

(November 29, 2017)

**TOWNSHIP OF CHATHAM
AFFORDABLE HOUSING
FREQUENTLY ASKED QUESTIONS**

A. Affordable Housing

- Q. Why do municipalities have to provide realistic opportunities for the development of affordable housing?
- A. Since 1975, the New Jersey Supreme Court has found as a constitutional requirement that municipalities cannot use the zoning power to exclude affordable housing from within municipal borders. This is known as the Mount Laurel doctrine.
- Q. Does this mean municipalities are required to build affordable housing?
- A. No, it means that municipalities cannot create exclusionary zoning to limit or prevent affordable housing from being built. However, municipalities may decide to utilize or make available municipally owned land to an affordable housing developer.
- Q. What is affordable housing?
- A. Affordable housing is divided into three (3) income classifications: moderate, low and very low, and is based upon income limits. The income limits for Region 2, the Essex, Morris, Union and Warren County area, range from \$52,762 for a single person to \$99,494 for eight people as a moderate income household; \$32,976 for a single person to \$62,184 for eight people as a low income household; and \$19,786 for a single person to \$37,310 for eight people as a very low household. Source: Attached as Exhibit A: 2017 Income Limits, Prepared by Affordable Housing Professionals of New Jersey (AHPNJ) - August 2017 titled "2017 Affordable Housing Regional Income Limits by Household Size".
- Q. Does the Township of Chatham have an affordable housing district?
- A. Yes, the Township, since 1992, has had an A-H Affordable Housing District. Within that District, the Township Police Department, Public Works Department and Skate Park are currently located.

- Q. How is a municipality's affordable housing obligation determined?
- A. In 1985, the New Jersey Legislature, in direct response to the Mount Laurel lawsuits challenging municipal zoning because the zoning did not provide for realistic opportunities for affordable housing, passed and the Governor signed into law the Fair Housing Act. The Fair Housing Act created an administrative agency known as the Council on Affordable Housing or COAH. The Fair Housing Act provided COAH with criteria for municipalities to provide a realistic opportunity for affordable housing. COAH, until 1999, adopted regulations which established the methodologies to determine the statewide, regional and municipal obligation. However, since 1999, COAH was unable to develop regulations which complied with the Mount Laurel doctrine.
- Q. What benefit did municipalities receive for complying with the Fair Housing Act and the COAH regulations?
- A. If a municipality followed the Fair Housing Act and COAH regulations, COAH was able to grant municipalities immunity from suits by builders challenging municipal zoning ordinances.
- Q. What is the effect of COAH's failure to adopt valid regulations?
- A. In 2015, faced with this failure, the New Jersey Supreme Court returned the adjudication of the municipal fair share housing obligation to the judiciary. Municipalities that desired continued protection from lawsuits challenging their zoning ordinances were to file an action with the Superior Court of New Jersey by July, 2015, to obtain temporary immunity from builders' suits.
- Q. Did the Township of Chatham avail itself of this protection from challenges to its zoning ordinances?
- A. Yes, in July, 2015, the Township of Chatham, like a majority of New Jersey municipalities, filed a lawsuit seeking to continue protection from challenges to its zoning ordinances and for a determination of the Township's fair share housing obligation.
- Q. Is that lawsuit currently pending?

A. Yes.

Q. Why is it taking so long to resolve that lawsuit?

A. The calculation of the municipal fair share housing obligation involves complex calculations of present and future affordable housing needs at the state, regional and municipal level and experts retained by municipalities, by the Fair Share Housing Center, New Jersey Builders Association, individual builders and Special Masters appointed by the Superior Court of New Jersey have disagreed regarding the interpretation of existing standards to perform this calculation.

Q. What do these experts say is the Township of Chatham's fair share housing obligation?

A. The expert calculations for the Township of Chatham's affordable housing need for the period from 2015 to 2025 are as high as 645.

Q. Is there a relationship between the affordable housing obligation and the number of housing units that may be built?

A. Yes, typically the ratio of market rate units to affordable units is four (4) to one (1), meaning that four (4) market units would be built before a builder has to provide one (1) affordable unit. To provide an incentive for builders to construct affordable housing, the zoning ordinance or builders remedy would allow housing at a higher density.

