

AMG

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Letter from Public Advocate to Judge
-w/ Mallach letter to Public Advocate

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State of New Jersey

DEPARTMENT OF THE PUBLIC ADVOCATE
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PUBLIC ADVOCATE

February 1, 1984

RECEIVED

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JUDGE SERPENTELLI'S CHAMBERS

Honorable Eugene D. Serpentelli
Court House
CN 2191
Toms River, N.J. 08754

Re: AMG Realty v. Warren Tp.

Dear Judge Serpentelli:

I have reviewed the transcripts in this matter. I had hoped to send you a detailed letter once I reviewed the experts' joint recommendation. I have not yet, however, received their report. Since I am going to be out of the office for over a week because of a personal matter, I wanted to send you my preliminary thoughts.

I. Is the concept of bifurcated region appropriate for the entire state?

The concept of bifurcated region has developed for several reasons. There seems to be a major problem with the idea of using an eight or nine county region for purposes of determining prospective fair share. Nevertheless, all parties seem to acknowledge that an eight or nine county region in North Jersey is necessary for determining existing need. Accepting these assumptions, the concept of bifurcated region makes eminent sense for North Jersey.

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The question remains, however, whether the concept of bifurcated region should be adopted as a statewide answer or as a response to a unique factual problem in the northern half of the state. In view of the awkwardness of establishing two regions, it should be done only where necessary.

Both the Rutgers report and the Warren Township experts recognize Ocean-Monmouth as a region. The Warren experts would recognize this as a region only for present need purposes. Doesn't it make much more sense to treat Monmouth-Ocean as one region for both purposes, prospective and present? A citizen of an Ocean County municipality will accept an Ocean-Monmouth region as a much more natural region than a forty-five minute commutershed including municipalities forty-five minutes away which have no real relationship to the Ocean County municipality. What possible benefit is there to adopting two different regions for Ocean-Monmouth?

The Warren Township experts propose Burlington-Mercer as a region. The Warren recommendation is directly contrary to a holding of the Mt. Laurel I case that Mt. Laurel Township is part of the South Jersey metropolitan area consisting of Camden, Burlington, and Gloucester Counties. Indeed, Mr. Cappola recognized that Burlington is difficult because northern Burlington County is tied to Mercer County, while southern Burlington County is tied to Camden County. In view of this split, the obvious solution is the

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Rutgers Southwest Region 5-Camden, Burlington, Gloucester and Mercer.

Moreover, there is no reason why this region could not exist for purposes of computing both prospective and present need. In fact, the Delaware Valley Regional Planning Commission does regional planning for these four counties and five Pennsylvania counties. As early as 1973, the D.V.R.P.C. published a fair share plan for these four New Jersey counties and for the Pennsylvania counties. Since all four New Jersey counties were included in the regional planning agency's board of directors and actively worked with D.V.R.P.C. there were no objections to this region. The D.V.R.P.C. fair share plan is discussed in the Oakwood-at-Madison decision, 72 N.J. 481, 533, fn. 37. In view of the long history of this four county area as a region, is it really necessary now to establish a separate prospective and present region here?

In short, I wonder whether the concept of bifurcated regions has any applicability outside of northern New Jersey.

II. Where bifurcated regions are used, should the prospective region be the Rutgers region or a journey-to-work region?

For purposes of this discussion, I am again assuming that the Court has decided that an eight county region is inappropriate for prospective fair share purposes. In that case, the question is whether the advantages of a journey-to-work region outweigh the advantages of the Rutgers region. The big advantage of a journey-

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to-work region is that it most accurately reflects commutation patterns. The Rutgers regions also reflect commutation patterns, although to a somewhat lesser extent. I saw no discussion in the transcript as to how much more accurate the journey-to-work region is.

Balanced against the possible increased accuracy is the question of cost. If the Rutgers regions were accepted as prospective regions, almost all prospective fair share issues could be resolved in six cases, since there will then only be six prospective need regions. Adoption of the Rutgers region would eliminate the need to calculate 500 separate journey-to-work regions for 500 separate municipalities. Moreover, in each case a plaintiff's planner will have to double-check the municipal planner's calculations to see that they are error-free and not self-serving where judgment is exercised. It is easy to foresee the courts being forced to deal with relatively trivial disputes on journey-to-work calculations in the context of Mt. Laurel disputes. Even if the journey-to-work region more accurately reflects commutation patterns, the Rutgers methodology on region is more preferable because of its simplicity and its tendency to minimize litigation on issues of region.

A second disadvantage of journey-to-work is that it locks the court into one rigid way of calculating prospective regional need. Regional need can be calculated only on the basis of straight-line job projections and then the adoption of a ratio of jobs to housing.

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The Public Advocate has strongly been urging that prospective housing need be calculated on the basis of population projections. It is not the purpose of this letter to resolve the controversy between the two approaches to housing need. One point should be made, however. If the prospective region is a combination of counties, housing need can be determined either on the basis of population projection, job to housing ratios, or a combination of both. Since all population projections are done solely at the county level, a choice of journey-to-work eliminates any possibility of calculating housing need on the basis of population projections. Before making such a choice, a court should be certain that the employment model for projecting prospective need is clearly the one to adopt.

For the Court's information, I am attaching a letter which I received from Alan Mallach detailing his reservations about the use of employment projections.

In summary, the Rutgers regions are simpler and less expensive to utilize for fair share purposes and allow more flexibility in the determination of household need. This Court will have to balance these advantages against any increased use of journey-to-work in reflecting commutation patterns.

