



TO: Joseph Burgis, PP, AICP

FROM: Dan Hauben, PP, AICP, LEED® Green Associate™, DMR Architects
On behalf of the Township of Middletown

DATE: January 31, 2024

RE: **MIDDLETOWN TOWNSHIP AFFORDABLE HOUSING INVENTORY ANALYSIS
DOCKET No. MON-L-1260-23, MON-L-2588-23**

BACKGROUND

I am Senior Project Planner at DMR Architects (“DMR”), a multi-disciplinary firm with its office at 777 Terrace Avenue, Hasbrouck Heights, New Jersey, 07410, and I am a professional planner as licensed by the State of New Jersey (33L00630300), and a member of the American Institute of Certified Planners (AICP).

DMR was retained as an expert witness by the defendants, the Township of Middletown and Middletown Planning Board (“Middletown”), in this matter for the purposes of calculating the Township’s total affordable housing inventory as well as eligible bonuses. I specifically have taken the lead on this project based upon my experience as an affordable housing planner dating back to 2014, when the Council on Affordable Housing (“COAH”) published a draft of its third attempt at creating constitutionally valid Third Round Rules for calculating and addressing statewide and municipal affordable housing obligations. At that time, I was tasked as a junior planner at CME Associates to assist the other planning staff and the firm’s municipal clients in understanding the implications of these rules for their affordable housing obligations;

The next year, when the Supreme Court issued its *Mount Laurel IV* decision on March 10, 2015, I was employed by Clarke Caton Hintz, where for the next four years I would work under Philip Caton, Mary Beth Lonergan, Elizabeth McManus, Brian Slaugh, and Kendra Lelie in their roles as municipal affordable housing planners and Court-appointed Special Masters.

During my nearly four years at Clarke Caton Hintz I prepared the affordable housing plans for the following municipalities, and assisted in the affordable housing planning process and declaratory judgement actions for several more:

1. Allendale Borough, Bergen County
2. Greenwich Township, Warren County
3. Haddonfield Borough, Camden County
4. Harrison Township, Gloucester County
5. Highland Park Borough, Middlesex County
6. Ho-Ho-Kus Borough, Bergen County
7. Lawrence Township, Mercer County
8. Union Township, Hunterdon County
9. Vineland City, Cumberland County

During that time, I also supported the several Court-appointed Special Masters at Clarke Caton Hintz in their review of dozens of proposed settlement agreements between compliance-seeking municipalities and Fair Share Housing Center as well as their

affordable housing plans for compliance with those settlement agreements. This included preparing fairness and compliance reports which were submitted to the Courts in the matters of municipalities that had gone through the settlement process.

Since I joined DMR Architects in 2019, I have continued to provide affordable housing planning services including preparing inclusionary overlay zoning in the City of Hackensack, preparing the Housing Element and Fair Share Plan for Verona Township, assisting with affordable housing compliance in Paramus, and assisting the Borough of Elmwood Park to comply with their Court-approved Settlement Agreement with Fair Share Housing Center.

PURPOSE AND DOCUMENTS REVIEWED

DMR has been tasked with assisting Middletown with identifying creditworthy projects and activities and determining their eligibility for bonuses in order to calculate the total number of credits from projects and programs completed to date and which are in progress or in the pipeline. DMR's resources for identifying eligible credits include but are not limited to:

1. The certifications filed in this matter by Anthony Mercantante, the Township Administrator for Middletown Township, dated June 29, 2023, November 1, 2023, and December 4, 2023;
2. The Township's *Third Round Housing Element and Fair Share Plan*, adopted on December 11, 2008;
3. *Resolution Granting Third Round Substantive Certification* adopted by the the Council on Affordable Housing on October 14, 2009;
4. A 2023-updated Affordable Housing Dossier entitled *Affordable Housing Development in Middletown Township*, prepared by the Township's Department of Planning and Community Development;
5. Internal data received from the Township's Department of Planning and Community Development;
6. The Township's 2023 *Master Plan Reexamination Report*, adopted in March of 2023; and
7. Review of redevelopment plans and zoning ordinances for sites not yet developed or approved for development.

