Colts Neck Township

State-Mandated Affordable Housing: Status Report for Residents of Colts Neck

March 4, 2020
Welcome

- Mayor Frank Rizzuto
  - Purpose of this special public meeting

- Members of the Colts Neck Township Committee
  - Deputy Mayor Michael Viola
  - Committeeman JP Bartolomeo
  - Committeewoman Sue Fitzpatrick
  - Committeeman Tom Orgo

- Colts Neck Township Staff
  - Kathleen Capristo, Township Administrator
  - Tim Anfuso, Township Planner
Agenda

- Status & Summary
- What is State-Mandated Affordable Housing?
- History of State-Mandated Affordable Housing in New Jersey
- Major Players in this Issue, the Process and "Rounds of Obligations"
- Where We Stand Today: Recent Timeline for Colts Neck, Affordable Housing Obligation for the Township and, finally, Choices Before Us
- We Will Take Your Questions

**Wed., 3/4:** Overview of the Issue, Pending Completion of Mediation
**Wed., 3/11:** More Details, plus Township’s Legal and Planning Advisors
Status & Summary

- Affordable housing is mandated by the State of New Jersey
  - NJ Supreme Court interpretation of the state constitution
  - There is no “opting out.”

- The courts play an active role in state-mandated affordable housing.
  - Currently, the affordable housing process is driven by court-sanctioned, court-enforced methodology, calculations, orders and timelines.

- Colts Neck Township has been working on its affordable housing obligation since the mid-1980s.

- Recently, the court ordered Colts Neck Township to settle or litigate.

- We are not alone: Municipalities all around the state, including many in Monmouth County, have been contending with state-mandated affordable housing for years.
What is State-Mandated Affordable Housing?

The term “affordable housing” is used to describe both renter- and owner-occupied housing options that are affordable to people and households with low and moderate income.

In New Jersey, those who qualify to live in affordable housing work in professions in the private and public sector, including: police, teachers, tradesmen and other working families.

Eligible applicants have the opportunity to pay lower rents and home prices based on income.
History: State-Mandated Affordable Housing in NJ

How & When It All Started:

- **New Jersey Supreme Court in 1975:** Southern Burlington County N.A.A.C.P. v. Mount Laurel Township (commonly called Mount Laurel I), in which the plaintiffs challenged the zoning ordinance of Mount Laurel Township on the grounds that it operated to exclude low and moderate income persons from obtaining housing in the municipality.


- **The doctrine requires** that municipalities use their zoning powers in an affirmative manner to provide a realistic opportunity for the production of housing affordable to low and moderate income households.

- **Municipalities must comply.** No "opting out."
Timeline: State-Mandated Affordable Housing in NJ

1975
Mount Laurel I
Municipalities have a constitutional obligation to provide realistic opportunities for affordable housing

1983
Mount Laurel II
“Builder’s Remedy Lawsuit” (Builders can sue to build at greater densities if a municipality has not addressed its affordable housing obligations)

1985
NJ Fair Housing Act
Created Council on Affordable Housing “COAH” to administer the Fair Housing Act

1986-2014
COAH Rule Making
COAH administers the Fair Housing Act and creates First, Second, and Third Round rules and obligations

2015
Supreme Court disbands COAH and declares COAH “moribund:"
Trial Courts to assume COAH’s functions i.e. reviewing, processing, and approving municipal affordable housing plans “Mount Laurel IV"

2017
Gap Period Need
Established 1999 to 2015 need. “Mount Laurel V”
# Major Players in State-Mandated Affordable Housing

<table>
<thead>
<tr>
<th>Player</th>
<th>Role</th>
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<tbody>
<tr>
<td>State of New Jersey</td>
<td>Identifies and responds to needs of citizens, as determined by elected officials.</td>
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<tr>
<td>Courts</td>
<td>Currently, the courts sanction and enforce methodology, calculations, orders and timelines behind state-mandated affordable housing.</td>
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<tr>
<td>Court-Appointed Advocate</td>
<td>Advocates for affordable housing. (Originally, Coalition on Affordable House (COAH); currently, Fair Share Housing Center.)</td>
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<tr>
<td>Special Master</td>
<td>A planning expert, appointed by the court, to assist in determining municipal obligations for affordable housing.</td>
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<tr>
<td>Developers (Interveners)</td>
<td>Plan and build market-value and affordable housing units.</td>
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<tr>
<td>Municipalities</td>
<td>Must work with courts, court-appointed advocate, special master and developers to advance state-mandated affordable housing.</td>
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State-Mandated Affordable Housing: The Process

• Courts initiate the process and demand municipalities file affordable housing plans, or face “builder’s remedy.”

