

Hillsborough Litigation

4/21/95

Per Curiam opinion In the Matter of the Township of Denville

2 pgs

notes: double-sided pages

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NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-4152-93T3

IN THE MATTER OF THE
TOWNSHIP OF DENVILLE.

FILING DATE
APPELLATE DIVISION

APR 21 1995

Argued April 4, 1995 - Decided **APR 21 1995**

Before Judges Pressler, Conley and Newman.

On appeal from New Jersey Council on
Affordable Housing.

Edward J. Buzak argued the cause for
appellant, Township of Denville (Mr. Buzak
and Jeanne Ann McManus, on the brief).

William P. Malloy, Deputy Attorney General,
argued the cause for respondent, New Jersey
Council on Affordable Housing (Deborah T.
Poritz, Attorney General, attorney; Joseph L.
Yannotti, Assistant Attorney General, of
counsel; Mr. Malloy, on the brief).

Peter A. Buchsbaum argued the cause for
respondent, Morris County Fair Housing
Council and Morris County Chapter of the
National Association for the Advancement of
Colored People (Greenbaum, Rowe, Smith, Ravin
and Davis, attorneys; Mr. Buchsbaum, on the
letter brief).

PER CURIAM

In 1978, the Township of Denville, along with others, was
sued by the Public Advocate for its failure to comply with Mt.
Laurel housing requirements. In 1988, COAH granted substantive
compliance pursuant to N.J.S.A. 52:27D-313. A fundamental
component of the fair share housing plan that was granted
certification was the purchase by the Township of what has been

referred to as the McGreevy site, and transfer thereof to the Morris County Housing Authority for the construction of low-income housing. It is now 1995 and the Township has purchased the property. But the transfer has not occurred, ostensibly because, although all of the roadblocks along the way have been cleared, a residency preference similar to that contained in various proposed contracts with the Authority, was invalidated by the Supreme Court in In re Township of Warren, 132 N.J. 1 (1993).

In rejecting the Township's contention that this change justified its desire to revisit the plan upon which the substantive certification had been granted, and enforcing compliance with the plan by ordering the Township to transfer the site to the Housing Authority, COAH stated:

The Township of Denville, having been ordered along with other interested parties to appear before the New Jersey Council on Affordable Housing at its regularly scheduled meeting of March 14, 1994 at the North Brunswick Municipal Building to show cause why the Council should not order Denville to comply with the terms of its housing element and fair share plan, which received final substantive certification on August 15, 1988, and also why the Council should not order Denville to take all steps necessary to expeditiously proceed with the construction of 75 low and moderate income rental units at the McGreevy site in conformance with its certified housing element and fair share plan; and the Council having heard from the Township of Denville through its attorney and representatives that the Township no longer wishes to build the 75 units of low and moderate income rental housing on the McGreevy site as it has planned to do in conformance with its certified housing element and fair share plan, but that the Township would rather build 75 units of affordable housing of some other sort on the McGreevy site, the precise nature of the housing to be built, however, having not yet been determined; and the Council having heard from the Morris County Housing attorney and representatives that Morris County Housing Authority has already spent \$250,000 based upon its

agreement with Denville made pursuant to Denville's fair share plan and has allocated money towards the building of the 75 units of low and moderate income rental housing on the McGreevy site, and that State of New Jersey has allocated \$1,192,411.00 of Balanced Housing funds to the development, and that the United States Department of Housing and Urban Development funds of \$6,806,998.00 have also been committed to the McGreevy site's development of 75 units of low and moderate income rental housing; and that these federal and state funds are in danger of being lost because of Denville's failure to sign a purchase agreement transferring the McGreevy property to the Housing Authority of Morris County, so that it can begin construction on the project...

We cannot say that under the peculiar and unique circumstances here the order to transfer the property which does no more than fulfill the purpose of the acquisition the Township has already made and accomplish what it has already agreed to, despite the invalidity of the residency provision, was not a reasonable exercise of the enforcement powers of COAH. Cf. Holmdel Builders Ass'n. v. Township of Holmdel, 121 N.J. 550, 576 (1990); Hills Development Co. v. Bernards Tp., 103 N.J. 1, 57-58 (1986). We note that when the Supreme Court invalidated the residency preference in Warren, the McGreevy site was directly involved and nowhere did the Supreme Court indicate that that would invalidate the plan itself or provide the Township with some leverage to escape its obligations.¹

We have carefully considered the issues raised on appeal and

¹It also is of some note that although the Supreme Court invalidated the particular occupancy preference for local residents then before it, it specifically recognized that COAH "is free to consider alternative means by which to recognize the affordable housing needs of eligible local residents." 132 N.J. at 36.

the applicable law. We are convinced they are without merit and that COAH's enforcement action here, given the particular circumstances, requires no further elaboration. R. 2:11-3(e)(1)(D),(E). We do so notwithstanding the Township's contention that COAH has lost jurisdiction over it because it is now beyond the six-year period during which a substantive certification entitles a municipality to a presumption of validity. See N.J.S.A. 52:27D-313, 317. Neither the loss of that presumption, nor the requirements of N.J.S.A. 40:55D-89 that a municipality's master plan be reviewed every six years, has anything to do with COAH's jurisdiction.

Affirmed.

I hereby certify that the foregoing is a true copy of the original on file in my office.

A handwritten signature in cursive script, appearing to read "R. E. Miller".

Clerk