



Sea Girt *New Jersey*

WHERE THE CEDARS MEET THE SEA

New Jersey Affordable Housing

-A Constitutional Mandate-
*A Look at the History & Applicability
to the Borough of Sea Girt*





What is Affordable Housing?

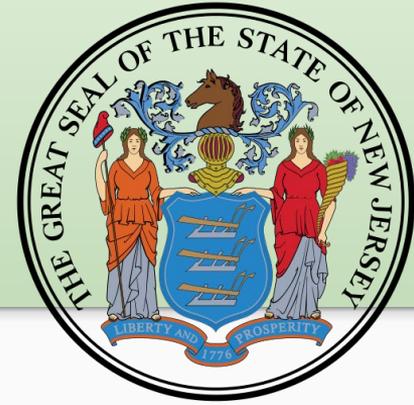
Affordable Housing is a CONSTITUTIONAL OBLIGATION placed on ALL municipalities in the State of New Jersey. Sea Girt is not exempt.

The Fair Housing Act (P.L. 1985 - Chapter 222) was enacted by the New Jersey State Legislature to increase the supply of housing in New Jersey that is available to households whose total gross annual income falls below 80% of an authorized median income guideline.

Affordable housing units are restricted for limited time periods to be occupied by households that have been certified as income eligible. Any housing that has been designated, as low and moderate-income housing will also be subject to restrictions that enable them to be rented or sold only to income-qualified households. Affordable Housing units initial rents, sales prices and re-sales and re-rentals will be controlled by utilizing a system of adjustment based on approved median income guidelines.



A Brief History



1975

Mount Laurel I

This court case ruled that each municipality has a constitutional obligation to provide Affordable Housing in their jurisdiction.

1983

Mount Laurel II

- Builders Remedy instituted: decision which allows a developer to file suit for the opportunity to construct housing at higher densities than a municipality would otherwise allow.
- Municipal obligations are imposed
- The Courts are to approve Housing Plans

1985

Fair Housing Act (FHA)

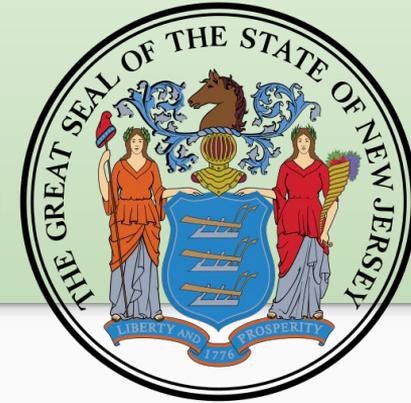
The Council on Affordable Housing (COAH) was created to administer the FHA

1986-2014

COAH

COAH Administered the FHA and promulgated first, second and third round rules down to the municipalities.

History Continued



2014

COAH Fails to Adopt

COAH fails to adopt 3rd round rules and the coalition is deemed to be ineffective.

2015

Mount Laurel IV

The Supreme Court transfers approval of housing plans to the lower Courts (COAH divested of jurisdiction).

2015 and Beyond

Status Quo thru 2025

Municipalities are bound by their 3rd round obligations until 2025. The Supreme Court did not adopt a new set of methodology and therefore kept with the same COAH methodology to determine the Affordable Housing obligation.

What is Sea Girt's Affordable Housing Obligation?

286

Court Ordered Units



You may be saying to yourself, “There is no way Sea Girt could develop 286 units worth of Affordable Housing.”

Sea Girt has a prior round (1987-1999) obligation of 115 affordable housing units and a current round (1997-2025) obligation of 171 units.

Affordable units are based on a court approved COAH methodology to determine the municipalities obligation.

HOWEVER, Sea Girt is entitled to a vacant land adjustment (VLA), and exercised this right by responsibly hiring a Borough Planner with extensive affordable housing knowledge and an attorney who has managed many affordable housing settlements.

Sea Girt’s VLA determined that we had a Realistic Development Potential (RDP) of 5 affordable housing credits, which leaves what is called an “unmet need” of 281 credits/units.

Sea Girt is currently in settlement discussions with Fair Share Housing to determine the mechanisms to address our unmet need, to avoid a builder’s remedy lawsuit and protect the Borough into the future.

What is a Builder's Remedy Lawsuit?



A builder's remedy lawsuit allows a developer to file suit to have a specific piece of property chosen by the builder rezoned to allow for the opportunity to construct housing at higher densities than a municipality would otherwise allow, **provided that the developer provides a set aside of affordable units that are designated for low and moderate income.** A developer is entitled to a builder's remedy if (1) it succeeds in Mount Laurel litigation; (2) it proposes a project with a substantial amount of affordable housing, and (3) the site is suitable, i.e. the municipality fails to meet its burden of proving that the site is environmentally constrained or construction of the project would represent bad planning. *Southern Burlington County NAACP v. Mt. Laurel Twp.*, 92 N.J. 158, 279–80 (1983).

A successful developer in a builder's remedy suit is entitled to a court ordered zoning designation, including all aspects of zoning such as density, setbacks, building heights, lot coverage, etc. to accommodate its proposed inclusionary project.

