

**MEDIATION AGREEMENT BEFORE THE AFFORDABLE HOUSING DISPUTE
RESOLUTION PROGRAM**

**In the Matter of the Application of the Borough of Old Tappan, County of Bergen
Docket No. BER-L-477-25**

WHEREAS, the Borough of Old Tappan (the “Borough” or “Old Tappan”) having filed a resolution of participation in the Affordable Housing Dispute Resolution Program (the “Program”) and a declaratory judgment action pursuant to N.J.S.A. 52:27D-301 et. seq. (the “Fair Housing Act”) on January 22, 2025; and

WHEREAS, the Court entered an order on May 30, 2025 setting the Borough’s Fourth Round fair share obligations as a Present Need of four (4) units and a Prospective Need of two hundred twelve (212) units, which no party appealed, and ordering the Borough to file a Housing Element and Fair Share Plan (“HEFSP”) by June 30, 2025; and

WHEREAS, the Borough having filed its HEFSP on June 12, 2025 (“Adopted HEFSP”); and

WHEREAS, FSHC having filed a challenge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) regarding the Borough’s HEFSP on August 31, 2025; and

WHEREAS, the Borough and FSHC have agreed to amicably resolve the issues set forth in the challenge through this mediation agreement and present this agreement for review by the Program and referral to the Mount Laurel judge pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, which if approved will result in a compliance certification for the Borough for the Fourth Round;

THEREFORE, the Borough and FSHC agree:

Fair Share Obligations

1. The Borough’s Present Need or Rehabilitation Obligation is 4 units, the Borough’s First and Second Rounds Obligation (1987-1999) is 98, the Borough’s Third Round Obligation (1999-2025) is 271, the Borough’s Fourth Round Prospective Need (2025-2035) is 212 units.

Satisfaction of Fair Share Obligations

2. The Borough will address its Present Need by continuing to implement its housing rehabilitation program established during the Third Round and via continued participation in the Bergen County Housing Rehabilitation Program..

3. The Borough’s combined First and Second Round obligation was 98 affordable units. The First and Second Round obligation has been satisfied as illustrated by the table below:

Plan Components Satisfying Prior 1985-1999 First & Second Rounds Obligation

Plan Component	Type	Units	Bonus	Credits	Status
Winding Creek	Family rental	8	8	16	Completed
Villages at Wood's Edge	Family sale	9	0	9	Completed
Foxwood Estates	Family sale	6	0	6	Completed
Dorotockey's Run	Family rental	8	8	16	Completed
Russell Avenue Senior Rental Housing	Senior rental	29	4	33	Completed
RCA with Jersey City (Foxwood Estates – 7 units, Wood’s Edge – 14)	RCA	21	0	21	
Total		81	20	101	

4. The Borough’s Third Round obligation is 271 units. Based upon a vacant land adjustment, the Borough’s Realistic Development Potential (RDP) was established as 31 units with the remainder of 240 units as unmet need. The Borough’s Thid Round RDP is satisfied as presented in the Table below:

Plan Components Satisfying Third Round RDP

Plan Component	Type	Units	Bonus	Credits	Status
Prior Round Surplus Credits-Russell Avenue	Senior rental	3	0	3	Completed
Bergen County United Way/Madeline	Special needs	4	2	6	Completed
Accessory Apartment Ordinance	Family rental	10	0	10	Incomplete
Central Avenue Inclusionary Zoning	Family rental	6	6	12	Completed
Total		23	8	31	

