

# OVERVIEW OF BOROUGH OF BELMAR AFFORDABLE HOUSING OBLIGATIONS

BACKGROUND AND STATUS OF BOROUGH  
DECLARATORY JUDGMENT ACTION

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- **1975 – Mount Laurel Doctrine** created a **constitutional obligation** for NJ municipalities to provide their fair share of their region’s need for affordable housing
- Borough has a **Mandatory** constitutional obligation to provide its fair share of Affordable Housing in the Region
- Borough is part of Region 4 – Mercer, Monmouth & Ocean Counties

# WHAT IS AFFORDABLE HOUSING?

- Housing with a sales price or rent within the means of a very – low, low- or moderate- income household.

# WHO QUALIFIES FOR AFFORDABLE HOUSING?

## 2023 INCOME LIMITS REGION 4 MERCER, MONMOUTH & OCEAN

FAMILY SIZE	1 PERSON	*1.5 PERSON	2 PERSON	*3 PERSON	4 PERSON	*4.5 PERSON	5 PERSON	6 PERSON	7 PERSON	8+ PERSON	Max Increase Rents** Sales***	Regional Asset Limit****
MEDIAN	\$91,038	\$97,540	\$104,043	\$117,048	\$130,054	\$135,256	\$140,458	\$150,862	\$161,267	\$171,671	6.0% 6.07%	\$244,635
MODERATE	\$72,830	\$78,032	\$83,234	\$93,639	\$104,043	\$108,205	\$112,367	\$120,690	\$129,013	\$137,337		
LOW	\$45,519	\$48,770	\$52,022	\$58,524	\$65,027	\$67,628	\$70,229	\$75,431	\$80,633	\$85,836		
VERY LOW	\$27,311	\$29,262	\$31,213	\$35,115	\$39,016	\$40,577	\$42,137	\$45,259	\$48,380	\$51,501		

Eligibility is determined by **gross annual household income**. To qualify, your income must be no more than 80% of median for moderate income or 50% of median for low income and 30% for very low income.

- **COAH** was established to promulgate Rules to determine a municipality's Affordable Housing obligations and oversee their efforts to satisfy their obligations
- Municipalities were required to file Housing Element and Fair Share Plans with COAH to address how it will meet its housing obligations and complying municipalities received **substantive certification** from COAH
- **First Round covered 1987-1993**
- **Second Round covered 1993-1999**
- **Gap Period covered 1999 – 2015**
- **Third Round covers July 1, 2015 through June 30, 2025**

- During the Gap Period, COAH's Third Round Rules were challenged by Fair Share Housing Center;
- Case decided March 10, 2015 in the Decision, "**Mt. Laurel IV**", COAH's proposed Third Round Rules were deemed to be **non-compliant**.
- The Courts were reinstated as the **forum** to evaluate and determine a municipality's compliance with its Affordable Housing obligations; Judges were appointed in each Vicinage and given authority to hear cases
- Municipalities were given until **July 8, 2015** to voluntarily file a Declaratory Judgment Action with the Superior Court
- Under the DJ action the Court the municipality would file a Housing Element and Fair Share Plan and ask the Court to determine its compliance with the **State's Mt. Laurel requirements**

## Parties to DJ Action

- Mount Laurel Judge
- Municipality (Lawyer/Planner)
- Special Master - expert appointed by Court; acts as a mediator between municipality, FSHC and any intervenors
- Fair Share Housing Center – automatic party
- Intervenor(s) – builders, developers, land owners and other interested parties
  - Typically take the position that the municipality has failed to zone for the creation of enough affordable housing
  - They own a specific site that the municipality's should allow for development of affordable housing

- Once a DJ Action is filed, Courts are authorized to provide **temporary immunity** to the municipality to protect against “**builder remedy**” lawsuits

### **BUILDER REMEDY LAWSUIT**

- Allows a developer to bring litigation against a municipality to change zoning on a particular site if the developer demonstrates that the municipality is not in compliance with its Fair Share obligation or is engaging in exclusionary zoning practices
- Developer in this type of lawsuit must commit to include a 20 percent set aside of low- and moderate- income housing as part of its development



# **LAWSUIT BY FAIR SHARE HOUSING CENTER**

- FSHC has the right to file action directly against any municipality that has not filed a DJ action and is in non-compliance of its Affordable Housing Obligations.

## HOW IS A MUNICIPALITY'S AFFORDABLE HOUSING OBLIGATION DETERMINED?

- Based on a methodology that came out of a Mercer County case on March 8, 2018 before Judge Jacobson.
- **Judges** have relied on and applied the Jacobson methodology to calculate obligation numbers for its **municipalities**.

