



**MAYOR & COUNCIL
THE BOROUGH OF PEAPACK & GLADSTONE,
BOROUGH COUNCIL MEETING MINUTES
MAY 10, 2018**



The special meeting on affordable housing of the Mayor and Council of the Borough of Peapack & Gladstone was held on Thursday, May 10, 2018 at the Municipal Complex, 1 School Street, Peapack, New Jersey and began at 6:34 p.m.

Mayor Muller called the meeting to order. Borough Clerk Nancy A. Bretzger read the Sunshine Notice "Pursuant to the Open Public Meetings Act, Adequate notice of 2018 Meeting Dates was published in the Courier News and Bernardsville News on December 28, 2017, and posted at the Municipal Complex and the Borough Library. Action may be taken."

Mayor Muller led the Pledge of Allegiance.

Roll Call indicated the following present:

Present: Mayor Muller, Councilman Caminiti, Council President Corigliano, Councilwoman Dietrich, Councilman Lemma, Councilman Smith

Absent: Councilman Simpson

Also present were: Christopher Tietjen, Assistant Administrator; Mr. John Bruder, Esq., Borough Attorney; Nancy A. Bretzger, Borough Clerk; Mr. John Szabo, Borough Planner; and Roger Thomas, Legal Counsel, Borough Attorney specializing in Affordable Housing.

Mayor Muller explained what the meeting tonight was about. He stated that there will no action taken at this meeting.

PUBLIC COMMENTS – 5 MINUTES PER PERSON – NON-AGENDA ITEMS

No one from the audience came forward.

Mayor Muller handed the meeting over to Council President Corigliano to give the Peapack & Gladstone and Affordable Housing presentation. Council President Corigliano stated that he has been Chairman of Affordable Housing Committee for the prior two years in addition to currently being Council President. He has been intimately involved with this topic for that time. Council President Corigliano stated that there is a white paper on the subject that he published in 2016 on the website. He introduced the members of the Council. He introduced Roger Thomas, the LUB attorney; John Szabo, the Borough Planner with Burgis Associates; and John Bruder, Borough Attorney. He introduced Chris Tietjen, Borough Administrator, and Nancy Bretzger, Borough Clerk. Council President Corigliano stated that Mr. Szabo is going to give an overview of the Affordable Housing mandate within the State and then he would go over how Peapack & Gladstone affordable housing situation.

PRESENTATION – AFFORDABLE HOUSING

John Szabo, Borough Planner, presented a slide show on 2018 Affordable Housing. He wanted to provide a contextual overview to aid in understanding the information Council President Corigliano will present later in the meeting.



**MAYOR & COUNCIL
THE BOROUGH OF PEAPACK & GLADSTONE,
BOROUGH COUNCIL MEETING MINUTES
MAY 10, 2018**



He noted that every municipality with limited exceptions in the state of NJ has a constitutional obligation to address the affordable housing need. It is a calculation of statewide needs that is then distributed across individual municipalities within regions. These started from NJ State Supreme Court decisions.

Mr. Szabo showed a slide presentation with the following information:

1975 - Mt. Laurel (ML) 1 every developing municipality has an affordable housing obligation.

1983 – ML 2 every municipality has an obligation. Those in growth areas have a greater obligation than those in non-growth areas.

1986 – ML 3 affirms validity of Fair Housing Act (FHA), adopted in 1985.

2015 – Council on Affordable Housing (COAH) is deemed dysfunctional. Courts take over certification process.

FHA adopted in 1985 as a response to the Supreme Court's Mount Laurel decisions. Designed to remove the courts from the affordable housing process. Created COAH which was delegated the authority to determine municipal affordable housing obligations and create a process for implementing state affordable housing policies under the FHA.

Before FHA, municipal affordable housing obligations under Mount Laurel 1 and 2 were determined by lawsuits brought by developers to Court. Developers were awarded density bonuses in return for building affordable housing units. A "builder remedy" results in a 20% set aside for affordable leaving the developer with 80% of the project as market rate.

Issues with builder remedy suits include that developers get large increases in density in order to produce affordable housing at 80/20 ratio of market to affordable units; the municipality has no control over location; and these are extremely difficult and costly for municipalities to contest in court.

The numbers are derived from U.S. Census data that is then projected into the future. They take into consideration such factors as population growth, income, employment and the availability of land as related to a municipality's region. Peapack & Gladstone is located in Region 3. What is considered affordable depends on the region in which municipality is located in.

The 2017 regional income limits for Region 3 were listed on a slide, with the median income level listed for one through five-person households. Moderate income level numbers are 80% of median, low are 50%, and very low are 30%.

There have been two previous affordable housing rounds since the adoption of the FHA in 1995 that covered the time between 1987 to 1999. We are now in the Third Round which covers the time period between 1999 to 2025. Under this Third Round there are three components to a municipality's affordable housing obligation. One, the prior round obligation; two, rehabilitation or present need; and three, prospective need (new units required between 1999-2025 which includes the GAP period). The GAP is an affordable housing obligation generated between 1999 and 2015 as a result of COAH's lack of action. The Fourth Round will happen after 2025.



**MAYOR & COUNCIL
THE BOROUGH OF PEAPACK & GLADSTONE,
BOROUGH COUNCIL MEETING MINUTES
MAY 10, 2018**



Under Mount Laurel IV, the Supreme Court created 13 vicinages (or courts) to hear petitions for certification of municipal housing plans. The borough filed its declaratory judgement action with the Court on July 8, 2015 indicating that it would seek certification of its housing element and fair share plan. This provided temporary immunity from builder remedy suits. During that time, the borough engaged with the Court appointed "Special Master" and the Fair Share Housing Center (FSHC) to arrive at a negotiated settlement of the borough's affordable housing obligation.

The Court Special Master is someone appointed by the Court to assist and advise the Court in reviewing housing plans. FSHC is an affordable housing advocacy group that has been granted special status by the NJ Supreme Court to intervene in affordable housing matters. Both provide important input and recommendations to the Court in evaluating whether to approve municipal affordable housing plans.