5. Third Round Unmet need is addressed through the following mechanisms:
 - a. Pearson Site. The Borough adopted inclusionary zoning for the property located at 200 Old Tappan Road and further identified as Block 1606, Lot 7. The zoning permits family housing at a density of 12 units per acre with a 20 percent affordable housing set aside if developed as for-sale units and 15 percent if developed for rentals. The development is under construction with family rental housing.
 - b. Mandatory Set-Aside Ordinance. The Borough adopted an ordinance which requires that any multi-family development of 5 units or more with a density of 6 dwelling units per acre or higher shall provide an affordable housing set-aside at a rate of 15 percent, where affordable units will be for rent, or 20 percent, where affordable units will be for sale. The Borough is not, however, be under any obligation to grant rezonings, variances, redevelopment designations or extraordinary approvals for any such construction and development applications will be required to otherwise conform to the Borough’s zoning requirements.
6. The Borough has a Fourth Round Prospective Need Obligation of 212 units with an RDP of 0 based upon no change in circumstances from the Borough’s Thid Round Vacant Land Analysis. The following mechanisms are to address unmet need:

Plan Component	Type	Units	Status
244 Old Tappan Road	Assisted living, rental	10	Approved
1043 Washington Avenue	Special needs, rental	12	Completed
Town Center Overlay	Family rental / sale	130	Proposed
Total		152	

7. The Town Center Overlay will provide for a minimum density of 15 dwelling units per acre and will cover the B-1 and B-2 Zones in accordance with the proposed Town Center mapping and ordinance parameters (attached). The overlay areas are designated as TCO-MU (Town Center Overlay-Mixed Use) and TCO-PO (Town Center Overlay-Professional Office). The affordable housing set-aside shall be 20%.
8. The Borough will amend its Mandatory Set Aside Ordinance to require a 20% affordable housing set aside for any multifamily development of 5 units or more.

9. The Borough will amend its Accessory Housing Ordinance to increase the program subsidy from \$10, 000 to \$25,000.

Unit Type and Income Distribution Requirements

10. The Borough and FSHC agree that the Borough’s HEFSP as presented above satisfies the following standards set forth in P.L. 2024, c. 2, including but not limited to, with respect to the following, and that the Borough shall maintain satisfaction with such requirements for the Fourth Round:

- a. Age Restricted Cap. The Borough agrees that it shall not exceed the age-restricted cap found in N.J.S.A. 52:27D-311(l), which requires age-restricted units to be capped at 30 percent of the overall Fourth Round affordable housing units that address the Fourth Round Prospective Need obligation exclusive of any bonus credits.
- b. Family units. Pursuant to N.J.S.A. 52:27D-211(l), the Borough shall satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits created to address its Fourth Round Prospective Need affordable housing obligation through the creation of housing available to families with children and otherwise in compliance with the requirements and controls established pursuant to Section 21 of P.L.1985, c.222 (C.52:27D-321).
- c. Rental and family rental units. Pursuant to N.J.S.A. 52:27D-311(l), at least 25 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its Prospective Need affordable housing obligation shall be addressed through rental housing, including at least half as available to families with children.
- d. Very low-income units. Pursuant to N.J.S.A. 52:27D-329.1, 13 percent of all affordable units referenced in this Agreement addressing the Borough’s Prospective Need obligation shall be very low-income units for households earning 30 percent or less of the regional median income, with half of the very low-income units being available to families.

- e. All new construction units shall be adaptable in conformance with P.L.2005, c.350/N.J.S.A. 52:27D-311(a) and (b), and all other applicable law.
 - f. All Prior Round and Third Round compliance shall continue to meet with the applicable percentages and standards for bonuses, family and senior housing, rental and family rental, very low-income units, and adaptability set forth in any prior settlement agreement between FSHC and the Borough, statutory requirements, and the Prior Round and Third Round regulations.
11. In all developments that produce affordable housing, the Borough and FSHC agree that, unless varied by a prior court order of the trial court, the below terms shall apply:
- a. All of the affordable units shall fully comply with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1, et seq. (“UHAC”), including but not limited to the required bedroom and income distribution, length of affordability controls, and phasing of affordable units.
 - b. The applicability of the updated form of UHAC versus the prior form of UHAC shall be as set forth in the statute and most current form of UHAC adopted by HMFA. Any terms of a prior agreement, judgment, or grant of substantive certification as to prior round of obligations modifying UHAC as to affordability controls longer than the now current regulations or as to very low-income units shall remain in effect as to those prior rounds of obligations.
 - c. The Borough agrees that in order to meet the low-income and very low-income requirement of the Fair Housing Act, it shall adopt an ordinance requiring for all affordable housing developments in its HEFSP that 50 percent of the affordable units within each bedroom distribution shall be required to be for low-income households earning 50 percent or less of the regional median income, including 13 percent of the affordable units within each bedroom distribution shall be required to be for very low-income households earning 30 percent or less of the regional median income.

