

AFFORDABLE HOUSING  
IN  
HOPEWELL TOWNSHIP

## S. Burlington County NAACP v. Mt. Laurel, 67 N.J. 151 (1975) (Mt. Laurel I)

- Municipality cannot exclude low and moderate income families from the municipality by means of its zoning ordinance;
- municipality's obligation to afford the opportunity for adequate low and moderate income housing extends to its fair share of the present and prospective regional need therefor;
- municipality must plan and provide reasonable opportunity for low and moderate cost housing.

## S. Burlington County NAACP v. Mt. Laurel, 92 N.J. 158 (1983) (Mt. Laurel II)

- When the exercise of (the zoning) power by a municipality affects something as fundamental as housing, the general welfare includes more than the welfare of that municipality and its citizens: it also includes the general welfare -- in this case the housing needs -- of those residing outside of the municipality but within the region that contributes to the housing demand within the municipality. Municipal land use regulations that conflict with the general welfare thus defined abuse the police power and are unconstitutional.

## S. Burlington County NAACP v. Mt. Laurel, 92 N.J. 158 (1983) (Mt. Laurel II)

- the trial court may appoint a special master to assist municipal officials in developing constitutional zoning and land use regulations;
- where a developer succeeds in *Mount Laurel* litigation and proposes a project providing a substantial amount of lower income housing, a builder's remedy should be granted;
- “while we have always preferred legislative to judicial action in this field, we shall continue -- until the Legislature acts -- to do our best to uphold the constitutional obligation that underlies the *Mount Laurel* doctrine.”

## Fair Housing Act (1985)

- Designed to create a process by which municipalities could predictably meet their Mount Laurel obligations outside of the court system;
- created the Council on Affordable Housing (COAH);
- provided for COAH to come up with municipal fair share numbers and acceptable compliance mechanisms every six years, giving rise to a series of “rounds” of compliance.

## Round 1 (1987-1993)

- In 1986, COAH released the First Round rules, which required 10,849 low- and moderate-income homes per year statewide.

## Round 2 (1993-1999)

- In 1994, COAH released the Second Round rules, which required 6,465 low- and moderate-income homes per year statewide.

## Round 3 (1999- present)

- Third round rules finalized 2005 – “growth share” replaces “fair share”;
- invalidated by court 2007 and reissued;
- continuous challenges until this year.

# Timelines

- Draft rules – April 30<sup>th</sup>
- Formal proposal – June 2<sup>nd</sup> NJ Register
- COAH public hearing – July 2<sup>nd</sup> at HMFA
- Public comments on rules – deadline August 1<sup>st</sup>
- COAH expected to adopt on October 2<sup>nd</sup>
- Effective date of rules – Nov. 17<sup>th</sup>
- New Plans – May 15, 2015

# Outline

- What has Hopewell township done to meet its Mt. Laurel obligations to date?
- What do the new Third Round rules require?
- What builders remedy issues must we confront?

# 2008 Fair Share Plan

## Round Three

	Requirement	Township Provision
Total Fair Share Obligation	1,008	--
Rounds One and Two	520	535
Rehabilitation Share	5	5
Round Three (Growth Share) Requirement	483	
Excess	--	15
Not Counted in Prior Rounds, Eligible in Round Three	--	49
Subtotal, Excess Applicable to Round Three Requirements	--	64
<b>Net New Round Three Requirement After Excess From Prior Rounds</b>	<b>419</b>	<b>--</b>
1. Scattered Site Projects (Community Options, HomeFront, Wick Avenue, Minnietown Lane)	--	15
2. Accessory Apartments	--	10
3. Block 78, Lot 10.4 (Project Freedom)	--	70
4. Block 33, Lot 1.02 (Pennytown)	--	70
5. Block 91, Lot 3.96 (Capital Health Systems)*	--	70
6. Block 93, Lot 5 (Burroughs tract)	--	7
7. Block 88, Lot 5.02 (Weidel tract - Amended)	--	180
8. Residential development (ongoing, inclusionary zoning distributed throughout Hopewell Township)	--	<u>50</u>
<b>Total Units</b>	<b>419</b>	<b>472</b>
Excess for Round Three Requirement		53

# Affordable Housing Requirements Per COAH Proposed Rules

*(N.J.A.C. 5:99 & N.J.A.C. 5:98)*

# Statewide Units Need

- Rehabilitation or Present Need = **62,859**
- Unanswered 1987 to 2014 Obligation = **22,171**
  - Half (**11,086**) due from 2014 to 2024
  - Other half from 2024 to 2034
- Fair Share of Prospective Need = **30,788**  
(2014 to 2024)

