

**PLANNER'S REPORT
FOR THE
TOWNSHIP OF SOUTH BRUNSWICK
MIDDLESEX COUNTY, NEW JERSEY**

***South Brunswick Center, LLC, Plaintiff
v.
Mayor and Municipal Council of the
Township of South Brunswick et al., Defendants
Docket No. MID-L-3669-14***

April 16, 2015

Prepared For:

The Township of South Brunswick

Prepared By:



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INTRODUCTION

On behalf of the Township of South Brunswick (“Township” or “South Brunswick”), this planner’s report sets forth the Township’s past affordable housing compliance efforts, which show that the Township has no ‘unmet Second Round affordable unit obligation,’ contrary to the Plaintiff’s Mount Laurel claim for a builder’s remedy in litigation entitled South Brunswick Center, LLC, v. Mayor and Council of the Township of South Brunswick in Their Official Capacities; Township of South Brunswick; and Planning Board of Township of South Brunswick, Docket No. MID-L-3669-14. The Township’s past affordable housing compliance efforts produced built and occupied affordable housing units that fully address the Township’s Second Round new construction affordable housing fair share obligation. In addition, this report reviews a Planner’s Report, dated March 2015, prepared by John T. Chadwick, IV, P.P, on behalf of the Plaintiff.

I am South Brunswick’s planner on matters relating to affordable housing, having consulted with the Township since 2005. I am an Associate Partner at Clarke Caton Hintz, a planning, architecture and urban design firm, joining the firm in 2003. I am a licensed Professional Planner in the State of New Jersey with over 27 years of experience in municipal planning and 20 years of experience administering the requirements of the NJ Fair Housing Act (“FHA”) and the Council on Affordable Housing (“COAH”). Clarke Caton Hintz currently provides affordable housing planning consulting services to over 40 municipalities and I have either prepared or supervised the preparation of over 30 Third Round affordable housing plans for submission to COAH or the Superior Court.

In addition to my 12 years at Clarke Caton Hintz as an affordable housing planning expert on behalf of various municipalities and developers, my affordable housing experience includes working for COAH for eight years in three positions, rising to the level of Chief of Housing Services. While at COAH, I supervised seven staff planners, researched affordable

housing policy issues, prepared rule proposals and provided information and assistance to municipal officials and the public concerning COAH's rules and administrative procedures. I have been privileged to serve as Court-appointed Special Master in Mount Laurel cases involving 10 affordable housing matters and I assist Philip Caton, PP, FAICP, in his role as Special Master in over 50 municipalities.

Lastly, I am a member of the Board of Directors of the Affordable Housing Professionals of New Jersey ("AHPNJ") and I have participated in AHPNJ seminars to assist those in the affordable housing arena stay current on affordable housing planning matters (see Exhibit A – my attached resume).

I have reviewed a number of reports, plans, correspondence and other documents including the following documents which contributed to the preparation of this report:

- ✓ South Brunswick's Housing Element and Fair Share Plan, adopted December 10, 2008 and endorsed December 16, 2008, petitioning COAH for Third Round certification on December 31, 2008 (see Exhibit B);
- ✓ COAH Resolution granting Second Round substantive certification dated February 4, 1998 and attached COAH staff planner's report (see Exhibit C);
- ✓ Mount Laurel court decisions, the FHA, COAH's regulations, and other COAH reports and resolutions listed herein;
- ✓ Plaintiffs' filings before the Court and the Township's filings in response;
- ✓ Other correspondence, reports, etc. noted herein.

BACKGROUND

South Brunswick has almost 30 years of voluntary participation in the COAH process since COAH's initial adoption of affordable housing regulations for the First Round (1987 – 1993) after the establishment of the FHA in 1985. As described below, the Township

received First Round (1987 – 1993) COAH substantive certification on August 3, 1987, and Second Round (12-year cumulative 1987 – 1999) COAH certification on February 4, 1998. For the Third Round, the Township petitioned COAH in 2005 and 2008 addressing both iterations of COAH's 'growth share' regulations. COAH's first set of Third Round regulations adopted in 2004 included three fair share component parts – Third Round rehabilitation share (present need) based on the 2000 census, Prior Round (COAH's cumulative First and Second Rounds 1987 – 1999) and finally Third Round growth share for the time period 1999 – 2014. COAH's second set of Third Round regulations adopted in 2008 also included the three fair share component parts noted above (Rehabilitation Share, Prior Round and Third Round) but the Third Round growth share time period was expanded out to 2018. COAH had not certified the Township's petitioned plans prior to the Appellate Court decisions of January 25, 2007 and October 8, 2010, respectively, invalidating COAH's Third Round growth share methodology.

