

BOROUGH OF OLD TAPPAN  
3<sup>RD</sup> ROUND  
COAH OBLIGATION

# AFFORDABLE HOUSING BACKGROUND



**Affordable Housing obligations began with a 1975 constitutional decision by the New Jersey Supreme Court involving the Township of Mount Laurel, which required municipalities to provide a realistic opportunity for a variety of affordable housing choices.**

**Eight years later, in 1983, the NJ Supreme Court was unhappy with the lack of progress under its earlier decision and created the “builder’s remedy” lawsuits to compensate builders for constructing affordable housing units. Responding to the difficulties which arose from the courts “supervision of municipalities “Mt Laurel” obligations, the New Jersey Legislature passed the Fair Housing Act (“FHA”) in 1985. The FHA created the Council on Affordable Housing (COAH) to determine each municipality’s fair share of affordable housing units.**



# COUNCIL ON AFFORDABLE HOUSING

**COAH regulations outline the process by which a municipality can obtain certification that it has met its affordable housing obligation for each 10 year round. COAH functioned for rounds 1 and 2. During the period when each municipality would obtain 3<sup>RD</sup> round certification, its proposed regulations were stricken by the courts. Eventually COAH became nonfunctioning. In March 2015 the Supreme Court determined municipalities must meet their affordable housing obligations. The opinion permitted municipalities to file declaratory judgment actions seeking certification of their third round obligation and the plan to meet that requirement.**

## **The Creation of Affordable Units:**

- COAH Units: The local Planning Board adopts a Housing Element as part of the Master Plan, and also adopts a Fair Share Plan to outline how it will address its constitutionally mandated obligation to provide affordable housing**
- Municipality then petitions COAH for substantive certification and if granted, is protected for a period of time from a “builder’s remedy” lawsuit.**

# BUILDERS REMEDY...

**Builders have gone to court asking for and receiving a builder's remedy to build additional market rate units to offset the loss suffered by supplying affordable units at restricted sales prices.**



**These cases have been very expensive to litigate and municipalities generally lose,**

**The remedy is, depending on the value of the units, up to eighteen (18) market rate units for each affordable housing unit.**

**Even though the affordable housing obligation is mandatory under the constitution, participation in COAH's process is voluntary. However, municipalities that are not participating in the COAH process run the risk of being sued for exclusionary zoning and forced to grant a builder's remedy. In a builder's remedy lawsuit, municipalities lose their ability to choose where and how affordable housing will be provided and the development may conflict with the municipality's master plan. Under COAH, municipalities can plan for their affordable housing needs through a public process and also have priority access to many affordable housing funding sources. It will be easier and less costly to meet both affordable housing and other goals of the municipality, such as open space efforts, when participating voluntarily through COAH.**

# INTERVENOR...

**An intervenor is an interested party who files an action with the court to participate in the Declaratory Action process.**

**Old Tappan has two intervenors:**

- Fair Share although an intervenor didn't have to file as an intervenor because the NJ Supreme Court named them an interested party in their March 2015 decision**
- SMDC, LLC assembled a 3 acre parcel with frontage on Central Avenue and Elena Dr. It sought to construct 42 condominium units. The Borough was able to negotiate this down to 26 units, six of which would be affordable rental units**

**In July of 2016, Fair Share Housing Corp, a non-profit entity that has been spearheading the court mandates for affordable housing, submitted its own numbers outlining the amount of affordable housing New Jersey must supply to meet current needs. At that time it was determined that 140,000 affordable houses would meet current need third round.**

**On April 12, 2017 Fair Share Housing Center submitted new numbers to address the GAP Period. This was the 15 year period from 2000– 2015 when COAH's 3rd round should have been met but no affordable housing had been addressed because of inaction by COAH. The court agreed to an addition of approximately 100,000 more units.**

**Set asides of 5% to 20% have been requested by various developments. Even for the best possible outcome 20% set aside, 1,430,000 market rate units are required, a number never before seen in New Jersey. However the numbers could be much higher.**

# LOW INCOME HOUSING OBLIGATION

Like most suburban New Jersey municipalities, Old Tappan is confronted with the issue of affordable housing. As this relates specifically to Old Tappan, this obligation includes the needs of Old Tappan's own community and Old Tappan's fair share of the region's prospective need for affordable housing.

If this obligation is not met, implementation of the obligation can come from the court and include a court mandated requirement that would likely change the character of existing Old Tappan residential properties notwithstanding their residential zone classification.