DMR understands that the Township's Department of Planning and Community Development monitors and administers the affordable units within the Township. Therefore, DMR has not been tasked by the Township with reviewing documentation to verify creditworthiness of any units. DMR has not been tasked with performing any other review or analysis or rendering any opinions or recommendations for the purposes of this litigation, such as assessing whether Plaintiffs' sites meet COAH's suitability criteria.

APPLICABLE COAH RULES AND REGULATIONS

1. The Council on Affordable Housing ("COAH") was established by the Fair Housing Act, passed by the New Jersey State Legislature in 1985. Its primary functions included estimating the affordable housing obligations for municipalities, to set

criteria and guidelines (“rules”) for satisfying those obligations, and to review and approve affordable housing compliance plans and activities in accordance with those rules.

2. COAH adopted its first set of rules for a six-year period covering 1987 to 1993, also known as the “First Round”. It adopted a “Second Round” of rules (N.J.A.C. 5:91 and 5:93) in 1994 which superseded the First Round, including recalculating a portion of the 1987 to 1993 obligation as part of a larger obligation for the period of 1987 to 1999 and defining the mechanisms for addressing those obligations. Collectively, the 1987 to 1999 period is referred to as the “Prior Round”.
3. The Council delayed in its adoption of rules for a “Third Round” until December 20, 2004. This set of rules introduced a methodology for calculating municipal fair share obligations called a “growth share”, which substantially differed from the methodology in the Prior Round rules. This set of rules was largely invalidated by the New Jersey Appellate Court on January 25, 2007. COAH adopted Third Round rules again on June 2, 2008, which were again largely invalidated on October 8, 2010 due to the continued use of Growth Share methodology and other aspects of the rules which the Appellate Court concluded were incongruous with the Mount Laurel Doctrine and the Fair Housing Act.
4. COAH once again attempted to adopt new Third Round rules on October 22, 2014, but failed both to adopt the rules and to schedule a subsequent hearing on adoption.
5. The New Jersey Supreme Court, in its decision largely referred to as *Mount Laurel IV*, entered on March 10, 2015, required all municipalities to determine and comply with their Fair Share obligations based upon the Prior Round rules with the exception of those parts of the Third Round rules that were upheld by the Courts.

ASSUMPTIONS

1. All parties in this litigation are in agreement that the Township’s Prior Round new construction obligation as established by COAH for the years 1987 to 1999 is 1,561 units. DMR, for the purposes of this analysis, and the Plaintiff’s experts, accept that the Township’s Third Round obligation for the years 1999-2025 is 1,026 units as calculated by Econsult Solutions in their March 28, 2018 report based upon the March 8, 2018 decision by Judge Mary C. Jacobson A.J.S.C. in Mercer County.
2. The *Mount Laurel IV* decision left a great deal of confusion and uncertainty among municipalities and affordable housing planners as to how to apply outdated language from the Prior Round rules and the constitutionally valid portions of the Third Round rules for the purposes of calculating, for example, the minimum number of rental units (N.J.A.C. 5:93-5.15(a)) and the maximum number of senior units (N.J.A.C. 5:93-5.14(a)) and eligible bonuses from those units (N.J.A.C. 5:93-5.15(d)).
3. Rental Bonuses: N.J.A.C. 5:93-5.15(a) requires the minimum number of rental units to equal twenty five percent of the result of the municipal “precredited need” (essentially the new construction and rehabilitation obligation) minus prior cycle credits minus the impacts of the 20%-cap or 1,000-unit cap minus the rehabilitation obligation. For Middletown, this means its rental obligation equals 25 percent of the

difference between its 1,561 new construction obligation minus 133 claimed prior cycle credits, or $0.25 \times 1,428 = 357$ (rounded up). This value also equals the number of rental bonuses the Township can claim in the Prior Round.

