

## A BRIEF HISTORY OF THE MOUNT LAUREL DOCTRINE AND THE PRINCETON REGIONAL MASTER PLAN HOUSING ELEMENT AND FAIR SHARE PLANS

In the 1975 *Mount Laurel I* decision the New Jersey Supreme Court reminded municipalities that the power to zone comes from the State and is not inherent in local government, and ruled that every "developing municipality" must afford an opportunity for low and moderate income housing "at least to the extent of the municipality's fair share of the present and prospective regional need therefor."<sup>1</sup> Subsequently, in the 1983 *Mount Laurel II* decision, the Court set forth policies and procedures to turn the principles of the earlier decision into reality. In *Mount Laurel II* the Court created an enforcement mechanism - it held that in cases in which a municipality is found to have failed to address the obligation to provide a realistic opportunity through zoning for the construction of affordable housing, the lower court should overturn the municipal denial of permission to build and the court should grant a builder's remedy allowing a project where a developer proposes to provide a substantial amount of lower income housing.

The Fair Housing Act, adopted in 1985, was the legislative response to the *Mount Laurel* decisions. The Act created the Council on Affordable Housing ("COAH") to administer affordable housing within the State. COAH was given the responsibility of setting fair share goals for each municipality. A voluntary process was created whereby towns could submit "Fair Share Plans" to COAH for approval ("certification"), and once certification was received, towns would be protected from the imposition of a builder's remedy for the duration of the certification. Initially, the Act required COAH to revisit and recalculate fair share numbers every six years. Those municipalities that met their fair share obligation during the first six years ("round one") then had the next six years to meet any additional fair share calculated during round two. Municipalities that did not provide for the round one fair share had the unmet balance added to the new round two obligation. Under this system, between 1986 and 2004 34,900 new units of affordable housing were constructed and 13,900 rehabilitated.<sup>2</sup> An additional 8,650 units were built pursuant to regional contribution agreements whereby one community pays another (usually older urban centers) to construct the housing in the other municipality.<sup>3</sup>

Governor Christie has consistently opposed the *Mount Laurel* doctrine and has promised to abolish COAH. In 2011 the Legislature adopted amendments to the Fair Housing Act eliminating COAH and transferring its duties to another agency within the Department of Community Affairs, but Governor Christie conditionally vetoed the bill. Rather than accept the Governor's proposed amendments, the sponsors withdrew the bill. The Governor then abolished COAH by Executive Order. The Executive Order was challenged and in March 2012 the Appellate Division of Superior Court found the Executive Order invalid, reinstating COAH. To date the agency has not met. The State has appealed the decision to the Supreme Court, where it is pending.

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<sup>1</sup> See discussion in Mallach, Alan, *A Decent Home: Planning, Building, and Preserving Affordable Housing*. Chicago: American Planning Association, Planners Press, 2009 pp 162-170.

<sup>2</sup> Mallach, at page 169.

<sup>3</sup> Regional Contribution Agreements ("RCA's") were eliminated by amendment of the Fair Housing Act in 2008.

The Housing components of the Princeton Regional Master Plan were most recently updated in December 2008, in response to a State imposed deadline for submission of third round compliance plans.<sup>4</sup> The Master Plan contains a "Future Housing Policies" section and Appendices containing the Fair Share Plans submitted to COAH for certification by Princeton Borough and Princeton Township. Both municipal plans were challenged by various parties and to date neither has received certification.

In brief, the plans state that both Princeton municipalities have satisfied the round one and round two obligations. Round three obligations are calculated to be 178 new units and 67 rehabilitated units in the Borough and 168 new units and 47 rehabilitated units in the Township. These numbers were calculated under the amended third round rules adopted by COAH in October 2008. Numerous challenges to the regulations were brought, and in October 2010 the Appellate Division again invalidated substantial portions of the regulations. The State's appeal of this decision has been pending in the Supreme Court for almost two years.

Given the uncertain state of the law, it is impossible to predict whether the fair share numbers in the 2008 Borough and Township plans will hold. However, regardless of the outcome of the administrative mechanism and regulations promulgated under the Fair Housing Act, the *Mount Laurel* doctrine is still the law, and New Jersey municipalities continue to have an obligation to provide a realistic opportunity through zoning for the construction of affordable housing. For this reason, as well as because it is the right thing to do, Princeton should continue to actively seek opportunities to add new affordable units and to rehabilitate existing affordable units.

The Princeton Community Master Plan - Future Housing Policies are attached.

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<sup>4</sup> The third round commenced in 2000. COAH failed to adopt third round regulations until 2004; portions of these rules were invalidated by the courts, and revised regulations were adopted in October 2008. The Borough and Township Fair Share Plans cover the period from 2000 to 2018.

