

# **Borough of Mountain Lakes**

## **Housing Element and Fair Share Plan (HEFSP) Committee**

**Final Report to Planning Board  
March 2, 2016**

Chair Blair Schleicher Bravo

Secretary Stephen Shaw

Councilman William Barrett

Councilman John Lester

Planning Board Chair Martin Kane

Planning Board Member Thomas Dagger

Planning Board Member Corey Nachsen

Citizen Member Sandy Batty

Richard Sheola, Borough Manager

Paul Phillips, Borough Planner

## **History:**

Exclusionary zoning and affordable housing have been among the most prominent public policy issues in New Jersey for the last forty years. The [Mount Laurel](#) doctrine is a judicial interpretation of the [New Jersey State Constitution](#) that 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.

In 1985, the [New Jersey Legislature](#) responded to the Mount Laurel rulings by passing the Fair Housing Act. This legislation created an administrative agency, the [Council on Affordable Housing](#) (COAH), to establish regulations for determining the obligation of each municipality in terms of the number of units and means of satisfying the obligation. COAH adopted housing numbers and rules referred to as the First Round (1987-1993) and Second Round (1993-1999). Third Round rules for the period beginning in 2000 were proposed on several occasions and subsequently invalidated by the NJ Supreme Court. In March 2015, the NJ Supreme Court found that the COAH administrative process had become nonfunctioning and, as a result, returned primary jurisdiction over affordable housing matters to the trial courts, ruling that the municipal Fair Share obligation will be determined by the trial court on a case-by-case basis.

## **Background:**

The Borough voluntarily participated in COAH's first and second rounds. Since the third round rules were in a constant state of flux, the Borough deferred developing a plan around a moving target. In 2009, with the adoption of the Highland's Regional Master Plan, the Borough Council appointed a committee comprised of members of the Planning Board, the Mayor, Borough Council members and the Chair of the Environmental Commission to work in conjunction with the Borough Manager, Planner and Engineer to evaluate the advantages, disadvantages and impacts to the Borough in participating in the COAH third round and/or opting into the Highlands Regional Master Plan. The committee presented its final report to the Borough Council on April 26, 2010. No formal recommendation or action was taken due to several challenges to the third round rules working through the courts, as well as pending legislation that would drastically alter the way NJ approaches affordable housing and eliminate COAH entirely. Additionally Governor Christie's transition report found "*there is no constitutional obligation for such a state agency to exist.*"

On October 24, 2013, the Borough's current Master Plan was adopted with the following note:

*In order to proceed with the completion of the Master Plan a preliminary Housing Element is being prepared. Considering that at the time of the preparation of this Housing Element the status of COAH regulations and implementation are unclear, it is not possible to formulate an informed Housing Element. This approach to the Housing Element is due to current political and judicial issues and has no reflection on the intent of the Borough of Mountain Lakes. The Borough of Mountain Lakes will review and revise this Housing Element when the COAH regulations have been resolved.*

On March 10, 2015, the NJ Supreme Court issued a unanimous ruling that returned affordable housing enforcement to the courts. The court ruling provided a roadmap for municipalities to follow in developing constitutionally compliant Housing Element and Fair Share Plans. The ruling set forth specific timelines for municipalities to follow based on their prior status with the Council on Affordable Housing (COAH) and the invalidated third round rules. Municipalities that had previously been participating in the fair housing process before COAH had to file actions before the courts by July 8, 2015 to seek protection from builder remedy suits. Since Mountain Lakes did not file for or receive third round substantive certification, it is not part of the group of municipalities filing declaratory judgments with the courts in July. The Borough has been vulnerable to a builder's remedy lawsuit since June 2010. Now that the court has ruled, Mountain Lakes is able to move forward in developing a plan as contemplated when the current Master Plan was adopted.