In the First Round, the Township adopted a housing element and fair share plan addressing a 669-unit precredited need (603 new construction/66 rehabilitation), petitioned COAH and received First Round substantive certification from COAH on August 3, 1987.

The Township petitioned COAH for Second Round substantive certification on March 6, 1995. COAH approved the Township's Second Round housing element and fair share plan and granted Second Round substantive certification on February 4, 1998 (see Exhibit C). The Township's 1987 - 1999 cumulative Second Round obligation, as determined by COAH per N.J.A.C. 5:93, consisted of a 937-unit pre-credited need (842 new construction/95 rehabilitation).

In 2005, the Township retained the firm of Clarke Caton Hintz as its affordable housing consultant. On December 16, 2005, the Township petitioned COAH for Third Round substantive certification by submitting a Third Round housing element and fair

share plan addressing COAH's original Third Round rules at N.J.A.C. 5:94. However, COAH had not acted on the Township's 2005 Third Round plan before the Appellate Division invalidated COAH's Third Round 'growth share' methodology and portions of COAH's initial Third Round affordable housing regulations in In re Adoption of N.J.A.C. 5:94 & 5:95, 390 N.J. Super. 1 (App. Div. 2007), and directed COAH to adopt revised Third Round rules. Municipalities that had not received substantive certification under the initial Third Round rules and wished to continue with the COAH process (such as South Brunswick) were required to re-petition COAH for substantive certification under its revised 2008 rules by December 31, 2008.

I prepared an amended Third Round plan for the Township consistent with COAH's revised Third Round rules at N.J.A.C. 5:97 which went into effect on June 2, 2008 and were amended on October 20, 2008. The Township again petitioned COAH for Third Round certification on December 31, 2008 with a Housing Element and Fair Share Plan, adopted by the Planning Board on December 10, 2008 and endorsed by the governing body on December 16, 2008 that addressed the Township's cumulative 1987 - 2018 affordable housing obligation of a 36-unit Rehabilitation Share, a prior round obligation of 841 units (First and Second Rounds combined) and a Third Round growth share obligation of 948 units.

On December 13, 2014, Plaintiff filed an amended complaint to include a *Mount Laurel* builder's remedy count in its litigation against the Township. As discussed below in more detail, South Brunswick fully addressed its known 842-unit Second Round new construction affordable housing obligation well before the filing of SBC's amended complaint.

SOUTH BRUNSWICK TOWNSHIP'S FAIR SHARE OBLIGATION

Pursuant to the NJ Supreme Court's March 10, 2015 decision in In re Adoption of N.J.A.C. 5:96 and 5:97, ___ N.J. ___ (2015), the Supreme Court stated that COAH's First and Second Round methodology must be followed by the Mount Laurel Judge in each Superior Court vicinage in the determination of Third Round fair share obligations (Slip Opinion at page 41). COAH's Second Round regulations at N.J.A.C. 5:93, the last set of regulations upheld by the Courts, set the Township's Second Round 12-year cumulative (First and Second Rounds) new construction obligation at 842 units and had previously set the Township's Second Round rehabilitation share (present need) at 95 units (based on the 1990 census). COAH's invalidated 2008 regulations had updated the Township's rehabilitation share to 36 units based on the 2000 census. Based on the Supreme Court's March 10, 2015 decision, the Superior Court must also determine the Township's Third Round rehabilitation share, possibly to be updated with the 2010 census.

SOUTH BRUNSWICK TOWNSHIP'S AFFORDABLE HOUSING COMPLIANCE EFFORTS

To address its known 842-unit new construction obligation based on the court-upheld COAH Second Round regulations per N.J.A.C. 5:93, the Township previously provided crediting documentation to COAH as part of its First Round, Second Round and both Third Round submissions (2005 and 2008).

