

Borough of Rumson

Affordable Housing Overview

This document has been drafted by the Borough’s professionals to give residents of Rumson Borough an overview of the Borough’s current affordable housing obligations, and how they will be addressed via a Settlement Agreement entered into between the Borough and non-profit Fair Share Housing Center. After this Settlement Agreement is reviewed and approved by the Court, the Court will issue a Judgment of Compliance and Repose Order, which will protect the Borough from all Mount Laurel lawsuits, including builder’s remedy lawsuits, until July 2, 2025.

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 Rumson 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 or “affordable” 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 do so 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 in more detail below, Rumson’s current affordable housing obligation can be broken down into three parts:
 - The Rehabilitation Obligation;
 - The Prior Round Obligation, which covers the time period of 1987 to 1999; and
 - The Round 3 Obligation, which covers the time period of 1999 to 2025.

State of New Jersey’s Affordable Housing Timeline

- **1975 - Mount Laurel I**: The Supreme Court holds that it is 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.
- Created the “builder’s remedy lawsuit” 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 and does not require input from the municipality of 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 own zoning.
- **1985 – The Fair Housing Act:** After Mount Laurel II created a flood of lawsuits from developers, the legislature adopted the Fair Housing Act, which:
 - 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.
 - Incentivized compliance by creating protections from Mount Laurel 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 compliance period – the period of time that the plan covered. The future protections came in the form of “Substantive Certification”.
 - Continued to allow a municipality, if it so decided, to have its affordable housing plan approved by a court, rather than COAH. On this path a municipality would first have to get the court to enter an Order granting “temporary immunity” from Mount Laurel lawsuits, while the municipality’s plan was approved by the court. The final approval of the plan would be the entry of a Judgment of Compliance and Repose (“JOR”), which would grant the same protections as the grant of “Substantive Certification” from COAH.
- **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 Rumson’s case, COAH assigned the Borough a Prior Round Obligation of 268.

- **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 attempt, until their final attempt in 2014 while under Supreme 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 FHA 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 July of 2025.
- **2015-2018: Litigation Regarding Implementation:** In the years that followed the Mount Laurel IV decision, there were various trials regarding fair share numbers, an Appellate Division decision, and an addition Supreme Court ruling, commonly called Mount Laurel V, which all dealt with the proper implementation of Mount Laurel IV.

The Borough of Rumson’s Affordable Housing Timeline

- **December 2005** - The Borough filed an adopted and endorsed Round 3 Housing Element and Fair Share Plan (“2005 plan”) to COAH based upon the first iteration of Round 3 regulations adopted by COAH in 2004, and petitioned COAH for Substantive Certification. COAH did not approve the plan because COAH’s initial 2004 Round 3 regulations were invalidated by the Appellate Division.
- **December of 2008** - After COAH adopted the second iteration of Round 3 regulations in September of 2008, the Borough submitted its second adopted and endorsed Round 3 Housing Element and Fair Share Plan (“2008 plan”) to COAH, and petitioned COAH for Substantive Certification. COAD did not approve this plan either because COAH’s 2008 Round 3 regulations were also invalidated by the Appellate Division.

- **July 2, 2015** - In response to the Supreme Court’s March 2015 Mount Laurel IV decision, the Borough filed a Declaratory Judgment action along with a simultaneous motion for immunity from Mount Laurel lawsuits.
- **Fall 2015** - The Court granted the Borough’s motion for immunity from all Mount Laurel lawsuits, including builder’s remedy lawsuits, and this immunity is still in place today. The Court also appointed Francis Banisch, P.P., A.I.C.P., as its expert Court Master to oversee the Borough’s case.
- **2015-2019**: The Borough participated in the global county wide Mount Laurel process set up by Judge Perri and Judge O’Brien, the Judges assigned by the Supreme Court to handle Mount Laurel IV cases in Monmouth County. Eventually Judge Jones took over the Borough’s Declaratory Judgment action. During this time period the Borough:
 - Fought off a motion to strip its immunity.
 - Mediated with Fair Share Housing Center (“FSHC”), the premier housing advocacy entity in the state, to settle the case globally.
 - Mediated with developer Yellow Brook Property Co., LLC (“Yellow Brook”), who intervened in the Borough’s Declaratory Judgment action.
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- **Early January of 2020**: The Borough agreed to the final form of a Settlement Agreement between the Borough and FSHC, and the final form of a Settlement Agreement between the Borough and developer Yellow Brook.

