Colts Neck Township

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

March 11, 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

The Township’s Professionals
  - Legal Counsel: Thomas Trautner & Ronald Israel of Chiesa, Shahinian & Giantomasi, PC
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, Proposed Sites and, finally, Choices Before Us
- Recap
- 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
**Wed., 3/18:** Township Committee must vote on this matter, per court order
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.

• Per state and court requirements: Since the mid-1980s, Colts Neck Township has been participating in the development of a plan that will provide a reasonable opportunity for affordable housing to be built in Colts Neck.

• 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.
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>
</tr>
<tr>
<td>Developers (Interveners)</td>
<td>Plan and build market-value and affordable housing units.</td>
</tr>
<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.

PRIOR ROUNDS 1987-1999

THIRD ROUND 1999-2025

A Municipality’s Fair Share Obligation
State-Mandated Affordable Housing: Where We Stand Today
Elizabeth McManus
Kyle + McManus

Elizabeth McManus has more than 17 years of experience in both public- and private-sector planning. She has prepared numerous planning-related studies, including master plan elements, reexamination reports, redevelopment investigations and plans, special area studies, open space and farmland preservation plans, housing plans, and development regulations, for a variety of municipal and private clients and has advised dozens of municipal planning boards, zoning boards and governing bodies on public policy and land development practice.

She also has extensive experience serving in the role of special master for the New Jersey Superior Court in more than 40 cases where municipalities are seeking review and approval of their housing plans. Her experience extends from the state's smallest boroughs to the largest cities.

Thomas Trautner
Chiesa, Shahinian & Giantomasi, PC

Thomas J. Trautner Jr. is an experienced real estate development lawyer, with a diverse practice serving as counselor, strategic architect and (when the situation calls) litigator. He excels in helping clients navigate the entitlements process through his breadth of knowledge regarding subjects, which include redevelopment, eminent domain and affordable housing.

As a result of his diverse experience counseling developers, municipalities and trade organizations, Tom has developed a deep understanding of affordable housing issues in New Jersey (having looked at virtually every issue from one side or another). As a young associate, he co-authored an amicus curiae brief on behalf of the New Jersey chapter of the National Association of Industrial Office Properties in the appellate division case that overturned COAH's Third Round Rules. In recent years, Tom has been at the forefront of helping his clients navigate the uncertainty of the affordable housing landscape before the New Jersey Courts while also being intimately involved in the preparation of briefs and arguments to the New Jersey Supreme Court on evolving issues.
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>
<th>Event</th>
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<tbody>
<tr>
<td>April 2016</td>
<td>Colts Neck Township Committee hosts special public meeting on state-mandated affordable housing.</td>
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<tr>
<td>2017</td>
<td>Landmark case in Mercer County.</td>
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<tr>
<td>March 2018</td>
<td>Judgement stemming from the Mercer County case determined a methodology. This new methodology caused every municipality that had not settled to accept, mediate or litigate.</td>
</tr>
<tr>
<td>May 2018</td>
<td>Colts Neck Township enters into court-ordered mediation.</td>
</tr>
<tr>
<td>Mid 2018-2020</td>
<td>Mediation plays out, covering obligation, locations, developers (interveners), feasibility of proposed locations, timelines, etc.</td>
</tr>
<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 shortly thereafter.</td>
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**State-Mandated Affordable Housing in Colts Neck**

<table>
<thead>
<tr>
<th></th>
<th>Obligation Proposed by Fair Share Housing Center for Colts Neck, ~ 2016</th>
<th>Obligation for Colts Neck, under new methodology, as of June 2018*</th>
<th>Final “Round Three” Obligation for Colts Neck following two-year mediation+</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Total Units</strong> (100%)</td>
<td>2,765</td>
<td>1,530</td>
<td>1,280</td>
</tr>
<tr>
<td><strong>Market Rate</strong> (80% of total)</td>
<td>2,212</td>
<td>1,224</td>
<td>1,051</td>
</tr>
<tr>
<td><strong>State-Mandated Affordable Housing Units</strong> (20% of total)</td>
<td>553</td>
<td>306</td>
<td>229</td>
</tr>
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* Methodology as part of the judgement coming out of Mercer County landmark decision
+ New housing units to be constructed to meet obligation.
# State-Mandated Affordable Housing in Colts Neck

<table>
<thead>
<tr>
<th>Developer</th>
<th>Location 1: Rt. 34 North, south of Rt. 537</th>
<th>Location 2: Rt. 537, opposite Five Points Rd.</th>
<th>Location 3: Stone Hill Road</th>
</tr>
</thead>
<tbody>
<tr>
<td>Toll Brothers</td>
<td>Colts Neck Builders Associates (Kushner)</td>
<td>Countryside</td>
<td></td>
</tr>
<tr>
<td>Size of parcel(s) (~ = approximate)</td>
<td>~13.5 acres</td>
<td>~38.92 acres</td>
<td>~16 acres</td>
</tr>
<tr>
<td>Current owner of parcel(s)</td>
<td>Seta Realty; 297 SR 34 LLC</td>
<td>Colts Neck Building Associates (Kushner)</td>
<td>Contract buyer: Countryside Mariel Susan Bajcar</td>
</tr>
<tr>
<td>Number of housing units</td>
<td>~100 / 20</td>
<td>288 / 72</td>
<td>53 /15</td>
</tr>
<tr>
<td>(market value units + affordable housing units)</td>
<td></td>
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</tr>
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**Who Qualifies for State-Mandated Affordable Housing?**