4. Less straightforward is the formula for determining the number of age-restricted units that can address the Prior Round Obligation. N.J.A.C. 5:93-5.14(a) allowed municipalities to address up to 25% of their *adjusted* affordable housing obligation with age-restricted units. The adjustment for towns like Middletown equaled the “precredited need” minus prior cycle credits minus credits from units rehabilitated between April 1, 1990 and the adoption of the Second Round Rules minus the impact of the 20%-cap or 1,000-unit cap. From that number, towns would further subtract the number of age restricted units addressing the First Round.
5. Settlement Agreements between Fair Share Housing Center and municipalities participating in the Declaratory Judgement process have referred back to the Second Round rules to calculate the minimum rental requirement and maximum rental bonus allowance for Third Round obligations. For the Third Round, as there is no equivalent of Prior Cycle Credits, the minimum rental obligation equal 25% of the Third Round obligation, or $0.25 \times 1,026 = 256.5$ round up to 257. To calculate the rental bonus allowance, round down to **256**.
6. The applicable rules permit all compliant affordable housing units to be credited on a one for one basis, except that that municipalities can claim a number of “bonus” credits from affordable rental units up to the minimum rental requirement (if the formula at N.J.A.C. 5:93-5.15(a) for the minimum rental requirement results in a fraction, round up to get the rental requirement because it is a minimum, whereas the bonus allowance is calculated by rounding down because it is a maximum). Per N.J.A.C. 5:93-5.15(d), bonuses can only be granted for units that are constructed or for which there is some form of commitment to construction.
7. Affordable rentals that are available to families and individuals (“families”) regardless of age or disability/medical status are eligible for one additional unit (“bonus credit” or “bonus”), within the limit stated above.
8. Each age restricted rental unit is eligible for a 0.33 bonus credits provided that the total number of age restricted units receiving bonus credits cannot exceed half of the minimum rental requirement. The formula for this is $357 \times 0.5 \times 0.33 = 58.9$, round down to **58** permitted rental bonuses from age-restricted units.
9. Bedrooms for persons in housing for persons with special needs (“Alternative Living Arrangements”), including group homes, are eligible for one rental bonus provided the facilities in question have controls in place for 30 or more years (N.J.A.C. 5:93-5.8(d)). Additionally, accessory dwelling units with controls for 30 or more years are eligible for one rental bonus (N.J.A.C. 5:93-5.9(e)). Assisted living units are also eligible for rental bonuses (N.J.A.C. 5:93-5.16(f)).
10. Rental units transferred to another community through the now prohibited technique known as Regional Contribution Agreements are not eligible for rental bonuses.
11. Municipalities that have a gap in meeting their Prior Round obligation may retroactively apply newer projects and zones created after 1999 toward the Prior Round obligation including claiming rental bonuses from those newer projects within the bonus allowance permitted in that round.

12. Conversely, Prior Round units for which affordability controls are scheduled to expire during the current round are generally not permitted to be counted towards the current round.

MIDDLETOWN TOWNSHIP'S AFFORDABLE HOUSING PROJECTS, PROGRAMS, AND CREDITS

DMR calculates a total of **1,985** credits (units and bonuses) from projects zoned for, created, approved, funded, or anticipated at this time.

The projects, units, and programs counted towards the Prior Round obligation are identified in the list below:

