

CA - Sayreville 5-Jan-78

Letter to judge - re: Plaintiffs
objections to Sayreville's plan
and reasons.

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CA001946L

Case

NATIONAL COMMITTEE AGAINST DISCRIMINATION IN HOUSING, INC.
Fair Housing Legal Program
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MARTIN E. SLOANE
General Counsel

January 5, 1978

Honorable David D. Furman
Judge of the Superior Court
Middlesex County Courthouse
New Brunswick, New Jersey 08903

Re: Urban League of Greater New Brunswick, et al.,
v. The Mayor and Council of the Borough of
Carteret, et al., Docket No. C-4122-73

Dear Judge Furman:

On October 7, 1977 the Borough of Sayreville moved for an Order of Compliance in the above-captioned case on the basis of an affidavit and attachments submitted with the motion. Plaintiffs received the Borough's motion and submissions on October 13, 1977. After review of these materials by plaintiffs' expert, Mr. Alan Mallach, plaintiffs sent a letter dated October 19, 1977 to the Borough's attorney, Mr. Alan Karcher, requesting additional information necessary to properly assess the Borough's efforts to comply with the opinion and order of this Court. Mr. Mallach received additional material during the week of December 5, 1977. Despite the Borough's delay in responding to plaintiffs' letter of October 19, 1977 and despite the fact that not all information requested was provided, plaintiffs' expert completed his review and analysis in one week and on December 16 plaintiffs' counsel informed Mr. Karcher that plaintiffs were troubled by certain aspects of the Borough's efforts.

In an attempt to reach an accommodation with the Borough and in an effort to avoid the necessity of a court hearing on the matter, plaintiffs' counsel requested a conference with Mr. Karcher. This took place at Mr. Karcher's convenience on December 22 in the form of a conference call. At that time plaintiffs outlined all their objections to the Borough's plan and Mr. Karcher agreed to two changes but indicated that additional steps requested by plaintiffs would not be forthcoming from the Borough at this time. The agreed upon changes

are found in plaintiffs' counsel's letter of December 28 to Mr. Karcher confirming the December 22 conversation. However, on January 3 plaintiffs received a letter from Mr. Karcher stating for the first time that the two changes he had agreed to would be effected only on representation by plaintiffs' counsel that we would consent to an order of dismissal. Since the areas of agreement were only part of the objections plaintiffs have with the Borough's actions and since they are of lesser importance than those areas not agreed upon, plaintiffs reluctantly state that they are not able to agree to an order of dismissal at this time.

While we have some serious disagreements with the Borough's counsel over certain actions taken by the Borough, plaintiffs recognize that the Borough has made some steps in the direction of compliance with this Court's opinion and order. However, it would be premature for plaintiffs to agree that the Borough has fully complied with the opinion and order in this case.

Plaintiffs outline their objections as follows:

I. Ordinance No. 1213

While plaintiffs recognize that this ordinance amendment is a positive step in that it allows senior citizens' housing as a conditional use in all residential zones, plaintiffs have certain specific problems with this ordinance as a means of facilitating housing opportunity:

- A. The ordinance does not extend the same opportunity to non-senior citizen low and moderate income households.
- B. Developments under this ordinance must have a minimum of 90 units and 5 acres. This is excessive.
- C. Paragraph 2 of the ordinance states, "housing shall conform to all the requirements and guidelines established by HUD and the NJ HFA, whichever are the more stringent, with regard to cost limitations, construction, etc." This is unreasonable and should be changed to refer to the standards of the agency funding the development at issue.
- D. Two bedroom units are not permitted under the ordinance. It is generally held that a moderate number of two bedroom units, approximately 10 percent, should be included in senior citizens housing developments.

Items C and D were those initially agreed to by Mr. Karcher in the December 22 conversation.

II. Special tax agreement

We commend the Borough on allowing a payment in lieu of taxation for the senior citizen development proposed by Concept Building Industries, Inc. Plaintiffs are concerned about whether future developments of low and moderate income character will be provided similar tax agreements. In our discussions with the Borough's counsel, Mr. Karcher stated that any development which would be a "mirror image" of the Concept Building project will be granted similar privileges. Plaintiffs contend this representation to be meaningless.