Q. May this four (4) to one (1) ratio change?

A. Yes, if the builder constructs a one-hundred (100%) percent affordable housing development.

Q. Does the Township of Chatham currently have affordable housing?

A. Yes, there are seventy-two affordable units at the Vernon Grove Condominium, one (1) at the Sutton Woods Condominium and one (1) six unit Group Home.

Q. How does the Township provide for a realistic opportunity for the construction of affordable housing?

- A. The Planning Board drafts a specific element of the Master Plan known as the Housing Element and Fair Share Plan which, among other things, explains the mechanisms that the Township will employ to meet its affordable housing fair share obligation.
- Q. What is the process for the Planning Board to adopt the Housing Element and Fair Share Plan?
- A. Because the Housing Element and Fair Share Plan is a part of the Master Plan, its adoption is governed by the Municipal Land Use Law. The Housing Element and Fair Share Plan is subject to a public hearing before the Planning Board during which the public may participate. If the Planning Board adopts the Housing Element and Fair Share Plan to the Master Plan, then it must be endorsed by the Township Committee at a public meeting.
- Q. What happens after the Housing Element and Fair Share Plan is endorsed by the Township Committee?
- A. The next step is to prepare zoning ordinances implementing the Housing Element and Fair Share Plan. Those ordinances, like all ordinances, are subject to introduction by the Township Committee, publication, referral by the Township Committee to the Planning Board for a Master Plan inconsistency determination, and then a public hearing before the Township Committee.
- Q. What is an area in need of redevelopment?
- A. The criteria to declare an area in need of redevelopment are stated in the Local Redevelopment and Housing Law and begins with the Planning Board conducting an investigation of whether the particular property under study meets the area in need of redevelopment criteria. Once the investigation is completed and a report prepared, the Planning Board holds a public hearing at which the public may participate. If the Planning Board recommends an area in need of redevelopment designation, then that recommendation is considered by the Township Committee at a public meeting.
- Q. If the Township Committee declares an area in need of redevelopment, does that result in development approvals?
- A. No, the next step is for a Redevelopment Plan to be prepared. A Redevelopment Plan is a zoning ordinance and the procedure

described in the Local Redevelopment and Housing Law is followed, including a public hearing.

- Q. If the Redevelopment Plan is adopted, does that result in development approvals?
- A. No, the developer would have to file a land use application with the Planning Board and follow the public process required by the Municipal Land Use Law.
- Q. If the Township of Chatham takes no action to adopt a valid Housing Element and Fair Share Plan, are there any potential consequences to the Township?
- A. Yes, the Township may lose its immunity from builder remedy lawsuits challenging the Township's zoning ordinances. In that case, the Township may lose control over the location, size and density of residential developments within the Township.

B. Administration of Affordable Housing

- Q. How are current and future affordable housing units managed?
- A. Affordable housing units are managed by an Administrative Agent or designee selected by the Township and follow regulations known as the Uniform Housing Affordability Controls or UHAC.
- Q. How are affordable housing unit owners or tenants selected?
- A. The Administrative Agent following a marketing process and income eligibility requirements established by UHAC select affordable housing unit owners or tenants.
- Q. Will Township residents receive a preference for affordable housing in the Township?
- A. No, all affordable housing units must be marketed, made available, to those who are income eligible for affordable housing depending on whether their income is within the moderate, low or very low requirements discussed above.
- Q. What is the required mix or percentages of moderate, low or very low units?

- A. Thirteen (13%) percent of all of the affordable units must meet the very low income limits. Fifty (50%) percent must be very low and low income units. The remaining fifty (50%) percent may be moderate income units.
- Q. Are Regional Contribution Agreements, a method for a municipality to meet a part of the municipal fair share housing obligation, permitted?
- A. RCAs, which allowed municipalities to make a monetary contribution to other municipalities for affordable housing, are no longer permitted. Municipalities must provide for a realistic development potential for affordable housing within its municipal boundaries.