FSHC is the primary affordable housing advocacy group in the state. They successfully challenged and had COAH's Third Round Growth share rules invalidated by the NJ Supreme Court. FSHC was granted special status to review all affordable housing plans submitted to the Court. It can challenge and demand a trial if they feel a municipal plan does not go far enough to further affordable housing. It holds major influence with the courts in deciding affordable housing obligations.

Mr. Szabo re-introduced Council President Corigliano for his presentation on how this impacts Peapack & Gladstone. Council President Corigliano stated that the affordable housing issue is an emotional one because of the potential impact this can have on the community. He stated that by settling the Borough's affordable housing obligation, the Council is upholding the laws of NJ. Mr. Corigliano reiterated that this has been imposed on us by the NJ Supreme Court.

The Round 3 settlements affect most towns in NJ. The affordable housing obligation is nothing new in Peapack & Gladstone This town has been dealing with the affordable housing issue for nearly 30 years. This is one of the most difficult issue that Council has had to deal with. Corigliano was pleased to announce that the borough has settled its Round Three obligation and the agreement was signed a few days ago.

Corigliano made it clear that the borough does not have an obligation to construct any affordable housing units as specified in our settlement, however the borough must legislate to allow the reasonable construction of affordable housing units, consistent with its settlement plan.

In reviewing affordable housing obligations, there are two numbers that should not be confused. The total number of credits is the final settlement number. This is higher than the number of actual housing units. Some types of affordable housing units are credited more than one credit, hence the difference.

Round 1, 1987-1993: The Borough granted substantive certification for Round one on 1/9/89.

Round 2, 1993-1999: The borough had a requirement for 82 units. This was satisfied by the Hamilton Court (Lutheran Ministries) development, St. Luke's Senior Village, and a contribution to Perth Amboy to build 37 units. The borough was granted substantive certification for Round Two on 1/10/96.

Round 3, 1999-2025: Issues insued with COAH on account of challenges to affordable housing rules. Rules not ratified until 2004. Borough granted a prospective need of 35-38 units. Council met this requirement by purchasing and reserving land (Smith Tract) at the end of Apgar Avenue for 28 units.



**MAYOR & COUNCIL
THE BOROUGH OF PEAPACK & GLADSTONE,
BOROUGH COUNCIL MEETING MINUTES
MAY 10, 2018**



COAH certified this plan in 2009. Peapack & Gladstone (P&G) was one of only 68 towns in NJ to receive this Third Round certification. COAH was then effectively shut down by the Governor

After the debilitation of COAH, the issue floundered between the courts and State with no resolution until 2015. Since then, P&G's obligation as determined by the courts and the newly empowered FSHC was reported to be as low as 50 and perhaps as high as 240 (units, not credits). The 'Kinsey Report' indicated 188. The borough filed a Declaratory Judgement for protection against damaging Builder's Remedy. This was subsequently extended. P&G contributes to joint alliance of towns that commission their own study, commonly referred to as the 'E-Consult Report.' This reported more reasonable numbers for P&G of 144. P&G made efforts to align with neighbors and reached out to State elected officials for help, with no lasting results

The P&G Affordable Housing team headed by Corigliano and including Mayor Muller, Lemma, Thomas and Szabo played hard with the numbers to keep them low. They had many meetings in Somerville with the Vicinage Judge, Special Master and FSHC attorney. Corigliano came to a verbal settlement with Kevin Walsh, the lead Council for FSHC earlier this year. It took many more months to get a settlement agreement in writing from FSHC, which then needs revision and execution.

Council President Corigliano stated that the borough settled on 104 credits or more importantly, 78 units on the ground. The components of this include units in Hamilton Court, the Smith tract, Vernon Manor, Matheny, Accessory Apartments, SJP Properties, and Elks/American Legion and a rehabilitative component of one existing unit. The settlement is still subject to ratification at a fairness hearing in Vicinage Judge Thomas Miller's courtroom on June 14 in Somerville. The agreement has a "poison pill" clause so if the current state of affordable housing is overturned and the obligation drops, P&G will not be held to the settlement numbers and instead would be held to the lower number. The agreement includes a one-time 'contribution' payment to FSHC of \$3,750.

The settlement was arrived at through more than a year of negotiations, back and forth, and judicial mediation. The borough always based its negotiated offers on vacant land available and other options such as the Matheny settlement. FSHC based its numbers on numerical calculations based on the sanctioned reports (Kinsey). Settlement resolves P&G affordable housing obligation without the need for a very costly trial, one in which the borough would likely not prevail. The largest developable parcel is locked up at a very, very low density. If P&G had settled after the 'Mercer County decision', our settlement would no doubt have been much higher. The borough is now fully protected from Builder's Remedy through 2025.

Council President Corigliano stated that we're not aware of any announced settlements by many of our neighbors. The media suggests that our settlement will be considered favorable as compared to others. He discussed Dewey Meadow in Basking Ridge and the Far Hills development. One town within 20 minutes of P&G reportedly has settled for 500+ units.

Council President Corigliano showed slides on how affordable housing looks on maps.

Council President Corigliano ended the presentation by discussing the next steps, specifically the Fairness Hearing, Compliance and the Compliance hearing. There is a 120-day compliance period, when



**MAYOR & COUNCIL
THE BOROUGH OF PEAPACK & GLADSTONE,
BOROUGH COUNCIL MEETING MINUTES
MAY 10, 2018**



the borough has to adopt all necessary documents including Fair Share Plan, Ordinances, and necessary appendices.

Roger Thomas, Land Use Board Attorney, spoke regarding the negotiation meetings with the judge and FSHC. They discussed developing farms and the SJP property with the Borough representatives pushing back. He noted that there is a presumptive density in the Round Two rules of six units per acre and that density is now in many cases going up to 10-12 units per acre. A 65-acre property would potentially have 375 units with 70 of those being affordable. The borough's team pushed back on the higher density number. FSHC has increased the contribution for litigation from \$5000 or \$10,000 to \$50,000. The affordable housing issue that has been around since 1975 and in his opinion is not going to go away.

Councilman Smith and Councilman Caminiti both spoke regarding the many years of hard work that was put into the negotiations by the borough's team.