### **Process for Developing the Proposed Plan:**

In June 2015, the Borough Council directed Borough Planner Paul Phillips to draft a Housing Element and Fair Share Plan to be considered for incorporation into the Borough's Master Plan. A committee consisting of Manager Richard Sheola, Blair Bravo, Stephen Shaw, Planning Board Chairman Jim Bailey, Sandy Batty, and Mayor Doug McWilliams was assembled to assist the Planner. The group was selected because of the present and prior positions they held in the Borough, institutional knowledge and work on prior Master Plans.

To familiarize the committee with the background and its responsibility, background documents were distributed, including the current Borough Master Plan, the COAH/Highlands Draft Housing Element and Fair Share Plan, and documents entitled "Preparing a Housing Element and Fair Share Plan," "What is an Accessory Apartment," and "A Guide to Affordable Housing Funding Sources."

On November 16, 2015, the committee issued a memo to the Borough Council to clarify its assignment and the expectations of the Council and Planning Board. The memo recommended formally constituting the committee as the Housing Element and Fair Share Plan (HEFSP) Committee, and appointing a committee chair, Blair Schleicher Bravo, and secretary, Stephen Shaw. It recommended that the direction for the committee should be:

1. Assist Borough Planner Paul Phillips in preparation of the Borough's third round Housing Element and Fair Share Plan (HEFSP).
2. Identify and prioritize realistic opportunities for affordable housing.
3. Suggest possible funding sources to accomplish affordable housing opportunities.
4. Communicate with the Borough Council on progress of numbers 1-3.
5. Finalize HEFSP by the end of January 2016.

Additionally, the committee recommended adding two Council members and an additional Planning Board member to the HEFSP Committee. In the past, when the Borough developed its HEFSP for COAH Rounds One and Two, the Housing Committee had representatives from the Council, the Planning Board and the Environmental Commission. The committee determined it

would benefit from greater input and points of view, and having Councilmen on the committee would facilitate communication with the Council.

By resolution adopted on January 4, 2016, the HEFSP Committee was formally established by the Borough Council as an ad hoc advisory committee with the composition and direction as previously recommended. Bill Barrett and John Lester were appointed as Borough Council members. Mr. Bailey withdrew from the committee with his resignation from the Planning Board in January 2016, and Mr. Dagger and Mr. Nachsen joined the committee as the two Planning Board members.

The committee has met nine times since June of 2015.

Other committee meeting discussions revolved around alternate ways to meet Mountain Lakes' obligation and possible areas in the Borough that may be suitable. Some methods discussed included:

- Mixed use
- Adaptive reuse
- Multi family
- Redevelopment
- Accessory apartments
- Group homes
- Rental rehab
- Age restricted

Locations were discussed including areas along RT 46 Corridor, the Midvale market area, other commercial areas, and some specific properties.

The committee focused on the realistic opportunity and best for overall planning in the Borough, the funding of the affordable units, and working in partnership with profit or nonprofit organizations. The committee also considered how a municipality can incentivize a land owner to develop, based on a redevelopment zone and or Payment In Lieu Of Taxes (PILOT) program.

The committee considered various methods of funding, which included:

- Developer funding via inclusionary development
- Housing trust funds (Mountain Lakes has very little money in its fund)
- Developer fee ordinance
- Municipal bonding
- Property swaps

To properly develop its Housing Plan, Mountain Lakes first needed to determine its Fair Share obligation. The Fair Share Housing Center, a nonprofit organization that advocates for greater affordable housing obligations for municipalities across New Jersey, estimated Mountain Lakes' 1999-2025 obligation to be 265 units. The NJ State League of Municipalities (NJSLOM) engaged highly respected professional planning consultants to prepare reports and review past

work and methodologies in determining the State’s affordable housing need on behalf of its member municipalities, including Mountain Lakes. The Borough Council retained the services of one of the NJSLOM consultants, Econsult Solutions, to develop a prospective need number for the Borough.