The Township's affordable housing crediting documentation has been addressed in COAH's crediting lists (see Exhibit D) and as found on COAH's webpage at <http://www.nj.gov/dca/services/lps/hss/transinfo/reports/units.pdf>. This COAH crediting list is dated March 2011 and although it reflects a partial report on the status of the Township's affordable housing credits, it is not complete. The details in my February 13, 2015 certification in this matter and in this report more fully update the Township's

affordable housing crediting status through 2014, in compliance with the analysis required under the Mount Laurel doctrine which calls for a determination of municipal compliance at the time of the filing of a builder's remedy claim, in this case, as on or about December 31, 2014, when the Plaintiff filed its amended complaint to include a Mount Laurel builder's remedy count.

Also, the Township's crediting of 187 prior round rental bonuses is based on COAH's certification reports as well as based on COAH's Second Round regulation at N.J.A.C. 5:93-5.15, which permits a 2-for-1 rental bonus for built non-senior affordable rentals up to the municipal prior round rental obligation.¹

¹ Pursuant to N.J.A.C. 5:93-5.15(d), the Township is eligible for prior round rental bonuses up to its prior round rental obligation of 187 rentals. The prior round rental obligation is based on COAH's formula at N.J.A.C. 5:93-5.15(a) which sets a rental obligation at 0.25 [municipal prec Credited need – prior cycle credits (1980 – 1986 credits) – the impact of the 20 percent cap – the impact of the 1,000 unit limitation – the rehabilitation component, thus, for South Brunswick $0.25((842 + \text{rehab share}) - 94 - 0 - 0 - \text{rehab share}) = 187$.

Pursuant to COAH's Second Round rules at N.J.A.C. 5:93, et seq., the Township is entitled to the following credits/bonuses for affordable units actually built:

<u>Development</u>	<u>Units</u>
Deans Apartments	40 (prior cycle credits)
Charleston Place I	54 (prior cycle credits)
Regal Point	5 (affordable family sales)
Monmouth Walk	43 (affordable family sales)
Nassau Square	49 (affordable family sales)
Woodhaven	80 (affordable family rentals)
Charleston Place II	30 (affordable senior rentals)
Summerfield	70 (affordable family sales)
Deans Pond Crossing	20 (affordable family sales)
Southridge/Southridge Woods	124 (affordable family rentals)
CIL-Wynwood	7 (alternative living arrangements)
CIL Woods	16 (alternative living arrangements)
Wheeler Rd Group Home	3 (alternative living arrangements)
Major Rd Group Home	3 (alternative living arrangements)
Oak Woods	73 (affordable senior rentals)
Buckingham Place	23 (affordable senior rentals)
ARC of Middlesex County	15 (alternative living arrangements)
Dungarvin/Eclipse	8 (alternative living arrangements)
Community Options	8 (alternative living arrangements)
Triple C Housing	6 (alternative living arrangements)
REACH (Market to Affordable)	18 (affordable family sales)
Rental Bonuses (Prior Round)	<u>187</u>
TOTAL CREDITS	882

Attached is documentation that shows all of the units that were actually constructed, the dates Certificates of Occupancy were issued and the dates that either a deed to the affordable housing owner, or lease to an affordable housing renter, was first executed (see Exhibit E). The actual documents are on file in the offices of the Township of South Brunswick, and are available for inspection upon request. Documentation is included with this report for the additional group homes completed in the Township including ARC of Middlesex County, Dungarvin/Eclipse, Community Options and Triple C Housing (see Exhibit F). Documentation is also included on the Township's REACH program (Market to Affordable) and on the existing assisted living units at Buckingham Place (see Exhibit G).

In addressing the 842-unit prior round (new construction) obligation, the Township is eligible for 882 credits, resulting in a Third Round surplus of 40 affordable housing credits. In addition to the above units and noted 40-unit surplus, the Superior Court previously approved 8 affordable units as part of the Menowitz inclusionary development (see Exhibit H). Moreover, the Township also has formal, binding contracts and/or firm commitments in place to develop up to an additional 472 units of affordable housing as follows (see Exhibit I):

- A. New Senior and Special Needs Housing: On July 23, 2014, the Township entered into an agreement with South Brunswick Community Development Corporation, a non-profit affordable housing provider, to convey 17 acres of Township-owned vacant land to it for use in constructing up to 300 affordable rental units (in four phases of up to 75 units each) for seniors and special needs housing including for veterans and those with developmental disabilities.
- B. Dungarvin/Eclipse: The existing agreement with Dungarvin/Eclipse commits the Township to funding another 4-bedroom group home.
- C. Woodhaven Terrace (f/k/a Deans Apartments): Extension of controls on 40 affordable units due to expire. Agreement was signed on August 18, 2005, awarding a grant from the Affordable Housing Trust Fund to Volunteers of America in the amount of \$1,250,000 for an urban renewal project at the Deans Apartments. Volunteers of America utilized these funds, as well as other additional capital, to completely refurbish the entire complex. All 40 units are affordable rental units, including statutorily required very low-income units.
- D. REACH Market-to-Affordable Program: On October 14, 2009, COAH approved the

Township's request for a waiver of the limit on market-to-affordable units, allowing the Township to produce up to 146 units in this fashion. A balance of 128 units remain to be constructed.