## **IV. FUTURE HOUSING POLICIES**

### **INTRODUCTION**

The Princeton Community has a long history of providing housing opportunities for residents from diverse socio-economic backgrounds. Princeton's commitment to affordable housing predates the mandates of the Mount Laurel decisions and the Fair Housing Act of 1985. Efforts to provide affordable housing date back to 1938 in the Borough with the construction of Franklin Terrace and in the Township from 1976 with the construction of Princeton Community Village. Both communities remain committed to providing affordable housing, and implementing housing policies beyond the Council on Affordable Housing (COAH) requirements.

The Housing Element, found in Appendix A, presents Princeton's ten-year Affordable Housing Program. The Housing Element is the only part of this master plan where the two Princetons have individual plans. Both the Borough and Township must prepare separate Housing Element under the COAH rules and regulations. The Housing Element has been prepared in conjunction with the Borough and Township Affordable Housing Boards. These Boards oversee day to day affordable housing activities for their respective communities. The Borough's Housing Authority provided comment on this element as well. The Housing Authority is responsible for the day to day operations of Hageman Homes, Franklin Terrace, Karen Court, Maple Terrace, Redding Circle and Spruce Circle. Appendix A of the Housing Element provides an inventory of the Princeton community's housing stock as well as the specific programs to comply with COAH rules.

The Borough's growth share obligation, as determined by COAH, is 178 new units, based on projected residential and non-residential growth. The Township's growth share obligation, as determined by COAH, is 168 new units based on projected residential and non-residential growth. The Borough's rehabilitation share is 67 units and the Township's rehabilitation share is 47 units. Details on the Borough's and Township's Affordable Housing Programs and Fair Share Plans can be found in Appendix A.

### **1996 POLICY STATEMENT**

Historically, Princeton has offered housing opportunities for a full spectrum of people ranging from those of low and moderate income to affluent. Ensuring that these opportunities continue to be available, is an important part of this element. Maintaining a balanced community ensures diversity of population, reflecting a wide variety of social, cultural, ethnic and economic backgrounds as well as a broad mix of compatible land uses.

The Housing Element seeks to reinforce the human scale, diversity of residential opportunity, variety of experience, small town image, and balance of uses that are the essence of Princeton. Given the dwindling amount of vacant land in Princeton, the construction of new affordable

1996 PRINCETON COMMUNITY MASTER PLAN  
FUTURE HOUSING POLICIES

Amendment adopted December 12, 2005; adopted December 4, 2008

page 41

housing and senior housing on a large scale may not be possible. Therefore, it is imperative to develop alternatives to traditional development in providing affordable housing in Princeton.

**1996-2001 HOUSING GOALS**

- I. Provide Princeton's regional fair share of affordable housing for low, moderate and middle income households.
- II. Provide for the housing needs of the handicapped and the elderly.
- III. Promote, preserve and enhance Princeton's unique community life and housing stock.
- IV. Provide for present and future housing needs in the Princeton Community, while retaining the small-town quality and diversity of life within the community, consistent with the vision of Princeton.
- V. Balance Princeton's housing needs with other land uses, and the goals and policies of other elements of the Community Master Plan.
- VI. Ensure that new housing development does not have a negative impact upon the natural or man-made environment within Princeton, nor should it place an undue burden on existing infrastructure and roads or negatively impact the quality of life.
- VII. Higher density housing opportunities for affordable and senior housing should be provided in areas where the impact on Princeton's quality of life, traffic circulation, schools, and transportation system can be minimized.

**STRATEGIES**

In addition to the housing strategies found in Appendix A the Regional Planning Board is committed to providing opportunities for a variety of housing affordable to low-, moderate-, and middle-income families as well as providing additional opportunities for senior housing. Listed below are strategies that will be evaluated by the Board and recommended for implementation if suitable sites are found.

One such opportunity was the expansion of Elm Court from 89 units to 157 units. This project straddles the municipal boundary lines. Zoning amendments in each municipality to permit this expansion were adopted. This new zone includes the existing Elm Court, with its buildings in the Borough and its stormwater detention basin in the Township and the seven acres behind Elm Court. Development is clustered behind Elm Court and in the eastern portion of the 7 acres lot behind Elm Court. The rear of this lot with the exception of the easements for sewer lines will be subject to a conservation easement. This development, now known as

Harriet Bryant House provides an additional 68 income-restricted units for seniors in the Princeton Community.

**I. Low and Moderate Income Housing**

- A. Continue housing rehabilitation program utilizing developer impact fees.
- B. Provide opportunities for new affordable housing utilizing developer fees, state and federal funding and or private funds for both development and purchase of sites.
- C. Promote scatter site and or infill development for affordable housing.
- D. Encourage local tax-exempt institutions to provide affordable housing for their low income workers.

**II. Middle Income Housing**

- A. Provide opportunities for new middle income housing through below market mortgages similar to the University's program for its faculty.
- B. Utilize cluster development or innovative zoning techniques to provide housing opportunities.

**III. Senior Housing**

- A. Promote scatter site and or infill development for senior housing.
- B. Develop additional senior housing zones in appropriate locations.
- C. Provide opportunities for nontraditional senior housing.