



**Office of the Borough Administrator  
BOROUGH OF FAIR HAVEN  
748 River Road – Fair Haven, NJ 07704  
732-747-0241**

This document is designed to give the residents of Fair Haven an overview of the State of New Jersey’s historical and current affordable housing laws. Of greater interest to our community will be the particulars on how those laws impact Fair Haven, as it relates to the Borough’s Housing Element and Fair Share Plan settlement negotiations and a potential final agreement.

**Overview of the History of Affordable Housing Law in New Jersey**

- Since at least 1983, when the Supreme Court decided Mount Laurel II, the Borough of Fair Haven and other municipalities in the state have had a constitutional obligation to provide a realistic opportunity for their fair share of low and moderate income (“LMI”) housing. Following that legal ruling, several key events have impacted the laws on affordable housing, including:
  - The adoption of the Fair Housing Act
  - The creation of the Council on Affordable Housing (“COAH”),
  - COAH’s calculation of fair share obligations (“quotas”) for Round 1 and 2.
  - COAH’s failure to validly calculate obligations for Round 3 (the current Round of 1999-2025).
  - Most importantly, the Supreme Court’s intervention due to COAH’s failures in a case commonly referred to as “Mount Laurel IV”.
- As described below, New Jersey’s affordable housing obligations can be broken down into several parts including: the rehabilitation obligation, the Prior Round obligation and the Round 3 new construction obligation.
- For the purposes of Fair Haven, those distinctions are relatively unimportant as the Borough does not have a rehabilitation obligation and since it does not have Prior Round credits. As a result, the obligation is best conceptualized as a new construction obligation that covers the time period of 1987-2025. That obligation is defined below and is subject to adjustments, which are also described below.

## State of New Jersey's Affordable Housing Timeline

**1975 - Mount Laurel I:** The Supreme Court holds that it is a violation of the constitution for municipalities to exclude low and moderate-income households, via their zoning powers.

**1983 - Mount Laurel II:** The Supreme Court:

- Held that all municipalities, not just developing municipalities, are required to create a realistic opportunity for the construction of their fair share of the regional need for low and moderate income housing.
- Creates the “builder’s remedy” as a method to enforce the Mount Laurel Doctrine. Under a builder’s remedy lawsuit, if a developer/plaintiff can demonstrate that the municipality has not satisfied its obligations and certain other conditions are met, a builder’s remedy may be awarded. The remedy would include high density development with an affordable housing set aside, which **does not require input from the municipality**, regarding location, bulk standards, design features and so on. In other words, if successful, a builder’s remedy could potentially force a municipality to lose control over its zoning.

**1985 – The Fair Housing Act (“FHA”):** After Mount Laurel II created a flood of lawsuits from developers, the legislature adopted the FHA. The Fair Housing Act:

- Created the Council on Affordable Housing (“COAH”).
- Required COAH to calculate state and regional obligations.
- Discouraged litigation by incentivizing voluntary municipal compliance through COAH or a court (the carrot) as opposed to the builder’s remedy lawsuit (the stick) as the primary method of enforcement.
- To incentivize compliance, the Fair Housing Act created protections from lawsuits for municipalities that filed their affordable housing plans with COAH. There were protections during the review and processing phase of the plan and if the plan was approved future protections for the covered compliance period. The future protections came in the form of “Substantive Certification”.

**1987-1999 – COAH’s Round 1 and 2 - The “Prior Round”**

- In 1986, COAH adopted regulations for Round 1, spanning a six-year period from 1987 to 1993.
- In 1994, COAH adopted regulations for Round 2, spanning a “cumulative” 12-year period from 1987 to 1999. The courts refer to the regulations from Rounds 1 and 2 as the “Prior Round” regulations.
  - **In the Borough of Fair Haven’s case, COAH assigned the Borough a Prior Round obligation of 135 units.**

**1999-2014 – COAH’s Failure to Adopt Valid Round 3 Regulations:** After the expiration of the Round 2 regulations, COAH failed to adopt valid regulations and calculations of need, despite multiple

attempts, until their final attempt in 2014 while under court scrutiny. When COAH failed to adopt its 2014 regulations, Fair Share Housing Center (“FSHC”) moved before the Supreme Court to enforce litigants’ rights.

