adam M. Gordon, Esq., on behalf of FSHC

FSHC submitted opposition to Middletown motion on November 24, 2010. FSHC disagrees with Middletown’s interpretation of the Appellate Division decision and argues that the

decision does not state that municipalities, whether or not they have been certified, have the right to not implement elements of their fair share plans and still receive the protection of the COAH process. FSHC maintains that COAH should instead deny Middletown's motion and require it to continue to implement the terms of the Township's substantive certification.

Reply

November 30, 2010

Jeffrey R. Surenian, Esq., on behalf of Middletown Township

Middletown submitted a reply to FSHC's opposition. Middletown states that its motion is for limited temporary relief and the purpose of it is to maintain the status quo. Middletown indicates that it is seeking protection from developers and affordable housing advocates while COAH revises and adopts new regulations. The Township also states that it wants to refrain from spending any public funds until the Mount Laurel laws are clearer. Middletown further argues that the Appellate Division decision did not suggest that plan implementation is mandatory and that failing to implement the plan as approved could result in site specific relief. Middletown states that the Court contemplated the relief requested by the Township when it indicated that municipalities could request stays from COAH on a case by case basis. Middletown maintains that municipalities who have addressed their prior round and rehabilitation share should not be penalized for failing to comply with regulations that COAH has yet to adopt. Therefore, Middletown argues that it is reasonable for it to pull back on components of its plan that address the third round obligation until the requirements are clear. However, Middletown states that it is not seeking to rescind any component of its plan as approved at this time and the Township continues to implement the plan.

Recommendation

Middletown's motion was presented to a COAH task force on December 1, 2010. The task force recommends that the stay motion submitted by the Township of Middletown concerning COAH proceedings involving the third round prospective obligation be granted in light of the Appellate Division's invalidation of the third round growth share methodology. Further, the task force notes that Middletown received third round substantive certification and is

currently in compliance with its rehabilitation share and prior round affordable housing obligations and remains under the jurisdiction of COAH.