III. Rezoning of 174.7 acres from M-2 (heavy industry) to G-1

The area in question is located in the southern corner of the Borough. According to a letter from Mr. Karcher "at least half (of the site) is developable in its present condition." A review of the flood hazard areas delineation map provided by the New Jersey Department of Environmental Protection indicates that between 70% and 75% of the site is in the flood hazard zone. Plaintiffs' expert has consulted with the owner of the rezoned property, Mr. Mocco, who indicated an intention to add fill to the flood hazard zone if he gets the necessary approval. Mr. Mocco also explained his intention to develop a mobile home area for 650 homes as the first phase of development in this zone. The second phase of development is intended to include garden apartments.

IV. Granting of preliminary approval to two PUD developments

The Borough has given preliminary approval to developments in PUD zones totalling 647 residential units. Our expert obtained the following information from the developers of these PUDs:

(a) River End PUD will contain (1) 260 apartment units, containing roughly 50% 1 and 50% 2 bedroom units, renting for \$250-\$270/month for 1 bedroom units, and \$310-\$320/month for 2 bedroom units; (2) 82 townhouse units, containing roughly 50% 2 and 50% 3 bedroom units. The rents for the townhouses are not determined, but will be over \$400/month.

(b) Blue Springs PUD will contain a total of 305 units divided as follows: (1) 15 single family detached units,

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selling for \$65,000 to \$80,000; (2) 150 townhouses, divided equally between 2 and 3 bedroom units, selling for \$50,000 or more; and (3) 140 garden apartments, 75% 1 bedroom and 25% 2 bedroom, renting for an undetermined amount of over \$300/month.

It is certainly questionable whether the Blue Springs PUD can be considered "least cost" housing by any reasonable standard, and at all relevant to fair share considerations. As far as River End is concerned the apartment component might possibly be relevant to the fair share, but clearly would make only a modest contribution to the fair share goal.

Furthermore, the developer of the Blue Springs PUD pointed out to Mr. Mallach that there are still certain cost-generating provisions in the PUD ordinance, notably (a) the low gross density possible of 4 DUs/acre; and (b) the elaborate timing provisions requiring that certain non-residential uses be developed prior to development of housing. Both of these increase costs. The latter feature is particularly troublesome because it increases carrying costs, since it extends the length of time required to develop the housing. Both of these provisions were the subject of trial testimony. In conclusion, there is serious question as to how much weight to give these PUD approvals as an element toward meeting fair share goals; they include no subsidized housing units, and only a small percentage of the units to be built can be considered by a reasonable standard "least cost housing".

V. Actions carried out pursuant to the Sayreville Community Development Block Grant (CDBG) program.

The Borough has carried out four actions, of which two are procedural and two substantive: (a) appointment of a CDBG administrator; (b) designation of the Borough Council as an LHA; (c) application for 50 units of Section 8 subsidy; and (d) processing of applications (42 to date) for home improvement loans for low and moderate income families.

These actions were carried out as a result of their being imposed as express conditions of continued CDBG funding by HUD, according to a letter from the HUD Area Office Director dated July 12, 1977, not as a result of this litigation. The Section 8 (existing) units at issue here (25 1 bedroom and 25 2 bedroom units) are, of course, not new units applicable towards the fair share goal.

VI. Adoption of an ordinance providing for mobile home parks

Ordinance No. 1227 was adopted to provide for mobile home parks. While this would seem to be a reasonable ordinance on its face, plaintiffs note that under the ordinance mobile home parks can be established only in the newly created G-1 zone mentioned in section III above.

The above-mentioned points pertain to the actions described in Mr. Karcher's submissions as representing compliance with the Urban League decision. We turn now to those areas, in our judgment relevant to the fair share goals of that decision, which do not appear to be reflected in the Borough's submission. It is a general assumption, reflected in the language of the Urban League decision, that the class for which fair share is intended includes in large part families and individuals needing subsidization to be housed; and that those families and individuals include non-elderly as well as elderly households. In evaluating the Sayreville submission, it is apparent that these different elements are not served equally by the Borough's actions.