*Hopewell Township  
Affordable Housing Obligation  
Per Proposed Rules*

Units

Total remaining affordable  
Housing obligation for the  
period 1987-2024

**1,477**

*Total due by 2024:*

**982**

# Hopewell Township Obligation per Proposed Rules

	<u>Units</u>
<b>I. Affordable Housing Obligation</b>	
– Rehabilitation Need	0
– Prior Cycle Obligation	
– 1987-1999: 565	
– 1999-2014: <u>726</u>	
<b>Total 1987-1999 obligation</b>	<b>1,291</b>
<b>II. Affordable Unit “Completions”</b>	
Per proposed COAH rules	- <u>301</u>
<b>Net Unanswered Prior Round Obligation (1987-2014)</b>	<b>990</b>
<b>III. Remaining Obligation per COAH</b>	
– Net “Unanswered” Prior Round Obligation(1987-2014):	990
– Fair Share Obligation 2014-2024 (“Post-Project Need”):	<u>+487</u>
<b>Total Remaining Affordable Unit obligation 1987-2024</b>	<b>1,477</b>
<b>IV. Delivery Requirements</b>	
– <i>Portion of obligation due by 2024:</i>	
– 2014-2024 Obligation	487
– + 50% of Unanswered Prior Obligation =	<u>+495</u>
<b>Total due by 2024:</b>	<b>982</b>

***Hopewell Township Obligation  
with RCA Units and Substantial Compliance  
Reduction***

Units

Total remaining affordable  
Housing obligation for the  
period 1987-2024

**1,121**

***Total due by 2024:***

**806**

# Hopewell Township Obligation with RCA units

	<u>Units</u>
I. <b>Affordable Housing Obligation</b>	
– Rehabilitation Need	0
– Prior Cycle Obligation	
– 1987-1999: 565	
– 1999-2014: <u>726</u>	
<b>Total 1987-1999 obligation</b>	<b>1,291</b>
II. <b>Affordable Unit “Completions”</b>	
Per proposed COAH rules	- 301
RCA units	- 198
<b>Net Unanswered 1987-2014 Obligation</b>	<b>990</b>
III. <b>Remaining Obligation per COAH</b>	
– Net “Unanswered” 1987-2014 Obligation (792 units before 20% reduction):	634
– Fair Share Obligation 2014-2024 (“Post-Project Need”):	+ <u>487</u>
<b>Remaining Affordable Unit obligation 1987-2024</b>	<b>1,121</b>
IV. <b>Delivery Requirements</b>	
– <i>Portion of obligation due by 2024:</i>	
– 2014-2024 Obligation	487
– + 50% of Unanswered Prior Obligation =	<u>+319</u>
<b>Total due by 2024:</b>	<b>806</b>

# *Hopewell Township Affordable Housing Obligation*

Units

Total remaining affordable housing  
obligation 1987-2024

**1,477**

Delivery Requirements

*Total due by 2024:*

**982**

*Total due between 2024 and 2034:*

**495**

# Major Rule Changes

- ***Requires inclusionary zoning*** as preferred means addressing Fair Share
- Establishes an affordable housing ***set aside of 10%***
- Requires an ***Economic Feasibility Study*** (EFS) for inclusionary zoning
- Permits alternate approach only where available land capacity is insufficient
- Eliminates:
  - presumptive density standards
  - rental requirement
  - rental bonuses
  - family housing requirements
  - market to affordable
  - extensions of controls
  - assisted living

# MEETING THE PROSPECTIVE NEED

- Available Techniques:
  - Inclusionary Zoning
  - Donation of land for 100% affordable units
  - Community residences for the developmentally disabled
  - Tax abatements
  - Use of public funds
  - Use of municipally-generated funds

# CONCERNS OVER BUILDER'S REMEDY LITIGATION AND EXCLUSIONARY ZONING CHALLENGES – FACT OR FICTION?

- Municipalities need to be concerned over the possibility of builder's remedy litigation and exclusionary zoning challenges during the pending period of uncertainty involving COAH's third round rules, methodologies and affordable housing calculations.
  - Example – Cherry Hill Township was recently sued for a builder's remedy . The suit asserts that production of affordable housing on owner's property is required for Cherry Hill to address its looming third round affordable housing obligation spanning from 2000 to 2024.

- Fair Share Housing Center (FSHC) filed a motion with the Supreme Court on June 17, 2014
  - Asserts proposed third round rules, methodologies and affordable housing calculations published on June 2, 2014 are not in accordance with the Supreme Court's directives.
  - FSHC requests the Court order COAH to comply with its prior directives or, in the alternative, that enforcement of the Mount Laurel doctrine be returned to the trial courts thus exposing municipalities to builder's remedy litigation and exclusionary zoning challenges.
- A municipality declared by the Court to be in violation of the Mount Laurel doctrine and the Fair Housing Act loses control over local land use planning decisions.