

COUNCIL ON AFFORDABLE
HOUSING
DOCKET NO. COAH⁸⁷160

MORRIS COUNTY FAIR HOUSING)
COUNCIL, et al.,)

Plaintiffs,)

v.)

BOONTON TOWNSHIP, et al.,)
(DENVILLE TOWNSHIP),)

Defendants.)

Civil Action

OPINION

_____)
RANDOLPH MOUNTAIN INDUSTRIAL)
COMPLEX,)

Plaintiff,)

v.)

BOARD OF ADJUSTMENT OF THE)
TOWNSHIP OF RANDOLPH, et al.,)

Defendants.)

This matter comes before the Council on Affordable Housing (Council) upon the application of intervenor, Sisters of the Sorrowful Mother Health Care Corporation (SSMHCC) and the St. Francis Life Care Company (SFLCC) for an Order exempting them from the restraints on sewer allocation imposed by the Council in its Order dated November 3, 1986. Specifically, SSMHCC and SFLCC seek exemptions for two proposed projects referred to as the continuing care retirement center and the medical office building.

SSMHCC and SFLCC argue that said exemptions are appropriate for essentially two reasons. First, they contend that both projects will provide vitally needed health care and health care facilities for the region. Second, they argue that the development of these projects will directly result in the provision of low and moderate income units in both Denville and Boonton since the Sisters of the Sorrowful Mother Healthcare Corporation (SSM Healthcare Corp.), the parent corporation of SSMHCC and SFLCC, plans to sponsor, develop and manage 72 low and moderate income units in Boonton, 38 of which will be units transferred from Denville to Boonton pursuant to a regional contribution agreement (RCA). The SSM Healthcare Corp. plans to donate land for the units as well as in kind contributions of services. However, SSMHCC and SFLCC argue that if they cannot proceed with the projects in question, they will be unable to supply the land and services for the low and moderate income units. Additionally, SSMHCC and SFLCC rely upon a 1953 contract between the Sisters of the Sorrowful Mother and Denville which granted the Sisters 200,000 gallons of sewer capacity per day.

The Township of Denville and objector Maurice Soussa support the motion citing the need for such health care facilities in the area. Stonehedge Associates opposes the motion and argue that the present uncertainty of Denville's housing element and fair share plan makes it necessary to continue all restraints since at this juncture it is unclear how much sewerage capacity Denville will require to satisfy its fair share obligation.

The basic facts of this matter are undisputed. The SFLCC plans to construct a continuing care retirement center in Denville.

This center will combine living accommodations with social and healthcare services for the elderly. SFLCC will enter into a contract with the resident and agree to provide continuing care for the period of the contract, which generally will be the duration of a resident's life, in return for an entrance fee or periodic payment or both. The center will consist of 240 unfurnished apartments, consisting of studios, one bedroom and two bedroom apartments, and a sixty bed skilled nursing facility and also will provide various services and programs on an in patient and out-patient basis. SFLCC does not plan to include income qualification nor does it plan to set aside any space specifically for low and moderate income persons. The project has received a certificate of need for a skilled nursing facility from the Department of Health which expires on January 1, 1988.

SSMHCC plans to instruct a 76,000 square foot medical office building in Denville. The office building has received site plan approval from the Denville Township planning board, as well as all necessary DEP approvals. Approximately 60% of the office space has been leased and an October, 1988 occupancy date has been promised to the tenants. If the exception is not granted, SSMHCC will have to immediately notify all tenants and inform them that it is unlikely the October 1988 occupancy date will be met. It is anticipated that many physicians will seek alternative office space.

On November 3, 1986 the Council entered an Order restraining Denville from "permitting any additional connection to the public sanitary sewage system, or increased usage by parties presently connected to the system, which would utilize or diminish

sewage treatment capacity in the "municipal growth reserve..." At that time, SSMHCC and SFLCC* appeared to seek an exemption from any restraints the Council might impose. In its opinion accompanying the Order, the Council found SSMHCC's and SFLCC's request to be premature since they had not made formal application for approval of the proposed projects and hence had received none of the necessary approvals. SSMHCC and SFLCC presently have received certain approvals and their application before the Council is no longer premature.

After reviewing the facts of this case, the Council is satisfied that it is appropriate to exempt the medical office building from the terms of the Order imposing conditions, however, at this time it is not appropriate to allow an exemption for the continuing care retirement center. The office building will require approximately 8,325 gpd as calculated by SSMHCC. No party disputed this figure. The project has received all necessary approvals and has leased 60% of the space. The only impediment to the project is the Council's restraint. If the restraint is not lifted for this project, it is very likely the project will suffer irreparable delay due to loss of occupants. This delay could undermine the provision of low and moderate housing in the region. SSMHCC and SFLCC intend to donate land for the construction of 72 units of affordable housing in Boonton, 38 of which will be trans-

* It should be noted that at the time SSMHCC and SFLCC appeared before the Council in 1986, they were known as the Sisters of the Sorrowful Mother Primary Care Corporation and the Sisters of the Sorrowful Mother Senior Services Corporation. The names have been changed but the entities remain the same.

ferred from Denville pursuant to an RCA. Additionally, the movants intend to donate in kind services for the development and management of the units. However, in order for SSMHCC and SELCC to be able to proceed with the above undertaken they need to proceed with the projects to ensure that they have sufficient financial ability. Thus, there is a direct link between the construction of the office building and provision and maintenance of low and moderate income units in the region. To deny the exemption to the office building at this time will adversely impact upon affordable housing in the region to an extent that does not justify denying SSMHCC the use of 8,325 gpd of sewer capacity. Moreover, the Council is mindful of the beneficial services to the region this facility will provide, as recognized by Denville and the objector, Mr. Soussa. Thus, the benefit of exempting the office building far outweighs any harm.

However, at this time, the same cannot be said for continuing care center. The center has not progressed to the stage where release from the restraints is vital. The center does not have all necessary approvals, as does the office building, nor is more than half of its space committed, as is the office building. Additionally, the amount of capacity required by the center, approximately 27,400, gpd is far in excess of 8,325 gpd needed for the office building and therefore will have a substantial effect on the availability of sewer capacity. Thus, the Council finds it inappropriate to exempt the continuing care center.

An appropriate Order embodying his opinion will be entered.

Arthur R. Kondrup
Chairman

Dated: