

Affordable Housing

Everything Old is New Again
(or maybe not)

Pinelands Commission
Policy & Implementation Committee
January 29, 2016

Background

Affordable Housing and the Pinelands Area Prior to
March 10, 2015

- ▣ The CMP, as originally adopted, contained provisions relating to the production of low and moderate income housing in the Pinelands
- ▣ FHA enacted in 1985 in response to the first two Mount Laurel decisions
 - ▣ Created COAH as the administrative alternative to the Courts
 - ▣ Empowered COAH to:
 - ▣ Define housing regions with the state and regional need for affordable housing
 - ▣ Promulgate criteria and guidelines to enable municipalities within each region to determine their fair share of that regional need

- ▣ **Following the enactment of the Fair Housing Act in 1985, the Legislature amended the Pinelands Protection Act**
 - ▣ **Excluded the number of low and moderate income housing units provided in a Master Plan, Land Use Ordinances or development application, as a criteria for consideration by the Commission.**

The Impact of Mount Laurel IV

In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97
by N.J. Council on Affordable Housing

Mount Laurel IV

- ❑ Decided March 10, 2015
- ❑ COAH's Repeated Failure to Adopt Third Round Rules
Basis for Decision
- ❑ Returned determination of municipal compliance with constitutional Mount Laurel obligation to the Courts (i.e. same as prior to enactment of the FHA)
- ❑ Processes before the courts are to be similar to those that would be available before COAH

- ❑ Affords certain municipalities (those who had participated before COAH) the opportunity to have the courts review their housing elements and fair share plans and demonstrate compliance, before being subject to builders remedy suits
- ❑ For municipalities that demonstrate compliance, court will issue judicial equivalent of substantive certification and accompanying protection as provided under the FHA
- ❑ Municipalities who are found to be non-compliant will be subject to exclusionary zoning actions and builder's remedy suits may proceed.

Issues that the Courts Need to Address

- ❑ What is the correct “Fair Share” number for a municipality?
 - ❑ Different numbers being advanced by different parties
 - ❑ COAH’s numbers from the Third Round Rules – prepared by Robert W. Burchell, PH.D, Rutgers University
 - ❑ Fair Share Housing Council (FSHC) and NJ Builders’ Association report prepared by David N. Kinsey, Ph.D., Princeton University
 - ❑ Econsult Solutions Report prepared Peter A. Angelides, Ph.D., AICP for consortium of 200 municipalities
 - ❑ Reports prepared by court appointed “Numbers” Special Masters, e.g. Richard B. Reading “Preliminary Review and Assessment of Low and Moderate Income Housing Needs of Ocean County Municipalities”

- ❑ What should be considered when calculating a municipality's "Fair Share" numbers (i.e. Fair share of present and prospective regional affordable housing needs)

- ❑ How will the issues be addressed in each of the 15 designated affordable housing judges?
 - ❑ Will the judges get together to come up with a definitive set of numbers or will each court make its own determination for their region as to the numbers should be?

 - ❑ Will differences in interpretation of the Mount Laurel decisions lead each court decide its cases using the same rules or different ones?

Affordable Housing in the Pinelands Today

Pinelands municipalities are obligated to comply with the requirements of the Fair Housing Act, the Pinelands Protection Act and the Pinelands Comprehensive Management Plan pursuant to Mount Laurel II

(So. Burlington NAACP v. Tp. Of Mount Laurel, 92 N.J. 158, 238 (1983) – Fair Housing principles can not be enforced at the expense of environmental objectives.)

Provisions of the Pinelands CMP Relevant to Providing Opportunities for Affordable Housing

- ❑ Management Area designations dictate the use and intensity of development permitted
- ❑ Residential densities (maximum number of residential units) are established based on management area standards
- ❑ Sewer service infrastructure and densities above 1 du/acre only permitted in:
 - ❑ Regional Growth Areas
 - ❑ Pinelands Towns
 - ❑ Pinelands Villages

Additional Considerations

- ❑ Economic feasibility – e.g. 4 market rate units are needed to support 1 affordable unit
- ❑ Our experience has shown that reasonable fair share percentages (e.g. 10-20%) and PDC obligations can both be met (if densities are high enough)
- ❑ Pinelands municipalities exercise considerable discretion in developing individual zoning districts, particularly in RGA & Pinelands Town

