letter-opinion Ordering Twp to immediately start work upon adoption of a compliance ordinance to satisfy the fair share number

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Superior Court of New Jersey

CHAMBERS OF
JUDGE EUGENE D. SERPENTELLI
ASSIGNMENT JUDGE

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

July 23, 1985

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LETTER-OPINION

Re: Urban League of Greater New Brunswick v. Carteret
Docket No. C-4122-73

Counsel:

In April, 1984 this court began hearings for the purpose of establishing the fair share of the seven remaining municipalities in the above case. The fact that each of those municipalities had not adopted ordinances complying with Mount Laurel II has already been established.

The fair share of six of the municipalities has since been determined. With regard to Piscataway Township, the court appointed master concluded that the fair share of the township was 3744 if calculated in

accordance with the methodology approved by this court in AMG Realty v. Warren Twp. et al., decided July 16, 1984. However, all parties and the master recognized that because of the amount of vacant developable land within the Township of Piscataway, it was highly unlikely that the fair share of the township as calculated pursuant to AMG could be satisfied. As a result, the court authorized the master to conduct a physical inventory of all vacant developable land within the township and to make recommendations concerning the suitability of that land for Mount Laurel development and the densities which would be appropriate for each suitable tract. The Urban League also conducted such a study. Upon conclusion of those studies, the Urban League was able to agree with the master upon the parcels which were suitable for lower income development. The defendant disagrees with that conclusion.

A hearing was held with respect to the suitability of each tract. The master testified as to each site and was subjected to cross-examination by the plaintiffs, defendants and interested property owners. The township presented its proofs with regard to each of the sites and each property owner also presented proofs either in favor of or opposed to a finding of suitability for lower income housing as to their individual parcels.

At the conclusion of the hearing the township attorney urged the court to make an actual site inspection before reaching any determination concerning the fair share of the township. The court agreed and an inspection was held on May 16, 1985. During the tour, the court recorded its observations. Thereafter, the recording was transcribed and was made available to counsel.

Piscataway Township, unlike many other townships involved in Mount Laurel litigation before this court, possesses a wide variety of housing.

That is not to suggest, however, that much of the housing is affordable to lower income households. Nevertheless, it does appear that there is a mixture of housing within Piscataway not present in some of the more affluent communities engaged in Mount Laurel litigation. There is a significant quantity of middle class housing and even some older lower income units. On the other hand, it is also evident that Piscataway Township has attracted a very substantial amount of industrial and office construction. The court viewed large tracts of land devoted almost exclusively to impressive corporate headquarters, office buildings, professional structures and other commercial development.

The site inspection confirmed virtually all of the conclusions made by the court appointed master in her reports of November 10, 1984 and January 18, 1985 and also confirmed her testimony before this court. There were no sites found suitable by the master which the court could conclude were not suitable based upon a site inspection. The court recognizes that the defendant has raised potential problems with some of the sites as they relate to the possible presence of toxins. However, the site inspection certainly did not confirm those concerns and the proofs in that regard were totally inadequate. Therefore, the court cannot exclude the sites based upon supposition or speculation. If they are to be excluded, a more detailed site analysis must be conducted. The township also asserted various other justifications to support a finding of unsuitability for numerous sites. The principal objections related to traffic, drainage, infrastructure inadequacies, overhead powerlines, wetlands and incompatability of adjacent land uses. Again, the site inspection did not demonstrate that any site was clearly rendered unsuitable by any such condition and the proofs concerning these constraints do not support a finding of lack of suitability. That is

not to suggest that a careful site analysis of any given site during the compliance process may not warrant a different conclusion.

Therefore, it is appropriate to calculate the fair share of the township based upon the finding made by the master and accepted by the court that the sites designated in her two reports are suitable for Mount Laurel housing. The township did not dispute the densities allocated to each of the sites by the master. In her testimony, the master concluded that the density estimates were "conservative". She provided a range of density for some sites. Though I believe it would be appropriate, for the purposes of establishing the fair share, to utilize the higher level within those ranges, I have opted, in light of the large fair share obligation of the township and the need for some adjustment to the fair share as discussed later, to use the lower level of density for each site for which a density range was provided. The township retains the right to demonstrate, after careful analysis during the compliance stage, that the densities may not be attained. Furthermore, since the fair share number need not be satisfied on every site, the township will have to analyze whether the overall fair share can be satisfied on the sites which it chooses for Mount Laurel zoning.

As a result, the court finds that the fair share of the township is 2215. That number is arrived at by multiplying the density number assigned for each of the tracts found suitable by the court by the total acreage within the sites which may be utilized for Mount Laurel housing. It should be noted that with respect to site 60, the master's report was somewhat unclear. It was clarified in supplemental testimony. Her findings were that the site, which includes several other sites shown by separate numberings in the exhibits, could accommodate 270 senior citizen units within site 53 and 300 to 400 units, most of which would be lower income, within the balance of

sites 51, 52, 53, 54 and 60. A recapitulaion of the fair share calculation is attached as an appendix. Counsel should examine the calculation carefully to be sure that the court has accurately reflected the numerical data.

