CA

Piscataway

6-5-84

Memo answering questions by Judge ~~Serpentelli~~ Serpentelli re: including vacant land to build & housing credits

pgs. 5

Note - This was pre-ruling from Court on housing credits

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June 5, 1984

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Dear Dan:

During the colloqui following your presentation on behalf of Sudler Companies, Judge Serpentelli asked a number of questions. The following may help clarify the issues involved.

1. The first question was whether there is any justification for the setting aside of lands for industrial development in a community such as Piscataway whose remaining vacant land is insufficient to accommodate its full fair share. In answer, in addition to the reasons you gave, I suggest that sound planning requires the reservation of land for industrial development in major transportation corridors. This means, by definition, that municipalities traversed by Interstate highways, such as Piscataway, should be planned to contain substantially greater amounts of industry than those farther removed therefrom, and therefore less likely to attract industry. The corollary to this is that the latter should be relied upon to provide housing in excess of their own needs. This will achieve a regionally balanced plan, even though it will not achieve parity in all respects among municipalities.

   This view seems to be supported by the Mount Laurel II advice against allocating the housing need "so as to equalize the proportion of lower income units in each municipality...The effect of such a remedy, of course, would be to make one municipality a demographic mirror image of another." The Supreme Court urges the trial courts to consider "the overall group of factors...all subsumed in the word 'suitability'" (92 N.J. 350). It seems to me that, given Piscataway's peculiar "suitability" for industrial development, the possibility that the zoning of some portion

of its remaining vacant land for additional industrial development represents an instance "where such planning is quite legitimate" (92 N.J. 276) should be given due weight.

That this may be so is borne out by the fact that even using only land that is suitable and already zoned for residential uses, a density of 10-12 units per acre will add 10,000 units (or 30,000 persons) to a municipality with a population of some 42,000. The pace of new development can be expected to be rapid due to the acuteness of the housing need in that portion of Middlesex County. Such rapid development is also anticipated in the very nature of the judicial remedy which contemplates full compliance over a six-year period. It seems to be generally agreed that Piscataway's tax rate is not so low as to be capable of being substantially increased without significantly burdening its generally not overly wealthy residents and not over lavish residential tax base. Thus, the increment in the non-residential tax base which additional industrial development would bring about paralleling the new residential development is the only way in which the present fiscal balance can be reasonably maintained.

2. A second question dealt with the use of existing housing credits to satisfy prospective needs. In answer, it may be appropriate to point out that much of Piscataway's fair share consists of present need (according to Carla Lerman's report, this portion of the fair share amounts to 678 units).

The second argument which I believe can legitimately be used consists of four parts:

1. Vacancies in the existing affordable housing supply are caused in large part by the upward movement of families out of the lower income and into market rate housing. This frees the affordable units for any one of the three components of the total obligation (indigenous, reallocated excess present, and prospective need).[1]

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[1] Please note that this concept is not the same as that rejected by the Court under which a defendant municipality would attempt to satisfy its Mount Laurel obligation by building market rate units, hoping that this would cause units at the lower end of the scale to become vacant and available to Mount Laurel households. What we deal with here is existing affordable units and how they may be counted toward the satisfaction of the obligation.

2. Vacancies are also caused by the movement of families beyond the boundaries of Piscataway's prospective need region, where they become part of the prospective need of the region into which they move. It is proper, therefore, to allocate the units they vacate toward the satisfaction of a similarly generated prospective need within Piscataway's region. As you know, "prospective need" determinations are based on ODEA household growth projections which, in turn, reflect expected population migrations as well as natural increase.

3. In married student housing, vacancies are clearly eligible for the satisfaction of prospective needs since they are filled by students migrating to Rutgers University from throughout the State of New Jersey and beyond and, frequently, they are occupied by newly formed households.

4. The existing rent-controlled units which are now affordable to moderate income families can not be counted as part of the housing supply which satisfies the present need as defined in Mount Laurel II for two reasons. The first, which was spelled out from the bench by Judge Serpentelli, is that the assurance of future affordability offered by a local law which may be permitted to lapse is insufficient. The second is that the units, even though affordable could be rented to families with incomes exceeding Mount Laurel limits. If, upon becoming vacant, those units for which credit is claimed were to be placed under appropriate controls prior to re-occupancy (possibly against a tax abatement, as was suggested by His Honor as one alternative), they would constitute a net addition to the affordable housing supply in the Mount Laurel sense, and should, therefore, be eligible for the satisfaction of any portion of the Township's obligation. This would be similar to that portion of the Plainsboro settlement, which was approved by Judge Serpentelli, which contemplates the conversion to low and moderate income housing in the Mount Laurel II sense of Forrestal Village Apartments, which were originally approved as low/moderate income housing but without proper assurances of the permanence of this characteristic.

While a quantification of any of this may be possible, the research would take some time. For the present, assuming that the Township is prepared to offer acceptable assurances of continued affordability, I would urge that qualifying 50-75% of the prospective vacancies in the confirmed affordable housing supply during the projection period of 6 years would reflect an acceptable estimate of their usefulness for the purpose of satisfying the Township's Mount Laurel obligation.

3. A third question concerned my suggestion that, in communities that would obviously find it difficult to accommodate their fair share, the 20% surcharge in the "consensus methodology" be dropped. Judge Serpentelli suggested that, I was probably motivated by the practical consideration that, since the municipality couldn't accommodate it, the obvious thing to do would be to dispense with it. I believe that the explanation I am about to offer constitutes more than a semantic difference with His Honor's interpretation.

    1. The "fair share" results from the application of the four factors to the prospective, and three factors to the present need region, plus the indigenous need.

    2. The 20% surcharge was added to assure that, if some municipalities were unable to accommodate that fair share, the deficit in terms of the aggregate regional need will be made up.

    3. Automatically, therefore, upon an initial showing that accommodating the total allocation would prove difficult, the surcharge over and above the "fair share" should be dropped. Oversimplifying, this means that a municipality whose total allocation, including the 20% surcharge, amounts to 2,400 units should be deemed to have fulfilled its obligation if it can provide a reasonable opportunity for the creation of 2,000 units.

    4. The importance of the distinction should be apparent where such a municipality can provide for, say, 1,800 units, and where to make provision for more would require drastic measures (such as measures that would constitute unsound planning, e.g. excessive densities in low density areas; injunctions, such as that against Sudler Companies; etc.). It would seem to me that the 20% surcharge applied to other municipalities in

the region is intended to avoid the need for such measures where the deficiency represents a reasonably limited proportion of the obligation. In the above example, 1,800 units represents 90% of the fair share according to my definition, but only 75% of that which would include the surcharge.

Of course, we will have to await the Court's ruling regarding the credits for existing housing. Should the Court decide in favor of qualifying at least a substantial proportion, the 2,000 units which can be provided for on vacant land exclusive of that which is zoned for industry, plus rehabilitation of 150 physically deficient units, plus the proposed 150-unit senior citizen project, plus as little as 50% of all claimed existing units would satisfy in full the Township's "fair share" without the 20% surcharge.

Sincerely yours,

George M. Raymond, AICP, AIA, P.P.
Chairman

GMR:kfv