Mayor Muller thanked everyone for attending. He questioned where the FSHC gets their funds and why there is this emphasis on housing rather than other costs such as cars, gas, and other household expenditures.

Council President Corigliano stated that he felt that the two judges were fair with the Borough and even though the Borough disagrees with the positions taken by FSHC, acknowledges that Kevin Walsh is very passionate about fair share housing.

PUBLIC COMMENTS – 3 MINUTES PER PERSON – AGENDA ITEMS ONLY

Lawrence Bogart - 7 Pheasant Run, Gladstone – Requested that the Powerpoint presentation be posted on the borough's website.

Greg Morris - 36 Fowler Road, Gladstone – Mr. Morris thanked everyone for the hard work and stated that it was clear that they kept the interest of the Borough in mind. He asked what the ramification is if some of the numbers are not met with the proposed settlement structure breakdown, one example specifically with the Accessory Apartments. Council President Corigliano stated that the Borough has an obligation to legislate to allow them to be built. John Szabo explained that the fair share settlement provides a plan through 2025. The Borough has the right to amend the plan but has to get the change approved by the Court. He anticipates that anything not built this round may be carried over to the Fourth Round. The borough is obligated to implement the plan but we are not prevented from seeking other opportunities to fulfill it.

Susan Wolffe Geary – 15 Jackson Ave. – Ms. Wolffe Geary asked why we're not allowed to talk about the SJP Property. Council President Corigliano stated that we are not able to discuss Ordinance 1050 as there has not been a public hearing yet.

Kingsley Hill – 13 Brookside Dr., Gladstone – Mr. Hill asked where in the constitution is it written that municipalities have to provide affordable housing. Mr. Thomas stated that the NJ Supreme Court has found reasonable interpretation within the constitution that there is an obligation for municipalities to provide affordable housing since 1975.



**MAYOR & COUNCIL
THE BOROUGH OF PEAPACK & GLADSTONE,
BOROUGH COUNCIL MEETING MINUTES
MAY 10, 2018**



Art Birmingham – 14 Apgar Ave. – Mr. Birmingham asked if anyone filed appeals to the US Supreme Court. Mr. Thomas said no because it is a NJ constitutional issue. Mr. Birmingham asked Council President Corigliano about notification to residents of settlement on Smith Property. He commented that Fair Share should consider that there are no factories or other places for many to work in the borough and that the larger cities are exempt from these requirements because they have failed.

Peter Weller - 13 Apgar Ave. – Mr. Weller asked if the town is obligated to find a developer for the Smith Property. Council President Corigliano stated the Borough has to make a reasonable effort to solicit a builder for the property. There are nonprofits and perhaps some developers that will take this type of project. Mr. Weller asked about access to Smith Property and noted that Apgar Ave. is a secondary road. Access would be addressed when a site plan is going through the approval process.

Mike Seboria – 10 Tiger Hill – Council President Corigliano noted that Mr. Seboria is a former Councilman and will address the previous points. Mr. Seboria stated that Apgar was addressed extensively, everyone was notified at that time and there were extensive meetings at that time. He stated that he also tried to find FSHC funding source and couldn't. He commented that the Council provided much information tonight and he wanted to know where to get questions answered moving forward. Council President Corigliano stated that people can ask himself, Mr. Lemma, the current Chairman of Affordable Housing, Mr. Tietjen the Administrator, or come to a Council meeting.

Jenny Morris – 36 Fowler Rd. – She thanked everyone for their presentations. Ms. Morris said the key slide to her was the one with the 78 units and asked what other alternatives were explored. Also, she asked where is the adjacent property that SJP can develop. Mr. Thomas answered that the FSHC has done their research and they felt that the SJP property could be used for higher density housing. She wanted to know if the town had any way to build the 14 units of affordable housing and Mr. Thomas said the Borough couldn't because this would require several million dollars.

Lou Palma - 2 Valley View Ave. – Mr. Palma asked about the poison pill slide. Council President Corigliano stated that if the State Assembly reduces these numbers the Borough would be able to reduce the number. Mr. Palma also asked if there are rules on how many bedrooms are required. Mr. Corigliano said that a certain percentage has to consist of family units.

Tina Rusta – 6 Rt. 206 – She said that she is very concerned about the increase of traffic on Rt. 206 and the increase in population. She wants to know how many houses will be built on Rt. 206 and how the builders find the land for sale. Council President Corigliano stated that the Mayor just met with the Governor and one of the biggest issues he brought up was how to handle the traffic on Rt. 206 because the Borough does not have jurisdiction on the state highway. He also stated that there could be potentially 82 units on the SJP property, 68 single family homes that have been approved for a long time and 14 affordable homes. In addition, the last review of the master plan suggested a zoning overlay for the American Legion property which includes 11 units under the affordable housing plan. Mayor Muller addressed the traffic question stating that the borough has been asking the DOT to help with left hand lane turns on Pottersville Road and Holland Ave. since he has been Mayor. He said that when developers are building on a state highway or on the SJP property, they do have to go to the State for their approval. Mayor Muller and Council President Corigliano discussed land development and that one key requirement is access to the sewer system.



**MAYOR & COUNCIL
THE BOROUGH OF PEAPACK & GLADSTONE,
BOROUGH COUNCIL MEETING MINUTES
MAY 10, 2018**



George Fraunfelder - 4 Cedar Place, Gladstone – Mr. Fraunfelder asked how many states have affordable housing requirements. Mr. Thomas will follow up with an answer. Mr. Fraunfelder asked if the Borough is no longer able to provide senior affordable housing like that already built on Main Street. He was told that 25% of the overall can go towards affordable housing for seniors. Mr. Fraunfelder said the Borough should make sure to provide that 25% for seniors, and that we all support our schools but we don't support the high taxes that he believes are forced seniors out of the town. He stated that he hears fear that our courts are going to impose this on us and questions that the money is all going to the planners, lawyers, and others involved in this. It riles us as tax payers to go through this and he thinks it's judicial overreach.