- d. The Borough agrees to review its Affordable Housing Ordinance and other ordinances to ensure that it complies with the most up to date requirements of UHAC and revise those ordinances accordingly as part of its Fourth Round HEFSP and implementing ordinances.
- e. The affordable units shall be affirmatively marketed in accordance with UHAC and applicable law. The affirmative marketing shall include posting of all affordable units on the New Jersey Housing Resource Center website in accordance with applicable law. The Borough shall add to the list of community and regional organizations in its affirmative marketing plan, pursuant to N.J.A.C. 5:80-26.15(f)(5), Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, the Bergen County NAACP, Urban League of Bergen County, Bergen County Housing Coalition, and Supportive Housing Association, and shall, as part of its regional affirmative marketing strategies during its implementation of this plan, provide notice to those organizations of all available affordable housing units. The Borough also agrees to require any other entities, including developers or persons or companies retained to do affirmative marketing, to comply with this paragraph.

Process for Approval and Implementation

- 12. Pursuant to N.J.S.A. 52:27D-304.1(f)(2)(b) and Administrative Directive #14-24, the municipality and FSHC recognize that the Program and/or county level housing judge must still review this agreement and the resulting HEFSP and implementing ordinances and resolutions for compliance with the Fair Housing Act prior to issuing a compliance certification, as follows:
 - a. The Borough and FSHC shall present this mediation agreement to the Program member for review upon full execution by both parties.
 - b. The Program Member shall review the agreement and if satisfied with compliance with the Fair Housing Act shall refer this matter to the Mount Laurel judge for

review and entry of certification of compliance, conditioned on adoption of all implementing ordinances and resolutions.

- c. The Borough shall adopt all implementing ordinances and resolutions no later than March 15, 2026, including but not limited to the outstanding items identified in the next paragraph. No later than 48 hours after adoption or March 15, 2026, whichever is sooner, the Borough shall file the information required by Paragraph 13 and any other adopted ordinances and resolutions on eCourts.
 - d. No later than April 15, 2026, the Borough and FSHC shall provide via filing on eCourts a form of consent order granting final compliance certification for the Court's review or identify any remaining issues of compliance that may be disputed at which point the court shall schedule a conference to review any such areas.
 - e. Both parties agree to implement the terms of this Agreement. If the Program, county level housing judge, or any appellate court rejects this Agreement, the parties reserve their right to rescind any action taken in anticipation of the Program's approval and return to status quo ante. All parties shall have an obligation to fulfill the intent and purpose of this Agreement, unless to do so would be inconsistent with the final, unappealable adjudication of any Program or court ruling or judgment. The terms of this agreement may be enforced through an enforcement motion in this declaratory judgment or a separate action before the Program or the Superior Court, Law Division.
13. The Borough and FSHC agree that following conditions remain to be met prior to March 15, 2026 as conditions of compliance certification, and that the municipality shall provide these documents to FSHC in draft form for comment by February 1, 2026:
- a. Operating manual for the Borough rehabilitation program.
 - b. Ordinance amending the accessory apartment program.
 - c. Operating manual for the accessory apartment program.
 - d. Documents demonstrating credit for the assisted living facility at 244 Old Tappan Road and group home at 1043 Washington Avenue.