Thus, the Township has up to 520 credits towards a future Third Round fair share. In summary, the Township has fully addressed its prior round (combined First and Second Rounds) new construction obligation of 842 units with built affordable units and has surplus credits, approved units and firm commitments for up to 520 additional affordable units towards a future Third Round fair share to be determined by the Superior Court.

REVIEW OF PLAINTIFF'S PLANNER'S REPORT

Below, is a summary of and response to various claims made in the Plaintiff's Planner's Report, dated March 2015, that challenge the Township's compliance with its 842-unit Second Round new construction fair share obligation:

1. *Plaintiffs' Claim* (page 1 - Introduction, Planner's Report) – "The Township's Second Round obligation was 841 units plus 36 rehabilitation."

Township Response – It appears the Plaintiff's Planner has erroneously relied on COAH's invalidated 2008 Third Round regulations which list a prior round component of 841 units and a rehabilitation share of 36 units for the Township. As noted above, based on the Supreme Court's March 10, 2015 decision, the Township's Second Round new construction obligation is 842 units per N.J.A.C. 5:93 and the Superior Court must determine the Township's Third Round rehabilitation share (present need).

2. *Plaintiffs' Claim* (page 1 - Introduction, Planner's Report) – "The Township's (Second Round) Plan included ineligible projects (CIL Woods and Buckingham Place), did not fully

address its obligation and did not establish a rehabilitation program or provide funding for the same.”

Township Response – COAH’s 1998 grant of Second Round certification deemed CIL Woods as an eligible affordable housing development and granted credit as reflected in COAH’s 2011 list of eligible affordable housing credits for the Township. The South Brunswick Citizens for Independent Living (CIL) received Planning Board approval in 1995 to construct 15 alternative living arrangement units for developmentally disabled individuals. The 15 units were to comprise 22 bedrooms. CIL previously received a HUD Section 811 grant which funded a portion of the approved development totaling 11 units with 16 bedrooms (COAH’s Second Round regulations at N.J.A.C. 5:93-5.8 grants alternative living arrangements credit by the bedroom). Thus, the Township revised its credit total for the existing CIL Woods to a total of 16 credits for the existing 16 alternative living arrangement bedrooms.

Buckingham Place is another existing eligible affordable housing development in the Township that came about as part of the Township’s ongoing affordable housing efforts after having received Second Round certification from COAH and before petitioning for Third Round certification. South Brunswick addressed 23 units of its prior round obligation through affordable units at an assisted living facility in the Township that was completed and occupied in 2002, before COAH even proposed its first set of Third Round regulations. Buckingham Place is a 112-unit assisted living residence on Raymond Road, which includes 23 affordable units, financed by the NJ Housing and Mortgage Finance Agency (“HMFA”). A certificate of occupancy for the assisted living residence was issued on March 20, 2002. HMFA entered into a Financing, Deed Restriction and Regulatory Agreement (“Agreement”) with Buckingham Place at South Brunswick, LLC, on May 9, 2002. The Agreement ensures that residents of the 23 affordable units are income-eligible whether private-pay or the recipient of a Medicaid waiver.

COAH's 1998 grant of Second Round certification found that the Township fully addressed its Second Round fair share obligation and specifically found that the Township had fully addressed its Second Round rehabilitation share (based on the 1990 census) with new construction credits.

3. *Plaintiffs' Claim* (page 1 - Introduction, Planner's Report) – The Plaintiff states that the Township has an 'Unanswered Prior Obligation' of 1,157 based on COAH's draft 2014 regulations.

Township's Response – Although ordered to by the NJ Supreme Court, COAH failed to adopt the June 2014 proposed regulations. Thus, the Township has no such additional prior obligation that it has failed to fully address. COAH's unadopted draft regulations had proposed to expand the historical 12-year 1987 to 1999 definition of Second Round or 'prior round' to also include a portion of the Third Round from 1999 to 2014. COAH's unadopted draft regulations that proposed to expand 'prior round' is not in keeping with the Court's clear Case Management Order of February 27, 2015 that focused the parties on the "Township's alleged unmet Second Round affordable unit obligation."