Council President Corigliano stated that your points are well taken but if they had done nothing the Borough would have been hit with much higher obligation including the real possibility of builder's remedy. This was a pragmatic solution. Mayor Muller stated that this was our least bad choice and it's unfortunate that our State Legislature has not stood up. Mr. Thomas stated that the NJ Supreme Court had urged the legislators to take action which they did not do. Mr. Fraunfelder said you should do a pro forma on what it means to our taxes.

John Sweeney – 14 Farm Cottage Rd., Gladstone – Mr. Sweeney said he does not find this settlement to be overbearing at all. If it had been implemented over time as it should have been we'd be at a similar number. He takes his hat off to you for that. Mr. Sweeney said that the best defense against the affordable housing mandate is to be proactive with open space/farmland preservation. He doesn't believe that the Borough has done a great job with this and needs to make a push on preserving open space. Mr. Sweeney made the final point about transparency and that the Council did a disservice to themselves by not making public the proactive steps taken such as announcing the declaratory judgement (DJ) action. He stated that affordable housing is about desegregating the state. Mr. Bruder spoke about transparency and that there is a requirement when there is pending litigation that you don't disclose. Mr. Sweeney said that it hasn't been made clear in the course of meetings that we were involved in litigation. Mr. Bruder said council may not have gotten the number they got if they revealed their obligation in part because Mr. Walsh did not want it revealed. Mr. Bruder stated that virtually every municipality in the state has filed a DJ action where the FSHC is an interested party which translates to opposition. Council President Corigliano stated that in his affordable housing updates at Council meetings over the prior two years and in the white paper on the website, the DJ action was discussed contrary to Mr. Sweeney's accusation that it was never disclosed. Mr. Sweeney relented on this. Mr. Sweeney asked what happens if the ordinance does not pass.

John Skinner – 20 Pottersville Road – Comments are my own not of any organization I belong to. – Mr. Skinner asked if the County DPW property has that been thought of at all. Council President Corigliano responded that it does not belong to the town yet. Further, it is in a flood plain and would be difficult to develop. Has there been any thought of increasing services such as DPW, police and fire, and others in upcoming budgets. Council President Corigliano responded that its too early to look at this and that there will be time before units are built. Mr. Skinner said that concerning transparency, the town should have been kept a little bit more notice of this so that they could have more say in it. Mr. Skinner said that concerning the SJP property the Council is almost holding a gun to the residents' heads on passing the ordinance because of what Fair Share might do. Council President Corigliano stated that he has



**MAYOR & COUNCIL
THE BOROUGH OF PEAPACK & GLADSTONE,
BOROUGH COUNCIL MEETING MINUTES
MAY 10, 2018**



already reviewed where he did make efforts to communicate. He continued that Fair Share Housing was very difficult to get paperwork out of and if they had kept the public apprised over the last several months during negotiations for what they felt were advantageous negotiations it would not be good business as it would have gotten back to FSHC. Council President Corigliano said that regarding SJP, when those ordinances are brought to hearing the public will have the opportunity to speak. Mr. Skinner stated that Warren Township has every document related to affordable housing on their website. Council President Corigliano stated he has not seen that town's website.

Christopher Downing – 99 Main Street, Peapack – Mr. Downing questioned if we build a group home on Smith Property we get six credits but if we build on Matheny we don't get any. Mr. Thomas stated that you can only get credit on up to 25% of the total obligation. Mr. Downing asked if Matheny built their units first how would you take the credits. Mr. Thomas responded that you take the credit for whatever is built first, it doesn't really matter. Mr. Downing asked if we can possibly switch properties and has this been done by other towns in prior obligations. Mr. Szabo answered no and said that the problem is that you need court and property owners' approval if related to the SJP property. Mr. Downing asked if the Smith property could be sold off and another parcel be purchased. Mr. Bruder stated that there isn't much land available and that it's a policy decision for the Borough to purchase land. Mr. Downing asked if the American Legion property was purchased and built on at higher density could the Smith property numbers be reduced. Mr. Thomas responded no because that property has already been identified. Mr. Downing stated that the Elks Club location is a potential site for a gas station and how will that affect the density on the combined property with the American Legion.

Robert Simon – 70 Pfizer Drive – Mr. Simon commended the speakers this evening. Mr. Simon said that this presentation would have benefitted the community more if it had been done later since it was after settlement so that there would have been time for review of the agreement. Mr. Simon asked if a detailed environmental study has been done on the properties that make up these 78 units. Mr. Szabo stated yes. Mr. Simon asked if the study is available to the public. Mr. Thomas stated that he will let him know at a later time. Mr. Simon asked where the offsite units would be for the SJP property. Council President Corigliano stated that the units as per the agreement would have to be onsite or on an adjacent site. Mr. Simon asked why there a special dispensation for the DPW County site. Mr. Simon asked what is the total number of units that would be built because of this affordable housing settlement. Mr. Szabo answered that there is limited exposure in terms of development, it does not rely on inclusionary zoning which results in a tremendous number of market units. Mr. Thomas said that just over 100 market units would be produced in addition to the affordable housing units. Mr. Simon asked about Judge Jacobson's ("Mercer decision") opinion and has anyone done an analysis on this. Mr. Thomas stated that the borough's settlement has a provision if the overall obligation decreases.

Peggy McFarland – 50 Mendham Road – Ms. McFarland thanked the Council for the information provided tonight. She asked if we have any information from towns that have seen build outs by these plans and if the approach works.

John Skinner – 20 Pottersville Road – Mr. Skinner asked when the settlement was reached and if there was discussion among Council to make this available any earlier since the agreement was received earlier than the meeting. Council President Corigliano stated that he was not an advocate because this is an extremely complex issue and the settlement needed to come with an explanation. Councilman Smith stated that there was much discussion about releasing this information because even now the fairness



**MAYOR & COUNCIL
THE BOROUGH OF PEAPACK & GLADSTONE,
BOROUGH COUNCIL MEETING MINUTES
MAY 10, 2018**



agreement has not been signed by the judge. Mr. Skinner asked what happens when the 30-year restriction comes off of the deeds for affordable units. The municipality has the responsibility to manage the units.

Tina Lestra - 6 US Highway 206 – Ms. Lestra asked how the affordable units are taxed.

