UL. v. Cateret, (Monroe + Cranbury) 7/27 1984

Letter Opinion

Pgs. 5

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CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI

OCEAN COUNTY COURT HOUSE
C. N. 2191
TOMS RIVER. K. J. 087&3

July 27, 1984

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LETTER OPINION

Re; Urban League v. Carteret
Docket No. C-4122-73

Gentlemen:

Before the receipt of this letter, you should have received a copy of the court's opinion in the AMG Realty Company et al v. Township of Warren, That opinion is dispositive of all of the legal issues relating to the establishment of a fair share methodology concerning the Townships of Monroe and Cranbury and is fully incorporated herein by this reference.

Based upon that opinion and the calculations contained in J-5 marked in evidence, the fair share of the Township of Monroe is established at 774 units, representing 201 indigenous and surplus present need units and 573 prospective need units for the decade of 1980 to 1990. As to Cranbury the fair share is established at 816 units representing 116 indigenous and surplus present need units and 700 prospective need units for the decade of 1980 to 1990. The reduction in the fair share numbers as shown on Tables

13A, 13B, 15A and 15B of J-5 represents a recalculation of the indigenous need based upon Carla Lerman's memorandum of May 24, 1984 and the use of J-20 in evidence. As to Monroe, the indigenous need is reduced from 196, as shown on Table 15A, to 133, as shown in J-20, As to Cranbury, the indigenous need is reduced from 29, as shwn on Tabfe 21A to 23, as shown 3fn J-20.

In the case of Monroe the total fair share shall consist of 387 low cost and 387 moderate cost units. As to Cranbury, the total fair share shall cuuslst of 4CO"-units JL'Jw cost and 408 moderate cost. The use of tlie terms "low and moderate" shall be generally in accordance with the guidelines provided by Mount Laurel II at p. 221 ii 8. I find that the factual circumstances which warranted an equal division between low and moderate income housing in the AMG case exist with respect to Monroe and Cranbury. (AMG at 24) Similarly, the factual circumstances justifying phasing of the present need in the AMG case are sufficiently analogous here.(AMG at 24-25)

As should be evident from the fair share discussion above, I have rejected Cranbury's challenge to the State Development Guide Plan (hereinafter SDGP). Essentially, Cranbury argued that since the 1980 version of the SDGP, the Department of Community Affairs (hereinafter DCA) amended the concept maps, thereby characterizing less of the municipality as growth area. A reduction in growth area would lower Cranbury's obligation somewhat and might impact on the granting of a builder's remedy.

Cranbury's argument fails for two reasons. First, the testimony at trial did not demonstrate that the SDGP was ever formally amended. Apparently, the DCA considered many possible changes to the May, 1980 SDGP

and summarized their comments in a document dated January, 1981. (J-8 in evidence). However, the process never progressed beyond mere general discussion and, in fact, Mr. Ginman did not recall any specific discussion of a change affecting Cranbury with the Cabinet Committee. Second, and more importantly, our Supreme Court has adopted the May, 1980 SDGP - not the subsequent alleged atoeniteentfs. Indeed, the Sifpreme 'Court: went as far as giving the 1980 SDGP evidential value. (Mount Laurel II at 246-47) Any informality in adoption of the 1980 edition of the SDGP is overcome by the Supreme Court's endorsement of it as a means of insuring that lower income housing would be built where it should be built. (Mount Laurel II at 225)

With respect to the issue of compliance of the respective land use regulations of Monroe and Cranbury, counsel for both townships have stipulated that the ordinances do not provide a realistic opportunity for satisfation of the municipalities* fair share of lower income housing. Therefore, the land use regulations of both municipalities are invalid under Mount Laurel II guidelines.

Having identified the obligations of Cranbury and Monroe, and having found their land use regulations noncompliant, I hereby order these municipalities to revise their land use regulations within 90 days of the filing of this opinion to comply with Mount Laure1 II. Both townships shall provide for adequate zoning to meet their fair share, eliminate from their ordinances all cost generating provisions which would stand in the way of the construction of lower income housing and, if necessary, incorporate in the revised ordinances all affirmative devices necessary to lead to the

construction of their fair share of lower income housing. (see generally Mount Laurel IT at 258-278)

In connection with the ordinance revisions, I hereby appoint Carla L. Lerman, 413 Englewood Avenue, Teaneck, New Jersey, 07666 as the master to assist the Township of Monroe in the revision process and Philip B. Caton, 342 West State Street, Trenton, New Jersey, 08618, as the master to assdlst the Township of Cranbury in the revision process.

The right to a builder's remedy relating to both municipalities is reserved pending the revision process. To the the extent that any of the plaintiff builders are not voluntarily granted a builder's remedy in the revision process, each master is directed to report to the court concerning the suitability of that builder's site for Mount Laurel construction. As to the issue of priority of builder's remedies in Cranbury, Mr. Caton should also make recommendations, from a planning standpoint, as to the relative suitability of each site. After the 90 day revision period, all builder's remedy issues in both municipalities will be considered as part of the compliance hearing.

As the AMG opinion indicates, it is not the court's desire to revise the zoning ordinances of Monroe or Cranbury by its own fiat. Rather, the governing body, planning board, the master and all those interested in the process now have the opportunity to submit a compliant ordinance to the court.(AMG at 68) All those involved in the process must strive to devise solutions which will maximize the housing opportunity for lower income people and minimize the impact on the townships. (AMG at 80) Only if the townships

should fail to satisify their constitutional obligation must the court implement the remedies for noncompliance provided for by Mount Laurel II, (Mount Laurel II at 285 et^ seq)

Mr. Gelber shall submit a single order relating to both townships incorporating the provisions of this letter opinion pursuant to the five day rule.

Very truly yours,

Eugene D. Serpentelli, JSC

EDS:RDH
cc: Carla L. Leraan, P.P.
cc: Philip B. Caton, P.P.