**The Borough of Old Tappan has met and even exceeded the mandates of COAH since its inception.**



# **Affordable Housing Credits**

## **1993 – 2004 Borough Of Old Tappan**

- 7 credits - Regional Contribution Agreement (RCA) Jersey City 1993**
- 14 credits - Regional Contribution Agreement (RCA) Jersey City 1995**
- 12 credits - 40 Russell Ave Senior Housing - rental Old Tappan 1986**
- 8 credits - Dorotockey's Run -Rental Old Tappan 2003**
- 6 credits - Foxwood Estates – Purchase Units Condo Old Tappan 1996**
- 29 credits - 32 Russell Ave Senior Housing – Rental Old Tappan**
- 9 credits - Village at old Tappan- Purchase Units Condo Old Tappan 1999**
- 8 credits - Winding Creek – Rental Units Old Tappan 2004**

**Total credits thus far 93 Units of affordable housing.  
Amount exceeds requirements for 1<sup>st</sup> & 2<sup>nd</sup> round obligations.**



# So let's talk Old Tappan...

Originally Fair Share Housing proffered that Old Tappan needed to supply 369 COAH units to meet current requirements and prospective need.

Due to the GAP decision an additional 157 CAOH units were added to the "3rd round" obligation bringing Old Tappan COAH obligation to a total of 527 COAH units.

If the builder's remedy is applied that would lead to up to 2635 total new units in Old Tappan.

To put that into perspective currently Old Tappan has 2100 properties both private and municipal in the entire borough.

# Settlement...

**The Mayor and Council, weighing all the options to find the best solutions for our borough, have finally come to an agreement with Fair Share Housing and the intervenor. This has been an arduous task that has taken more than a year to negotiate with the court, the plaintiff, and the intervenor.**

**Your governing body, along with our legal and professional staff have devoted much time and thought to planning and negotiating for what we believe to be the best result for our community.**

**This negotiated settlement has to receive the approval of the court which would avoid a long and costly trial that would have ended with a dubious result, all the while leaving us exposed to the “builders remedy”.**

**If approved the Borough will be protected from the “builders remedy” through 2025**

**The “Nuts & Bolts” of the agreement and what changes may take place are as follows...**

- **Fair Share Housing Corp. is recognizing that the Borough of Old Tappan only has a realistic development potential of 31 units of housing**
- **SMDC, LLC, the owner of the property on Central Avenue and Elena Court and an intervenor in our litigation will have its property rezoned to permit it to development of 26 town homes, 6 of which will be dedicated as rental units for low & moderate income families. Rental units allow the Borough to get bonus credits toward its 3<sup>rd</sup> Round obligation allowing it to build less affordable units to meet its obligation.**

- **Pearson education property, located adjacent to the Bi-State Plaza will receive an overlay zone allowing for a townhome and assisted living development. The density at this site will be limited to 12 units per acre. Fair Share wanted 25 per acre. Twenty percent (20%) of the units would be set aside for affordable housing. Note: Pearson Education is closing their offices at this location and the property is currently for sale. The purchaser of this property will be afforded the opportunity to continue to operate the property as a commercial operation or develop the property as a town home development as set forth above.**
- **A group home which will accommodate four (4) developmentally disabled adults will be built by United Way/Madeline Corporation at the terminus of Grace Avenue. Supportive housing yields bonus credits and for the 4 beds the Borough will net six affordable housing credits.**

- **Accessory Apartment Ordinance – The Borough will adopt an ordinance permitting a limited number of affordable accessory apartments in single family residences.**
- **Any project approved in the future or more than five (5) multi-family units will require a 20% set-aside for affordable housing units.**
- **If any appellate court issues a non-appealable decision or legislation is adopted which lowers Old Tappan's 3<sup>rd</sup> round obligation by more than ten percent (10%,) Old Tappan can apply to have its number reduced.**

# Compliance...

**When the Borough receives a declaration of compliance through the New Jersey Superior Court as it relates to its 3<sup>rd</sup> round obligation, it will be protected through 2025 from “builders remedy” lawsuits outside of the confines of our zoning ordinances.**

**Since 1986, Old Tappan has remained compliant with the previous two rounds of COAH certifications.**

**Be assured that all plans and designs must be presented to our planning board to ensure compliance with zoning codes and of designs that will fit the character of Old Tappan.**