- e. Ordinance(s) creating the TCO-MU (Town Center Overlay-Mixed Use) and TCO-PO (Town Center Overlay-Professional Office) districts.
 - f. The Borough will adopt a Fourth Round Spending Plan in accordance with P.L. 2024, c. 2 and the forthcoming regulations at N.J.A.C. 5:99.
 - g. The Borough will update and adopt its affordable housing ordinance, development fee ordinance, affirmative marketing plan, and other administrative documents in accordance with the forthcoming regulations at N.J.A.C. 5:80-26.1, et seq., and N.J.A.C. after they are adopted and before March 15, 2026.
14. The Borough and FSHC recognize that substantial changes in circumstances affecting the Borough's RDP are possible pursuant to the holding in *Fair Share Housing Center v. Cherry Hill*, 173 N.J. 393, (2002) and related law. In the event such a substantial changed circumstance occurs, the Borough shall have one hundred twenty (120) days to present to the trial court and FSHC a plan to address such change in circumstances on notice and opportunity to be heard from FSHC. The Borough agrees that any additional RDP generated due to changed circumstances must be addressed in a manner that is consistent with controlling law.
15. The Borough's Compliance Certification shall be subject to required ongoing monitoring as follows:
- a. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of a detailed accounting of all development fees and any other payments into its trust fund that have been collected including residential and non-residential development fees, along with the current balance in the municipality's affordable housing trust fund as well as trust funds expended, including purposes and amounts of such expenditures, in the previous year from January 1st to December 31st.
 - b. The Borough by February 15, 2026, and annually, agrees to electronically enter data into the AHMS system of the Department of Community Affairs of up-to-date municipal information concerning the number of affordable housing units actually

constructed, construction starts, certificates of occupancy granted, and the start and expiration dates of deed restrictions. With respect to units actually constructed, the information shall specify the characteristics of the housing, including housing type, tenure, affordability level, number of bedrooms, date and expiration of affordability controls, and whether occupancy is reserved for families, senior citizens, or other special populations.

- c. For the midpoint realistic opportunity review as of July 1, 2030, pursuant to N.J.S.A. 52:27D-313, the Borough or other interested party may file an action through the Program seeking a realistic opportunity review and shall provide for notice to the public, including a realistic opportunity review of any inclusionary development site as set forth in the adopted HEFSP that has not received preliminary site plan approval prior to the midpoint of the 10-year round. Any such filing shall be through eCourts or any similar system set forth by the Program with notice to any party that has appeared in this matter.
16. This Agreement may be executed in counterparts, all of which together shall constitute the same agreement, and any exhibits or schedules attached hereto shall be hereby made a part of this Agreement. This Agreement shall not be modified, amended or altered in any way except by a writing signed by each of the parties. Each party acknowledges that each has entered into this Agreement on its own volition without coercion or duress after consulting with its counsel, that each signatory is the proper person and possesses the authority to sign the Agreement, and that this Agreement was not drafted by any one of the parties, but was drafted, negotiated and reviewed by all parties, therefore, the presumption of resolving ambiguities against the drafter shall not apply. Unless otherwise specified, it is intended that the provisions of this Agreement are to be severable. The validity of any article, section, clause or provision of this Agreement shall not affect the validity of the remaining articles, sections, clauses or provisions hereof. If any section of this Agreement shall be adjudged by a court to be invalid, illegal, or unenforceable in any respect, such determination shall not affect the remaining sections. No member, official or employee of the municipality shall have any direct or indirect interest in this Agreement, nor participate

in any decision relating to the Agreement, which is prohibited by law, absent the need to invoke the rule of necessity.

