Affordable Housing
Update on Affordable Housing Litigation & Settlement Efforts
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Participating Municipalities: Voluntary Process with Incentives

- Housing Plan approval:
  - COAH “Substantive Certification” or
  - Court “Judgment of Repose”
- Immunity from litigation for 10 years

Non-participating Municipalities: Risk of “Builder’s Remedy”

- Developer awarded higher density housing with affordable housing via litigation
Update on Affordable Housing Litigation & Settlement Efforts

1975
Mount Laurel I
Each municipality has a constitutional obligation to provide affordable housing

1983
Mount Laurel II
Obligations assigned
Court approves Housing Plans

1985
Fair Housing Act
COAH created to administer FHA

1986-2014
COAH Rule Making
COAH administered the FHA and promulgated first, second and third round rules
3rd Round Rules

“Growth share” rules are adopted twice and overturned

2013

Supreme Court Decision

Invalidate methodology
Ordered new rules to be adopted

2014

COAH Fails to Adopt

COAH fails to adopt 3rd round rules

2014

FSHC Motion

Fair Share Housing Center (FSHC) files motion to compel the State to adopt rules

2015

Mount Laurel IV

Supreme Court transfers approval of housing plans to Courts
COAH Rulemaking “Rounds”

1st Round 1987-1993

2nd Round 1993-1999

known now as PRIOR ROUND 1987-1999

Third Round 1999-2025
Current Litigation – Process

1. File for Declaratory Judgement
   • Alert Court of intention to comply and seek immunity from builder’s remedy

2. Seek Settlement
   • Settlement agreement(s) with intervenors
3. Fairness Hearing or Trial

- Determine obligation and preliminary compliance
- Fairness hearing if settlement with intervenor(s)

4. Compliance Hearing

- Court approval/rejection of adopted housing plan
Current Litigation - Parties

Fair Share Housing Center (FHSC)
- Intervenor in all cases
- Non-profit organization defending housing rights for low income households
- Enforced Litigants’ Rights and prompted 2015 Mount Laurel IV
- Calculated obligations & offer settlements to municipalities

Developer Intervenors
- 1 Intervenor - 34 Walnut Street, LLC
  - Zoning Board approved 8 total units, including 1 affordable
  - Developers intervene to be included in a housing plan and receive increased density
Current Litigation – Primary Issues

Affordable Housing Obligation

- Negotiate obligation
- Unusual process – must adhere to caselaw

Compliance Strategies

- Vacant Land Adjustment
- Affordable housing sites and programs

Administration

- Monitoring
- Unit Administration
- Future Steps
Madison’s History & Status

1995
Second Round Substantive Certification

2005
Extended Prior Round Substantive Certification

7/2015
Declaratory Judgement

11/2015
Draft Housing Plan Submitted

10/2016
Intervenor Status

2017-2018
Settlement Negotiations

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Madison Housing Authority & Madison Affordable Housing Corporation

Affordable Housing Provider

• Senior & family housing
• Rental & sale housing
• Scattered throughout Borough

Rental Voucher Program

• Not eligible for credit
The Obligation

Rehab.

Prior Round
(1987-1999)

Final determination by Court or Settlement with FSHC

Third Round
(1999-2025)

6-21

86

227-1,065
The Obligation

Rehabilitation
(present need)

Prior Round
(1987-1999)

New Construction Obligation

25% min rental

25% max senior

37% min low income

13% min very low income

Bedroom Distribution
(1, 2, 3 bedrooms)

Third Round
(1999-2025)
Satisfying the Rehabilitation & Prior Round Obligations

Rehabilitation Obligation – 6-21 units

- Participate in the Morris County Housing Rehabilitation Program
- Create a Municipal Rehabilitation Program

Prior Round Obligation – 86 units

- Satisfied with 174 Existing Affordable Units & Bonuses
  - Madison Housing Authority
  - Madison Affordable Housing Corporation
Third Round Vacant Land Adjustment

Realistic Development Potential (RDP)

- +/- 80-120 units
- Theoretical exercise
- Identify “vacant and developable” lands
- Calculate potential capacity for affordable housing

Unmet Need

- Difference between RDP and third round obligation
- Must create opportunities where they arise
Satisfying the Third Round RDP

Utilize Prior Round Surplus

- Madison Housing Authority
- Madison Affordable Housing Corporation
- Other

Address any Deficit with New Sites

- Analysis and negotiation ongoing
Create Affordable Housing Opportunities

- Most common: overlay inclusionary housing
  - Downtowns
  - Shopping Centers
  - Underutilized sites
- Alternatives: by-right zoning, accessory apartments
Housing Element/Fair Share Plan

Consideration of lands for affordable housing

Satisfaction of rehabilitation obligation

Satisfaction of prior round & third round obligations

Probable future affordable housing stock

Trust Fund: spending plan, development fee ordinance

Housing, demographic, employment analysis

Resolutions, draft ordinances, administration manuals
Court Approval of Housing Plan

Court Hearing on Adopted Housing Plan

- Public comment
- Does it meet applicable rules?

Judgment of Repose

- Compliance finding
- Ongoing monitoring
- Immunity from builder’s remedy litigation
- Implementation of Housing Plan
Questions?

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