



Ryan, Jessica

From: Lashway, Lisa
Sent: Thursday, April 29, 2010 8:55 AM
To: Sohl, Bill; Ryan, Jessica; Natafalusy, Catherine
Subject: FW: FSHC's Comment on Mount Olive's Fair Share Plan

Lisa Lashway
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From: Kevin Walsh [mailto:kevinwalsh@fairsharehousing.org]
Sent: Wednesday, April 28, 2010 6:09 PM
To: COAHmail@dca.state.nj.us; gfishetti@dca.state.nj.us; 'Rudd, Matthew'; sthompson@dca.state.nj.us
Cc: Chuckmcgroarty@Banisch.Com; Natafalusy, Catherine; Lashway, Lisa
Subject: FSHC's Comment on Mount Olive's Fair Share Plan

Attached please find Fair Share Housing Center's comment on Mount Olive Township's fair share plan.

Thank you.

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Peter J. O'Connor, Esq.
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April 28, 2010

Sean Thompson,
Acting Executive Director
New Jersey Council on Affordable Housing
101 South Broad Street
P.O. Box 813
Trenton, New Jersey 08625

Re: Mount Olive Township (Morris)

Dear Mr. Thompson:

Please accept this letter as Fair Share Housing Center's (FSHC) comments on Mount Olive Township's Third Round Housing Element and Fair Share Plan. FSHC, founded in 1975, is New Jersey's only public interest organization dedicated solely to the preservation and growth of the Mount Laurel doctrine. We work to ensure that every municipality in New Jersey provides its fair share of low- and moderate-income housing in order to promote housing opportunities for all New Jerseyans and racially and economically diverse communities. See, e.g., In re Adoption of 5:94 and 5:95, 390 N.J. Super. 1 (App. Div. 2007); Fair Share Housing Center v. Cherry Hill, 173 N.J. 393, 415-16 (2002); In re Adoption of N.J.A.C. 19:3, 19:4, 19:5, and 19:6, 393 N.J. Super. 173, 182 (App. Div. 2007).

We do not intend through this letter to object to Mount Olive's plan pursuant to N.J.A.C. 5:96-4.1. However, we have identified a specific areas of concern that the Council on Affordable Housing (COAH) and the Township should address before Mount Olive can receive substantive certification. Specifically, we are opposed to Mount Olive's failure to include very low income family units. The very low income units in the township's plan are all senior units. This approach is inconsistent with COAH's regulations and violates the Mount Laurel doctrine.

The Fair Housing Act of 1985, as amended, requires COAH to ensure that municipalities provide at least 13 percent of their affordable housing as very low income housing. N.J.S.A. 52:27D-329.1. COAH is implementing this requirement in the Third Round certification process. COAH has additionally indicated in an October 2009 letter that its existing regulations require that half of the very low income units be family units. Mount Olive's plan, however, does not indicate any means of satisfying the township's very low income family housing obligation.

In addition to violating the existing regulations, this approach violates the Mount Laurel doctrine. Courts have repeatedly emphasized that housing that excludes families may satisfy part, but not all, of a municipality's Mount Laurel requirement. Younger families with children are the primary intended beneficiaries of the Mount Laurel doctrine. See Taxpayers Ass'n of Weymouth v. Township of Weymouth, 80 N.J. 6, 50 (1976)("[W]e were specifically concerned in Mt. Laurel with the needs of younger families with children"). In In Re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1, 76 (App. Div. 2007), the Appellate Division recognized that "[t]he desire to exclude families with children drives

exclusionary zoning, a fact recognized when the Court first announced the Mount Laurel doctrine The cost of primary and secondary education generates a significant burden which can be lowered by limiting housing opportunities for families with children.” The panel found that age-restricting half a municipality’s affordable housing “represents an exclusionary restriction” that “has the potential to significantly reduce the availability of affordable housing for poor families with children, and is therefore exclusionary.” Id. at 79. See also In re Re-Petition of Howell Tp. for Substantive Certification, 2006 WL 1749632 (App. Div. 2006)(invalidating waiver by COAH allowing municipality to provide 33 percent instead of 25 percent of fair share requirement through age-restricted housing, in part because doing so “diminished” number of units available for families).