On behalf of the Borough of Old Tappan:

On behalf of Fair Share Housing Center:

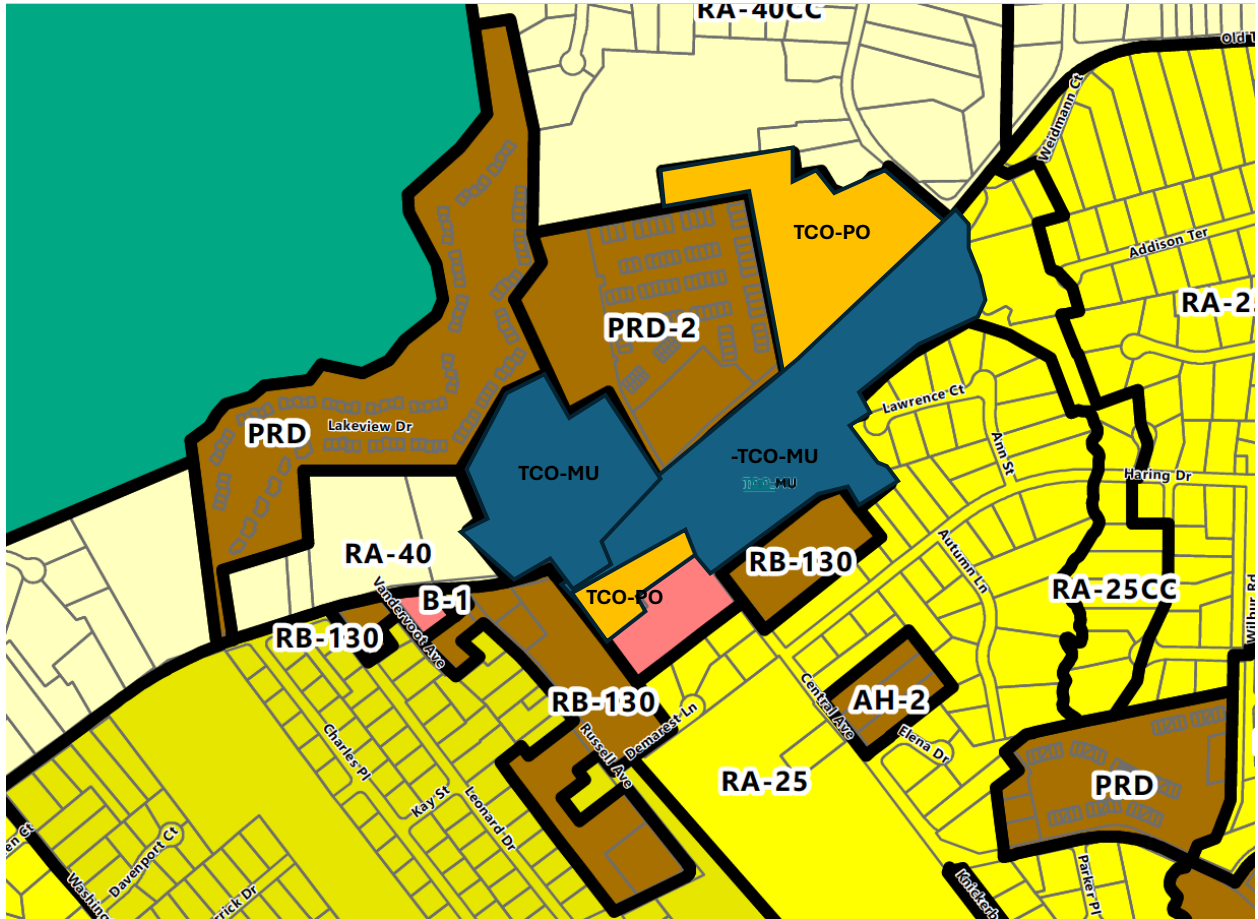


Thomas Gallagher
Mayor, Borough of Old Tappan

Date: 12-30-25

Date:

Town Center Overlay Mapping



The Town Center Overlay Zone consists of two parts:

TCO-MU – Mixed Use Overlay: 30.79 acres

Multiple buildings with residential over commercial use to be permitted.

A single stand-alone residential multifamily building is to be permitted but limited to a building footprint not to exceed 20% of the total building coverage.

Commercial uses as currently permitted in the B-1

Density Max: 15du/ac

TCO-PO - Professional Office Overlay 12.79 acres

Limited to office use with units above. Freestanding multifamily would not be permitted.

Density Max: 15 du/ac