

COUNCIL ON AFFORDABLE HOUSING
Docket No. COAH 89-203

In the Matter of)
THE TOWNSHIP OF)
PARSIPPANY-TROY HILLS,)
COUNTY OF MORRIS)

OPINION

The Township of Parsippany-Troy Hills has moved before the Council on Affordable Housing (COAH) for an Order clarifying the provisions of N.J.S.A. 52:27D-312(a), N.J.A.C. 5:92-11.1(a) and N.J.A.C. 5:92-11.2(h) as they relate to regional contribution agreements. Essentially, Parsippany-Troy Hills requests the Council to decide whether calculation of the number of units permitted to be transferred pursuant to a regional contribution agreement (RCA) is based upon the precredited need number or the number arrived at after credits.

Parsippany-Troy Hills was transferred to COAH by Order dated January 23, 1988. At the time it was transferred to COAH, Parsippany-Troy Hills already had filed its adopted housing element and fair share plan. COAH determined that Parsippany-Troy Hills' plan was deficient and by Resolution adopted January 9, 1989 returned the plan to Parsippany-Troy Hills and indicated that a letter would be following specifically outlining in detail the deficiencies in the plan.

COAH determined Parsippany-Troy Hills' precredited need to be 1,028. In its plan submitted to COAH on March 10, 1989, Parsippany-Troy Hills indicated that it proposed to enter into an RCA contribution agreement to transfer up to 514 units. Parsippany-Troy Hills utilized its precredited need of 1,028 to determine the

amount of units it was permitted to transfer pursuant to an RCA. The deficiency letter forwarded to Parsippany-Troy Hills clearly indicated that Parsippany-Troy Hills should calculate the amount of units it would be permitted to transfer pursuant to an RCA based upon its fair share obligation as arrived at after taking allowable credits. In this case, Parsippany-Troy Hills sought to take 441 credits against its precredited need thereby arriving at a fair share obligation of 587. The deficiency letter indicated that under the Fair Housing Act and COAH regulations it would be permitted to transfer 50% of 587 or 294 units.

After reviewing the Fair Housing Act, COAH regulations, the "incomplete" letter and all papers filed, COAH finds that the "incomplete" letter was correct and Parsippany-Troy Hills may transfer up to 294 units, assuming that it is ultimately permitted to claim 441 credits. The term "fair share" is not defined in the Act or in COAH regulations, however, the provisions of the Fair Housing Act make it clear what the term means. N.J.S.A. 52:27D-307(c)(1) requires COAH to "adopt criteria and guidelines:" for

municipal determination of its present and prospective fair share of the housing need in a given region. Municipal fair share shall be determined after crediting on a one-to-one basis each current unit of low and moderate income housing of adequate standard, including any such housing constructed or acquired as part of a housing program specifically intended to provide housing for low and moderate income households;

Additionally, N.J.S.A. 27D-307(c)(2) provides that the ultimate fair share number is arrived at after taking any allowable adjustments as well. These provisions make it apparent that the term "fair share" as used in the Fair Housing Act and consequently as

used in COAH regulations and as COAH consistently has applied means that obligation arrived at after a municipality takes any credits or adjustments to which it may be entitled. Accordingly, COAH has provided each municipality with a calculation of its precredited need and each municipality may take whatever credits or adjustments are appropriate pursuant to COAH regulations to determine its actual fair share obligation.

N.J.S.A. 52:27D-312 states that

- a. A municipality may propose the transfer of up to 50% of its fair share to another municipality within its housing region by means of a contractual agreement into which two municipalities voluntarily enter.

The term "fair share" is not defined in this section and consequently the Act as a whole must be viewed in order to determine what is meant by "...the transfer of up to 50% of its fair share" As discussed above, N.J.S.A. 52:27D-307 sets forth the manner in which the fair share shall be determined and specifically states that the fair share ultimately is arrived at after the municipality is allowed appropriate credits and adjustments. Therefore, pursuant to N.J.S.A. 52:27D-312, a municipality may transfer up to 50% of its fair share obligation as calculated after the municipality has taken appropriate credits and adjustments.

In the present case, Parsippany-Troy Hills has a precredited need of 1,028. In its housing element and fair share plan, Parsippany-Troy Hills claims a credit of 441 units thereby arriving at a fair share of 587 units. Parsippany-Troy Hills does not claim any adjustments, therefore that is not an issue in this case.

Pursuant to N.J.S.A. 52:27D-312, Parsippany-Troy Hills may propose to transfer up to 50% of this figure or 294 units. Of course, the claim for credits as presently set forth in Parsippany-Troy Hills' housing element and fair share plan must be verified and when it is in fact determined the exact number of credits to which Parsippany-Troy Hills is entitled, the Township will then be able to calculate the exact number of units it is permitted to transfer pursuant to an RCA. For the purposes of this motion, COAH uses the figure of 441 credits since that presently is what Parsippany-Troy Hills is claiming. As stated, this figure is subject to change.

Parsippany-Troy Hills argues that N.J.S.A. 52:27D-312(a) clearly allows a municipality to transfer up to 50% of its precredited need. However, as explained above, this section specifically indicates that the fair share obligation is determined after allowing for appropriate credits and adjustments. Therefore, it is inconsistent to claim that the precredited need number is the appropriate number to utilize.

Parsippany-Troy Hills also argues that COAH's staff confused the Township when the Township sought the advice of the staff as to how many units it could transfer pursuant to an RCA. Parsippany-Troy Hills points specifically to apparent confusion over the interpretation of N.J.A.C. 5:92-11.2(h). Contrary to Parsippany-Troy Hills' argument, this provision is in actually irrelevant to the precise determination of how many units a municipality may transfer pursuant to an RCA. N.J.A.C. 5:92-11.2(h) simply states that a municipality may have no more than 25% of its total units

age-restricted, whether that 25% is actually provided in the municipality or pursuant to an RCA or a combination of both. This regulation does not impact upon the calculation of the number of units a municipality may transfer pursuant to an RCA.

Finally, Parsippany-Troy Hills argues that COAH has inconsistently interpreted the provisions of N.J.S.A. 52:27D-307 and 312. Parsippany Troy-Hills argues that COAH uses the term "fair share" interchangeably with the term "precredited obligation". Parsippany Troy-Hills ignores the plain meaning of the term "precredit". Precredit as used by the Council means precisely that. Each municipality is assigned a precredited need number which, pursuant to N.J.S.A. 52:27D-307, the municipality then may claim credits against and adjust. COAH also is not persuaded by Parsippany-Troy-Hills' argument that it is being penalized for having produced 441 units of senior citizen housing since 1980. If these credits claimed are determined to be appropriate then Parsippany-Troy Hills has less units to provide in town as well as less units to transfer pursuant to an RCA. Accordingly, the Township is not being penalized for providing those units.

In conclusion, COAH hereby finds that consistent with the Fair Housing Act and COAH regulations, Parsippany-Troy Hills may transfer up to one-half of its fair share as calculated after taking any allowable credits or adjustments. Parsippany-Troy Hills has only requested clarification of the Council's position on this matter, so accordingly, there is no need to enter an Order in this case since this Opinion serves as clarification.


James L. Logue, III, Chairman
Council on Affordable Housing

Dated April 24, 1989