It is important to note that the court does not expect the Township of Piscataway to satisfy its fair share obligation by rezoning each of the sites found suitable by the court. In fact, it would be preferable for the township to develop fewer of those sites so as to avoid a patchwork of development throughout the community. However, at this point, there is simply no evidence before the court to demonstrate that the township does not have the capacity to satisfy the fair share through rezoning of a more limited number of sites. That rezoning need not take the character of four to one development. The court has already seen in other communities that there are many devices available to the township to accommodate lower income housing development without utilizing the mandatory set-aside of 20% and turning all of the sites over to private developers. Site 60, for example, is an area in which the township owns substantial property. It could undertake housing development in that area itself, through a non-profit corporation or through the use of land dedication to that purpose in cooperation with private enterprise. That is only one example of the options available to the town. If, after careful review, the township can demonstrate that it cannot accommodate the fair share number as established in this opinion without a substantial negative impact upon the zone plan or environment of its community, it may attempt to do so. However, it must be noted that the court has been extremely careful in attempting to bring greater precision to the fair share number developed in Piscataway through the use of an actual inventory of available sites and an on-site inspection by both the master and the court. Therefore, the municipality has a

significant burden to carry if it attempts to demonstrate that it cannot satisfy its fair share number.

The township offered some evidence with respect to potential credits for fair share compliance. The court need not analyze each of the credits claimed in depth. By and large, the claimed credits relate to the existence of university housing within the municipality or the large number of apartment complexes throughout the municipality.

There is no claimed "credit" that can pass the technical requirements needed to establish a true numerical credit in the pure sense. All the units asserted by the township to be credits were built prior to 1980 and, therefore, would have been in response to the need existing prior to that date. The present need category of the AMG methodology identifies only a need for housing from 1980 forward. Secondly, none of the housing claimed as credits is price-controlled or subject to resale restrictions. Third, the testimony showed most of it is beyond lower income levels as established in Mount Laurel II.

The Urban League's expert conceded that some portion of the married student housing (348 units) might be given consideration towards reduction of the fair share - not as a pure credit - but from an equitable standpoint. I have made such an allowance and a good deal more by utilizing a density figure for all the Mount Laurel sites which is even more conservative than the "conservative" estimate made by the master. The difference between using the higher range of density and the lower range, together with a 200 unit reduction on sites 51, 52, 53, 54 and 60, amounts to approximately 473 units - a more than fair credit for any adjustment for which the township could claim "credits" based on the equities.

The fact is that there has been virtually no lower income housing created since 1980 which would fall into the category of credits towards

present need. Certainly there has been no housing developed which would constitute credits towards prospective need. Dormitory housing or group quarters would not constitute a credit inasmuch as that type of housing is not included in the inventory of present housing need as calculated under the AMG methodology.

As noted, the most that could be argued by the township is that it does have some variety of housing which other municipalities do not have and that the married student housing warrants some adjustment. Any equity considerations should be weighed in light of the evident fact that Piscataway Township is one of those types of communities which the Court had in mind when it referred to those towns which have invited the factories and excluded the workers. (Mount Laurel II at 211) The township has experienced a commercial boom which has generated very attractive ratables and the boom is not over. The fair share established for Piscataway in this opinion is likely to be its last because most of its vacant developable land for lower income purposes could reasonably be expected to be gone by 1990 and much of it has or will be consumed by very desirable ratables. Therefore, the township should do whatever it can do now.

As a result, the township is hereby ordered to start work immediately upon the adoption of a compliance ordinance to satisfy the fair share number of 2,215. It shall have a period of 90 days to do so. However, given the substantial delay which has occurred in establishing this fair share and recognizing that the township should have known that it would have a significant fair share number, the township should not expect that this court will permit any significant extension of this 90 day period. While such extensions have been liberally granted in many other municipalities,

in this case it would be unfair and inappropriate to do so. The township should expect that if it is unable to satisfy the 90 day requirement, it will have to present compelling reasons why the court should not have the master establish a compliance ordinance in accordance with this opinion.

Very truly yours,

EDS:RDH

Eugene D. Serpentelli,
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APPENDIX

SITE NUMBER	ACREAGE	DENSITY	TOTAL UNITS
1	10.7	5	53.5
2	110	8	880
3	27.7	8	221.6
4	10	7	70
6	55.6	12	667.2
7 & 8	123	8	984
9 & 13	81 (subject to possible reduced density for buffering to approximately 6 per acre)	8	648
10 & 12	68	8	544
31	11.9	10	119
32,33 & 34	114.02	7	798.14
35	74.65	10	746.5
37	7.82	12	93.84
38	30	12	360
40	15 5	8 (120) 15 (75)	195
42	32.4	10	324
43	14.7	10	147
44	20	8	160
45	40.9	8	327.2
46	55.64	8	445.12
47	9.4	10	94
48 & 63	9	5	45
49	17.3	12	207.6

57	40	10	400
75 & 76	10.5	6	63
77	6.45	5	32.25
78	3	7	21
80	10	8	80
			8,726.95

8,726.95 divided by 5 = 1,745.39

	1,745.39
51,52,53	270.00 (senior citizen)
54,60	200.00*
	2,215.39

*Using the lower estimate of the master (300) and reducing it because of her testimony that most of the units would be lower income.

No units charged against site 79 which was found suitable in conjunction with site 38.