C. Dixiedale Farm Rezoning

- Q. Why is the Township Committee considering rezoning the Dixiedale Farm?
- A. On July 18, 2016, the contract purchaser of the Dixiedale Farm made a request to the Township Committee to change the zoning for the Dixiedale Farm from single-family homes to multi-family townhouses.
- Q. How did the Township Committee respond to that request?
- A. On November 10, 2016, the Township Committee adopted, in public session, a Resolution referring the rezoning request to the Planning Board for review, study and a recommendation to the Township Committee.
- Q. Did the Planning Board respond to that request?
- A. Yes, the Planning Board responded by:
- i. Asking the developer to make a public presentation to the Planning Board detailing the request.
 - ii. Undertaking a Master Plan Periodic Reexamination Study to determine whether it was appropriate to amend the Master Plan to allow the Dixiedale Farm to be rezoned.
 - iii. Recommending to the Township Committee a Rezoning Ordinance for the Dixiedale Farm.
- Q. When did the Planning Board take those steps?

- A. On March 20, 2017, the Planning Board adopted a Master Plan Periodic Reexamination Report. Page 22 of that Report specifically recommends that the Township Committee "1. Consider Rezoning [Dixiedale]. The Planning Board is considering a rezoning request for a 30+ acre tract on River Road and Hillside [Avenue] for multiple family townhouse development, similar to the more recent townhouse neighborhoods in northern Chatham Township".
- Q. Where may I find the 2017 Master Plan Periodic Reexamination Report?
- A. It is on the Township website at <http://www.chathamtownship-nj.gov/images/master-plan/2017-MPRE-Report.pdf>.
- Q. Has the Planning Board sought to implement that recommendation?
- A. Yes, on October 16, 2017, the Planning Board recommended to the Township Committee the Dixiedale Farm Rezoning Ordinance.
- Q. Where may I find the Dixiedale Farm Rezoning Ordinance?
- A. It is on the Township website at <http://www.chathamtownship-nj.gov/images/ordinances/2017/Ordinance-2017-15-Rezoning-Dixiedale.pdf>.
- Q. How will the Dixiedale Farm be rezoned?
- A. The proposed Dixiedale Farm Rezoning Ordinance provides for fifty (50) townhouse units, four (4) units on the second and third floors of the Manor House currently on the property for a total of fifty-four (54) market units. The Dixiedale Farm Rezoning Ordinance also provides for a minimum of twenty-four (24) affordable housing units to be built either on or off-site. The proposed rezoning also provides for a minimum of forty (40%) percent of the Dixiedale Farm to be for common open space, which shall be deed restricted against future development. Additionally, a naturalized trail around the perimeter of the Dixiedale Farm will be constructed by the developer, and maintained and repaired by the homeowner association. The public will be granted access across the perimeter trail.
- Q. Has the Township Committee responded to the Planning Board recommendation?

- A. Yes, on November 8, 2017, the developer made a presentation regarding a Concept Plan to the Township Committee and the public on how the proposed Dixiedale Farm Rezoning Ordinance may be implemented. After the developer's presentation and the conclusion of public comment, the Township Committee introduced the Dixiedale Farm Rezoning Ordinance, Ordinance 2017-15, with a public hearing scheduled for December 14, 2017 starting at 7:30 P.M. Additionally, the Township Committee referred Ordinance 2017-15 to the Planning Board to determine whether the Ordinance was inconsistent with the Master Plan.
- Q. Where may I see the developer's presentation, public comment and the Township Committee discussion?
- A. A video of the November 8, 2017 Township Committee meeting is on the Township website at <http://www.chathamtownship-nj.gov/township-committee-agendas-and-minutes/64-video/tc-2017-video/289-township-committee-110817-video-dixiedale>.
- Q. Did the Planning Board review Ordinance 2017-15 as a result of the Township Committee's referral?
- A. Yes, on November 20, 2017, the Planning Board held a public meeting and determined that Ordinance 2017-15 was "inconsistent with the Land Use Plan". However, the Planning Board also determined that Ordinance 2017-15 "advances Land Use Plan goals for a balanced land use plan, Conservation Plan goals to minimize development impacts and protect the environment and the Fair Share Plan goals to meet the constitutional mandate to provide for the Township's fair share of the regional need for affordable housing". The Planning Board concluded "that while the Ordinance No. 2017-15 is inconsistent with the Land Use Plan, the proposed ordinance advances many of the Master Plan's significant objectives and the Board recommends adoption of the ordinance".
- Q. Because the Planning Board determined Ordinance 2017-15 to be "inconsistent", is the Township Committee prohibited from adopting the Ordinance?
- A. No. The Township Committee "shall review the report of the planning board and may disapprove or change any recommendation by a vote of a majority of its full authorized membership and shall record in its minutes the reasons for not following such recommendation". See N.J.S.A. 40:55D-26(a).

