



# TOWNSHIP OF READINGTON

## MESSAGE FROM THE MAYOR

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Greetings:

Welcome to my first Mayor's newsletter. As a change from prior newsletters, I would like to use this space to dive into topics that impact us all and require a full discussion that is more than a few bullets and website links. For this issue it is "**Affordable Housing**".

Recently everywhere I go residents have been talking about affordable housing. This is an issue that impacts all towns in NJ. However, since the late 1990s it wasn't really impacting our daily lives and it was out of most people's thoughts. Then the Courts took over in 2015, it hit the news cycle, and it is now in the forefront of conversation.

I start off with a brief overview of the 47-year history of affordable housing in New Jersey. I then detail what Readington has been doing since the late 1970s to address this topic. What you will see is that for each round of affordable housing Readington had a plan to meet or exceed the legally mandated requirements. That will bring us to the current year, what we are doing today and the choices that the Township Committee faces.

For those of you who will take this newsletter and fact check it via Google two comments: firstly, I applaud you for researching a normally dry topic to learn more, and secondly, I caution you to put whatever you find into context. Each year the numbers have changed for us. When was the piece published? What was the bias of the author? This topic has many strongly dissenting opinions.

And now to step back to where it all began.

*Benjamin Smith*  
Mayor

### Affordable Housing History Readers Digest Version

- **1975 and 1983 NJ Supreme Court Decisions:**
  - ◇ People have the right to live in every town in NJ no matter their economic situation.
  - ◇ Towns must make affordable housing available.
  - ◇ Each town is assigned a quota.
  - ◇ Courts can directly approve projects if towns are not compliant with their quota.
- **Fair Share Housing Act (1985):**
  - ◇ Established Council on Affordable Housing (COAH) to set rules, manage affordable housing quotas and review compliance.
- **COAH Rounds 1 and 2 (1986-1999):**
  - ◇ Readington builds or gets credits for 394 new construction units and has a small surplus.
- **COAH Round 3:**
  - ◇ Readington is one of 68 towns (out of 565 in NJ) who had an approved 3<sup>rd</sup> Round plan.
  - ◇ Rules overturned twice by Appeals and Supreme Court (1999-2015).
  - ◇ COAH failed to approve third set of rules and NJ Supreme Court transferred affordable housing matters to the Superior Courts (March 2015).
- **2016 and the future:**
  - ◇ Courts are now directly assigning quotas to each town.
  - ◇ Court has ruled that the quotas include current prospective demand (2015 to 2025) plus the demand for the gap 1999 to 2015.
  - ◇ Readington has not had our day in court yet, but experts are signaling a quota of 500 to 700 units plus 800 gap period units that may be capped at 1000 units.
  - ◇ Today there are about 6000 homes in Readington.
  - ◇ Developers build 1 affordable rental unit for 5 market-rate units.

# Affordable Housing Historic Overview

**1970:** The Mayor of Mount Laurel Township denied an application to build low-income housing to a group of African-American church parishioners. At the time the mayor told them, "If you folks can't afford to live in our town, then you'll just have to leave." The church parishioners sued and the case went from Superior Court to Appeals Court to the NJ Supreme Court.

**1975:** NJ Supreme Court ruled that developing municipalities must make available their fair share of the regional need of low and moderate-income housing. This court case is known as Mount Laurel I.

Many municipalities refused to comply. Lawsuits were filed and were heard at the Superior, Appeals and NJ Supreme Court levels.

**1983:** NJ Supreme Court ruled that specific requirements must be made for every municipality to provide its fair share of low and moderate-income housing that create "realistic opportunities." The Court also created "builders remedy" lawsuits. However, if a municipality is in compliance with its plan, then it is immune from these lawsuits. This court case is known as Mount Laurel II.

