

HOUSING APPEALS COMMITTEE
ANGLEWOOD HOUSING DEVELOPMENT LIMITED PARTNERSHIP

Decision # **90-06**
Appellant: **ANGLEWOOD HOUSING DEVELOPMENT LIMITED PARTNERSHIP**
Appellee: **KINGSTON BOARD OF APPEALS**
Date: **October 2, 1995**
DECISION

In its decision of August 29, 1990, the Appellee, Kingston Board of Appeals, granted with conditions the Appellant's request for a Comprehensive Permit to build affordable housing. The proposal was originally for thirty-nine single-family houses to be built on a seven and three quarter acre site off Route 3-A (Main Street) at Baker Avenue. The permit issued by the Board limited the development to twelve houses, and imposed a number of other limitations. The developer, Anglewood Housing Development Limited Partnership, appealed to the Housing Appeals Committee.

The Committee held a conference of counsel, conducted a site visit, and began a de novo evidentiary hearing, with witnesses sworn, full rights of cross examination, and a verbatim transcript.

During these proceedings, however, it appeared that many of the differences between the parties

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were negotiable, and the Committee urged them to consider settlement. Counsel for the parties entered into lengthy and difficult negotiations, which have ultimately been successful. The parties have presented to the Committee an Agreement for Judgment, filed August 11, 1995. The agreement permits construction of twenty-five single-family houses, and also resolves all of the other outstanding issues but for one.

The outstanding issue is described in the parties' Agreement for Judgment (p. 1, n.1):

There remains one issue that the parties submit to the Housing Appeals Committee for decision. The issue arises from a letter from the Kingston Water Department, dated May 28, 1990, a copy of which is submitted herewith, requiring the Developer to pay a water connection fee of \$500.00 per unit. The Developer's position is a request for a waiver of this fee as it applies to this project. The Town of Kingston's position is that the fee should [be] paid.

Before considering this issue, we would like to acknowledge the constructive manner in which both the developer and the Board, and their counsel, approached negotiations in this case. Parties too frequently stand upon their right to litigate every point of

disagreement even if there is only one unresolved issue blocking settlement. But by submitting only the matter actually in dispute to the final arbiter, the parties not only conserve resources, but also retain as much control as possible over the outcome of the controversy. That is, by reaching mutually acceptable com-

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promises, they avoid having winner-take-all decisions imposed by the fact finder. The parties and their counsel have wisely chosen that course here.

We would have hoped that the question of water connection fees could also have been resolved, for instance, by waiving the fee with regard to only the affordable units. But, when the parties have been unable to reach a compromise, it is not for this Committee to dictate what it believes is a fair settlement. Rather, our role is to review the evidence in light of the burdens of proof, and render a decision.

On the record before us, we find that the developer has not sustained its burden of proof, and therefore we conclude that a water connection fee of \$500.00 must be paid for each of the twenty-five approved housing units.

The Committee has examined the remainder of the parties' Agreement for Judgment, and finds it satisfactory. It is hereby incorporated and made part of this decision. The Board is directed to issue a Comprehensive Permit upon the terms and conditions set out in the Agreement. If the Board fails to act within thirty days of this decision, this decision shall be deemed, pursuant to G.L. c. 40B, s. 23, to be a Comprehensive Permit issued by the Board.

The developer shall not commence construction until detailed construction plans and specifications have been approved by the subsidizing agency and the project has re-

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ceived final subsidy commitment. The Board shall take whatever steps are necessary to insure that a building permit is issued to

the applicant, without undue delay, upon presentation of construction plans which conform to the comprehensive permit and the Massachusetts Uniform Building Code.

This decision may be reviewed in accordance with the provisions of G.L. c. 40B, s. 22 and G.L. c. 30A by instituting an action in Superior Court within 30 days of receipt of the decision.

Housing Appeals Committee

/s/ Werner A. Lohe Jr.
Chairman

/s/ Grace A. Abruzzio

/s/ Joseph P. Henefield

End Of Decision