

NEW JERSEY COUNCIL ON  
AFFORDABLE HOUSING

IN THE MATTER OF THE PETITION )  
FOR SUBSTANTIVE CERTIFICATION )  
OF CEDAR GROVE TOWNSHIP, )  
ESSEX COUNTY, NEW JERSEY )

Docket No. 87-25

Civil Action

OPINION

This matter comes before the Council on Affordable Housing (Council) upon the application of A&S Associates (A&S), an objector to the Township of Cedar Grove's petition for substantive certification, for reconsideration of a Council decision which would allow Cedar Grove to receive credit towards satisfaction of its fair share obligation. Cedar Grove has a precredited need of 152, 8 of which is indigenous need. The specific credit in question is a credit for 149 units of HUD section 202 senior citizen housing. The 149 units were constructed and completed prior to promulgation of the Council's regulations. All units are one bedroom units and restricted to low income households. Moreover, since it is a HUD section 202 project, the length of affordability controls run with the life of the building, which is well in excess of those required by the Council. See N.J.A.C. 5:92-12.2.

A&S argues that, at most, Cedar Grove should be entitled only to a credit of 34 units which represents the 25 per cent limit on age restricted housing. See N.J.A.C. 5:92-14.3. A&S argues that to allow otherwise would violate the Council's intent in promulgating regulations which call for a provision of a variety of housing. A&S also argues that it would render the Fair Housing Act (Act), N.J.S.A. 52:27D-301 et seq., unconstitutional to allow the credits since it would result in "over crediting" thereby diluting the fair share obligation. In support of this argument, A&S relies

upon Morris Cty. Fair Housing Council v. Boonton Tp., 209 N.J. Super. 393 (Law Div. 1985), in which the Court assumed that the Council would develop a methodology for determining present and prospective need which is compatible with the methodology for determining credits. Finally, A&S contends that in balancing the policy interests, the Council should conclude that the credit should be disallowed since any other result would permit Cedar Grove to exclude the persons the Act was deigned to help and frustrate the regulation's intent. Cedar Grove did not respond to the motion.

A&S' arguments evidence a misunderstanding of the Council's regulations. Pursuant to N.J.A.C. 5:92-6.1(a), Cedar grove clearly is entitled to credit for all 149 units. N.J.A.C. 5:92-6.1(a) states:

(a) Municipal present and prospective fair share shall be determined after crediting on a one to one basis those housing units created or rehabilitated after April 1980. Credits for rehabilitation shall not exceed indigenous need. Credits are applicable when a unit's occupancy is restricted to low or moderate income households and when the municipality has implemented adequate assurances for continued affordability consistent with Subchapter 12, Controls of Affordability, subject to the following exceptions:

1. A housing unit created and occupied after April 1, 1980 is also eligible for crediting when it has been developed under the auspices of a government funded, financed or otherwise - assisted housing program designed specifically for households whose incomes do not exceed 80 percent of median income where the unit is governed by controls on affordability that are substantially the same as those set forth in Subchapter 12, Controls on Affordability.
2. For rehabilitation, a unit shall be eligible for crediting if:

i. It was below applicable code standard and was rehabilitated up to applicable code standard between April 1, 1980 and January 1, 1987, provided it was occupied at the time of rehabilitation by an eligible low or moderate income household as defined in N.J.A.C. 5:92-1.3, and

ii. It is currently occupied by the occupants who resided within the unit at the time rehabilitation, or by another eligible low or moderate household as defined in N.J.A.C. 5:92-1.3. (Emphasis added).

Cedar Grove's request for credit falls squarely within N.J.A.C. 5:92-6.1(a). All 149 units were constructed and occupied between April 1, 1980 and January 1, 1987 and developed under the auspices of a government funded program, namely HUD. Moreover, those units are reserved for households whose income does not exceed 80 per cent of the region's median income and are governed by affordability controls in excess of the 20 years required by N.J.A.C. 5:92-12.2. Thus, no waiver of Council regulations is necessary since N.J.A.C. 5:92-6.1(a) applies in this instance.

In promulgating, N.J.A.C. 5:92-6.1(a) the Council recognized that municipalities may have acted in good faith to provide low and moderate income housing without knowledge of the Council's regulations since they were not promulgated until August 4, 1986. Therefore, the Council adopted N.J.A.C. 5:92-6.1(a) which would allow credits for those efforts provided they met the basic Council criteria of income qualifications and affordability controls.

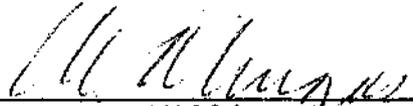
The crediting provision of N.J.A.C. 5:92-6.1(a) is consistent with Council methodology and, contrary to A&S' assertions, does not result in "over crediting." The methodology adopted by the Council for determining present and prospective need is based upon the 1980 census data. Accordingly, the fair share

numbers calculated pursuant to the Council methodology indicate a municipality's fair share obligation as of April 1, 1980. Any production of low and moderate income housing after April 1, 1980 does not appear in the present and prospective need and consequently low and moderate income units constructed subsequent to that date in actuality are satisfying the need. The crediting provision of N.J.A.C. 5:92-6.1(a) is consistent with the Council methodology in determining present and prospective need which is calculated as of April 1, 1980 since credits only are allowed for units created subsequent to April 1, 1980. This likewise is consistent with the court's assumption that "... the Council will develop a methodology for determining the present need for lower income housing which is compatible with the methodology it uses for determining credits..." Morris Cty. Fair Housing Council, 209 N.J. Super. at 430. N.J.A.C. 5:92-6.1 simply recognizes a municipality's good faith effort in providing affordable housing prior to the promulgation of the Council's regulations.

A&S points to other Council regulations which are designed to provide a variety of housing to a broad spectrum of households and argues that, in light of those regulations, the Council should not permit Cedar Grove to claim the credits. However, those regulations that A&S points to, namely N.J.A.C. 5:92-14.1, 14.2 and 14.3, apply to inclusionary developments which are not subject to the crediting rule. All inclusionary developments constructed after January 1, 1987 must comply with the provisions of N.J.A.C. 5:92-14 et seq. unless a waiver is granted. Those regulations do not apply in this instance. While it is true that the Council promulgated subchapter 14 in an effort to provide

a wide variety of housing to a broad spectrum of households, the Council did not intend those regulations to apply to units constructed prior to promulgation of Council regulations since the municipalities would have been unaware of Council regulations. Hence, the Council adopted N.J.A.C. 5:92-6.1(a).

Accordingly, since all 149 units in question comply with the provision of N.J.A.C. 5:92-6.1(a), Cedar Grove is entitled to receive the credits. It is unnecessary, therefore, for Cedar Grove to apply for any waivers of Council regulations. An appropriate order will be entered.

  
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William Angus  
Acting Chairman

Dated: 2/1/88