

**Borough of Old Tappan
Bergen County**

Midpoint Review Report

Purpose

The Borough of Old Tappan is required to comply with the statutory midpoint review requirements of the Fair Housing Act (“FHA”) and specifically N.J.S.A. 52:27D-313, which provides in relevant part: “[t]he Council shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public.” Pursuant to the Settlement Agreement between Fair Share Housing Center (“FSHC”) and the Borough (hereinafter the “FSHC Settlement Agreement”), that review requires the Borough to post on its website on July 1, 2020, with a copy to FSHC, and an opportunity for comment, a status report regarding its compliance mechanisms and whether or not unbuilt sites/unfulfilled mechanisms continue to present a realistic opportunity.

Relevant Background

On July 9, 2015, the Borough filed a declaratory judgment action, seeking a determination of its Round Three affordable housing obligations and approval of its proposed Housing Element and Fair Share Plan to satisfy such obligations and, thereby, obtain a Judgment of Compliance and Repose from the Court, pursuant to the March 2015 New Jersey Supreme Court decision, In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”). The Court appointed a Special Master, Frank Banisch, PP, AICP, as is customary in Mount Laurel matters. The Special Master assisted the Borough in reaching a settlement agreement with FSHC, a non-profit organization dedicated to protecting the rights of low and moderate income households in New Jersey. The FSHC Settlement Agreement with the Borough was entered into on November 20, 2017. The Borough also settled with an intervenor, SMDC, LLC to develop affordable housing units on property located on Central Avenue, Block 1103, Lots 13 & 14. The settlement with FSHC included the SMDC, LLC settlement terms.

A fairness hearing was held before the Honorable Menelaos W. Toskas, J.S.C., on February 15, 2018 wherein the Court determined that the settlement agreements presented a realistic opportunity for affordable housing development and were fair, equitable and protected the interests of low and moderate income families. An order to this effect was entered into by the Court and filed on March 6, 2018. The Borough has retained immunity from builder remedy suits throughout the process and has continued immunity pursuant to the Court order.

The FSHC Settlement Agreement, established the Borough’s Third Round Fair Share obligations as follows:

- Rehabilitation Obligation: 7 units
- Prior Round Obligation (1987-1999): 98 units

- Third Round Gap and Prospective Need Obligation (1999-2025): 271 units

The housing plan components to satisfy the Borough’s affordable housing obligation pursuant to the approved settlement agreement include the following:

For Prior Round Need - 98 Units

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

Note: The Prior Round resulted in 3 excess units to be applied to current round obligation.

Present Need/Rehabilitation - 7 Units

The Borough will implement a housing rehabilitation program to rehabilitate 7 eligible housing unit and will partner with Bergen County through their BCHIP program.

Prospective Need - 271 Units

Because the Borough is entitled to a Vacant Land Adjustment, the Borough’s Prospective Need of 271 housing units for the period from 1999 to 2025 is comprised of two components: Realistic Development Potential (RDP) and Unmet Need.

RDP

The Borough will affirmatively address its RDP of 31 units leaving the Borough with a remaining Unmet Need of 240 units. The Borough’s RDP will be satisfied through the following mechanisms:

- Prior Round Credit for Excess Units. The Borough is entitled to a credit of 3 units generated by its prior round compliance.
- Bergen County United Way/ Madeline Corporation Partnership. The Borough has entered into an agreement with the Bergen County United Way/Madeline Corporation Partnership to develop four units of special needs housing on municipal property located on Grace Avenue, Block 1208, Lot 1. The Borough has committed \$200,000

of its Affordable Housing Trust fund as its contribution to the project.

- Accessory Apartment Program. The Borough will provide funding for up to 10 accessory apartments through its affordable housing trust fund and create and adopt an accessory apartment program including adopting modifications to the Borough's zoning regulations to permit accessory apartments. Consistent with COAH Second Round rules the Borough will commit \$10,000 per accessory apartment.
- Central Avenue Inclusionary Zoning. The Borough will provide a realistic opportunity for the development of affordable housing through the adoption of inclusionary zoning on property located on Central Avenue and further identified as Block 1103, Lots 13, 14 and 15 to permit the development of 26 housing units of which, 6 shall be set aside as affordable rental units.

Unmet Need.

The difference between the Borough's Third Round Prospective Need number and its RDP obligation is defined as Unmet Need. Whereas RDP is an obligation that must be affirmatively addressed, Unmet Need is more aspirational. Pursuant to the Borough's Settlement Agreement with FSHC, the Borough of Old Tappan has a remaining Unmet Need of 240 units. The Borough proposes to address its Unmet Need by rezoning the Pearson property, as well as adopting a Borough-wide mandatory set-aside ordinance. These mechanisms will provide a realistic opportunity for the development of affordable housing within the Borough. Each mechanism is discussed in more detail as follows:

- Pearson Site. The Borough will create an affordable housing zone on property located at 200 Old Tappan Road further identified as Block 1606, Lot 7 by Borough tax records for inclusionary development. This property is presently owned by Prentice Hall and is also commonly referred to as the Pearson site. This property is developed with an existing office building on a 19-acre tract and is centrally located within the Borough adjoining Bi-State Plaza shopping center. The Borough will rezone this property for 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.
- Mandatory Set-Aside Ordinance. The Borough also intends to adopt 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. This requirement will ensure that new multi-family residential development in Old Tappan will provide its fair share of affordable units and assist with the Borough's continuous efforts to address its affordable housing obligation. The Borough will 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.

Status

Pursuant to the settlement agreement, the Borough adopted all of the required compliance and received a judgement of compliance and repose issued by the Honorable Christine Farrington, J.S.C. on June 24, 2019.

As of July 1, 2020, no affordable housing units have been physically rehabilitated or constructed within the Borough. It is noteworthy however, that three significant projects, as contemplated by the Borough's housing plan, have received site plan approved by the Borough and will proceed to construction within the next year.

The Borough Planning Board has approved the inclusionary development contemplated for Central Avenue resulting in 6 affordable units, the Pearson Site resulting in 40 affordable units and the Bergen County United Way/ Madeline Corporation Partnership group home project resulting 4 affordable adult special needs bedroom. The total number of affordable units anticipated to be constructed is therefore, 50 units.

The Borough continues to believe that the present plan represents a realistic opportunity for the development of affordable housing in the community.

Comments

Comments from interested parties are welcome and may be submitted to the Borough by contacting the Borough Administrator and Housing Liaison Anna Havarilla, Borough Hall, 227 Old Tappan Road, Old Tappan, NJ 07675 or by email at: oldtappan@oldtappan.net.