Affordable Housing Update

Policy & Implementation Committee
March 23, 2018
Purpose

To update Committee on affordable housing matters in Pinelands Area post Mount Laurel IV

- Summarize the status of Pinelands Area municipalities
- Discuss Pinelands Commission role
- Make Committee aware of strategies being adopted by Pinelands Municipalities
Background – Mount Laurel Doctrine

New Jersey affordable housing laws are rooted in the “Mount Laurel Doctrine”

- Stem from landmark N.J. Supreme Court decisions
  - **Mount Laurel I (1975)**
    *So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel*
  - **Mount Laurel II (1983)**
    *So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel*

- Mount Laurel I & II decisions recognize that the power to zone carries a constitutional obligation to create a realistic opportunity for the development of a municipality’s fair share of the regional need for affordable housing.
In 1985 N.J. legislature adopts the Fair Housing Act (FHA)

- Incorporated the legal principles of the Mount Laurel decisions and established the means by which municipalities can satisfy their affordable housing obligation outside of litigation

- Establishes the Council on Affordable Housing (COAH):
  1. To estimate the affordable housing need statewide and by region
  2. To establish methods for municipalities to determine their affordable housing obligation as well as adjustments (based on developable land, available infrastructure, environmental or historic preservation factors)
  3. To administer the substantive certification process and the mediation process
Background – Fair Housing Act 1985

-- In 1985 N.J. legislature adopts the Fair Housing Act (FHA)
Continued........

- FHA creates systems where municipalities may voluntarily apply to COAH for “substantive certification”

- COAH certifies if submitted housing plan is found to create a realistic opportunity for the creation of their affordable housing obligation

- With substantive certification, a municipality is insulated to a substantial extent, for 10 years, from exclusionary zoning litigation (aka, builder’s remedy litigation or Mount Laurel Lawsuits)

- Without substantive certification, municipalities are vulnerable to exclusionary zoning litigation (e.g., forced rezoning).

Third Round rules --

- **December, 2004**
  COAH adopts Third Round rules for 1987-2014
  - January, 2007 – Rules invalidated by NJ Appellate Court

- **October, 2008**
  COAH adopts revised Third Round rules 1987-2018
  - October, 2010 – Rules again invalidated by NJ Appellate Court
  - September, 2013 – Appellate decision upheld by NJ Supreme Court

- **May, 2014**
  COAH proposes another revised Third Round rules, but fails to adopt in October, 2014
March, 2015 – “Mount Laurel IV”

- NJ Supreme Court instructs trial courts to assume responsibilities of COAH

- Certain* municipalities are able to file declaratory judgment actions to obtain a judicial version of the substantive certification

- Court to assess obligation on a municipality by municipality
Process

- Eligible municipalities file applications for declaratory judgment
- Negotiations ensue between parties within individual cases
- Court-approved settlements between individual municipalities, Fair Share Housing Center and other interested parties
Background - Post-Mount Laurel IV

Process Continued....

- Housing Element and Fair Share Plans are adopted by Planning Boards
  - Housing needs analysis
  - Affordable housing obligation
  - Accounting of how obligation is met (e.g., existing/planned sites)
  - Recommended ordinance changes to implement plan

- Implementing ordinances are adopted by Governing Bodies
  - Zoning changes/Inclusionary zoning
    - Density bonuses/Mandatory set-asides
  - Developer fees/Affordable housing trust funds
  - Controls on affordability
  - Affirmative marketing plan
Pinelands Commission Role

- Ensure Pinelands CMP regulations are acknowledged in advance when possible

- Municipal conformance process
  - Housing Elements
  - Affordable Housing Ordinances
  - Zoning Changes

- Review planned sites in Pinelands Area
  - Ensure conformance with existing zoning
  - Ensure zoning changes are consistent with CMP (e.g., PDCs)
  - Environmental constraints of sites
Municipal Status Summary

- Pinelands Municipalities (53)
  - Filed Declaratory Judgment Action (31)
    - Settlement Reached (23)
      - HE&FSP Adopted (16)
      - Pinelands Commission Certified (14)
    - Settlement Pending (8)
      - HE&FSP Pending (6*)
  - Did not or could not file (22)
Recent P.C. Certified HE&FSPs

Atlantic County
- Buena Vista Twp
- Mullica Twp

Burlington County
- Pemberton Twp

Camden County
- Berlin Boro
- Waterford Twp
- Winslow Twp

Cumberland County
- Vineland City

Ocean County
- Berkeley Twp
- Jackson Twp
- Lacey Twp
- Little Egg Harbor Twp
- Manchester Twp
- Ocean Twp
- Stafford Twp
- Barnegat Twp*

Total: 15
### Recent Zoning Changes

<table>
<thead>
<tr>
<th>Muni</th>
<th>Density</th>
<th>Set-aside</th>
<th>Housing Types</th>
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<tbody>
<tr>
<td>Barnegat Twp</td>
<td>4.3-7.5 du/acre</td>
<td>10% of the Shoreline S&amp;G Redevelopment Area</td>
<td>Single family detached, Townhouses, Apts</td>
</tr>
<tr>
<td>Jackson Twp</td>
<td>3-4.5 du/acre</td>
<td>20% of units in RG-2 and RG-3 zones</td>
<td>Townhouses</td>
</tr>
<tr>
<td>Manchester Twp</td>
<td>4.5 du/acre</td>
<td>20% of MDG Tract</td>
<td>Apts, Townhouses</td>
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<tr>
<td>S. Toms River Borough</td>
<td>7.15 du/acre</td>
<td>Up to 20%</td>
<td>Apts, Townhouses</td>
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<tr>
<td></td>
<td>17 du/acre</td>
<td>10-20%</td>
<td>Apts, Townhouses</td>
</tr>
<tr>
<td>Waterford Twp</td>
<td>5-12 du/acre</td>
<td>20% of Haines Blvd Redevelopment Area</td>
<td>Single family detached, Townhouses, Apts, Mixed Use</td>
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</tbody>
</table>
So far, not a lot of new development in the Pinelands Area is expected as a result of this new round of affordable housing court cases.

Many Pinelands muni’s still need to be certified by the courts,.....

.....other Pinelands Muni’s are vulnerable to Mount Laurel lawsuits.

Staff will continue in its role regarding conformance and stay up to date with further developments on affordable housing in the state.
Questions?