Robert Simon – 7 Pfizer Drive, Gladstone – Mr. Simon asked if an analysis was done to see if there are affordable credits that can be applied when restrictions on units expire as part of the settlement agreement. Mr. Simon asked if the public will be notified about the fairness hearing. The answer was yes.

There being no other matters to be addressed by the Governing Body at this time, a motion was made by Councilwoman Dietrich, seconded by Councilman Lemma, that this meeting be adjourned at 9:50 p.m. This motion was carried unanimously.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Nancy A. Bretzger".

Nancy A. Bretzger, Borough Clerk



WELCOME
TO HISTORIC
PEAPACK &
GLADSTONE

founded 1701

2018 Affordable Housing Presentation

Borough of Peapack & Gladstone, New Jersey

by: John P. Szabo, Jr., PP, AICP | May 10, 2018



What is a municipality's affordable housing requirement?

Every municipality in the State of New Jersey has a constitutional obligation to provide for its "fair share" of affordable housing units. This obligation however, specifically exempts "urban aid communities." (Jersey City, Newark, etc.)

This obligation is based on a calculation of statewide needs that is then distributed to regions, which is then...

Distributed to individual municipalities within the region.

Where does the constitutional obligation come from?

Major NJ Supreme Court Decisions

1975:
Mount
Laurel I

- Every ***developing*** municipality has an affordable housing obligation

1983:
Mount
Laurel II

- ***Every*** municipality has an obligation
- Those in growth areas have a greater obligation than those in non-growth areas

1986:
Mount
Laurel III

- Affirms validity of Fair Housing Act (adopted in 1985)

2015:
Mount
Laurel IV

- COAH dysfunctional
- Courts take over certification process

What is the Fair Housing Act (FHA): N.J.S.A.52:27D-301 et seq.

- Adopted in 1985 as a legislative response to the Supreme Court's Mount Laurel decisions.
- Designed to remove the courts from the affordable housing process.
- Created the Council on Affordable Housing (COAH) which was delegated the authority to determine municipal affordable housing obligations and create a process for implementing state affordable housing policies under the FHA.

Before the Fair Housing Act

Municipal affordable housing obligations under Mount Laurel I and II were determined by lawsuits brought by developers to Court.

Resulted in "Builder Remedies" where developers were awarded density bonuses in return for building affordable housing units. A "Builder Remedy" results in a 20% set aside for affordable leaving the developer with 80% of the project as market rate.

What's Wrong with Builder Remedy Suits?

- Developers get large increases in density in order to produce affordable housing at 80/20 ratio of market to affordable units.
 - ex: in order to produce 10 affordable units a builder is entitled to build a total of 50 units.
- No control over location. If a property owner or developer proposed a viable project, it was generally approved by the Court. Can lead to incompatible land uses.
 - ex: high density/tall multi-storied structures in low density neighborhoods.
 - ex: loss of open space and particularly farmland.
- Extremely difficult and costly for municipalities to contest in court.

Where do the numbers come from?

The numbers are derived from U.S. Census data that is then projected into the future.

They take into consideration such factors as population growth (household generation), income, employment and the availability of land as related to a municipality's region.

Peapack & Gladstone is located in Region 3 which is Hunterdon/Middlesex and Somerset Counties.

So what is considered affordable? Depends on the region in which the municipality is located in.

What Is Considered Affordable: 2017 Regional Income Limits-Region 3

Income Level	1 Person	2 Person	3 Person	4 Person	5 Person
Median	\$73,780	\$84,320	\$94,860	\$105,400	\$113,832
Moderate	\$59,024	\$67,456	\$75,888	\$84,320	\$91,066
Low	\$36,890	\$42,160	\$47,430	\$52,700	\$56,916
Very-Low	\$22,134	\$25,296	\$28,458	\$31,620	\$34,150



What time period is covered?

There have been two previous affordable housing rounds since the adoption of the Fair Housing Act in 1995 that covered the time between 1987 to 1999.

We are now in the Third Round which covers the time period between 1999 to 2025.



How is the obligation described?

Under this Third Round there are three components to a municipality's affordable housing obligation:

- Prior Round Obligation 1987-1999
- Rehabilitation or Present Need
- Prospective Need (new units required between 1999-2025 which includes the GAP period)



What is the GAP?

This is as a result of the NJ Supreme Court's decision, also known as Mount Laurel V, where the Court determined that municipalities had incurred an affordable housing obligation that was generated between 1999 and 2015 as a result of COAH's lack of action.



Affordable Housing Obligation for the Third Round

- Under Mount Laurel IV, the Supreme Court created 13 vicinages (or courts) to hear petitions for certification of municipal housing plans.
- The Borough filed its declaratory judgement action with the court on July 8, 2015 indicating that it would seek certification of its housing element and fair share plan. This provided temporary immunity from “builder” remedy suits.
- During that time, the Borough engaged with the Court appointed “Special Master” and the Fair Share Housing Center (FSHC) to arrive at a negotiated settlement of the Borough’s affordable housing obligation.

Who is the Court Special Master and FSHC?

The Court Special Master is someone appointed by the Court to assist the Court in reviewing housing plans.

FSHC is an affordable housing advocacy group that has been granted special status by the New Jersey Supreme Court to intervene in affordable housing matters.

Both provide important input and recommendations to the Court in evaluating whether to approve municipal affordable housing plans.

Fair Share Housing Center

The Fair Share Housing Center is the primary affordable housing advocacy group in the state:

- They successfully challenged and had COAH's Third Round Growth share rules invalidated by the N.J. Supreme Court.
- Was granted special status to review all affordable housing plans submitted to the Court.
- Can challenge and demand a trial if they feel a municipal plan does not go far enough to further affordable housing.
- Holds major influence with the Courts in deciding affordable housing obligations.



Peapack & Gladstone and Affordable Housing

PEAPACK & GLADSTONE, NJ

8 MAY, 2018

BY MARK A. CORIGLIANO, COUNCIL PRESIDENT

The Affordable Housing Mandate

- ▶ Clearly biased against most towns in New Jersey
- ▶ This is not a new requirement. P&G has been dealing with an Affordable Housing issue for nearly 30 years.
- ▶ Along with finance and taxes, perhaps the most difficult issue this Council and prior Councils have had to deal with.
- ▶ The Borough has settled its third round obligation and the agreement was signed just a few days ago.