**2015: Mount Laurel IV:** In response, the Supreme Court decided a case commonly referred to as Mount Laurel IV, which:

- Declared COAH “moribund” and created transitional procedures whereby the trial courts would again function as the primary entities responsible for reviewing, processing and approving municipal affordable housing plans.
- Those transitional procedures relied upon the Fair Housing Act and renewed the carrot vs. the stick approach. Municipalities that filed declaratory judgment actions either between June 8 and July 8 of 2015, or prior to being sued, largely received immunity from builder’s remedy lawsuits during the review process for the plan and a Judgment of Compliance and Repose (“JOR”) upon final court-approval of the plan, which provides protections from such suits until the year 2025.
- After considering all factors, the Borough of Fair Haven did not file a declaratory judgement action in June/July, 2015.

**2015-2018: Litigation Regarding Implementation:** In the years that followed Mount Laurel IV, there were various trials, an Appellate decision, and even Supreme Court’s rulings as to the proper implementation of that decision.

### **The Borough of Fair Haven’s Affordable Housing Timeline**

- **June, 2015** - the Borough retains the Planning Firm, Clarke, Caton, Hintz to facilitate the reexamination of the Borough’s Master Plan. The Master Plan was previously reexamined in 2005.
- **August, 2016** - the Planning Board adopts the Master Plan reexamination report.
- **November, 2017** - the Borough’s Governing Body endorses an Active Transportation Plan, which was developed using a consultant, funded by an NJDOT grant.
- **January, 2018** – The Borough appoints Heyer, Gruel and Associates as the Borough’s Planner.
- **March, 2018** – The Planning Board adopts the Active Transportation Plan as an element of the Master Plan.
- **January, 2018 – March, 2019** - The Borough’s Housing Element and Fair Housing Subcommittee, which consisted of various members of the Governing Body and Planning Board, along with Borough Professionals held ongoing meetings to formulate and revise the plan. This plan was presented to the Planning Board on March 19, 2019.

- During this ongoing process, members of the Committee have included:
  - **Ben Lucarelli** – Fair Haven Mayor
  - **Betsy Koch** – Fair Haven Council
  - **Chris Rodriguez** – Fair Haven Council
  - **Todd Lehder** – Fair Haven PB and ZB Chairman
  - **Andrew Sobel** – Member as of October, 2019
  - **Michael Borneo** – Member as of October, 2019
  - **Jim Banahan** – Originally represented the Fair Haven PB – Eliminated due to quorum considerations, post his becoming a member of the Governing Body on 01/01/2019
  - **Theresa Casagrande** – Fair Haven Borough Administrator
  - **Rich Gardella** – Planning Board Engineer
  - **Nick Poruchynsky** – Zoning Officer – As Needed
  - **Fred Heyer and Susan Gruel** – Fair Haven Planners
  - **Sal Alfieri, Esq.** – Fair Haven Borough Attorney – As Needed
  - **Michael Edwards, Esq. Surenian, Edwards & Nolan, LLC**, Special Counsel for Affordable Housing
  
- **March 7, 2019** – The Borough’s Special Legal Counsel for Affordable Housing filed a Declaratory Complaint in Monmouth County Superior Court, Law Division. At this point in time, the Borough received temporary immunity from the Court, which remains in full force and effect today.
  
- **March 19, 2019** – The Fair Haven Planning Board adopts the Borough’s Housing Element and Fair Share Plan, which is a required element of the Borough’s recent Master Plan reexamination process.
  
- **March 25, 2019** – The Fair Haven Governing Body adopts a resolution that memorialized their endorsement of the adopted plan.
  
- **March, 2019 through January, 2020** – Under the jurisdiction of Monmouth County Superior Court, the Borough’s Special Counsel for Affordable Housing, Mike Edwards, oversees negotiations between the Borough, Representatives of Fair Share Housing Center and M&M Realty (Interested Party as the owner/developer of the Sunoco site on River Road, which is located within an overlay zone, as per the Borough’s HEFSP). The Mt. Laurel Committee meets, as needed, to give their ongoing input into the negotiations process and keeps the Governing Body updated regarding the still ongoing negotiations.