The Fair Share Numbers and Vacant Land Analysis

- **Fair Share Obligation**: As described above, there are several components to the fair share obligation. The Borough of Rumson’s fair share obligations, as calculated as a result of a 41-day “methodology trial” in Mercer County, and as proposed in the Settlement Agreement between the Borough and Fair Share Housing Center, are broken down as follows:
 - Rehabilitation Obligation: 29
 - Prior Round (1987-1999) Obligation: 268
 - Round 3 (1999-2025) Obligation: 335
- **Vacant Land Analysis**: When a municipality, like Rumson, 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 to 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 is known as the “unmet need”.

- **Rumson Borough’s Realistic Development Potential is 51:** Under the terms of the Settlement Agreement with FSHC, the Borough’s combined Prior Round and Round 3 RDP is 51. The Borough must create a “realistic opportunity” for the satisfaction of its RDP between now and July 2, 2025, which is the end of Round 3.
- **The Borough of Rumson’s “unmet need” is 552:**
 - After you subtract out the RDP of 51 from the Borough’s combined Prior Round and Round 3 obligation, the Borough’s remaining “unmet need” is 552 ($603 - 51 = 552$).
 - 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 it – most typically in the form of overlay zoning and other less intrusive compliance techniques.

Settlement Agreement Between Rumson Borough and FSHC

The FSHC Settlement Agreement’s major terms are as follows:

- **Agreed upon Fair Share Obligations:**
 - Rehabilitation Obligation: 29
 - Prior Round (1987-1999) Obligation: 268
 - Round 3 (1999-2025) Obligation: 335
 - RDP: 51
 - Unmet Need: 552
- **Satisfaction of Rehabilitation Obligation of 29:**
 - The rehabilitation obligation involves the rehabilitation and improvement of existing units, not the creation of new ones.
 - The Borough will either participate in the Monmouth County Rehabilitation Program, or hire a separate entity to run a local rehabilitation program.
 - Units will be rehabilitated using Affordable Housing Trust Fund monies, not general funds (tax revenue).
 - The Borough may be able to reduce its Rehabilitation Obligation during the compliance process by doing a survey of existing units in the Borough to see if there even are 29 units that need to be rehabilitated in the Borough.

- **Satisfaction of RDP of 51:**
 - **5 already constructed and occupied affordable units.**
 - **9 Proposed Market To Affordable Units:** The Borough has already produced units through its market to affordable program, which involves the Borough purchasing units with Affordable Housing Trust Fund monies, and converting the units to affordable units. The Borough will be required to create 9 more market to affordable units by the end of Round 3.
 - **14 affordable units from the Carton Street Project:** Under the settlement agreement between the Borough and developer Yellow Brook, the developer will be constructing up to eighteen 18 total luxury market rate units on 132 Bingham Avenue (Block 94, Lot 5), and up to 16 total luxury market rate units on 91 Rumson Road (Block 124, Lot 31). Instead of affordable units being constructed by the developer on these sites, the developer will donate another site that it owns located on Carton Street (Block 59, Lot 10) to the Borough, and will also make an additional payment of \$1.45 million to the Borough’s Affordable Housing Trust Fund. The Borough will then work with a non-profit to build a 14-unit 100 percent affordable project on Carton Street (Block 59, Lot 10), using monies from its Affordable Housing Trust Fund.
 - **10-unit 100% Affordable Project:** This proposed 10-unit project will be constructed and run by an experienced non-profit developer.
 - **13 rental bonus credits.**
- **Addressing the Borough’s remaining “Unmet Need”:**
 - **Faith Institution Overlay Zones:**
 - Holy Cross Church: An overlay zone will be adopted over the Holly Cross Church site (Block 104, Lot 1.01), which will allow for a residential project to be developed at a density of 6 du/acre, and will require a 20% affordable housing set-aside.
 - First Presbyterian Church: An overlay zone will be adopted over the First Presbyterian Church site (Block 10, Lot 6), which will allow for a residential project to be developed at a density of 8 du/acre, and will require a 20% affordable housing set-aside.