Once a court determines that a municipality has not satisfied its constitutional obligations concerning the development of affordable housing, **it is exceptionally rare to “win” a subsequent builder's remedy lawsuit.** The municipality loses the presumption of validity of its zoning ordinances and the case proceeds with the underlying premise that the municipality is *improperly preventing the development of affordable housing.*

As a result, when a builder's remedy is granted, courts grant the developer the right to construct multi-family housing on its proposed site and relax the municipality's density, height, bulk and setback standards as necessary to facilitate that development. **In addition, that development will contain an affordable housing set-aside, typically between 15% and 20%. These decisions will be made by a judge upon the recommendation of a court-appointed master - not by Borough officials.**

Sea Girt's Builder's Remedy Lawsuit

501 Washington Blvd. LLC,
503 Washington Blvd. LLC,
Sea Girt Fifth Avenue LLC,
Sitco Sea Girt LLC

v.

Borough of Sea Girt
Docket No. MON-L-102-20



- Plaintiff filed a Mount Laurel exclusionary zoning complaint (also called a Builder's Remedy action) on January 9, 2020 alleging the Borough has failed to create a sufficient realistic opportunity for the construction of affordable to low- and moderate-income households and their fair share of the region's need for such housing in violation of the New Jersey Constitution as construed by the New Jersey Supreme Court in Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 751, cert. denied, 423 U.S. 808, 96 S.Ct. 18, 46 L.Ed.2d 25 (1975) ("Mount Laurel I") and Southern Burlington Cnty. NAACP v. Township of Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel 11") (collectively, the "Mount Laurel Doctrine"), and as implemented by the Legislature in the Fair Housing Act, N.J.S.A. 52:27D- 30I, et seq. ("FHA"), and by COAH in its regulations, N.J.A.C. 5:91 through 5:93. Plaintiff owns Block 76, Lots 1 and 2 comprising of approximately 0.4 acres ("North Property") and Block 77, Lots 16 and 17 comprising approximately 0.3 acres ("South Property").
- Plaintiff and Borough had been involved in court actions regarding the development of the property for residential uses and as part of the housing plan to **partially address the Borough's fair share affordable housing obligation.** After consultations with the court and Special Master and extensive negotiations, the Borough and Plaintiff have entered into an Agreement for the development of the North Property and South Property. The Agreement provides for the rezoning and the construction of a mixed-use development on the North Property and a residential development on the South Property. The North Property will consist of commercial/office use on the first floor and nine (9) family non-age restricted rental units **including three (3) family non-age restricted rental units set aside for very-low, low and moderate income households.** The South Property will consist of ten (10) market rate multi-family dwelling units. A total of nineteen (19) units will be provided across the North and South Property parcels which includes three (3) family non-age restricted rental units and sixteen (16) market rate non-age restricted rental units.

Source: Special Master's Report for Fairness Hearing; May 26, 2021

Outcome of Builder's Remedy Lawsuit



- Project will consist of 3 Affordable rental units*: 1: very-low income two-bedroom unit, 1: low-income two bedroom unit; and 1: moderate-income one bedroom unit
- The Borough also had to rezone the North and South property to permit the development of each parcel consistent with the Agreement exhibits.

*Rental units are calculated as bonus credits. This project satisfies the Borough's RDP based on our VLA

		2021 AFFORDABLE HOUSING REGIONAL INCOME LIMITS BY HOUSEHOLD SIZE									
		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8+ Person
Region 4	Median	\$76,469	\$81,931	\$87,393	\$98,317	\$109,242	\$113,611	\$117,981	\$126,720	\$135,460	\$144,199
Mercer,	Moderate	\$61,175	\$65,545	\$69,915	\$78,654	\$87,393	\$90,889	\$94,385	\$101,376	\$108,368	\$115,359
Monmouth and	Low	\$38,235	\$40,966	\$43,697	\$49,159	\$54,621	\$56,806	\$58,990	\$63,360	\$67,730	\$72,099
Ocean	Very Low	\$22,941	\$24,579	\$26,218	\$29,495	\$32,772	\$34,083	\$35,394	\$38,016	\$40,638	\$43,260

Our Neighbors to the North and South



- 391 AH Credits to satisfy UNMET NEED*
- Addressing Unmet Need through Mandatory Set Aside Ordinance and Overlay Zoning*

* February 13, 2018 Fair Share Housing Center Settlement Agreement



- 519 AH Credits to satisfy UNMET NEED*
- Addressing Unmet Need through Housing Projects, Mandatory Set Aside Ordinance and Overlay Zoning.*

* 2018 Housing Plan Element and Fair Share Plan document

Addressing Affordable Housing in the Future



Step 1

Under COAH regulations, the BoSG has to implement 2 additional zoning mechanisms to satisfy unmet need.

Step 2

Currently (2022), the Borough of Sea Girt (BoSG), is in discussions with Fair Share Housing (FSH) with our Professionals, Mayor, Administrator and a Sub-Committee of Elected Officials to address a reasonable settlement agreement with FSH.

Step 3

Reiterate to FSH the Borough's Vacant Land Adjustment and Realistic Development potential to determine the Borough's TRUE unmet need.

Step 4

Negotiate the mechanisms of Overlay Zoning (does not change current zoning in specific areas) and development of an Affordable Housing Ordinance with FSH to satisfy the unmet need.

Step 5

Once settlement is reached, adopt and incorporate a **Housing Plan Element and Fair Share Plan** into the BoSG Master Plan, which will be approved until 2025 by the Court.

"The Borough believes in a complete interactive process with the Courts, our Professionals and Fair Share Housing to control our destiny as we work to comply with this Constitutional obligation" Mayor Don Fetzer