The Affordable Housing Mandate

A few notes to remember...

The Borough does not have an obligation to construct any Affordable Housing units as specified in our settlement, however the Borough must legislate to allow the reasonable construction of Affordable Housing units, consistent with its settlement plan.

In reviewing AH obligations, there are two numbers that should not be confused:

- ▶ Total number of credits. This is the final settlement number.
- ▶ Total number of units. The number we are more interested in. The obligation to allow the construction of 'units on the ground'
 - ▶ Some types of AH units are credited more than 1.

Is this all seemingly confusing and does not make sense?

P&G Affordable Housing Rounds I and II

Round I: 1987-1993

- ▶ Borough granted substantive certification on 1/9/89

Round II: 1993-1999

- ▶ Requirement for 82 units

Development	Units	Bonus Credits	Total
Hamilton Court (Lutheran Ministries)	18*	18	36
St. Luke's Senior Village	9		9
Perth Amboy Contribution (\$740k)	37		37
Totals:	64	18	82

- ▶ Borough granted substantive certification for Round II on 1/10/96

P&G Affordable Housing Round III

Round III: 1999-2025

- ▶ Issues begin with COAH on account of challenges to AH rules. Rules not ratified until 2004.
- ▶ Borough granted a prospective need of 35-38 units over the next few years. Council met this requirement by purchasing and reserving land (Smith tract) at the end of Apgar Avenue (adjacent to Komline Park) for 28 units (20 family units and 8 group home).
- ▶ COAH certified this plan in 2009. P&G was one of only 68 towns in NJ to receive 3rd Round certification.

Unfortunately, our good and sincere efforts were for naught, as COAH was 'shut down' and all settlements went, well...out the door.

P&G Affordable Housing Round III (continued)

- ▶ After the debilitation of COAH, the issue floundered between the Courts and the State with no resolution, until...2015. P&G's obligation hung in the balance.
- ▶ Since then, through many ups and downs and numerical adjustments, P&G's obligation as determined by the Courts and the newly empowered FSHC was reported to be as low as 50 and perhaps as high as 240 (units, not credits). Kinsey ends up at 188.
- ▶ Borough fights back
 - ▶ P&G files a Declaratory Judgement for protection against damaging Builder's Remedy. This is subsequently extended.
 - ▶ Contributes to joint alliance of towns that commission their own study. This reported more reasonable numbers.
 - ▶ P&G looks to align with neighbors
 - ▶ P&G reaches out to State elected officials for help

P&G Affordable Housing Round III (continued)

- ▶ Council played hard with the numbers to keep them low. Many meetings in Somerville with the Vicinage Judge, Special Master, FSHC attorneys and with our professionals.
- ▶ P&G comes to a verbal settlement earlier this year, mediated by both the Vicinage Judge and Special Master.
- ▶ It takes months to get a settlement agreement from FSHC, which then needs revision and execution. This brings us to...today.

P&G Affordable Housing Round III – The Settlement

Affordable Housing Settlement for P&G

104

78 units

104 credits

P&G Affordable Housing Round III – The Settlement (continued)

Development	Units	Bonus Credits	Total Credits
Hamilton Court (Lutheran Ministries) (carryover)	2*	2	4
Smith tract - family units (as per previous plan)	20	18	38
Smith tract - group homes (as per previous plan)	8	6	14
Vernon Manor	3		3
Matheny - group homes	10		10
Accessory Apartments	10		10
SJP Properties – family units	14		14
Elks/American Legion	11		11
Totals:	78	26	104

In addition to the above, the Borough shall adopt a plan to rehabilitation one unit.

*Already constructed

P&G Affordable Housing Round III – The Settlement (continued)

Additional Settlement Conditions and Considerations

- ▶ The above settlement numbers do not include a rehabilitative component of one (1) existing unit.
- ▶ The settlement is still subject to ratification at a Fairness Hearing. The hearing will be in Vicinage Judge Thomas Miller's courtroom and is scheduled for June 14.
- ▶ Remember GAP? The settlement numbers include the GAP.
- ▶ Agreement has a 'poison pill' clause. If the current state of AH is overturned and AH obligations drop, P&G will not be held to the settlement numbers and instead would be held to the lower number.
- ▶ The Agreement includes a one-time (#\$%^-) payment to FSHC of \$3750.

Why 104? Why Settle When We Did?

