

**Borough of West Cape May
County of Cape May**

Midpoint Review Report

Purpose

The Borough of West Cape May is required to comply with the statutory midpoint review requirements of the Fair Housing Act (“FHA”) and specifically N.J.S.A. 52:27D-313, which provides in relevant part: “[t]he Council shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public.” Pursuant to the Settlement Agreement between Fair Share Housing Center (“FSHC”) and the Borough (hereinafter the “FSHC Settlement Agreement”), that review requires the Borough to post on its website on July 1, 2020, with a copy to FSHC, and an opportunity for comment, a status report regarding its compliance mechanisms and whether or not unbuilt sites/unfulfilled mechanisms continue to present a realistic opportunity. The Settlement also contemplates review of unmet need/deferred mechanisms, though the realistic opportunity for the construction of those mechanisms during the compliance period is not applicable.

Relevant Background

On July 2, 2015, the Borough filed a declaratory judgment action, seeking a determination of its Round Three affordable housing obligations and approval of its proposed Housing Element and Fair Share Plan to satisfy such obligations and, thereby, obtain a Judgment of Compliance and Repose from the Court, pursuant to the March 2015 New Jersey Supreme Court decision, In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”). The Court appointed a Special Master, Hon. Steven P. Perskie, J.S.C., as is customary in Mount Laurel matters. The Special Master assisted the Borough in reaching a settlement agreement with FSHC, a non-profit organization dedicated to protecting the rights of low and moderate income households in New Jersey. The FSHC Settlement Agreement was entered into on March 28, 2018, and the settlement was approved by the Court via an Order entered on June 15, 2018 after a properly noticed Fairness Hearing was held. The Borough obtained a conditional Judgment of Compliance and Repose (“JOR”) approving the Borough’s Housing Element and Fair Share Plan on August 31, 2018, after a properly noticed Compliance Hearing was held. After the Borough satisfied all of the conditions of the JOR, the Court entered an Order on November 13, 2018 finalizing the JOR, which secured immunity for the Borough from all Mount Laurel lawsuits, including but not limited to, Builders Remedy lawsuits, until July 2, 2025.

The Court approved FSHC Settlement Agreement, established the Borough’s Third Round Fair Share obligations as follows:

- Rehabilitation Obligation: Two (2)
- Prior Round Obligation (1987-1999): Seven (7)
- Third Round Gap and Prospective Need Obligation (1999-2025): Fifty (50)

As part of the process described above, the Borough adopted all required resolutions and zoning ordinances.

Rehabilitation Program(s) Update

The Borough has a Rehabilitation Obligation of two (2), which was fully satisfied as of the date the Borough received its final JOR. In addition, the Borough has eleven (11) additional credits which it may use towards its Fourth Round rehabilitation obligation, should such credits be allowed and counted under applicable law in the future.

Prior Round Obligation Review

The Borough’s Prior Round obligation of seven (7) units was fully addressed and satisfied as of the date the Borough received its final JOR as follows:

- One (1) Credit Without Controls credit.
- Four (4) bedroom credits from the seven-bedroom, constructed and occupied Cape May House Supportive Shared Living Housing Facility located at 339 fifth Avenue (Block 52, Lot 62.02).
- Two (2) rental bonus credits.

Realistic Opportunity Review

The realistic opportunity standard applies to all mechanisms for non-adjustment municipalities, and Realistic Development Potential (or “RDP”) mechanisms for Vacant Land Adjustment municipalities.

The Borough is a Vacant Land Adjustment municipality, and has a Court approved RDP of ten (10), which applies to its Third Round (1999-2025) Obligation only.

The status of the Borough’s satisfaction of its Third Round RDP of ten (10) is as follows:

<u>Mechanism</u>	<u>Description</u>	<u>Ordinance Adopted (Yes/No)</u>	<u>Status</u>
Supportive Shared Living Facility	3 bedroom credits from the 7- bedroom Cape May House Supportive Shared Living Facility (339 fifth Avenue)(Block 52, Lot 62.02).	Yes.	Constructed and Occupied.
Accessory Apartment Program	The Borough has an Accessory Apartment program in place.	Yes (October 10, 2018).	The Borough has two (2) constructed and occupied Accessory Apartment units

			located at 301 North Broadway (Block 37, Lot 6) and 307 5 th Avenue (Block 6, Lot 1). The Borough will apply the next two accessory apartments created to its remaining RDP.
Rental Bonus Credits	Three approved rental bonus credits.		

Unmet Need

As contemplated in the FSHC Settlement Agreement, the Borough is in the process of addressing its remaining unmet need as follows:

<u>Mechanism</u>	<u>Ordinance Adopted (Yes/No)</u>	<u>Additional Information</u>
C-1, C-2 and C-3 Overlay Zones.	Yes (October 10, 2018).	No new affordable units approved or constructed in any of these zones since the finalization of the Borough’s JOR.
Accessory Apartment Program	Yes (October 10, 2018)	After the next two accessory apartment units are applied to the Borough’s RDP, any additional accessory apartment units created after that will be applied to unmet need.
Mandatory Set-Aside Ordinance (“MSO”)	Yes (October 10, 2018)	No new affordable units approved or constructed under the MSO since the finalization of the Borough’s JOR.

Very Low Income Analysis

The following constructed and occupied very low income affordable units are have been created in the Borough:

- Seven (7) very-low income affordable units in Cape May House Supportive Shared Living Facility located on 339 Fifth Avenue (Block 52, Lot 62.02).
- One (1) very-low income three-bedroom accessory apartment unit located on 307th Fifth Avenue (Block 6, Lot 1).

Conclusion

The Borough’s plan implementation continues to create a realistic opportunity where that standard is applicable, and the Borough maintains sufficient mechanisms for addressing unmet need.