

STATE OF NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING  
Docket No. COAH 88-112

In the Matter of the )  
CIVIC LEAGUE OF GREATER )  
NEW BRUNSWICK, )

Objector, )

v. )

EDISON TOWNSHIP, a municipal cor- )  
poration of the State of New Jer- )  
sey, located in Middlesex County; )  
and the PLANNING BOARD OF EDISON )  
TOWNSHIP, )

Petitioners. )

Civil Action

OPINION

This matter comes before the Council on Affordable Housing (Council) upon the application of the Civic League of Greater New Brunswick (League) for an Order prohibiting the Township of Edison and its planning board from selling and/or contracting for the sale of municipal land and from granting development approvals for privately owned land in Edison of five acres or more. The League is an objector to Edison's petition for substantive certification. Edison did not file any papers in response to the League's motion; however, it did appear at oral argument on the motion before the Council and opposed the motion. Pursuant to Council instructions during the oral argument, Edison did submit information on vacant land in the Township.

The League argues that the requested restraints should be imposed because Edison's present housing element and fair share plan claims numerous credits which purportedly reduce Edison's fair share obligation from 1,111 to zero. The league has objected to those credits and argues that Edison's fair share

obligation is at least 405 units. Therefore, the League contends that since Edison has failed to submit a housing element and fair share plan which adequately addresses its need, development of vacant land must be restrained to ensure that an appropriate plan is eventually adopted. The League also argues that Edison has admitted in its housing element that land is a scarce resource in the Township.

The New Jersey Supreme Court has defined a "scarce resource" as "... those resources that will probably be essential to the satisfaction of the Mt. Laurel obligation." Hills Development Co. v. Bernards Tp., 103 N.J. 1, 61 (1986). The Court specifically contemplated that land could be a scarce resource. Id. The Court empowered the Council to preserve these scarce resources and stated:

... [T]he Council has the power to require, as a condition of its exercise of jurisdiction on an application for substantive certification, that the applying municipality take appropriate measures to preserve 'scarce resources' ... [Id.]

The Council has incorporated this authority within its procedural rules and regulations. See N.J.A.C. 5:91-11.1.

Generally, in order to ensure that a municipality has sufficient vacant land to satisfy its fair share obligation while the administrative process is progressing, the Council considers the municipality's precredited need number, as opposed to the municipality's calculation of its fair share obligation after claimed credits and adjustments when determining whether the municipality has adequate land to meet its obligation. See Fair

Share Housing Center, Inc., et al. v. Township of Cherry Hill, COAH Docket No. 87-7. The rationale behind this approach is that it is not appropriate to speculate at the beginning of the process on the number of credits and adjustments which will eventually be allowed. The number ultimately arrived at and the number initially claimed by the municipality could differ greatly and therefore, to ensure that sufficient land is available to satisfy the ultimate number, the Council determined that it was prudent to preserve sufficient land to satisfy the entire pre-credited need number.

Satisfaction of the fair share obligation is the paramount goal of imposition of restraints upon the use of scarce resources. Therefore, generally, the Council will utilize the standard established in Fair Share Housing Center, Inc., et al v. Township of Cherry Hill, to determine whether a resource is scarce to ensure satisfaction of the obligation. However, the present case presents a unique situation and due to the uniqueness of this situation, the Council feels it is appropriate to deviate from the established standard for the determination of the existence of a scarce resource. Rather than consider Edison's precredited need number of 1,111 in determining whether land is a scarce resource, the Council will consider Edison's number after certain credits. The reason for this departure, as will be explained subsequently in more detail, is that it is clear under Council regulations that Edison is entitled to significant credits and has zoned sites for low and moderate income

housing which already have received approvals. The objectors do not dispute this. Therefore, since it is clear that Edison may receive certain credits against its fair share obligation and has progressed to the approval stage of the inclusionary developments, it makes the most sense to deal with the number arrived at after considering the foregoing in determining whether vacant land is a scarce resource rather than utilize the entire number which we know will not be required in this case. While this approach differs from the approach generally utilized, it does accomplish the goal of ensuring that sufficient land is available to satisfy Edison's obligation and therefore the Council is convinced that this approach is appropriate in this case.

In this case, after allowing for credits Edison will be entitled to under Council regulations, considering the sites already zoned for inclusionary development and calculating the vacant land necessary utilizing that number, the Council finds that vacant land is not a scarce resource in Edison and therefore will not impose restraints upon the development of vacant land. Preliminarily, it should be noted that the League in its papers states that Edison's obligation, after credits it claims are allowable, is at least 405. After reviewing Edison's housing element and fair share plan, for the purposes of this motion, the Council finds that after all allowable credits, Edison's fair share obligation is 590. The need number the Council utilizes for the purposes of his motion is therefore significantly higher

than the League's suggested figure. The Council arrived at 590 as follows:

Credits

216	rehabilitation credits (includes public housing and scattered site rehabilitation)
240	new construction of section 8 units
42	"
23	"
<u>521</u>	Allowable Credits
1,111	Precredited Need
<u>-(521)</u>	Credits
590	.....After Credits

The League argues that Edison should not receive credit for the rehabilitation of public housing units. However, the Council has decided in the case of Franklin Township, Somerset County that such units are eligible for credit. The Council agrees with the League's position that Edison should not receive the rental bonus credits pursuant to N.J.A.C. 5:92-14.4 since that regulation applies only to units to be constructed.