A builder's remedy lawsuit is where a developer sues the municipality, challenges the municipality's compliance with its fair share affordable housing obligations and submits a plan to develop a site to a judge. The builder's remedy plan must conform to environmental constraints and sound planning principals under the municipal land use law, but does not need to conform to local zoning. A builder's plan is to build the absolute maximum density, generally providing four market-rate residential units for every one affordable unit produced. If the judge rules in favor of the developer, the town is compelled by law to change the zoning and the planning board is compelled by law to approve a preliminary site plan with no variances. The judge will also require the municipality to fully address its fair share obligation at that time which most likely will result in the inclusion of other builder remedy sites.

**1985:** NJ Legislature passed the Fair Housing Act. The Act was signed into law by Governor Thomas Kean. The Act created the Council on Affordable Housing (COAH) which was charged with overseeing and enforcing affordable housing requirements in New Jersey.

**1986:** First round of COAH rules were adopted and requirements set covering the period 1987 to 1993.

Second round of COAH obligations covered the period from 1993 to 1999. The first and second rounds are now known as the "prior round" and reflect the new construc-

tion component from the earlier rounds.

Third round of COAH obligations was due to take effect in 1999 and covered affordable housing needs in New Jersey to 2009. This is when the process fell off the rails.

1999-2003: No rules are proposed or approved.

2004: First version of 3<sup>rd</sup> round rules became effective.

2007: Appellate Court struck down the "growth share" rules and required COAH to issue new rules.

2008: Second version of 3<sup>rd</sup> round COAH rules were approved.

2010: Appellate Court again struck down growth share rules and again required COAH to issue new rules.

2013: NJ Supreme Court upheld the Appellate Court decision and mandated that COAH adopt new rules by February 2014.

2014: COAH stalemated 3-3 and failed to act.

**March 2015:** NJ Supreme Court found that COAH was a 'moribund' (i.e., dying) state agency, ruled that the courts are to resume their role of evaluating municipal compliance with affordable housing requirement, and ruled that the courts would assign each municipality's affordable housing numbers. As part of the ruling the Court found that municipalities who had been granted "Substantive Certification" for Third Round in 2009 were given temporary immunity from builder's remedy lawsuits so long as they were actively advancing the court processes.

The Court also described three classes of municipalities:

1<sup>st</sup>: Those with substantive certification (about 65 municipalities, including Readington Township).

2<sup>nd</sup>: Those who had submitted documents to COAH or the courts, but had not been certified (about 300).

3<sup>rd</sup>: Those who had done nothing (about 200).

Municipalities in the first class were given 90 days to submit declaratory judgements (DJ) seeking judicial declaration that their housing plans were compliant and in return were to get temporary immunity from builder's remedy lawsuits. The municipalities in the second class were to also file DJ actions and they might get such immunity if they made progress.

One issue that had been slowing down the court processes was what to do about the "gap" period from 1999 to 2015. In January 2017 the NJ Supreme Court ruled that the gap period must be accounted for separately.

In recent months the first municipalities have completed the court process and had their affordable housing numbers assigned by the court. About 100 municipalities have settled on affordable housing numbers with Fair Share Housing Center, a statewide affordable housing advocacy group.

# Readington & Affordable Housing

**1978:** Readington zoned for “least cost” housing allowing attached residential units at Hunters’ Crossing (418 units) and Whitehouse Village (290 units). Before 1978, housing in Readington was detached homes.

**Early 1980s:** Hunter’s Crossing and Whitehouse Village were developed, but did not have affordable housing units at that time.

**1980s:** Lake Cushetunk Woods was zoned for high-density housing to comply with Mount Laurel. Initially it was zoned for 1,140 units. This reflected a time before COAH when the courts were mandating large numbers of affordable units. Once the Fair Share Housing Act was passed in 1985 and COAH was established, lower fair share numbers were required. At this time Township Committeeman Ron Monaco negotiated with the developer and reduced the size of the development to 522 units (84 affordable and 438 market-rate).

Lake Cushetunk Woods was built between 1995 and 1996. It brought a wave of 700 new students to our schools. As a result a new school was needed resulting in the construction of Holland Brook School.

## COAH Round 1

In 1986 Readington was given a first round obligation of 265 units. This included a mix of 82 rehabilitation units and 183 new-construction units for the period of 1987-1993.