On December 29, 2015, the committee received the report from Econsult Solutions (the “Econsult Report”). Paul Phillips summarized the pertinent portions of the report and made the following comments/statements:

The approach would use the following assumptions using the numbers from the Econsult Report:

- Our Capped Prospective Need for the 2015-2025 period is **50**.
- Our Capped Present Need number is 1 (rehab).
- Since we have a history of employing the Vacant Land Adjustment (VLA), we would be seeking a VLA in this plan.
- Based on additional analysis, taking into account environmental constraints, there is a realistic development potential (RDP) of approximately 14 acres. Assuming a density of 6 dwelling units /acre and a 20% set aside, we would need to plan for 17 units. Subtracting the 6 units planned at King of Kings and 2 additional units that were built at Legacy, we are left with 9 units.

### **Summary of the Proposed Plan:**

There are three components to a municipality’s affordable housing obligation: rehabilitation (present need) obligation, prior round obligation and prospective need obligation. Mountain Lakes will address its obligation through the following actions\*:

1. **Rehabilitation Obligation:** Mountain Lakes has a rehabilitation obligation of one (1) unit. The Borough will participate in the Morris County Community Development Block Grant Housing Rehabilitation Program to rehabilitate that one unit.
2. **Prior Round Obligation:** Mountain Lakes had a prior round obligation of 80 units; an RDP of 18 units; and an unmet need of 62 units. The municipality addressed its obligation through the following activities:
  - Six (6) units in the inclusionary “Fusee” development – these units are completed.
  - Twelve (12) unit regional contribution agreement (RCA) with the City of Orange in 1997.
  - The “unmet need” of sixty- two (62) units would be met with a Borough-wide Affordable Housing Overlay Zone to capture future affordable housing (20% set aside) from any residential development of five or more units.

The Council on Affordable Housing granted substantive certification to the Borough for the Prior Round obligation on March 5, 1997. Accordingly, the terms and requirements of

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\* Please refer to the Borough of Mountain Lakes Affordable Housing Plan - Table 21- page 30 of the Housing Element and Fair Share Plan.

prior round substantive certification have been met and zoning addressing the unmet need remains in place.

**3. Third Round Obligation:** The Borough will address its RDP obligation of seventeen (17) units at three inclusionary sites:

- The “Fusee” site (2 units). In 2006, the Planning Board granted approval to the property owner to rezone adjacent land permitting an expansion of the size and layout of the development to accommodate ten additional units including **2 affordable family sale units**.
- King of King Backlands lot (6 units). In 2015, the Borough Council passed Ordinance 12-15, which rezoned for inclusionary development Block 116, Lot 3.0x known as the “King of King Backlands Lot.” The new zoning allows for up to 40 townhome units with a 15 percent set aside yielding **6 affordable family sale units**.
- 1 Bloomfield Avenue (5 of 12 beds towards RDP). The Borough has received interest from an assisted living developer seeking to develop an assisted living facility on Block 118.04, Lot 2.01, which is currently vacant land. While the total number of beds achievable at the property remains to be determined, it is presumed that a minimum number of a 120-bed assisted living facility is realistic. Ten percent of the 120 beds (or 12 beds) will be Medicaid beds. These beds would be credited as age-restricted rental units. Since the Borough is limited to addressing only 25 percent of the sum of the RDP and the rehabilitation component with age-restricted units, only **5 of the 12 Medicaid beds** at the assisted living facility are eligible to meet the RDP.
- Accessory Apartments (5 units = 4 units to RDP and 1 unit to unmet need). The Borough intends to implement an accessory apartment program to encourage residents to establish **five units** of affordable housing for occupancy by low- and moderate-income households. The Borough proposes to apply four accessory apartment units towards its Third Round Prospective Need obligation and one accessory apartment unit toward its unmet need. Mountain Lakes’ implementing ordinance should permit the establishment of the five accessory apartments.
- Unmet Need (33 units). The Unmet Need is the difference between the Borough’s Third Round Prospective Need Obligation (50 units) and its RDP (17 units). Therefore, the Borough’s unmet is **33 units**. Mountain Lakes proposes to address this unmet need by crediting **one** of the accessory apartments toward its unmet need and creating a multi-family affordable housing overlay zone on four lots on the north side of Route 46 – Block 6 Lot 14; Block 7 Lots 7, 8, 9.