- Q. What does the prior answer mean?
- A. That the Township Committee may proceed, if it so desires, to adopt Ordinance 2017-15 provided that:
- i. three (3) Township Committee Members vote in favor of adoption, and
 - ii. the Township Committee adopts a "Reasons Resolution" explaining why the Township Committee did not follow the Planning Board's inconsistency determination.
- Q. What will occur on December 14, 2017 before the Township Committee?
- A. The developer will again make a presentation to the Township Committee and the public, a public hearing will be held on Ordinance 2017-15 and, thereafter, the Township Committee may vote on the adoption of the Ordinance.
- Q. If Ordinance 2017-15 is adopted, does that result in approval of the townhouse development?
- A. No, the developer will have to apply, in the same manner as any other developer, for subdivision and site plan approval from the Planning Board in accordance with the public process required by the Municipal Land Use Law.

D. Development of Skate Park for Affordable Housing

- Q. Why is the Township Committee considering developing the Skate Park for affordable housing?
- A. As discussed above, the Township has to provide a realistic development potential for affordable housing and, since 1992, the Township has had an A-H Affordable Housing District. That District consists of a single lot on which the Township Police Department, Public Works Department and Skate Park are currently located.
- Q. What steps has the Township Committee taken to provide for affordable housing at the Skate Park?
- A. On November 10, 2016, the Township Committee adopted, in public session, a Resolution referring to the Planning Board a request to determine whether the Skate Park qualified as an

area in need of redevelopment under the Local Redevelopment and Housing Law.

- Q. Did the Planning Board respond to that request?
- A. Yes, on March 20, 2017, the Planning Board, as part of the Master Plan Periodic Reexamination Report, stated at page 23 that "Chatham Township is currently conducting a preliminary redevelopment investigation to determine whether the [S]kate [P]ark site qualifies as an area in need of redevelopment pursuant to the Local Redevelopment and Housing Law. These lands, situated in the AH Affordable Housing Zone, may be developed as affordable housing if this designation is made".
- Q. Where will I find the 2017 Master Plan Periodic Reexamination Report?
- A. It is on the Township website at <http://www.chathamtownship-nj.gov/images/master-plan/2017-MPRE-Report.pdf> .
- Q. Has the preliminary redevelopment investigation discussed by the Planning Board in the Master Plan Periodic Reexamination Report been completed?
- A. Yes, on June 19, 2017, the Planning Board held a public hearing on the preliminary redevelopment investigation and recommended that the Township Committee declare the Skate Park an area in need of redevelopment.
- Q. Where may I find the preliminary investigation study?
- A. On the Township website at <http://www.chathamtownship-nj.gov/images/PB/PIR-REPORT5-24-17.pdf> .
- Q. How has the Township Committee responded to the Planning Board recommendation?
- A. Yes, on October 12, 2017, the Township adopted a Resolution declaring the Skate Park an area in need of redevelopment. That Resolution was amended on October 26, 2017.
- Q. Has the Planning Board recommended a Redevelopment Plan for the Skate Park?
- A. No, on October 16, 2017, the Planning Board tabled discussion of a Redevelopment Plan for the Skate Park until the New Jersey Department of Environmental Protection issues a Letter

of Interpretation delineating the wetlines at the Skate Park and confirming the area of the Skate Park that may be developed for affordable housing.

Q. What will happen to the Skate Park if the Skate Park property is used to construct affordable housing?

A. It is the intention of the Township Committee for the Skate Park to either, depending upon the delineation of the wetlands, remain at its current location or seek to relocate to another suitable site.

Q. Will the Planning Board resume the discussion of the Skate Park Redevelopment Plan?

A. Yes, once the Letter of Interpretation is received.

Note: These Frequently Asked Questions may be periodically updated as circumstances warrant.