# Borough's DJ Action

- Borough filed its DJ Action on **March 2, 2023**
- Judge Linda Grasso Jones is the Affordable Housing Judge
- Frank Banisch is the Special Master
- Four Intervenors

## INTERVENORS IN BOROUGH DJ ACTION\*

- Repetti, Jr./Russo Development
- 75 Rainey, LLC (Sackman)
- Mark-Built Properties, LLC
- 613 Tenth Avenue, LLC

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Request for Intervention – 4/8/2024

- Seventh Avenue Associates, LLC

\* All are seeking **Inclusionary Developments**

- Residential development project in which a percentage of the dwelling units are affordable to very-low, low- and moderate- income households

# HOW IS BOROUGH ADDRESSING ITS AFFORDABLE HOUSING OBLIGATION?

- COAH Rules provide **Mechanisms to adjust obligation** through a Vacant Land Adjustment
- VLA is an adjustment to a municipality's affordable housing obligation due to available land capacity. A VLA determines a municipality's **realistic development potential (RDP)**
- The Borough's Planner is working on a Vacant Land Adjustment to determine an adjusted housing obligation for the Borough
- Numerous meetings have been held with Fair Share Housing Center and Court Master to **determine the VLA and to determine what the RDP** for the Borough for the Third Round covering (2015-2025)

# **NEXT STEPS FOR BOROUGH FOR THIRD ROUND**

- **Finalize VLA and RDP**
- **Enter into Settlement Agreement with FSHC and Intervenors**
- **Prepare Housing Element and Fair Share Plan/Spending Plan**
- **Have a Fairness Hearing**
- **Adopt required ordinances**
- **Receive Final Approval from Court/Third Round Plan Certification/Immunity**

FOURTH ROUND  
P.L. 2024 Chapter 2  
(A4/S50)  
APRIL 10, 2024

- ABOLISHES COAH
- ESTABLISHES NEW PROCESS & PARTIES
- CHANGES METHODOLOGY FOR CALCULATING AFFORDABLE HOUSING OBLIGATIONS FOR THE FOURTH ROUND COMMENCING JULY 1, 2025
- SETS SPECIFIC STRINGENT TIMELINES FOR ACTIONS
- IMPOSES CONSEQUENCES FOR FAILURE TO MEET TIMELINES
- **IF THIRD ROUND OBLIGATIONS REMAIN UNFULFILLED, OR A MUNICIPALITY NEVER RECEIVED AN APPROVAL FROM THE COURT OR COAH FOR ANY PRIOR ROUND, THE MUNICIPALITY MUST ADDRESS SUCH UNFULFILLED PRIOR ROUND OBLIGATION IN ITS HEFSP.**



## FOURTH ROUND

### SCHEDULE OF DEADLINES FOR REQUIRED ACTIONS

- October 2024: DCA to publish calculation of regional need and municipal obligations
- May 1, 2024: Director of AOC appoints members to Affordable Housing Dispute Resolution Program
- October 7, 2024: Municipality to provide accounting of fees to DCA if municipality has been authorized to collect development fees of residential property or payments in lieu of constricting affordable housing
- **\*January 31, 2025: Municipality to determine its present and prospective fair share obligation and adopt obligation via binding resolution**

- February 28, 2025: Interested parties to Challenge a municipality's adopted obligation. The Challenge is filed through the Program. Challenge must state with particularity how municipal calculation fails to comply with methodology laid out in the legislation and must include Challenger's own calculation of Fair Share obligations. Municipality's calculation has a presumption of validity.
- March 1, 2025: Municipality's obligations are established by default and immunity remains in effect if no challenges are filed.
- March 31, 2025: Affordable Housing Dispute Resolution Program to settle any challenge(s) to municipal obligations.
- June 30, 2025: Municipality to adopt and endorse a HEFSP which includes an analysis of consistency with State Development and Redevelopment Plan. Also include drafts of appropriate zoning and other ordinances and resolutions implementing its present and prospective obligation. Failure to meet this deadline will result in loss of immunity from building remedy litigation.

- August 31, 2025: Interested Party to Challenge the validity of a municipality's HEFSP to be filed within the Program. In no challenge, the Program reviews the HEFSP for consistency with FHA.
- December 31, 2025: Municipality to commit to revising its HEFSP in compliance with the changes requested in the challenge, or provide an explanation as to why it will not make all of the requested changes, or both.
- March 15, 2026: Municipality to amend its HEFSP and to adopt implementing ordinances to comport with the amended numbers and file with the Program.