A rehabilitation unit is one where the Township gives an income-eligible property owner a grant or loan to help them fix up the property in exchange for putting an affordable housing restriction on the property.

An inclusionary development is where a developer builds some affordable houses and a majority of market-rate houses. Generally this ratio has been one affordable house to four market-rate houses, which means that five houses are built to get one affordable for-sale credit. This is also known as a 20% inclusionary development. In recent years developers have been demanding 15% inclusionary rental developments (one affordable rental to five market-rate homes)

COAH rules include bonuses for taking certain actions. One example is that rentals count double, up to a cap.

Readington’s 1<sup>st</sup> Round fair share plan was:

- 82 Rehabilitation units
- Inclusionary Housing:
  - ◊ Lake Cushetunk Woods: 84 units
  - ◊ Whitehouse Village: 14 units
  - ◊ Cushetunk Commons: 31 units
- Municipally-sponsored senior-rental project:

◊ Mirota Senior Center: 60 units

- Bonus credits: 12

Cushetunk Commons was initially part of the plan, but was later removed and converted to age-restricted, market-rate housing.

This plan totaled 283 credits with a surplus of 18 credits. The plan was granted “Substantive Certification” by COAH in 1989.

One developer, who wanted to build an inclusionary development on a 500 acre parcel in the Rural Residential zone, opposed Readington’s substantial certification. This development was rejected by the Planning Board.

## COAH Round 2

For the second round, COAH combined numbers and in 1995 gave Readington a requirement of 475 units. 81 were to be rehabilitation and 394 were to be new construction.

Elder Cottage Housing Opportunity (ECHO) is a temporary movable cottage placed on a property to permit a senior citizen to live independently, but near caring family.

COAH had a compliance mechanism called Regional Contribution Agreements (RCA). This is where a municipality could pay another municipality to rehabilitate or to build a unit in the other municipality.

In 1999 Readington submitted an amended plan to meet the 475 unit obligation:

- Rehabilitation program (81 units)
- Regional Contribution Agreements
  - ◊ Carteret (‘95-‘00): 116 credits
  - ◊ Bound Brook (‘99-‘04): 15 credits
  - ◊ Manville (‘99-‘04): 15 credits
- Inclusionary Housing
  - ◊ Whitehouse Village: 14 units
  - ◊ Lake Cushetunk Woods: 84 units
- Municipally-sponsored projects
  - ◊ Mirota Senior Center: 60 units
  - ◊ LSM/Three Bridges: 30 senior rentals
  - ◊ Anderson House: 6 group home credits
  - ◊ ARC Group Homes: 5 group home credits
- Accessory Apartments: 6 units
- Municipal Development
  - ◊ Calio House: 1 family rental
  - ◊ ECHO Housing: 4 senior rentals
  - ◊ Dobozyński Apartment: 1 unit
- Bonus Credits: 33

This gave a total of 475 credits.

Readington was granted Substantive Certification for Second Round by COAH in 1997.

# Readington & Affordable Housing (cont'd)

## COAH Round 3



In 2004 the first version of third round rules came into effect. In 2005 the Township received an extension of its Second Round Substantive Certification with amendments and extensions to our plan. In 2005 the Township also adopted a Third Round plan. This 2005 plan was submitted to COAH. Subsequently, to address COAH's revised third round rules, the Township adopted a new plan in 2008 and submitted it to COAH.

There were some changes for the Third Round. Firstly the rehabilitation requirement for 2008 was zero (0) for the Township. The prior rounds' new construction requirement remained at 394 units. Secondly, Regional Contribution Agreements still counted for prior rounds, but could no longer be used for new credits in Third Round.

The Township still needed to show compliance for prior rounds via a "Prior Round Compliance Plan". This was the same as detailed above for Round 2 with the following changes:

- Bound Brook RCAs increased from 15 credits to 57 credits
- LSM/Three Bridges senior rentals dropped
- Allies, Inc. added with 5 group home credits
- Dobozyński Apartment dropped.
- There are now 38 bonus credits

This gave a total of 410 credits for prior rounds including a surplus of 16 credits.