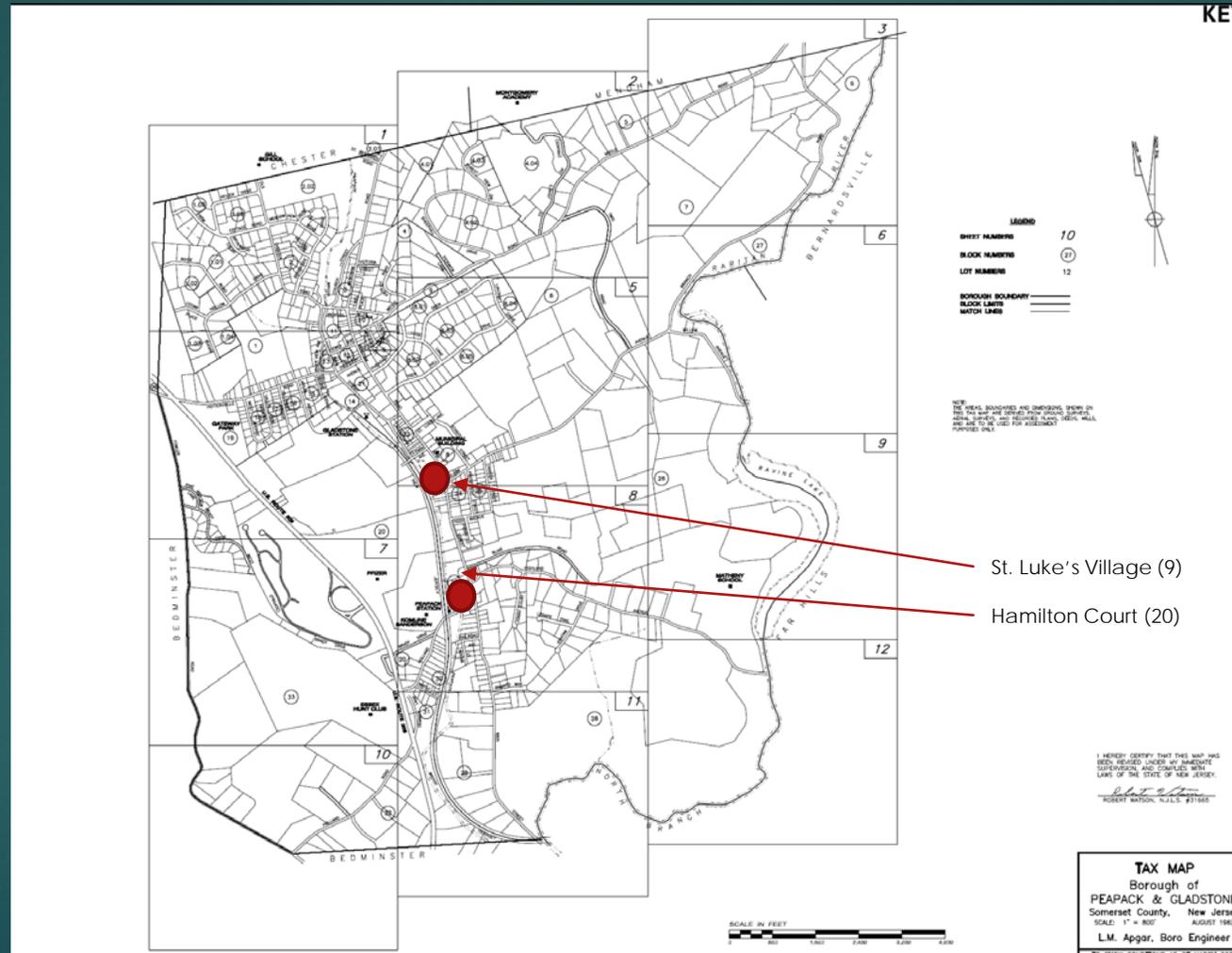
- ▶ Arrived at through more than a year of negotiations, back and forth and Judicial mediation
- ▶ Borough always based its negotiated offers on vacant land available and other options such as the Matheny settlement.
- ▶ FSHC based its numbers on numerical calculations based on the sanctioned reports (Kinsey).
- ▶ Settlement resolves P&G Affordable Housing obligation without the need for a very costly trial, one in which the Borough would likely not prevail.
- ▶ Largest developable parcel locked up at a very, very low density.
- ▶ The spectre of the Mercer Decision always hung over us. Mercer ended up going NOT in favor of the towns. If P&G had settled after Mercer, our settlement would no doubt have been way higher.
- ▶ Borough is now fully protected from Builder's Remedy through 2025.

Our Neighbors

- ▶ Not aware of any announced settlements by many of our neighboring communities.
- ▶ Media suggests that our settlement will be considered favorable as compared to others:
 - ▶ BN, 00/00/18: Wilf (Dewey Meadow) to get hundreds of new units including an affordable housing component as part of an objector suit with that town.
 - ▶ BN, 04/26/18: Far Hills considering a 'village' development of 139 units plus commercial of which 51 will be affordable. Article suggests that the final settlement will be "75-85 income restricted housing units."
 - ▶ PG: 2580 residents, 78 units
 - ▶ FH: 950 residents, 75-80 units
 - ▶ Word from other communities not good. \$5,000 to \$15,000 payments to FSHC. One town within 20 minutes of P&G reportedly settling for 500+ units.

How Affordable Housing 'looks'