• Currently, courts determine municipalities’ “obligations” for state-mandated affordable housing — i.e., number of affordable housing units that must be built.

• Municipalities can: 1) accept the court-determined obligation;
  2) mediate / negotiate;
  3) litigate.

• Some ways to satisfy the obligation: inclusionary zoning, municipally-sponsored ways to satisfy and “other credits.”
Established "Rounds" of Obligations:

Municipalities must satisfy new rounds of state-mandated affordable housing obligations at least every 10 years.

State-Mandated Affordable Housing:
Where We Stand Today
State-Mandated Affordable Housing in Colts Neck

From the beginning, we have had three choices:

1. Accept the court-sanctioned obligation
2. Mediate / negotiate
3. Litigate

"Opting Out" is not a choice
**Colts Neck’s Recent Timeline**  
**State-Mandated Affordable Housing**

<table>
<thead>
<tr>
<th>Date</th>
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<tr>
<td>April 2016</td>
<td>Colts Neck Township Committee hosts special public meeting on state-mandated affordable housing.</td>
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<td>2017</td>
<td>Landmark case in Mercer County.</td>
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<td>March 2018</td>
<td>Judgement stemming from the Mercer County case resulted in new methodology for determining municipalities’ state-mandated affordable housing obligations. Prior obligations are now reset with this methodology. Using new obligations, the court orders every municipality to accept, mediate or litigate.</td>
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<tr>
<td>May 2018</td>
<td>Colts Neck Township enters into court-ordered mediation.</td>
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<tr>
<td>Mid 2018-2020</td>
<td>Mediation plays out, covering obligation, locations, developers (interveners), feasibility of proposed locations, timelines, etc.</td>
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<tr>
<td>Feb. 28, 2020</td>
<td>On this date, the Court ordered Colts Neck Township to settle or litigate by March 18, with potential loss of immunity from builder’s remedy lawsuits by March 19.</td>
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### State-Mandated Affordable Housing in Colts Neck

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* Methodology as part of the judgement coming out of Mercer County landmark decision
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The Choices Before Us
on State-Mandated Affordable Housing

Litigation:

Township risks:

- Loss of “immunity,” or protection from “builder’s remedy;”
- Increase in state-mandated affordable housing obligation and units;
- Court will override township’s planning & zoning functions and existing regulations, allowing for building anywhere;
- No municipality has prevailed through extended litigation. Millions in legal expenses. Delayed action; eventual loss.

Settlement:

Township maintains control of:

- Development sites;
- The planning & zoning functions;
- Existing township planning & zoning regulations;
- Meets “Third Round” obligations of state-mandated affordable housing.
State-Mandated Affordable Housing:

Mayor Frank Rizzuto
Recap

• Affordable housing is mandated by the State of New Jersey
  – NJ Supreme Court interpretation of the state constitution.
  – There is no “opting out.”

• The courts play an active role in state-mandated affordable housing.
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• We are not alone: Municipalities all around the state, including many in Monmouth County, have been contending with state-mandated affordable housing for years.
Questions

1. Please come to the front of the room to ask your question.
2. Please give your name and address.
3. We would like everyone to have an opportunity to ask a question. Please be cognizant and courteous re time.
4. Since the township’s mediation on state-mandated affordable housing is still underway, we will provide as much detail as possible, but may have to defer answering some questions to the next meeting on Wed., March 11.
Please Join Us Next Week

Wednesday, March 11 at 7:30 p.m.
Conover Road Elementary School
56 Conover Road, Colts Neck

Thank You