For Third Round Readington was assigned 192 unit growth share obligation. The plan to achieve this was:

- 16 surplus credits from prior rounds
- Special Needs Housing:
  - ◊ Allies, Inc.: 22 credits
  - ◊ Anderson House: 7 credits
  - ◊ ARC: 4 credits
- Market to Affordable (buying down an existing home and restricting it as an affordable home): 10 units
- Extension of expiring controls (Whitehouse Village): 10 units
- Family rentals (Winfield Management): 12 units
- Municipally-sponsored construction:
  - ◊ Mirota expansion: 48 senior rentals
  - ◊ Cal-Lime site: 4 family rentals
  - ◊ Future site (114 Main Street aka Nelson Street

Project): 32 rentals

- Bonus credits: 38

This totals 203 credits including a surplus of 11 credits.

Readington was granted Substantive Certification of Third Round in 2009. Only about 68 of the almost 565 municipalities in New Jersey received such certification before the courts struck down the rules.

A developer sued the Township seeking to get the Third Round COAH Substantive Certification overturned. In 2012 the Appellate Court ruled in favor of the Township and re-granted the Substantive Certification because the Township had been taking immediate steps to secure a site for a 100% affordable housing project and hence reversing COAH's decision was not warranted. This site is 114 Main Street which is part of the Nelson Street Project. 114 Main Street was acquired in 2009 by the Township Committee with the stated purpose of affordable housing construction.

In 2014 a developer approached the Township Committee offering to sell land directly adjacent to the 114 Main Street property. The Township Committee purchased these three parcels in late 2014 with the stated purpose of affordable housing construction.

## **Paying for COAH**



One way to pay for affordable housing construction is the inclusionary development where the builder builds four market-rate houses for each affordable unit built by the builder with the builder paying all construction costs.

The second way is by the Township charging a fee for all construction. A Supreme Court case in 1990 involving Holmdel Township determined that mandatory development fees to support affordable housing construction is permitted and directed COAH to adopt rules. They did. Readington enacted an ordinance in 1993 and has amended it several times since then as the rules changed. In short, for every residential house built, 1.5% of the value and for every non-residential construction, 2.5% of the value is paid to the Township to fund affordable housing projects.

# Readington & Affordable Housing (cont'd)

## Affordable Housing Today



Just like every other municipality Readington has been caught up in the demise of COAH. In 2015 when the Supreme Court transferred review and approval of Fair Share Plans to Superior Court the following happened:

- Readington was deemed a certified municipality putting us in the first class of municipalities (our plan is presumed valid).
- Readington filed a motion for Declaratory Judgment.
- Six parties filed lawsuits as interveners in our affordable housing plan.
- Judge Miller granted Readington immunity and that we may use numbers from 2014 un-adopted COAH rules.
- Readington Affordable Housing sub-committee reviewed the plan and submitted court-required summary.

The Township took a number of actions in 2016:

- Met with each of the interveners to understand their properties.
- Met with developers to build a 100% affordable housing project and selected one (Ingerman).
- Started a formal redevelopment process for the Nelson Street Project (being in a redevelopment area is a requirement for State funding and permits the Township to select a redeveloper rather than use lengthy and expensive RFP processes. This allows the Township to select most qualified redeveloper rather than the lowest bidder).
- Entered into an Affordable Housing Agreement with Ingerman.
- Planning Board and Board of Adjustment held a public meeting to review affordable housing efforts to date.

The Township has maintained a current affordable housing plan; which includes, the same prior obligations with:

- Addition of The Farm: 15 family rental units.
- Bonus credits increased to 74.

For third round, the plan is similar to the 2008 plan, except that Readington now starts with 91 surplus credits from prior rounds instead of 16. The proposed Mirota Senior housing expansion is now 60 units instead of 48. The proposed Nelson Street project was listed as 68 units (recently updated to 72 units). The Township bonuses are at 82 credits instead of 38. This brings the town up to 335 credits for Third Round if all proposed projects in the current plan are built.

