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Analysis of section 7C(1) of fair housing act providing for the determination of housing credits against municipal fair share allocations

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AN ANALYSIS OF SECTION 7 C(1) OF THE FAIR HOUSING ACT PROVIDING FOR THE DETERMINATION OF HOUSING CREDITS AGAINST MUNICIPAL FAIR SHARE ALLOCATIONS

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In July 1985, the Fair Housing Act was enacted into law by the New Jersey Legislature, and signed by the governor. This act provides generally for the future implementation of what is known as the Mount Laurel doctrine through administrative machinery, including the determination of fair share obligations for New Jersey municipalities. For the most part, the provisions governing the determination of fair share are couched in broad and general language, with substantial administrative discretion granted by the act to the Council on Affordable Housing established by the act, as well as to local government/1. The act does, however, provide explicitly for municipalities to receive credit against the municipal fair share, in Section 7 c(1) of the act, to be calculated as follows:

> Municipal fair share shall be determined after crediting on a one to one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households.

The language makes clear that, while subsidized housing is to be included in this credit provision, units eligible for credit are not to be limited to subsidized housing. In order to be able to estimate the magnitude of the credit, some definition is necessary, which is provided elsewhere in the act, in Section 4:

> c. "Low Income Housing" means housing affordable according to federal Department of Housing and Urban Development or other recognized standards for home ownership and rental costs and occupied or reserved for occupancy by households with a gross household income equal to 50% or less of the median gross household income for households of the same size within the housing region in which the housing is located.

The definition for "moderate income" is identical, except that the income range is 50% to 80% of the area median income. Thus, a unit would meet the standard of Sec. 7 c(1) if it is:

1. Of adequate standard, meaning (one assumes) neither sub-standard or overcrowded;

1/Contrary to some impressions that have arisen, the Council does not determine the municipal fair share allocations. The Council determines the regions and total need figures to be used, and then adopts "criteria and guidelines" on the basis of which each municipality determines its fair share. Thus, depending on the degree of specificity of those guidelines, municipalities may retain broad discretion to determine their own fair share allocations.

2. Affordable, meaning that the household is not spending an excessive amount for shelter.

3. Occupied or reserved for occupancy by a household falling within the above income definition.

This definition clearly includes a substantial part of New Jersey's housing stock. Roughly 40% of New Jersey's households fall into the low and moderate income population, and the great majority of them live in physically sound housing. The affordability standard reduces the total, but it still remains substantial.

In order to estimate the magnitude of the credit, first at a statewide level, and then for selected municipalities, it is necessary to turn to 1980 Census data. Although a literal interpretation of the language of the act would suggest that a showing be made that the units are affordable and occupied by lower income households now; i.e., in 1985, no data more recent than the 1980 Census is available/2. For purposes of estimation, therefore, the Census appears to be a reasonable source. The 1980 Census [STF-3, Part XI, Table 30] provides a cross-tabulation of household income by percentage of income for shelter, for owners and renters, distributed on the basis of the following value ranges:

INCOME	% OF INCOME FOR SHELTER
$0 - $4999	under 20%
$5000 - $9999	20% - 24%
$10000 - $14999	25% - 34%
$15000 - $19999	35% and over
$20000 and over	[not computed]

In order to estimate the number of lower income households, and the number paying no more than an affordable amount for shelter, we have made the following assumptions.

1. Since in 1980, the median household income in New Jersey was $19,800, we have used $10,000 as the cut-off for the low income population, and $16,000 as the cut-off for the moderate income population. Wherever we have interpolated within ranges, we have assumed that households are evenly distributed throughout the range.

2. We have assumed, for both owners and renters, that a unit in which the household spends under 30% of gross income for housing costs is considered affordable. Again, we have assumed that households are evenly distributed within each range.

2/There is an open question whether, at such time that the Council establishes guidelines for this matter, they will accept a showing under this section based solely on 1980 Census data, or whether they will require a more up-to-date study to be made by the municipality.

3. We have assumed that the households listed in the table as "not computed" (n.c.) are evenly distributed among the value ranges.

Having determined the total number of lower income households living in housing considered affordable, it was necessary to make an adjustment to reflect the fact that some of these units would be physically substandard or overcrowded; we have assumed, in the absence of a more detailed analysis, that half of all substandard and overcrowded units are also affordable. For this purpose we have used the total of deficient housing established by the Rutgers Center for Urban Policy Research. This figure was subtracted from the total obtained from the Census data analysis in order to determine the number of potential fair share credits.

