

IN THE MATTER OF THE PETITION )  
FOR SUBSTANTIVE CERTIFICATION )  
OF THE BOROUGH OF WATCHUNG )

NEW JERSEY COUNCIL ON AFFORDABLE  
HOUSING

Docket No. *COAH 8728*

Civil Action

OPINION

This matter comes before the Council on Affordable Housing (Council) upon the application of Elizabeth Medical Trust for an Order declaring the proposed regional contribution agreement (RCA) between the Borough of Watchung and the Town of Phillipsburg violative of the Council's regulations and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. The Borough of Watchung and Crestwood Coalition for Proper Planning in Watchung (Crestwood) oppose the motion.

Watchung has a precredited need of 132 a.s. determined by the Council. Pursuant to N.J.S.A. 52:27D-312 and N.J.A.C. 5:92-11.3, Watchung proposes to transfer 57 units of its fair share obligation to Phillipsburg at a cost of \$22,000 per transferred unit. In accordance with N.J.A.C. 5:91-12.1(b), Watchung submitted to the Council a contract for the RCA and a memorandum of understanding with Phillipsburg, both of which set forth the number of transferred units, the cost of the transferred units and the source of funds for the transferred units.

Phillipsburg has a precredited need of 24 as determined by the Council. However, the actual number of deteriorated units in the town is 214. As a result of the Council's methodology, which considers filtering, conversions and spontaneous rehabilitation, See N.J.A.C. 5:92-5.8 to 5.12, Phillipsburg's precredited need was calculated as follows:

Actual Need	214
Demolitions	<u>+10</u>
	224

Filtering	-168
Conversions	- 28
Spontaneous rehab	<u>- 4</u>
Precredited Need	24

Filtering, conversions and spontaneous rehabilitaion are sometimes referred to as "secondary sources of supply".

Elizabeth Medical Trust argues that Phillipsburg should not be permitted to accept more than its precredited need of 24 units via an RCA. Elizabeth Medical Trust contends that the fact that the secondary sources of supply reduce Phillipsburg reduce Phillipsburg's need to 24 and the fact that Phillipsburg does not send any units into the region as reallocated need should preclude an RCA for more than 24 units. It also argues that since parties to mediation cannot challenge the methodology used to calculate precredited need in mediation, the municipalities should likewise have to abide by the precredited need figures.

Watchung opposes the motion and argues that the proposed RCA conforms to Council policies since there are actually 214 deteriorated units present in Phillipsburg and the cost of rehabilitaion proposed by the RCA is substantial. Likewise, Crestwood argues that the motion is premature since such a motion should not be considered at least until mediation has ended and probably should not be considered at all since it challenges the Council's regulations thereby making the Appellate Division the appropriate forum. Finally, Crestwood argues that there is nothing in the Act or the Council's regulations which would preclude a receiving municipality from accepting units over and above its precredited need. The restrictions on the transfer apply to the sending municipality, argues Crestwood, and the receiving municipality's fair share is irrelevant.

Initially, the Council does not find this motion to be premature as Crestwood argues. If it isultimately concluded that Phillipsburg may not accept the full 57 units, Watchung then must devise another way in which to satisfy its obligation. The proper forum for Watchung

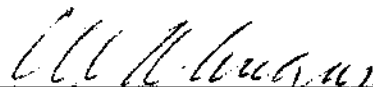
to do this is before the Council and the parties involved should know, while they are before the Council, whether Watchung's plan is satisfactory and thereby deal with any objection in mediation. Therefore, it serves no purpose to delay a decision which may impact upon review and mediation.

Crestwood is correct in its assertion that neither the Act nor the Council's regulations prohibit a receiving municipality from accepting more than its precredited need. Both the Act and the regulations simply say that a sending municipality is limited to transferring 50 per cent of its obligation. N.J.S.A. 52:27D-312 and N.J.A.C. 5:92-11.1. The receiver is barred, however, from receiving credits towards its fair share for units pursuant to an RCA. N.J.A.C. 5:92-11.3. This rule prevents the credits from being claimed twice once by the sending municipality and once by the receiving municipality thereby assuring that both municipalities provide their fair share.

If the RCA between Watchung and Phillipsburg proposed to provide for the transferred units through new construction, this would be the end of our inquiry. However, since the RCA in question proposes rehabilitation of 57 units, the Council must be assured that the units do indeed exist. Phillipsburg precredited need number of 24 therefore raises the question of whether sufficient units for the proposed RCA exist. In this case, the Council is satisfied that those deficient units do exist and the RCA is proper. While the secondary sources of supply reduce Phillipsburg's responsibility from 214 to 24 units, they do not negate the existence of the substandard units. Only spontaneous rehabilitation will negate the existence, and that is not a factor in this case. The secondary sources of filtering and conversions occur in communities with multi-family housing. The assumption is that sound units become available to income qualified households in areas with high percentages of multi-family housing. In any event, Phillipsburg does have sufficient units to rehabilitated through this proposed RCA. It should be noted that the Council has allowed RCAs in other instances where there is proof of the amount of actual deteriorated units. The Fair Housing Act sets forth as one of its purposes the need to rehabilitate substandard housing in the State. N.J.S.A. 52:27D-302. In fact the Legislature specifically declared that RCAs should be used to

rehabilitate deficient housing. N.J.S.A. 52:27D-302(f). The proposed RCA between Watchung and Phillipsburg thus falls squarely within the intent of the Act.

For all of the foregoing reasons, Elizabeth Medical Trust's motions is denied. An appropriate Order will be entered.



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William Angus, Acting  
Chairman

Dated *January 19, 1988.*