4. *Plaintiffs' Claim* (page 1 - Introduction, Planner's Report) – "The Township's Second Round Plan does not propose any sites for inclusionary zoning other than Township sponsored projects. The Third Round Plan continues that policy – no inclusionary zoning."

Township's Response – Even though the FHA and COAH's Second Round regulations list numerous compliance mechanisms for a municipality to address its fair share obligations in addition to inclusionary zoning, South Brunswick Township had significant inclusionary developments in its Second Round COAH-certified plan that has resulted in the

construction of a total of 3,084 residential units, including a total of 2,750 market-rate units and 334 affordable units as shown in the chart below:

Prior Round Affordable Inclusionary Sites

Inclusionary Development	Affordable Units	Market-rate Units	Total Units
Regal Point	5	53	58
Southridge/Southridge Woods	124	1,088	1,212
Monmouth Walk	43	290	333
Nassau Square	49	246	295
Summerfield	70	651	721
Deans Pond Crossing	20	333	353
Buckingham Place	23	89	112
Total	334	2,750	3,084

These Second Round inclusionary developments reflect almost half of the Township's affordable units addressing its Second Round fair share obligation. Also, the Township's 2008 Third Round plan had inclusionary sites as reflected in two inclusionary developments known as Baker – Ovations and Matzell & Mumford's Heritage sites. The Baker – Ovations inclusionary site has valid planning board approvals and the M&M Heritage site will produce affordable units through a court-approved settlement agreement (see Menowitz site discussion above).

5. *Plaintiffs' Claim* (page 1 – Summary of Evaluation, Planner's Report) – Absence of rezoning to permit affordable family housing in the Township's Amended Second Round Plan.

Township's Response – A full 431 of the 755 affordable units proposed in the Township's Second Round COAH-certified plan are available for income eligible families and are not special needs or age-restricted (senior) affordable housing. Based on the list above of actual

existing affordable units (not including prior round rental bonuses) in the Township as of this date, 449 or almost 65% of the 695 affordable units are family affordable units.

6. *Plaintiffs' Claim* (page 2, Planner's Report) – The Plaintiff raises criticisms of the Township's Third Round plan components and references Third Round regulations.

Township's Response – The Court's February 27, 2015 Order clearly focuses the parties on the Township's Second Round fair share affordable unit obligation. As described in detail herein, the Township has fully addressed its Second Round new construction obligation of 842 units and has up to 520 credits towards a future unknown Third Round fair share. Depending on the Court's ultimate approval of a Third Round obligation and Third Round rehabilitation share, the Township would most likely be required to amend its Third Round housing element and fair share plan for no other reason than it was based on COAH's invalidated Third Round growth share regulations.

7. *Plaintiffs' Claim* (page 2, Planner's Report) – “Published Third Round rules do not credit extended controls.”

Township's Response – The Plaintiff again references COAH's unadopted proposed Third Round regulations. The NJ Supreme Court's March 10, 2015 decision specifically provides guidance to Superior Court judges to permit municipalities to address a fair share obligation through extensions of controls on existing affordable units that may be lost to the regional stock of affordable housing if affordability controls are allowed to expire (Slip opinion at page 43).

8. *Plaintiffs' Claim* (page 3, Planner's Report) – The Township offers no analysis that it has the resources or expertise to implement or manage a large market to affordable program that requires a waiver.

Township's Response – On October 14, 2009, COAH approved the Township's Third Round request for a waiver to the limit on market-to-affordable units, allowing the Township to produce up to 146 units with this affordable housing compliance mechanism as the Township had demonstrated that it had the resources and expertise to implement and manage in-house this affordable housing program. The Township has implemented its market-to-affordable REACH program and has completed 18 affordable units.

CONCLUSION

South Brunswick Township has fully addressed its 842-unit Second Round new construction obligation and has no 'unmet Second Round affordable unit obligation'. In actuality, the Township has surplus credits towards the Third Round once such fair share obligation is determined pursuant to the NJ Supreme Court's March 10, 2015 decision. The Plaintiff's use of COAH's unadopted draft rules is unwarranted and its analysis of the Township's Third Round plan is without merit.