III. Some unanswered questions

Certain comparisons could be made between the two methodologies. This Court knows what the Caton and Abeles projections of

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regional need are for an eight or nine county region. What would happen if housing need projections were made for an eight or nine county region using the Cappola employment/population methodology? How close would the results be? If there are substantial differences, the Court may want to explore the reasons for the disparity and consider the implications of the disparity. It is quite likely that the method of calculating regional need will be much more significant to the outcome of a fair share determination than whether journey-to-work or the Rutgers region is employed.

The Court may also want to recompute the various Warren Township fair share formulas using the Rutgers region rather than a journey-to-work region. If there is a substantial difference, it might be worth considering why. Alternatively, if the numbers are very close, this would be a reason for adopting the simpler Rutgers region.

IV. Vacant developable land as an allocation criteria

I have reviewed the criticisms of vacant developable land as an allocation factor. While there are grounds for such criticism, the Court should be very conscious of the consequences of excluding vacant developable land.

In the Morris County case, Peter Abeles allocated prospective fair share numbers to ten defendants on the basis of an allocation over an eight county region. I am summarizing data on two of the defendants, Florham Park and Parsippany Troy Hills:

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	<u>Vacant Developable Land</u> (percentage of 8 county region based on D.C.A. data	<u>Employment Growth</u> (percentage of 8 county region)
Florham Park	.694%	3.324%
Parsippany-Troy Hills	<u>1.821%</u>	<u>5.826%</u>
Total	2.515%	9.150%

These two municipalities have tremendous amounts of employment and employment growth, but relatively little land. There is no possibility that they can absorb anywhere near the fair share an employment-based allocation formula will give them. Moreover, I understand that there are even more dramatic examples in Middlesex County. It is entirely possible that an allocation formula based solely on employment criteria could allocate over 20% of the region's fair share to towns like Florham Park with no capacity to absorb anything but a fraction of that allocation.

There is another side to the coin as well. There are a number of bedroom communities in New Jersey which have little industry but plenty of land and which have experienced and will continue to experience major population growth. A formula which uses only employment criteria will substantially underestimate the fair share of these municipalities.

CONCLUSION

I have attempted to make several points in this letter:

(1) Assuming the Court rejects the eight county region as a prospective housing region, then bifurcated prospective and present

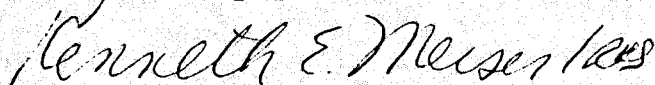
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housing regions are necessary for northern New Jersey. I have my doubts about the need for this approach in the remainder of the state.

(2) The Rutgers regions may be more appropriate prospective regions than 45 minute commutersheds.

(3) While there are problems with using vacant developable land as a fair share criteria, there may be more serious problems if only employment criteria are used.

Respectfully yours,



KENNETH E. MEISER
DEPUTY DIRECTOR

KEM:id

Alan Mallach 15 Pine Drive Roosevelt New Jersey 08555

January 10, 1984

Kenneth E. Meiser, Esq.
Division of Public Interest Advocacy
NJ Department of the Public Advocate
CN 850
Trenton NJ 08625

Dear Ken:

The following information is presented in response to your question regarding the relative merits of population vs. employment projection as a basis for establishing prospective housing need for purposes of fair share allocation. While there is no question that any approach that seeks to project into the future is speculative, there are clear reasons to prefer a methodology based on population projections over employment.

The first and most important reason is that there are population projections, prepared by a technically competent and objective State agency; namely, the ODEA projections. There are no comparable economic projections, for the reason that reputable economists do not consider it possible to project employment growth for areas as small as a county with any accuracy. Linear, or straight-line, extrapolations of employment growth from past periods are not projections; they have no technical or scientific basis whatsoever, and are given no credence by responsible economics or demographers.

Secondly, the key indicator of prospective need is household growth, and the relationship between household growth and population growth, although complex, is at least more straightforward than the relationship between household growth and employment growth. The former is a function of demographic changes; the latter is a function of the interaction between demographic and economic forces. Although some may not be aware of this, there is considerable consensus on at least the broad parameters of likely household growth during the coming decade. Virtually all responsible demographers feel that (1) household size will continue to decline; and (2) the decline will be at a more modest rate than during the 1970's. This is consistent with the analysis in the CUPR study, although they used a technically different methodology. Thus, although there will be some variation between the rates of household size change used by different responsible analysts, the variation will be within a limited parameter, within which the difference could easily be reconciled, if it were necessary to do so.

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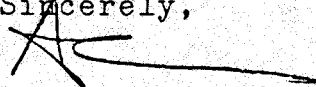
Kenneth E. Meiser, Esq. (2)

January 10, 1984

By contrast, any impression that one may have that there is a single acceptable basis for projecting household increase from employment growth (assuming one could make a responsible county-level projection of employment growth) can only arrive from the fact that few analysts, if any, have made a serious effort to do such a projection in a demographically responsible manner. To do so, one would have to take into consideration demographic changes, changes in labor force participation rates, changes in job/housing distributions between counties, and the like. The results, if two or more analysts made such an effort, would show a far wider variability than do the projections of household growth grounded in the ODEA population projections.

In conclusion, it is understandable that one would be tempted to search for alternatives to the population projection basis for prospective housing need, given the fact that it does have a significant margin of error. To substitute a projection based on a straight-line extrapolation of employment growth, however, is to make matters far worse, and to introduce a highly unreliable element into the fair share housing allocation procedure.

Sincerely,



Alan Mallach

AM:ms

cc: P.Abeles