Post Round I and Round II

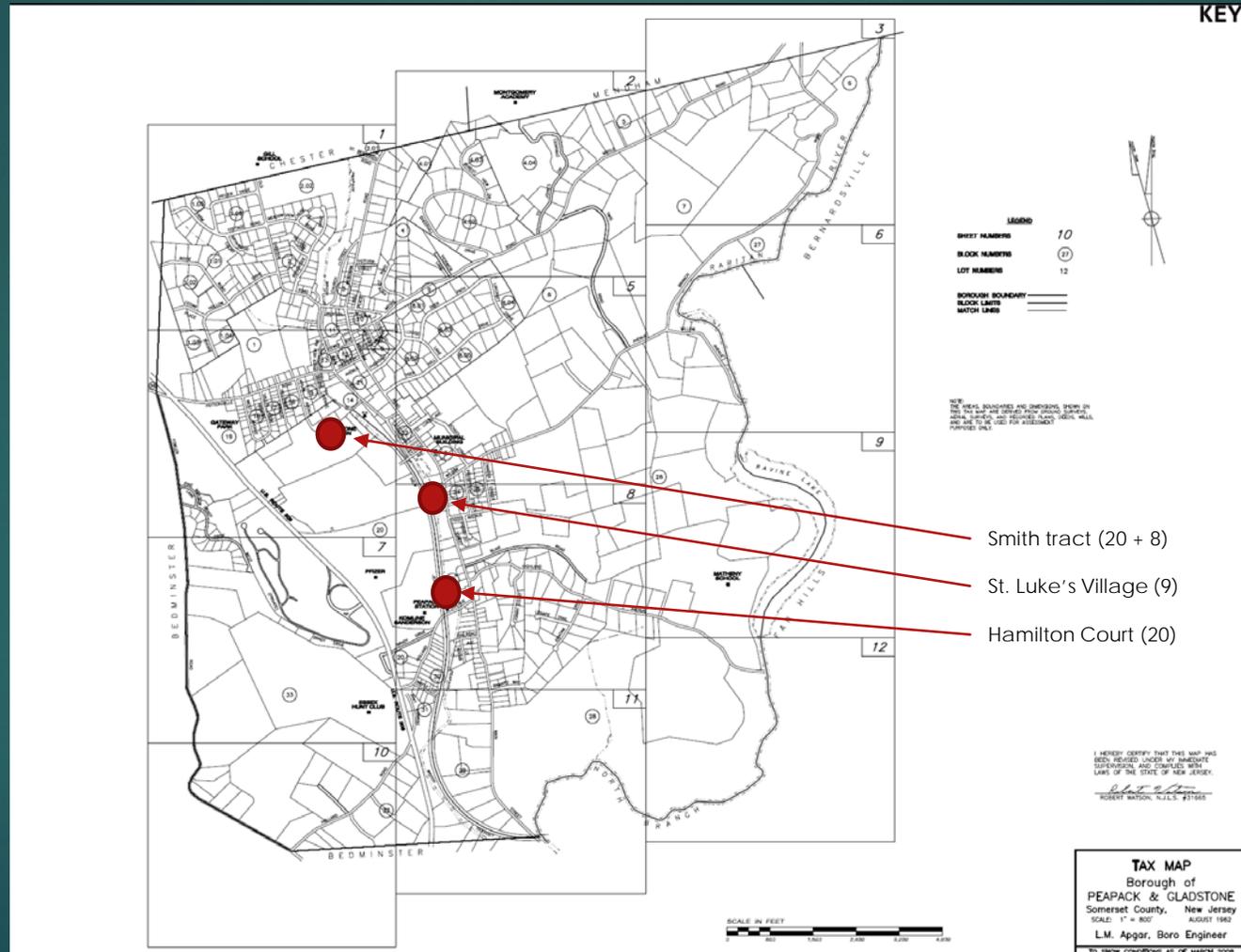


P&G has successfully completed these rounds and is in full compliance.

Not shown are 37 'paid' units in Perth Amboy.

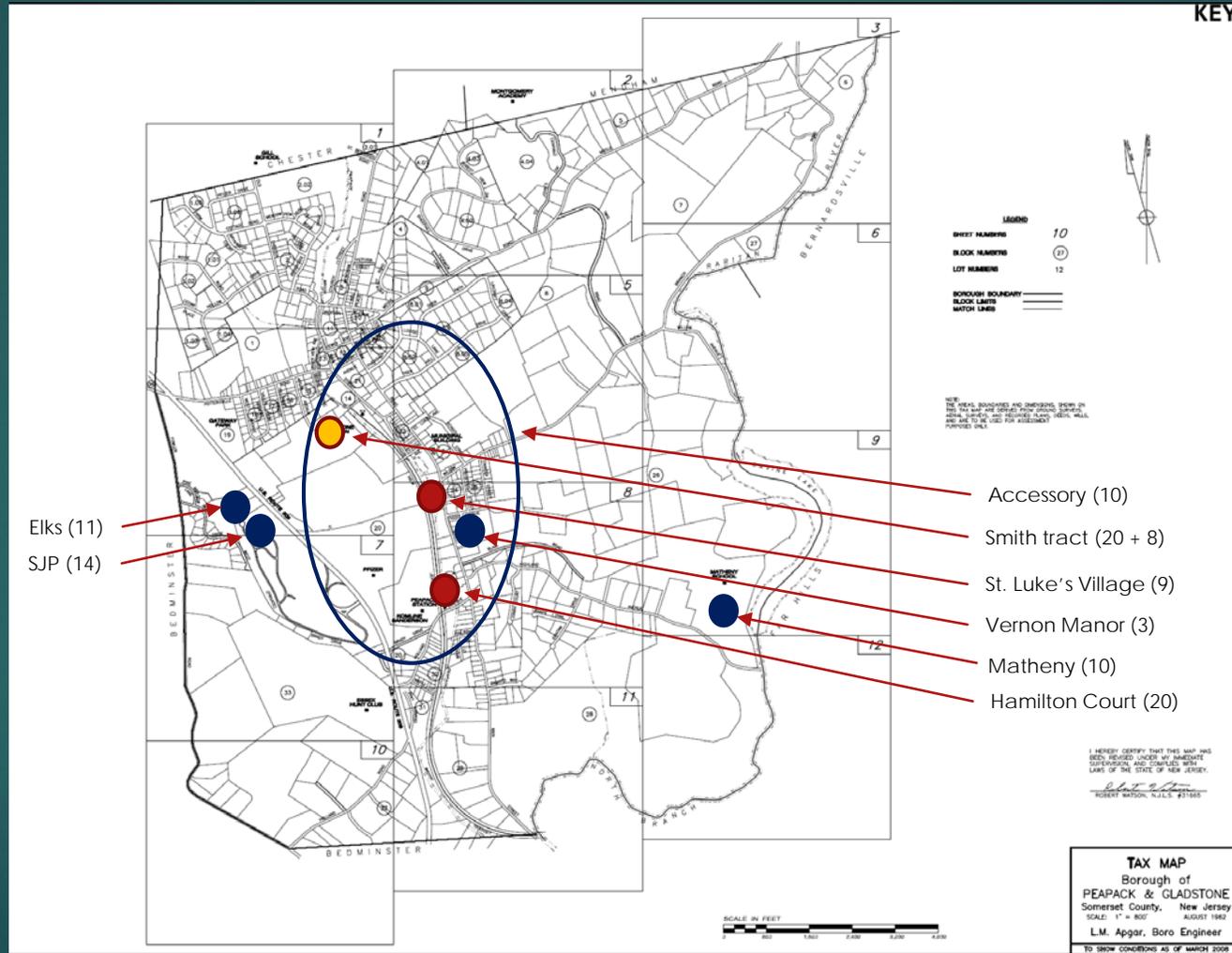
How Affordable Housing 'could look'

Post Round III Original Settlement, circa 2005



How Affordable Housing 'could look'

Post Round III Final Settlement (2018)



Next Steps

- ▶ Fairness Hearing before the Vicinage Judge: Court determines that the settlement is “fair and equitable” to the interests of low and moderate income families and satisfies the Borough’s Mount Laurel mandate. Presently scheduled for June 14 in Somerville.
- ▶ Compliance Period: 120 Days. Borough adopts all necessary documents including Fair Share Plan, Ordinances and necessary appendices. Not much time to do much work.
- ▶ Compliance Hearing: Court determines the Borough to be in compliance with the settlement and subsequently issues an order of “compliance and repose.”



Questions? Comments?