The Council notes that at this time it is clear that Edison is entitled to 521 credits. However, as the administrative process continues, the number may change. Therefore, the Council is utilizing the 521 credits solely for the purposes of this motion. The calculation of the credits at this time is not intended to limit the Council in any way and the Council explicitly states that this figure can change as more facts become known and more information is submitted. The Council has util-

ized the figure of 521 credits simply because it can say at this time those credits are eligible under Council regulations.

In its housing element and fair share plan, Edison indicates that it has already zoned four sites for low and moderate income housing. Those sites are zoned to allow for production of 600 units of low and moderate income housing and preliminary approvals have been granted. Those 600 units include 50 units at the Clara Barton development, 104 units at the Edison Tyler development, 100 units at Edison Woods and 346 units at Rivertown. Normally, when determining whether vacant land is a scarce resource, the Council simply looks at available vacant acreage and determines how many units can be provided at the presumptive six units per acre with twenty percent set-aside. N.J.A.C. 5:92-8.4. However, in this case the projects located on the four sites have received preliminary approvals and thus, Edison has done more than simply designate sites. Edison has undertaken steps towards development of those sites. Therefore, in this case, the Council will determine the amount of vacant land needed after allowable credits and after accounting for units to be provided on the four sites.

However, while Edison has zoned for 600 units, it will not be able to utilize all 600 units towards satisfaction of its fair share obligation. Edison's housing element indicates that all of the 600 units are or may be reserved for senior citizens. Under Council regulations, a municipality may only reserve up to 25% of its fair share, after credits, for senior citizens.

N.J.A.C. 5:92-14.3. In this case, utilizing the 521 credits, Edison should be entitled to reserve 148 units for senior citizens. Edison's plan, however, states that it will limit occupancy of 254 units at Clara Barton, Edison Tyler and Edison Woods for senior citizens and the remaining 346 units at Rivertown may be reserved for senior citizens. While the plan indicates that it is only a possibility that the 346 units may be designated for seniors, for the purpose of this motion, the Council must assume that all will be reserved for senior citizens. By making such an assumption, the Council can assure that Edison has sufficient land. Thus, out of the 600 units, Edison may only count 148 units towards satisfaction of its fair share obligation. Accordingly, after allowing for 521 credits and 148 units on the sites which have been zoned and received preliminary approvals, Edison will provide for 669 units and therefore Edison must have sufficient vacant land to accommodate an additional 442 units so that it satisfies its entire obligation of 1,111 units.

Based on the information before the Council, Edison has sufficient vacant land to accommodate the necessary 442 units. Regarding these units, since it is not clear how those units will be provided, the Council must assume that they will be developed at the presumptive six units per acre with a 20% set aside to ensure that there is sufficient vacant land to accommodate those units. Even though Edison may eventually provide for those units in another manner, at this time, the Council must assume the presumptive development set forth in the regulations since these

units have not been provided for with certainty as have the other 669 units. N.J.A.C. 5:92-8.3. Edison, therefore will require 368 acres of vacant land to accommodate those units. (442 X 5 units to be constructed for every low/moderate unit ÷ 6 units per acre = 368 acres). Edison has submitted documentation which indicates that it has 3281.7 acres of vacant land. Of that 3281.7 acres, 1965.3 is zoned "heavy industrial. In determining vacant acreage, the Council has removed those acres zoned "heavy industrial" since it is unlikely that such land will be used for residential purposes. However, the Council has not removed the land zoned "light industrial" from consideration since it is possible that such land could be utilized for high density development. In fact, the Council has had municipalities come before it in the past and use land that previously had been zoned commercial or light industrial for inclusionary developments. Thus, for the purposes of this motion, Edison has 1316.2 acres vacant land. Even if some of that acreage must be discounted due to development constraints, Edison clearly has enough vacant land to satisfy its obligation.

The Council would take this opportunity to reiterate that this case is a departure from the normal standard utilized by the Council for determining whether land is a scarce resource. In this case, the Council was able to reach conclusions about components of Edison's plan at this time. The Council is not able to do this in all cases. For instance, in Cherry Hill, the Council was not able to evaluate Cherry Hill's credit requests



nor had Cherry Hill progressed to the stage in designating sites where the Council was satisfied that it could consider development of certain projects. In this case, the Council is satisfied that vacant land is not a scarce resource.

The Council's decision today is not intended to preclude the League from raising this issue again if facts and circumstances change as the administrative process progresses. However, if the League does raise a similar motion in the future, the Council notes that before any restraints would be imposed, the Council would require notice to all parties in Edison who could be affected by any restraints requested, as well as general notice to the public. Certainly, the Council cannot impose restraints without affording all parties who might be affected by the restraints the opportunity to be heard.

---

James Logue, III, Chairman  
New Jersey Council on Affordable Housing

Dated: November 7, 1988.