TABLE 1: ANALYSIS OF POTENTIAL FAIR SHARE CREDITS BASED ON CENSUS DATA ON AFFORDABILITY BY HOUSEHOLD INCOME - STATE OF NEW JERSEY

1. DETERMINATION OF AFFORDABLE UNITS

	RENTER		OWNER	
	LOW	MODERATE	LOW	MODERATE
% OF INCOME FOR SHELTER:				
< 20%	21219	48595	10416	50104
20-24%	24747	49151	13911	27315
25-34%	54363	69981	32975	37946
35% +	246459	29305	103879	37380
n.c.	28201	6718	6211	0

Collapsed value ranges (without n.c. adjustment):

< 30%	73147	132737	40815	96392
30% +	273640	64295	120366	56353

Number of affordable units after n.c. adjustment:

< 30%	79072	137250	42386	96392

2. DETERMINATION OF POTENTIAL NUMBER OF FAIR SHARE CREDITS

Total number of affordable units occupied by lower income households	355,100
[less estimated number of substandard and overcrowded affordable units]	[60,080]
POTENTIAL FAIR SHARE CREDITS AVAILABLE	295,020

The significance of the number obtained in Table 1 is that it is larger than the total universe of fair share housing need, as determined through various methodologies. Using the CUPR figure for present housing need/3, and either the CUPR or Warren figures for prospective housing need, we find the following results:

TABLE 2: COMPARISON OF POTENTIAL FAIR SHARE CREDITS WITH TOTAL NEED TO BE ALLOCATED

1. CUPR NEED DETERMINATION

Present need	120,100
Prospective need	133,981
	254,081
less potential fair share credits	[295,020]
NET FAIR SHARE TO BE ALLOCATED	[40,939]

2. WARREN NEED DETERMINATION

Present need	120,100
Prospective need	158,708
	278,808
less potential fair share crediits	[295,020]
NET FAIR SHARE TO BE ALLOCATED	[16,212]

In both cases, the potential pool of credits exceeds the total need to be allocated. This is not as surprising as it may seem, since the statutory language of Sec. 7 c(1) defines, in essence, population in place, while the need allocation is principally based on future household increment. The two have little to do with one another, and it is largely coincidence that the two totals are as close as they are.

The excess of potential fair share credits over need to be allocated will not necessarily recur in all, or even most, municipalities. Since there is little relationship between the factors that determine each element, in some municipalities pottential credits will be only a modest fraction of the fair

3/The CUPR figure has been used here, since it appears that the Mount Laurel courts have determined that one aspect of the procedure by which present need was determined in the Warren methodology, namely, the determination of the percentage of sub-standard units occupied by lower income households, is less reliable than the comparable determination procedure used in the CUPR methodology.

share, while in others they will exceed the fair shre by a substantial amount.

Using the same methodology as shown above with regard to the State of New Jersey as a whole, we have computed the potential fair share credits for Washington Township (Morris County). This is then compared with the fair share allocation for the Township set by the Court in Van Dalen et al v. Township of Washington. Here, however, since the median household income for Morris County in 1980 was $26,626, we have used the entire population with incomes up to $20,000 as the lower income pool for determining potential credits/4.

TABLE 3: DETERMINATION OF POTENTIAL FAIR SHARE CREDITS FOR WASHINGTON TOWNSHIP [MORRIS COUNTY] AND COMPARISON WITH FAIR SHARE ALLOCATION

	$0 - $9999	$10000 - $19999	TOTAL
1. households by % of household income for housing costs:			
< 20%	0	93	
20% - 24%	0	100	
25% - 34%	41	186	
35% +	189	133	
n.c.	7	17	
2. Collapsed value ranges (without n.c. adjustment):			
< 30%	21	277	
30% +	209	216	
3. Number of affordable units after n.c. adjustment:			
< 30%	22	286	308
[less 50% of indigenous housing need]			[62]
Potential fair share credits available			246
Fair share allocation as determined by Court			[227]
NET MUNICIPAL FAIR SHARE OBLIGATION			[19]

4/80% of the county median is actually $21,300. It is extremely difficult, however, to interpolate with any accuracy into open-ended ranges ("$20,000 and over"), thus dictating our using $20,000 as the cut-off point. Furthermore, since the statute calls for using the median income of the housing region, the outcome would be affected by a regional median income likely to be somewhat lower than that of Morris County.

Thus, a literal application of the provisions of Sec. 7 c(1) leads to the conclusion that Washington Township has a "negative fair share"; i.e., the potential credits available to the township based on population in place exceed the municipality's allocation as established in the courts. This is merely an estimate, of course, but it raises serious questions.

It is extremely doubtful that this procedure can be reconciled in any rational fashion with the letter or intent of the <u>Mount Laurel</u> decision. In Washington Township, for example, roughly 2/3 of the "affordable" units are owner occupied units. Given the appreciation in property values in that community, it is inconceivable that, if any of those units come onto the market, they would be priced at levels so that a low or moderate income household could afford them. The implications of this provision are worrisome in the extreme for those who hope that the Fair Housing Act will result in a fair process of balancing municipal interests with those of the lower income population.

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