- **Congregation B’Nai Israel:** An overlay zone will be adopted over the Congregation B’Nai Israel site (Block 81, Lot 6), which will allow for a residential project to be developed at a density of 6 du/acre, and will require a 20% affordable housing set-aside.
- **Downtown GB/NB/POB Overlay Zone:** The Borough will establish an affordable housing overlay over the GB, NB and POB Zones, as depicted on the map attached to the FSHC Settlement Agreement as Exhibit B, to allow multi-family mixed-use projects of up to three stories at 12 du/acre with a 20% affordable housing set-aside.
- **R-2 Overlay Zone:** The Borough will adopt an overlay zone on certain parcels in the R-2 district, as depicted on the map attached to the FSHC Settlement Agreement as Exhibit B, to permit multi-family housing at a density of 3 du/acre on a minimum lot size of 3 acres, but with an affordable housing set-aside equal to what would be required at a density of 6 du/acre. The Borough will subsidize the affordable housing units associated with a density that exceeds the 3 du/acre. The Borough will provide language in the ordinance that indicates that the maximum density will be 6 units per acre if funding for the affordable housing units is not made available. The overlay zone will require a 20% affordable housing set-aside.
- **R-4 Overlay Zone:** The Borough will adopt an overlay zone on certain parcels in the R-4 district, as depicted on the map attached to the FSHC Settlement Agreement as Exhibit B, to permit multi-family housing at a density of 8 du/acre on a minimum lot size of 1 acre with a 20% affordable housing set-aside.
- **R-5 Overlay Zone:** The Borough will adopt an overlay zone on certain parcels in the R-5 district, as depicted on the map attached to the FSHC Settlement Agreement as Exhibit B, to permit multi-family housing at a density of 12 du/acre on a minimum lot size of 1 acre with a 20% affordable housing set-aside.
- **10 Accessory Apartment Units:** The Borough adopted an Accessory Apartment Ordinance back in 2018, which sets up an Accessory Apartment Program that will continue to be implemented to create up to 10 additional affordable units by the end of Round 3.

- **Mandatory Set-Aside Ordinance:** The Borough will adopt a Borough-wide Mandatory Set-Aside Ordinance (“MSO”). The MSO will require a 20% affordable housing set-aside for residential developments comprised of five (5) or more dwelling units. The MSO will not give any developer the right to any such rezoning, variance, redevelopment designation or other relief, or establish any obligation on the part of Rumson or its Planning Board to grant such rezoning, variance, redevelopment designation or other relief, nor will it apply to any of the affordable housing overlay zones described above.
- **Development Fee Ordinance:** The Borough will continue to collect residential and non-residential development fees under its existing Development Fee Ordinance to address unmet need by helping to fund the affordable housing projects and techniques described above.

Settlement Agreement Between Rumson Borough And Yellow Brook

This settlement agreement allows for developer Yellow Brook to construct up to eighteen 18 total luxury market rate units on 132 Bingham Avenue (Block 94, Lot 5), and up to 16 total luxury market rate units on 91 Rumson Road (Block 124, Lot 31). There will be no affordable units constructed on either of these sites. In lieu of building the affordable units on the site, developer Yellow Brook will donate another site that it owns located on Carton Street (Block 59, Lot 10) to the Borough, and will also make an additional payment of \$1.45 million to the Borough’s Affordable Housing Trust Fund. The Borough will then work with a non-profit to build a 14-unit 100 percent affordable project on Carton Street (Block 59, Lot 10), using monies from its Affordable Housing Trust Fund.

Outline Of Pending Future Steps To Complete The Settlement Process

In the event that the Borough authorizes and executes the above mentioned settlements, the timeline for compliance would be as follows:

- **March 12, 2020 - Fairness Hearing:** The Settlement Agreements will be placed on file for a period of at least 30 days and publically noticed. At the end of that notice period, the Court will hold a hearing to evaluate whether the settlements are fair and reasonable to low- and moderate-income households in the region. If yes, a 120 day clock would begin for plan implementation.
- **March-June 2020 – Compliance Implementation:** During this time period, the Borough Planning Board and the Borough Council will:
 - Adopt and endorse a Housing Element and Fair Share Plan that will implement the FSHC Settlement Agreement.

- Introduce and adopt all rezoning and overlay ordinances (at public hearings with the opportunity to be heard at the time of adoption).
 - Introduce and adopt all ancillary documents, resolutions and ordinances to implement the plan.
 - Request a final Compliance Hearing.
- **Summer 2020:** The Court would hold a final Compliance Hearing to evaluate the plan. If the Court finds that the plan 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 it from all Mount Laurel lawsuits, including builder's remedy lawsuits, until July 2, 2025.