Senior citizens requiring subsidization are best served, in view of the broad scope of Ordinance 1213. Here there appears to be a commitment to meeting housing needs, which should be strengthened by making the modifications needed in that ordinance, and by making the good faith commitment to provide tax abatements or similar tax agreements to future developments (both elderly and non-elderly).

Non-elderly low and moderate income families requiring subsidization have not been the subject of meaningful steps taken by the Borough. They provide no housing at all for families of more than four members. There are no ordinance provisions which provide any encouragement or facilitation of non-elderly low and moderate income housing. In view of the information obtained and set forth above with regard to the PUD zones, it is unlikely in the extreme that any subsidized housing for non-elderly families will be built in those zones. As far as the newly created G-1 zone is concerned, provision for such non-elderly families is at best speculative.

Very limited steps appear to have been taken to make possible some housing, though not accessible to lower income households, which may be considered "least cost" housing. As we have noted, some of the PUD units may be in this category, and there is a possibility that some such units may be developed in the new G-1 zone. Given the problems cited above, this must

be considered highly speculative at this time. It should be noted that we understand the one potentially "least cost" PUD, River End, is being constructed under the B-4 PUD option, the option providing the fewest cost-increasing provisions of any available PUD option. Furthermore, we understand that this development will effectively exhaust the land available under this option. Therefore, the potential for additional least cost housing beyond that cited by Mr. Karcher appears to be modest, at best.

We are concerned about the lack of meaningful opportunities for non-senior citizen low and moderate income housing. This problem, and the attendant preference for senior citizen development by local governments, particularly suburban ones, has been a major concern of state and federal housing officials in recent months. Some rectification of this problem, as it affects the Borough of Sayreville, is, in our judgment, essential to an achievement of fair share goals.

At this stage plaintiffs can only reasonably expect about one half of Sayreville's fair share goal of new units to be provided within the Borough with any degree of assurance and that includes the proposed 650 mobile homes in the new G-1 zone. Plaintiffs are also concerned that if the Borough expects the G-1 zone to provide most of its fair share that this will result in a segregation of these units within that zone. To further ensure provision of the fair share and in an attempt to avoid segregating these fair share units in one section of the Borough, plaintiffs recommend the following:

(1) amendment of Ordinance 1213 - (a) to remove undesirable provisions noted previously, and more significantly (b) to provide the conditional use for all low and moderate income housing, senior citizen and non-senior citizen, under reasonable standards adequate to ensure that proper planning criteria are followed and adverse impacts minimized. (We would be happy to recommend such criteria). The latter point, in particular, would further the goal of avoiding segregation of the fair share units.

(2) reasonable good faith representations by the Borough that tax abatements or similar incentives will be granted to developments submitted to the Borough, both senior citizen and otherwise, under the provisions of the revised ordinance.

(3) In the event of any future development through the PUD ordinance (a) cost generating provisions of the sort noted above should be removed, and greater potential created

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for development of "least cost" housing; and (b) serious consideration should be given either to mandatory minimum percentages of subsidized units in PUDs, or alternatively, significant incentives for development of subsidized housing, such as through density bonus provisions. The same could apply to development in the new G-1 zone.

Inasmuch as this Court has specified a particular fair share goal of 1,661 low and moderate income dwelling units to the year 1985 for the Borough and inasmuch as the submissions by the Borough fall short of this goal, we feel it is appropriate to request a plausible, realistic scenario for the development of these units, with the encouragement and facilitation of the Borough. We make this request with the clear understanding that we are, of course, not asking the Borough to build these units.

We did not expect it to be difficult to reach an accommodation with the Borough on the issues discussed above, considering the steps it has already taken. Apparently the Borough thinks otherwise. Since the submissions by the Borough and the information we have elicited on our own do not assure us that the fair share goal can be achieved through the actions taken to this date by the Borough, plaintiffs oppose entry of an order of compliance at this time.

Sincerely,



Roger C. Rosenthal
Attorney for Plaintiffs

Attachments

cc: Alan J. Karcher, Esq.

bcc: Marilyn
ACLU
Alan
Ben-Asher