Based on 2019 Regional Median Income in Mercer, Monmouth & Ocean Counties

<table>
<thead>
<tr>
<th>Maximum Household Income</th>
<th>1 Person</th>
<th>2 Persons</th>
<th>3 Persons</th>
<th>4 Persons</th>
</tr>
</thead>
<tbody>
<tr>
<td>Median</td>
<td>$72,165</td>
<td>$82,474</td>
<td>$92,783</td>
<td>$103,092</td>
</tr>
<tr>
<td>Moderate</td>
<td>$57,732</td>
<td>$65,979</td>
<td>$74,226</td>
<td>$82,474</td>
</tr>
<tr>
<td>Low</td>
<td>$36,082</td>
<td>$41,237</td>
<td>$46,392</td>
<td>$51,546</td>
</tr>
<tr>
<td>Very Low</td>
<td>$21,649</td>
<td>$24,742</td>
<td>$27,835</td>
<td>$30,928</td>
</tr>
</tbody>
</table>
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.
Court-Ordered Action

• “… it is hereby ORDERED on this 27th day of February 2020 as follows…”

• “It is anticipated that the Township will vote on the settlement agreement and developers agreements on March 18, 2020.”

• “If the governing body votes ‘no’ on the document(s), the court will hold a case management conference on March 23, 2020…”
State-Mandated Affordable Housing:

Mayor Frank Rizzuto
Recap

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Rumson In Uproar Over Housing Agreements
By Allison Perrine | aperrine@tworivertimes.com, Jan. 20, 2020

RUMSON – There were too many people to count at the borough’s public presentation on future housing plans Tuesday night, Jan. 14. But they made themselves heard.

A sea of upset residents filled the Forrestdale Middle School gymnasium after moving from the cafeteria due to limited space. Tension hung in the air for the entire four-and-a-half-hour-long meeting as borough planner Kendra Lelie presented two housing plans in Rumson, one for affordable housing and another for luxury apartments.

But the issue for residents was less about affordable housing than it was about the way the deals were done.

Two settlement agreements were on the table that night. One deal was with the nonprofit Fair Share Housing Center (FSHC), which advocates for affordable housing. The other was with Yellow Brook Property Co. LLC, owned by local developer Roger Mumford, which residents strongly opposed.
Fair Haven Housing Plan Draws Fire
By JOHN T. WARD
May 20, 2019

Fair Haven residents packed a hearing on zoning changes written to show “the right gestures” toward providing 370 new homes for low- and moderate-income earners Tuesday night.

But the planning board’s determination to immediately vote on a complex proposal it had just unveiled irked many who sat through the three-hour session as much as the substance of the changes.

“Clearly, the people of town have not asked for this,” said Chris Hempstead, of Willow Street, who requested that a decision be delayed so it could be discussed by residents. “It sounds insanely disruptive to the nature of the borough.”

At issue was the latest step in tussles over a series of so-called Mount Laurel New Jersey Supreme Court rulings dating back to 1975. The rulings enshrined a constitutional obligation on municipalities “to provide a realistic opportunity for the construction of low- and moderate-income housing,” in the words of a report prepared for the board by Heyer, Gruel & Associates, a Red Bank planning firm.
Little Silver affordable housing plan moving forward

By Jay Cook | Aug 7, 2018

LITTLE SILVER – A settlement agreement has been struck for the borough’s affordable housing obligations.

Per the agreement, Little Silver is on the hook for 230 new affordable housing credits. Different types of housing options are worth varying credit amounts.

But due to the lack of available vacant land, its realistic development potential is only 21 units.

Seven properties near Little Silver’s NJ Transit train station will also have new zoning overlays that would allow for more affordable housing if future developments come to town.

“At the end of the day, no town, including Little Silver, is ever going to be pleased with the settlements of these lawsuits,” Little Silver Mayor Bob Neff told The Two River Times Wednesday.

“I think we did as well as reasonably expected given the really crazy numbers there are for each town’s supposed fair share.”

Little Silver and Fair Share Housing Center (FSHC), a nonprofit group representing low-to-moderate income families, came to the agreement and will finalize the covenant at a Sept. 11 fairness hearing before Monmouth County Superior Court Judge Jamie S. Perri in Freehold.
The Township Committee has adopted an ordinance that officials said will help Manalapan meet its obligation to provide opportunities for the construction of affordable housing in the community.

The ordinance establishes an affordable housing overlay zone (AH-O) in a light industrial zone along Sobechko Road, east of Wilson Avenue (Route 527). The legislation was adopted by the committee on Feb. 26.

Voting to adopt the ordinance were Mayor Jack McNaboe, Committeewoman Mary Ann Musich, Committeeman Barry Jacobson and Committeeman Eric Nelson.

Deputy Mayor Susan Cohen stepped down from the dais on this matter. Cohen has said she does not participate in matters having to do with affordable housing because she works for an individual who owns land in Manalapan that could be used for affordable housing.
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 about time.
Thank You