## 2017 & The Future

This year brings more affordable housing news. The courts are finally beginning to complete the cases for the first municipalities. The numbers are coming in very high. Bridge-water was given an affordable housing requirement of 1,414 units. The judge ruled that South Brunswick's number is 2,907 with a third round cap of 1,533. Readington's immunity from builder's remedy lawsuits has been extended to August 2017. To save on legal fees, Readington has joined in with many other municipalities in Hunterdon, Somerset and Warren Counties to use the same law firm to argue the cases at the same time.

The Township has been moving forward with the Nelson Street project. This project has the advantage that it is 100% affordable and 100% rentals which means that each affordable unit counts double. Hence 72 units counts as 144 affordable credits. Being a municipally-sponsored, 100% affordable housing, rental program, in the sewer district, on public water, walkable to mass transit, and in a redevelopment zone, being built by a company that has years of experience developing, building, owning and managing affordable housing units means that the project has a very good chance of winning \$15 million of State funding. This means that Readington taxpayers don't have to directly pay for the project construction. In recent months the Township has created the redevelopment zone, approved the development plan, approved a developer's agreement and a payment in lieu of taxes (PILOT) plan. The Planning Board reviewed a preliminary site plan for Nelson Street in four marathon meetings lasting to almost midnight each night. 150 to 200 citizens attended Planning Board meetings, asked questions, and expressed their opinions.

What will Readington's Third Round numbers be? That answer has many opinions. Each opinion is colored by the biases of the opinion holder. In Superior Court Judge Miller will review data and cross-examine the experts that submit opinions. The experts all base their opinions on population demographics, but the bias is how they tweak the models to show how they think the State will grow. In the past year Readington has seen predicted numbers as low as 300 and as high as 1200. The experts seem to be converging on between 500 and 1000 being our final numbers. In the last month one of those experts stated that Readington's "gap year" number should be an additional 800 units. This means that we are facing a potential obligation of 1300 to 1500 units which may be capped at 1000 units. To date we have 335 credits built or in planning phases including 144 from the Nelson Street Project. The Township has been evaluating options on how to meet our obligations beyond 335, but each has different tradeoffs and impacts on our Township.

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Bulk Rate  
Permit #504

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## Closing Thoughts

For those of you who stuck it out and read all of these pages, thank you. Now when you discuss this issue with your friends and neighbors you have the background for what got us here today and, perhaps, the knowledge to ask the questions of where do we go from here?

One thing that those of us sitting on the Township Committee, and those sitting on various volunteer boards, have to keep in mind is the impact of this issue to the entire community. We are a Township of about 6,000 homes. If the affordable housing number was to be 1,000 units, and we didn't have a plan to spread the impact around, try a little of each type of qualifying method, and use all of the bonuses available to us, and we just let developers build out inclusionary developments wherever they wanted (now with five market rates to each affordable unit instead of four), then the Township would be in a very different place. Such development could represent another 6,000 homes. Doubling the size of the Township would have dramatic impact on roads, traffic, schools, municipal services and taxes and would transform Readington into a place we would no longer recognize. If the number is 1,500 units then that impact would be even larger.

I, and your elected committee members, have a duty to not only provide legally mandated affordable housing, but to minimize the impact and cost of that housing on the entire community. All while also preserving the rural way of life that we all enjoy. If we don't move forward with meeting our affordable housing obligations, we run the risk of builder's remedy lawsuits approving building sites more dense than we have ever seen before in Readington. Which brings a dilemma. If the Township sponsors an affordable housing project (such as Nelson street), the neighbors are unhappy about how that project may impact their lives. Do we build the 72 unit Nelson Street project with State funding which yields 144 credits or do we permit a developer to build a 15% inclusionary site with 864 homes to get the same 144 credits. 72 homes or 864 homes? That is just one project. There are never any easy answers.

*Benjamin Smith*  
Mayor