

**Borough of Midland Park  
Bergen County**

**Midpoint Review Report**

**Purpose**

The Borough of Midland Park 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.

**Relevant Background**

On June 25, 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, Michael P. Bolton, PP, AICP, 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 with the Borough was entered into on June 22, 2017.

A fairness hearing was held before the Honorable Menelaos W. Toskos, J.S.C., on July 19, 2017 wherein the Court determined that the settlement agreements presented a realistic opportunity for affordable housing development and were fair, equitable and protected the interests of low and moderate income families. An order to this effect was entered into by the Court and filed on August 4, 2017. The Borough has retained immunity from builder remedy suits throughout the process and has continued immunity pursuant to the Court order.

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

- Rehabilitation Obligation: 8 units
- Prior Round Obligation (1987-1999): 54 units
- Third Round Gap and Prospective Need Obligation (1999-2025): 198 units

The housing plan components to satisfy the Borough's affordable housing obligation pursuant to the approved settlement agreement include the following:

### **Prior Round Need - 54 Units**

Based upon a Vacant Land Adjustment approved by COAH as part of the Borough's Second Round substantive certification, Midland Park's realistic development potential (RDP) was established at 13 units leaving an Unmet Need balance of 41 units. The Borough has fully satisfied its prior round RDP through new affordable housing construction that resulted in 70-units of affordable housing leaving a credit balance of 29 units available for the Borough's Third Round Prospective need.

### **Present Need/Rehabilitation - 8 Units**

The Borough has a rehabilitation share of 8 units. The Borough has completed the rehabilitation of 16 affordable housing units through its participation with the Bergen County Home Improvement Program and has therefore, satisfied its Rehabilitation Share and is entitled to a credit of 8 additional units.

### **Prospective Need - 198 Units**

Because the Borough is entitled to a Vacant Land Adjustment, the Borough's Prospective Need of 198 housing units for the period from 1999 to 2025 is comprised of two components: Realistic Development Potential (RDP) and Unmet Need.

#### RDP

Midland Park's Third Round Prospective Need obligation is based entirely upon Unmet Need since the Borough's RDP is 0 units as established by the Borough's Vacant Land Analysis.

#### Unmet Need.

The difference between the Borough's Third Round Prospective Need number and its RDP obligation is what is known as Unmet Need. Whereas RDP is an obligation that must be affirmatively addressed, Unmet Need is more aspirational. As discussed previously, the Borough's RDP is 0 leaving only Unmet Need. Pursuant to the Borough's Settlement Agreement with FSHC which is 182 units. The Borough has addressed its Unmet Need through the creation of overlay zones, as well as adopting a Borough-wide mandatory set-aside ordinance. These mechanisms will provide a realistic opportunity for the development of affordable housing in Midland Park. Each mechanism is discussed in more detail as follows:

- Overlay Zones. Midland Park created multiple overlay zones over portions of the Borough covering 31 parcels. The overlay zones encompass 20.34 acres. Densities vary by zone. Those parcels fronting on or near Godwin Avenue will be permitted to develop at a density of 10 dwelling units per acre. The remaining parcels will develop at a density of 18 dwelling units per acre. The overlay zones require an affordable housing set-aside of 15 percent of all residential units, where affordable units will be for rent, or 20 percent of all residential units, where affordable units will be for sale.

- Mandatory Set-Aside Ordinance. The Borough adopted an ordinance which requires that any multi-family development of 5 units or more with a density of 6 dwelling units per acre or higher shall provide an affordable housing set-aside at a rate of 15 percent, where affordable units will be for rent, or 20 percent, where affordable units will be for sale. This requirement will ensure that new multi-family residential development in Midland Park will provide its fair share of affordable units and assist with the Borough's continuous efforts to address its affordable housing obligation. The Borough will not, however, be under any obligation to grant rezonings, variances, redevelopment designations or extraordinary approvals for any such construction and development applications will be required to otherwise conform to the Borough's zoning requirements.

### **Status**

Pursuant to the settlement agreement, the Borough has adopted all of the required compliance documents and received a judgement of compliance and repose issued by the Honorable, Menelaos W. Toskos, J.S.C. on June 29, 2018.

As of July 1, 2020, it is noteworthy that two inclusionary projects have been approved by the Borough. These projects include the following:

72 Lake Avenue, LLC	72 Lake Avenue/Block 3, Lot 2	1 - Affordable Unit
---------------------	-------------------------------	---------------------

Riggs Development II, LLC	577 Godwin Avenue	1 - Affordable Unit
---------------------------	-------------------	---------------------

The project located at 577 Godwin Avenue has been constructed. The project located at 72 Lake Avenue is pending construction.

The Borough continues to believe that the present plan represents a realistic opportunity for the development of affordable housing in the community.

### **Comments**

Comments from interested parties are welcome and may be submitted to the Borough by contacting Janet Giardino, Borough of Midland Park, 280 Godwin Avenue, Midland Park, NJ, 07432 or by email at: [jgiardino@midlandparknj.org](mailto:jgiardino@midlandparknj.org).