- ❑ Municipalities may designate different zoning districts to segregate different uses and provide for different densities
- ❑ CMP also provides opportunities for municipalities to increase their residential zoning capacity in RGA's through the use of additional density bonus or incentive programs or through the 10% provision
- ❑ CMP does not put a limit on Pinelands Town densities

Issues with the Numbers

- ❑ FSHC's numbers are unachievable in the Pinelands Area portion of most municipalities, based on vacant land in RGA, PT & PV
- ❑ Econsult's numbers are significantly better, but there are still problematic in municipalities without sewer service
- ❑ Analysis of Numbers for Pinelands Municipalities
 - ❑ 26 Municipalities do not have sewer service

Examples	FSHC	Econsult	PA Buildout	Sewer PA Buildout	FSHC # as % of Sewer Buildout
Washington	60	11	58	58 (PV)	103%
Tabernacle	311	29	755	431 (RGA) & 60 (PV)	63%
Woodland	98	30	312	215 (PV)	45%
Mullica	104	18	825	117 (PV)	84%

- ❑ 10 Municipalities have sewer service, but insufficient vacant land in the Pinelands Area to accommodate an affordable housing obligation

Examples	FSHC	Econsult	PA Buildout	Sewer PA Buildout	FHSC # as % of Sewer Buildout
Medford Lakes	188	20	52	52 (RGA)	362%
Buena Borough	86	0	146	146 (PT)	59%

- ❑ 5 Municipalities have sewer service and sufficient vacant land in the Pinelands Area, but proffered “Fair Share” numbers exceed 20% (economic feasibility)

Example	FSHC	Econsult	PA Buildout	Sewer PA Buildout	FHSC # as % of Sewer Buildout
Lakehurst	72	0	205	205 (PT)	35%
Chesilhurst	115	16	356	356 (RGA)	32%

- ❑ 12 Municipalities have sewer service and sufficient vacant land

Examples	FSHC	Econsult	PA Buildout	Sewer PA Buildout	FHSC # as % of Buildout
Winslow	1000	89	5427	4236 (RGA) & 516 (PV)	20%
Monroe	976	64	6362	5709 (RGA)	17%
Waterford	292	24	2406	2229 (RGA)	13%

- ❑ One municipality (Mullica) has already claimed that it should be exempt from any affordable housing obligation unless and until:
 - ❑ The Pinelands Commission modifies the CMP to permit overlay and/or density increases to accommodate additional growth and
 - ❑ Public water and sewer become available

Impact on Staff Resources

- ❑ Commission staff works with Pinelands municipalities to assist with planning and zoning issues that arise as these municipalities develop their housing elements and fair share plans
- ❑ Commission staff reviews housing elements, fair share plans and municipal ordinances as part of its conformance review
- ❑ Commission staff has completed various build out scenarios and is available to assist municipalities as they consider how they will plan and provide their fair share of the region's housing needs for low and moderate income individuals, while complying with the Pinelands CMP

- ❑ Commission staff becomes involved when a builder's remedy suit is advanced

- ❑ Builder's remedy suits bring challenges
 - ❑ Project usually not consistent with Commission certified local zoning
 - ❑ Residential proposed in non-residential zone
 - ❑ High density proposed in low density residential zone

- ❑ Commission may not be brought in early enough in the process
 - ❑ e.g. the solution has been negotiated and does not work

- ❑ Court appointed Master may not be familiar with the requirements of the CMP or the PDC provisions
- ❑ Proposed solution may not be consistent with the requirements of the CMP or the PDC provisions
- ❑ Challenges have been brought in the past to the CMP alleging it is an exclusionary zoning scheme and that PDCs are burdensome cost generating requirements

Steps the Commission can take to assist municipalities to meet their affordable housing obligations

- ❑ Move forward with PDC enhancements rule proposal
 - ❑ Formally removes Cap on RGA prescription
 - ❑ Result: More market rate units can support the affordable units
 - ❑ Sliding Scale provides PDC relief for higher density projects
 - ❑ Result: Lower PDC cost/unit increases overall feasibility
- ❑ No PDCs on Affordable Units
 - ❑ Result: 100% affordable projects possible
- ❑ Flexibility to meet increased density
 - ❑ Result: More market rate units can support the affordable units