The Fair Housing Act similarly concerns itself with families, as an integral part of a broader range of groups for which the municipality must allow a “variety and choice of housing.” The Legislature specifically mentions serving “[t]he interest of. . . families in need of affordable housing” as a key purpose of the Fair Housing Act. N.J.S.A. 52:27D-302(c). It further notes that “The Supreme Court of New Jersey in its Mount Laurel decisions demands that municipal land use regulations affirmatively afford a reasonable opportunity for a variety and choice of housing including low and moderate cost housing, to meet the needs of people desiring to live there.” N.J.S.A. 52:27D-302(h). COAH describes its family requirement, which it adopted in response to the Appellate Division finding that its prior rules were unconstitutional and violated the FHA, as implementing the constitutional and statutory requirement for a “variety and choice” of housing. 40 N.J.R. 237(a), 238.

Here, Mount Olive proposes to allow all of a municipality’s very-low-income requirement to be met with housing closed to families with children. That housing will be provided as age-restricted housing. While we do not doubt the importance of housing for seniors, it makes up a fairly small share of the housing need. See In re 5:94 and 5:95, supra, 390 N.J. Super. at 80 (age-restricted housing percentage above 25 percent did not reflect needs of housing market); N.J.A.C. 5:97-3.10 (age-restricted housing capped at 25 percent of municipal obligation). COAH has emphasized based on these data that schemes focusing on age-restricted housing alone does not address the full range of affordable housing needs. See, e.g., 40 N.J.R. 2738 (“The Council has established age-restricted maximums and family housing requirements to ensure a balance of housing opportunities for all segments of the population”).

COAH’s own methodology states that age-restricted housing and housing for the developmentally disabled combine to constitute only 32 percent of the housing need. COAH has responded to fears that such housing would constitute too much of a municipality’s compliance scheme by pointing to the 50 percent family minimum. A policy exempting very-low-income housing from that minimum, and allowing a municipality to meet all of the housing need for very-low-income households through those mechanisms, is inconsistent with COAH’s findings about housing need.

Such inconsistency mirrors the Appellate Division’s warning in In re N.J.A.C. 5:94 and 5:95 regarding schemes that purport to “meet” the Mount Laurel obligation while also allowing municipalities to exclude families with children. Given the Legislature’s determination that very-low-income people should be included in the Mount Laurel doctrine, a policy that allows exclusion of very-low-income families is unconstitutional. It also is contrary to the intent of the Fair Housing Act, which is to provide a “comprehensive planning and implementation response” with special attention to “families in need of

affordable housing." N.J.S.A. 52:27D-302(c). Excluding very-low-income families from a municipality is unconstitutional and contrary to the Fair Housing Act.

We thus urge COAH and Mount Olive to ensure that half of the Township's very low income units are provided as family housing.

Finally, we note that the Township's application requests a waiver to permit the Township to provide very low income family units. Although we do not take a position at this point on the waiver request, we do support the provision of very low income family units and urge COAH to require the Township to provide them regardless of the waiver request.

Please note that we do not intend through this letter to endorse any part of the COAH's Third Round regulations or methodology. We are challenging COAH's regulations before the Appellate Division. We expect that Mount Olive at some future time may have to provide a realistic opportunity for a substantially greater obligation than that it addresses in its current Fair Share Plan. Likewise, there may be other flaws in Mount Olive's plan that we have not identified in this letter.

Thank you for your attention to this matter.

Sincerely,

Kevin D. Walsh

c: Clerk, Mount Olive Township
Charles T. McGroarty, PP, AICP
Catherine Natafalusy