

Franklin

1985

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Letter Opinion re: fair share credits

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ML0000680



CHAMBERS OF  
JUDGE EUGENE D. SERPENTELLI  
ASSIGNMENT JUDGE

# Superior Court of New Jersey

ML0000680

OCEAN COUNTY COURT HOUSE  
C.N. 2191  
TOMS RIVER, N.J. 08754

December 2, 1985

## LETTER OPINION

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Re: J. W. Field & Company et als v. Twp. of Franklin

Counsel:

I have reviewed the report of Richard Coppola concerning fair share credits and recalculations of indigenous and surplus present need for Franklin Township. I have also reviewed all of the letter responses received concerning Mr. Coppola's report.

I note that several plaintiffs' counsel object to some of the credits recommended by Mr. Coppola based upon such assertions that the credits predate this decade, that they are not disaggregated between low and minimum income categories that they are not protected by resale controls. I believe it is fair to say, in a purely theoretical sense, several of the credits would not constitute "hard credits" that qualify towards satisfaction of the Mount Laurel obligation. Thus, for example, while no one would argue with the credit for 400 units given to the Field P.U.D. since they will meet all of the requirements imposed upon new Mount Laurel units, the same cannot be said for the units in Queens Square, Edgemere Apartments and the Ukranian Village. Other claimed credits are also debatable. For example, there is some question as to whether the Neighborhood Preservation Program rehabilitated solely substandard units as defined under AMG.

x/ However, unless the court shows some liberality with respect to the granting of credits under the facts of this case, a municipality which has made some efforts at providing a variety of housing in the past and up to the

present will not be treated any differently than a municipality that has done very little or nothing. I have, therefore, concluded that based on the legal entitlement to certain credits and the equitable right to an adjustment for other units which are not pure credits, the figure of 814 units recommended by Mr. Coppola is appropriate.

The question remains as to how the 814 units should be credited. The report subtracts those units from the total fair share. I believe that works to the prejudice of the municipality since the total fair share includes a phased reallocated present need. I have allocated the 814 credits as follows:

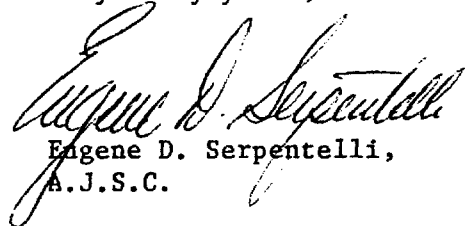
1. There shall be subtracted from the indigenous obligation of 128 units the 100 units rehabilitated by the Township Housing Authority leaving a present indigenous obligation of 28.
2. The phased reallocated present need is 220 units for the first six years. That entire obligation shall be satisfied by application of an additional 220 credits.
3. Four hundred (400) units shall be applied against the prospective need representing the Field P.U.D units.
4. The remaining 94 credits shall be applied against the second phase of the present reallocated need leaving a balance of reallocated need in the second six year period of 126 units.

Therefore, the total fair share of Franklin Township is recapitulated as follows:

1. Indigenous need -	28 units
2. Present reallocated need -	0
3. Prospective need -	<u>1,687</u>
TOTAL UNITS	1,715

My prior opinion dated October 7, 1985 shall be deemed amended to incorporate these credits. The township shall pursue compliance efforts in accordance with this revised fair share figure.

Very truly yours,

  
Eugene D. Serpentelli,  
A.J.S.C.

EDS:RDH  
copy to:  
Richard T. Coppola, P. P.