**The Borough of Fair Haven’s Fair Share Number and Vacant Land Analysis**

- **Fair Share:** As described above, there are several components to the fair share obligation. The Borough’s fair share obligations, as calculated as a result of a recent 41-day “methodology trial” in Mercer County, equal a new construction obligation of 371 units which is broken down as follows:

- Rehabilitation Obligation: 0
  - Prior Round (1987-1999) Obligation: 135 Units
  - Round 3 (1999-2025) Obligation: 236 Units
  - Total Obligation: 371 Units
- The numbers above are also as proposed in the Borough’s Housing Element and Fair Share Plan and pending settlement agreement
  - **Vacant Land Analysis:** When a municipality, like Fair Haven, lacks sufficient developable land to meet its new construction obligation, it is entitled to an adjustment of that number, known as a “Vacant Land Adjustment” or “VLA”. In essence, the Borough is telling the Court, “Judge, I do not have enough land for X, but I do have enough land for Y.” The adjusted number is known as the “Realistic Development Potential” or “RDP” and the remainder of the Borough’s obligation is known as the “unmet need”.
    - **Under the terms of the pending Settlement Agreement, the Borough’s current Realistic Development Potential is four (4) units.**
      - As to the RDP, the Borough must create a “realistic opportunity for the construction” of its RDP between now and July of 2025.
    - **The Borough’s unmet need is 367 Units (371 – 4 = 367)**
      - The operative legal standard for unmet need is less onerous and more flexible than that for RDP. It is akin to taking reasonable efforts to address this need, most typically in the form of overlay zoning.

**Proposed Settlement Agreement with Fair Share Housing Center (FSHC)**

- The pending FSHC Settlement Agreement’s major terms are as follows:
  - Rehabilitation, Prior Round and Round 3 obligations as stated above. The Borough’s current RDP of four (4) units. RDP satisfied via:
    - ❖ A two-family affordable project built by Habitat for Humanity.
      - A 50 x 100 foot portion of Borough owned land located at Hendrickson and Allen to be donated to Habitat. This size lot is fully conforming in the R-5 zone.
    - ❖ A 14 unit M&M inclusionary project on River Road will create two (2) affordable units.
    - ❖ The M&M site is located at the old Sunoco Station fronting on River Road. It falls within the proposed overlay zone, contained in the Borough’s adopted Housing Element and Fair Share Plan. The proposed density is 20 units per acre, which will

produce 14 total units, in two stories above the ground floor, which is to remain commercial.

- Unmet Need Satisfied via:
  - ❖ Overlay zoning in the Borough’s business district using the original density numbers, but the settlement creates a smaller footprint than initially proposed in the Borough’s Housing Element and Fair Share Plan. (HEFSP)
  - ❖ Overlay for senior housing at Methodist Church site adjacent to Fair Haven Fields, as originally proposed in the 2019 HEFSP, but with a future option of less density (8 units per acre) if the project is family instead of senior.
  - ❖ Overlay Zoning, in and around the municipal building, at Block 27, Lots 56, 57 and 58 (15 units per acre mixed-use) and Block 28, Lots 18, 19, 23.1, 25 and 26 (20 units per acre mixed use)

### **Outline of Pending Future Steps to Complete the Settlement Process**

Noting that the negotiations are still ongoing, in the event that the various parties agree on the terms of a settlement agreement, which is finally approved by the Governing Body, a reasonable timeline for compliance would be as follows:

- March/April 2020 Fairness Hearing: The Settlement(s) would be placed on file for a period of at least 30 days and publicly noticed. At the end of that notice period, the Court would hold a hearing to evaluate whether the settlement is fair and reasonable to low and moderate-income households in the region. If yes, a 120 day clock would begin for plan implementation.
- March-August 2020: during this time period, the Borough’s Governing Body and/or the Planning Board would:
  - Adopt/endorse the amended HEFSP
  - Introduce and adopt all rezoning and overlay ordinances, which will require public hearings prior to adoption.
  - Required ordinances would include a “Developers Fee Ordinance” that will be used as a funding mechanism for the Borough’s ongoing Fair Housing obligations.
  - Introduce and adopt all ancillary documents, resolutions and ordinances to implement the plan.
  - Request a final Compliance Hearing.
- Fall 2020: The Court would hold a final Compliance Hearing to evaluate the plan. If the Court finds it creates a realistic opportunity for the Borough’s fair share and approves the plan, the Borough will receive a conditional or final Judgment of Compliance and Repose, which will insulate the Borough from builder’s remedy lawsuits until July of 2025.