





AFFORDABLE HOUSING

Overview



Welcome....

Our presenters this evening will be:

Philip B. Caton, P.P., FAICP

Principal at Clarke, Caton Hintz – Trenton, NJ

Paul E. Pogorzelski, P.E., P.P.

Administrator/Engineer – Hopewell Township

Our moderator this evening will be:

Michael W. Herbert, Esq.

Attorney – Parker McCay

Who Qualifies for Affordable Housing in Mercer, Monmouth and Ocean County

Maximum Allowable Income

Household Size	Low Income	Moderate Income
1	\$33,011	\$52,817
4	\$47,158	\$75,454
6	\$54,704	\$87,526

For perspective:

Starting salary for a Hopewell Valley teacher with a BA: **\$51,712.00**

Starting salary for a Hopewell Township police officer: **\$57,278.00**

History of COAH

- Mount Laurel II decision (1983) from NJ Supreme Court
 - Created a constitutional obligation for all NJ municipalities to provide affordable housing
- NJ Fair Housing Act passed (1985) created Council on Affordable Housing (COAH) to administer the law
- This process worked smoothly through the first two rounds (1987-1999)
 - Hopewell Township met or exceeded its Affordable Housing obligations in these rounds

NJ Supreme Court's 3rd Round Mandate

(2015-present)

- In 2014, the COAH process broke down during the preparation of the 3rd round requirements. COAH stopped meeting.
 - In 2015, the NJ Supreme Court intervened and created a new court-mandated process.
- Municipalities were required to submit 3rd round compliance plans, by the court, by the end of 2015
- Many Municipalities and Fair Share Housing Center did not agree on each town's obligation, so trials were scheduled by county to determine the municipal affordable housing obligation through 2025
 - Hopewell Township petitioned for and received immunity from builder's remedy lawsuits during the trial

NJ Supreme Court's 3rd Round Mandate (continued) (2015-present)

- NJSLOM and Municipal consortiums were formed by county to reduce expense by limiting overlapping expert and legal costs.
 - Mercer County's trial was scheduled after Middlesex and Ocean Counties trials were completed.
 - The trial was divided into 2 phases.
 1. The determination of "prospective need", covering the period 2015-2025
 2. The determination of "expanded present need" (or "gap obligation") covering the period 1999-2015.
- 1. The trials lasted 40 days (January 11-June 10, 2017)

The Key Players

- **Fair Share Housing Center (FSHC)**

- A not-for-profit housing advocacy group dedicated to ensuring municipalities meet their affordable housing obligations
- Supported by coalition of affordable housing advocates and various other donors
- A 2015 decision of the Supreme Court concluded that Fair Share Housing was an “interested party” giving them standing in all affordable housing litigation
- Hired a highly-regarded expert (Kinsey and Associates) to create a methodology which assigned each municipality a “fair share” of their region’s housing need for low and moderate income households and to defend it in court



- **The Intervenor**

- Landowners in Hopewell Township that have committed to provide affordable housing.
 - **Deer Valley, Woodmont, CF Hopewell**
- 2 out of Hopewell Township's 3 intervenors had parcels within sewer service areas.

Note: COAH site suitability rules require that affordable housing be located in a sewer service area

Rights of the Intervenors

- Right to participate in the trial and to file independent motions before the Judge
- Right to present their own recommendation and plan for how Hopewell Township can meet its affordable housing needs
 - **Particularly applicable if the Township is unable to fulfill its total obligations with other parcels**
 - **Judge can choose Builder's plan over the Township if it results in a more realistic demonstration that Affordable Housing will be built**
- If settlement process were to break down, intervenors (and other developers) may petition the court to terminate our immunity
 - **The result of this action could be a builders remedy lawsuit giving developers the right to develop ANY land in the Township which has access proximity to water and sewer infrastructure**
 - **Township loses control and existing local Zoning and Master Plan restrictions.**

The Consequences of **NOT** Settling

- The judge decided the Township of South Brunswick had failed to make sufficient progress in meeting its affordable housing obligations.
- The result was a court-mandated requirement for over 2,900 new affordable housing units to be constructed.
- The judge appointed hearing officers to substitute for the Planning Board in reviewing applications for inclusionary development
 - Builders are now driving the process in South Brunswick moving forward

Hopewell Township's Affordable Housing History

We have had 3 experiences to date:

1. “Stick our Heads in the Sand” (pre-2000)

- **Result:** Builders Remedy lawsuit with a resulting ratio of 8-9 market units for each affordable unit.

