

## **Fair Share Housing**

### **NJ Affordable Housing History**

In 1975, in a case known as *Mount Laurel I*, the New Jersey Supreme Court determined every municipality has a constitutional obligation to use its zoning powers to provide a realistic opportunity for the production of affordable housing. The court revisited the issue in *Mount Laurel II*, providing mechanisms intended to make the *Mount Laurel I* doctrine more effective. Notably, the court allowed builders to file lawsuits, called builder's remedy lawsuits, against municipalities that were purportedly not allowing for the creation of affordable housing.

A builder's remedy lawsuit allows a developer to sue for the opportunity to construct housing at a much higher density than allowed. If a developer prevails, the municipality loses control over the zoning of the developer's property and may be liable for attorneys' fees, the fees of a Special Master, appointed by the court to oversee the new zoning for the property, and the costs of infrastructure upgrades.

In 1985 the Fair Housing Act codified the *Mount Laurel* decisions and created the Council on Affordable Housing (COAH), placing the agency in charge of establishing affordable housing obligations and granting protection to compliant municipalities from builder's remedy lawsuits. COAH functioned in its role until it failed to adopt rules for the housing period that was to begin in 1999 (the Third Round). Finally, on March 20, 2015, the Supreme Court transferred all affordable housing matters from COAH back to the courts and gave municipalities 90 days to file court actions to protect themselves against builder's remedy lawsuits. The court also allowed an organization called Fair Share Housing Center (FSHC) to intervene and participate in every municipality's case.

### **Long Hill's Participation**

Long Hill has been involved in the *Mount Laurel* process since it received approval from COAH on August 2, 1995. The Township applied to COAH twice during the Third Round but COAH's own inability to adopt rules deprived the Township of the opportunity to be shielded from builder's remedy lawsuits. In an effort to avoid such lawsuits, the Township filed a court action on July 16, 2015. After filing its case, the Township could have gone to trial but, after weighing the risks, the Township Committee decided that settling the case was in the best interest of the Township and its residents.

After negotiating with FSHC, the Township was able to settle for an obligation of 220 affordable units, but because of certain mechanisms and bonuses, that obligation has been reduced to between 54 units and 72 units. At FSHC's insistence, between 21 and 28 affordable units are proposed to be provided at the Tifa site, subject to further authorization from entities having jurisdiction over the property, such as the NJDEP. The settlement agreement with FSHC is not a framework for future discussions; it is an enforceable agreement that will conclude the Township's affordable housing litigation and protect the Township from builder's remedy lawsuits until 2025.