

ML Gloucester 27 - Feb - 1985

Groupco v. Trieste, Inc. v.
Gloucester Twp ~~Inc.~~ Gloucester

Affidavit of Harvey S. Moskowitz
a licensed planner of the State of
New Jersey.

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 Attorney for Plaintiff Groupco

GROUPCO, a New Jersey partnership, : SUPERIOR COURT OF NEW JERSEY
 : LAW DIVISION
 Plaintiff, : CAMDEN COUNTY/ATLANTIC COUNTY
 : DOCKET NO. L-061299-84 PW

v. :
 : Civil Action
 GLOUCESTER TOWNSHIP, etc., : (Mount Laurel)
 Defendant • :

-AND- :
 TRIESTE, INC., II, :
 Plaintiff, :
 : DOCKET NO. L-037692-84

v. :
 : AFFIDAVIT OF HARVEY S. MOSKOWITZ
 TOWNSHIP OF GLOUCESTER, etc., :
 Defendant. :

STATE OF NEW JERSEY:
 SS
 COUNTY OF ESSEX :

HARVEY S. NOSKOWITZ, of full age, being duly sworn
 according to law, upon his oath, deposes and says?

1. I am a licensed planner of the State of New Jersey,
 a copy of my resume is attached.

2. I have been retained as a consultant to the plaintiff Groupco in the above-captioned matter.

3. The following is my opinion as to whether credits should be awarded, under Mt. Laurel II, against the municipal fair share obligation in two separate contexts:

a. Units constructed before January 1, 1980; and

b. Units containing no occupancy constraint requiring that occupants must be lower-income households.

4. There are three exceptions to the rule that units constructed prior to January 1, 1980, cannot be credited against a fair share assessed for the period 1980-1990. They are:

a. Turnover in subsidized elderly units where the turnover represents a newly-available unit; that is, a net increase in the available regional housing stock;

b. Indigenous need units which have become standard units between 1980 and 1990; and

c. Units which were not standard, affordable, price and occupancy controlled units occupied by lower income households prior to 1980 and which are retrofitted with affordability, occupancy and price controls after January 1, 1980, and which turn over and are newly occupied by a lower-income household.

5. The reason why units constructed prior to 1980 cannot be credited is as follows:

a. The fair share is composed of these categories of need: indigenous, present reallocated and prospective;

b. Indigenous need can only be satisfied by upgrading the unit or providing a "new" unit; post-1980. Obviously, the existence of another pre-1980 unit is irrelevant to the satisfaction of indigenous need;

c. Allocated present need represents households living in substandard conditions regionally and the portion of

that need allocated to the municipality for satisfaction. Only "new" units in the municipality can satisfy that need since it is dependent on the net increase in the housing stock in the region;

d. Prospective need represents a proportion of the regional future increase in lower-income households. Since these are newly added households, their needs can be satisfied only by a net increase in the housing stock in the region;

e. Turnover of pre-1980, even if those units would otherwise qualify for Mt. Laurel II purposes, does not represent a "new" unit; that is, a net increase in the regional housing stock of lower-income units. A household moving out of a unit in Gloucester Township moves into a unit somewhere else. That unit was vacated by another household, etc. ultimately leading to the occupancy of the Gloucester Township unit which had been vacated. The mobility of lower-income households occupying pre-1980 units is largely irrelevant to fair share satisfaction. The fair share number assumes the existence of that mobility; that is, that some lower-income households will move in and out of the region as well as within the region. This is similar to the assumption that some will become middle-income and some middle-income households will become lower-income. A distinction is made for elderly units to the extent the turnover represents a net increase of an available lower-income unit.

6. The reasons why units which are not subject to an eligibility (occupancy) constraint cannot be credited is, from a planning perspective, the thrust of Mt. Laurel II is to provide housing for lower-income households. Merely providing affordable housing, even with resale or rerelease controls, does not assure that lower-income households will benefit;

7. There are numerous reasons why affordability (only) is insufficient:

a. Many non-lower income households will take advantage of the opportunity to occupy a standard, less-expensive dwelling;

b. Non-lower income households are likely to have a better credit history and, for that and reasons associated with

prejudice, are more likely to be acceptable to landlords, credit institutions and sellers;

c. Non-lower income households are more likely to be aware of suburban housing opportunities and can better compete for those opportunities than lower-income households.

8. Occupancy standards may not be essential in certain circumstances. Thus, if the defendant can show that, historically, a percentage of lower-income households do occupy affordable housing in Gloucester Township, we can assume a similar percentage will occupy such housing built after 1980.

a. The formula would be:

- establish the total number of affordable units and the total number of Mt. Laurel households living in affordable units;

- subtract out the indigenous need number from both the total pre-1980 affordable units and total pre-1980 lower-income households occupying affordable units;

- establish the percentage of total pre-1980 units (excluding substandard and overcrowded units) which are both affordable to and occupied by lower-income households;

- establish the number of post-1980 units which are affordable and subject to resale or rerelease controls; and

- multiply the percentage against the post-1980 units.

b. The credit would also depend on the existence of a mechanism to deal with the potential repeal of rent levelling, hardship approval of a rent increase beyond affordability limits and condominium conversions; and

c. The distribution of actual low/moderate households would depend on the relationship of the rent level to the relative income limits.

9. I should note that the above analysis assumes both affordability and rerelease controls adequate to maintain

affordability. In the case of the defendant, neither can be assumed:

a. The information presented on affordability is inadequate and does not reveal bedroom size data and other potential shelter costs; and

b. The rent levelling ordinance is not geared to increases in median household income or a relevant standard. It is a flat increase which would appear to take rentals out of the affordability range.

10. My conclusion is there is a complete absence of proof that post-1980 affordable units have been provided other than the possibility of some FMHA dwellings. There appears to be no justification for credits for non-occupancy controlled or post-1980 affordable units.



HARVEY S. MOSKOWITZ (L.S.)

Sworn to and Subscribed
Before me this ^{17th} day
of February, 1985.



LINDA M. MASCHLER
NOTARY PUBUC OF NEW JERSEY
My Commission Expires September 18.1963