2. Regional Contribution Agreement (RCA)

Result: City of Trenton was paid by Hopewell Township to create affordable housing on our behalf and provide housing credits to the Township in return.

Note: The Fair Housing Act was amended in 2008 to abolish RCA's – they are no longer permitted.

3. Proactive Era

- Hopewell Township started to fulfill its 3rd round affordable housing needs through proactive planning.
- By being proactive, Hopewell Township maintained control of its Master Plan and Zoning.

Executive Summary

- Negotiated our obligation down from 1,756 units to 653 units after bonuses and credits
- Reduced the ratio of market to affordable units down from a high of 9:1 recommended by Governor Christie to a ratio of 4:1¹
- Developers will absorb the cost of new infrastructure
- Affordable housing units are being distributed geographically to coincide with school capacity
 - **Note: Hopewell Valley schools currently have approximately 600 open seats across the district**

¹ Source: NJ Spotlight article May 6, 2015

Executive Summary (continued)

- Traffic impacts will be distributed across three 1-95 interchanges
 - Developers will also be responsible for providing detailed traffic impact studies (and mitigation plans) before projects proceed
- Settlement of litigation ends escalating legal expenses. Mercer County towns have incurred over \$1,000,000, in expense, through June 2017

High Level Overview of Hopewell Township's Settlement

- The Mercer County trial started with 5 municipalities participating. As towns settled out of the litigation, Hopewell Township's share of the costs increased.
- Hopewell successfully negotiated our obligation down from 1,756 units, resulting in 653 net units (after bonuses and credits).
- For the 653 units:
 - 164 can be age-restricted, limiting impacts on the schools
 - The potential number of affordable units on the Pennington Circle was reduced by over 50% to limit the traffic impacts on the circle
 - The remaining units are distributed across multiple locations in the town spreading the traffic across three 1-95 interchanges

Overview of Settlement (continued)

- Hopewell Township is entitled to reduce its 3rd round number if the final Mercer County trial ruling or other legislative action results in a lower obligation
 - Hopewell Township is also protected against any increased obligation that may result from the trial.
- Moving forward, this settlement will satisfy our obligation on Affordable Housing because it provides a “realistic opportunity” for these units to be built
- Important notes:
 - Developers assume the risk that the real estate market can absorb the total number of units – e.g. if there is not market-demand for this many units, they will not be built.
 - Developers will also absorb the cost of new water and sewer infrastructure.

Who is controlling the timing?

- August 28th – **Fairness Hearing** was held and the Judge determined that Hopewell Township’s settlement provided a “realistic opportunity” to meet its affordable housing obligations.
 - Immunity from Builders Remedy lawsuits extended for 120 days.
- December 14th – **Compliance Hearing** to be held.
 - Court mandates that this hearing be held by all NJ Municipalities within 120 days of the completion of the Fairness Hearing.
 - Hopewell Township must demonstrate that the required progress has been made by the date of the Compliance Hearing

Risks of failing to show required progress?

- Intervenors would have the right to recommend their own plan for development if the township has not demonstrated required progress
- Hopewell Township could lose its immunity, allowing other developers to submit alternate plans (e.g. builders remedy)

What is the realistic timing of the plan?

Timing will largely be driven by:

1. **Market factors** – a limited amount of new housing can be absorbed by the housing market each year.
2. **Development Hurdles** – planning, permitting, approvals, studies, inspections, utility capacity and expansion timing etc.

As a point of reference, Brandon Farms took approximately 15 years to reach full build-out of 1,000+ units.

Hopewell Township's settlement anticipates and provides for construction to occur beyond the year 2025.

Questions:

What stipulations are in the plan in the event there is a constitutional amendment that changes our obligations?

- The settlement provides for changes in court rulings and legislative changes that reduce our number. The settlement specifically states:

“The Parties agree that if a decision of a court of competent jurisdiction in Mercer County, or a determination by an administrative agency responsible for implementing the Fair Housing Act, or an action by the New Jersey Legislature, would result in a calculation of an obligation for the Township for the period 1999-2025 that would be lower by more than ten (10%) percent than the total prospective Third Round need obligation established in this agreement, and if that calculation is memorialized in an unappealable final judgment, the Township may seek to amend the judgment in the Action to reduce its fair share obligation accordingly....”