This Housing Element and Fair Share Plan seeks to fulfill Mountain Lakes’ Third Round Prospective Need Obligation in a manner that is consistent with Mountain Lakes’ historic preservation policies, including by establishing inclusionary zoning sites outside the Mountain Lakes Historic District and by encouraging the establishment of affordable accessory apartments, which can be established in existing residential structures both within and outside the Mountain Lakes Historic District without impacting the historic character of the community.

### **Procedural Process and Timeline:**

The committee developed the procedural process and timeline for completion of the Housing Element and the Fair Share Plan, as follows:

- The Planner with input from the HESP Committee finalized a draft Housing Element and Fair Share Plan, which was reviewed and discussed at the committee meeting on February 25, prior to the preliminary discussion held during the Planning Board meeting that evening.
- The plan will be forwarded to the Planning Board for discussion and comment at a special meeting on March 10.
- The Planning Board will make revisions if necessary on March 10.
- The Planning Board will hold a public hearing and adopt the plan on March 24.
- Following the Planning Board adoption, Council will seek a declaratory judgment from the court.
- Following court approval, the Borough Council will then enact enabling ordinances.

### **Conclusion:**

The HEFSHP Committee is pleased to present the attached draft Housing Element and Fair Share Plan of the Master Plan for review by the Planning Board. We feel this draft plan is the best approach for the Borough to fulfill its constitutional responsibility to provide a realistic opportunity for the production of housing affordable to low- and moderate-income households.

We look forward to the Planning Board's discussion of the draft plan and input from the community. We are available to answer any questions you may have.

# Definitions

**Accessory Housing** – a self-contained, independent housing unit created either within an existing house through conversion of an existing structure attached to a house or by an addition to the house.

**Affordable Housing** – Housing whose cost (gross rents, including utilities, or mortgage payment, insurances, property taxes, and homeowner fees) is less than 30% of gross monthly income, adjusted for household size.

**Fair Share Housing** – The portion of a region’s housing needs for which a municipality must create realistic housing opportunities for low and moderate income households.

**Inclusionary Developments** – refers to municipal and county planning ordinances that require a given share of new construction to be affordable by people with low to moderate incomes. In practice, these policies involve placing deed restrictions on 10%-30% of new houses or apartments in order to make the cost of the housing affordable to lower-income households.

**Low and Moderate Income Housing** – means a restricted unit that is affordable to a low- or moderate income household.

**Low Income Household** – means a household with a total gross annual household income equal to 50 percent or less of the median income.

**Median income** - means the median income by household size for an applicable county\*, as adopted annually by the Council on Affordable Housing. \*Mountain Lakes is in region #2.

**Moderate Income Household** – means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median income.

**Present Need** – The present need component of the fair share obligation signifies that low and moderate income households are living in substandard and overcrowded housing in the municipality. To satisfy this need, most municipalities establish, fund, and administer a local rehabilitation program using municipal staff, consultants, or a county community development housing improvement program.

**Prior Round Obligation** – An adjustment to each municipality’s obligation based on additional, “secondary” sources of housing demand and supply.

**Prospective Need** – A projection of low and moderate income housing needs for a defined period in the future.

**Realistic Development Potential (RDP)** – The development potential of land taking into account environmental and regulatory constraints. The principle for determining whether a municipal housing plan satisfies a municipality’s constitutional housing obligation.

**Vacant Land Adjustment (VLA)** – Communities with limited vacant land can seek to establish their fair share obligations based upon the available land capacity to accommodate new housing development.

**Very Low Income Household** – means a household with a total gross annual household income as less than 30 percent of the median household income.