What improvements to roads and facilities are planned and what will this do to property taxes?

- As discussed earlier in tonight's presentation, each site's developer will be responsible for bringing road, sewer and water infrastructure to their site. These investments are the responsibility of private developers and will not result in out of pocket expense for the Township.
- Each site will also need to prepare detailed traffic studies before preliminary plans are approved. If issues are identified, the Township will work proactively with the developer to mitigate these issues.

What alternatives including the use of accessory apartments and purchasing of foreclosures are being explored for cost comparisons to determine feasibility?

- We have one accessory apartment today in the Township and are only permitted a maximum of 10 in the third round.
- Accessory apartments are specifically permitted throughout the Township. However, there is an affordability restriction that must be recorded with the deed to the property lasting a period of 30-50 years.
- In many instances owners are unwilling to accept a deed restriction which is an encumbrance on the property that can affect sales and refinancing. Additionally, most owners seek to screen and pick the tenants in the accessory apartment but the COAH process precludes that. (including family members)
- Foreclosures – Foreclosure purchase is a lengthy and costly process. The township has pursued foreclosures in the past however, as the Affordable Housing Trust Fund was depleted, it was determined that the legal costs of purchasing foreclosures outweighed the benefit gained by saving the unit.

How will the Hopewell Township Affordable Housing settlement impact schools and taxes?

- Decisions regarding School capacity, funding and capital investment is the purview of the Board of Education. However, we would like to share the following perspectives:
 - The Hopewell Valley Regional School District currently has approximately 600 open seats across Hopewell Valley, so it can absorb a significant number of new students, without anticipated capital investments.
 - Hopewell Township has taken several proactive steps in its settlement to mitigate the potential impacts on schools. For example: Hopewell Township's settlement allows for 25% of the Affordable units (164) and the associated market rate units to be age-restricted (e.g. 55+ community);
 - The new market rate rental units on the Klockner tract are targeted to young professionals; data from similar Woodmont developments suggest this type of housing generates a relatively low number of school age children.

How will the Hopewell Township Affordable Housing settlement impact schools and taxes?

- As a next step, we will be working to share more detailed information on each site with the District's demographer, along with proposed project phasing, so that we can get a more accurate picture of potential impacts beyond 2025.
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- Importantly, the School District will also retire a significant amount of its current debt in 2021-22, as previous capital investments to expand capacity are paid off. This will free up monies within the existing tax rate to help mitigate any issues and/or allow for monies to be returned to taxpayers



Has the committee signed on to the legislation proposed by Holly Schepisi to revamp the affordable housing requirements?

- Yes, Hopewell Township has formally adopted multiple resolutions advocating for reform of the Affordable Housing process. This includes joint Senate and Assembly bills co-sponsored by our D-15 Legislator Reed Gusciora, along with Ms. Schepisi.



What tools remain available to the Township to exercise control over the number and placement of units?

- While the number of affordable units is fixed by the settlement, we are working to further optimize the specific placement of the units on each site and to ensure that any development respects key environmental constraints.
- The Township has also placed each of the key Affordable Housing sites in redevelopment areas, which not only allows us to claim bonus credits, but also gives us greater control over any resulting development.

Might the township still be able to maintain open space areas or corridors within these developments?

- On Scotch Road, the Township expects to receive 170 acres of property by early 2018 (as a result of this settlement) that will preserve the existing viewshed from Pennington-Washington Crossing Road towards the south, and also create a wooded buffer of approximately 1000 feet to the west to protect Jacob's Creek and shield existing neighborhoods.
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- Similarly on the Zaitz tract, we are setting aside land for a new Senior + Community Center and Community Gardens. And we have permanently protected the adjacent Hutchinson tract by removing it from a sewer service area.
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- The other lands being developed are limited in size and are not anticipated to have open areas of the same size as CF Hopewell or Zaitz. However, we will take prudent steps on these sites to create buffers, protect stream corridors, and otherwise support long-standing Township environmental practices.



Additional Questions??