1. Credits without Controls: According to the 2008 Third Round Housing Element and Fair Share Plan ("HEFSP"), COAH in 2003 approved 101 credits for affordable units constructed between April 1, 1980 and December 15, 1986, also known as "Credits without Controls" in accordance with the Prior Round rules. The creditworthiness of these units was reaffirmed by COAH's 2009 Compliance Resolution. These units are not eligible for rental bonuses; therefore, they contribute **101** credits to the Prior Round obligation;
2. Prior Cycle Scattered Site: The Township had started constructing "scattered site" affordable units prior to the start of the First Round. COAH notified the Township on July 17, 1991 that any Scattered Site units constructed prior to July 7, 1987 would be considered Prior Cycle credits. The Township's 2008 Third Round Plan identifies two such units on page 25. These units are not eligible for rental bonuses; therefore, they contribute **two (2)** credits to the Prior Round obligation. The creditworthiness of these units were reaffirmed by COAH's 2009 Compliance Resolution;
3. Prior Cycle – Section 8 Housing: The Township's 2008 HEFSP identified 26 age-restricted prior cycle credits from Section 8 senior housing units at the King's Row Senior Citizen Development which COAH determined to be creditworthy as prior cycle credits. The creditworthiness of these units were reaffirmed by COAH's 2009 Compliance Resolution. These units are not eligible for rental bonuses; therefore, they contribute **26** credits to the Prior Round obligation;
4. Prior Cycle – 141 Cherry Tree Farm Road Group Home: COAH's 2009 Compliance resolution granted the Township prior cycle credit for four bedrooms in a group home at 141 Cherry Tree Farm Road with perpetual controls (according to the 2008 Third Round Plan). As Prior Cycle credits, these units are not eligible for rental bonuses; therefore, they contribute **four (4)** credits to the Prior Round obligation;
5. Regional Contribution Agreements: COAH in 2003 approved Regional Contribution Agreements between the Township of Middletown and the nearby communities of Highlands Borough, Union Beach, Red Bank, Long Branch, and Asbury Park to create 500 affordable units. The creditworthiness of these units was reaffirmed by COAH's 2009 Compliance Resolution. These units are not eligible for rental bonuses; therefore, they contribute **500** credits to the Prior Round obligation;
6. Lin-Midd Addition - Block 1072, Lot 36.02: The Township completed the Lin-Midd addition at Luftman Towers in 1995 which created 60 affordable senior rental units. This project is eligible for 19 rental bonuses, for a combined **79** credits;

7. 3 Division Street Group Home: This was constructed in 1998 with perpetual controls (according to the 2008 Third Round Plan). The Township recently became aware that the group home program at this site was sold in 2015, short of the 30 years required to be eligible for rental bonuses but greater than the 10 years required to be creditworthy. Therefore, the group home is only eligible for **four (4)** credits;
8. Beacon Place - Block 487, Lot 1: Completed in 2000 and consists of 140 units including 28 affordable. The 28 affordable rental units are eligible for 1-for-1 bonuses resulting in a total of **56** credits;
9. 645 Brookside Drive Group Home: This four-bedroom (4) group home has perpetual controls according to the Township's 2008 Housing Element and Fair Share Plan and was issued a certificate of occupancy in 2001. It is eligible for 1-for-1 bonuses and therefore provides **eight (8)** credits toward the Township's Prior Round Obligation;
10. Laurel Greene / Ironwood Court - Block 795, Lots 11 and 17: This 118-unit inclusionary site was constructed in 2002 and contains 24 affordable family sale units. Controls were lost on one of those units leaving only **23** creditworthy units at this time;
11. 30 Collins Avenue Group Home: Completed in 2003 and having four (4) perpetually controlled bedrooms for persons with special needs, according to the Township's 2008 Housing Element and Fair Share Plan. The four (4) bedrooms are eligible for four (4) bonus credits resulting in a total of **eight (8)** credits;
12. Regency Park - Block 91, Lots 5 to 7: Completed in 2004, this is a 110-unit inclusionary development at consisting of 16 family rental units, which are eligible for rental bonuses for a total of **32** credits against the Township's obligation;
13. RTH-8 Zone - Block 532, Lots 43 and 44: Created in 2005, and in 2007 was the site of an approved 100% affordable project by Affordable Housing Alliance to create seven (7) affordable for sale units and five (5) affordable family rental units. The project was unable to obtain necessary funding due to proximity to a site with hazardous conditions, and was abandoned; however, the zone remains in place and could result in **six (6)** affordable units;
14. The Park Avenue at Port Monmouth - Block 135, Lot 6.01: Completed in 2006 and contains 30 units including six (6) affordable family rental units which are each eligible for bonuses for a total of **12** credits;
15. Village @ Chapel Hill - Block 878, Lot 35.01: A 150-unit inclusionary development completed in 2007 which includes 30 affordable rental units eligible for bonus credits resulting in a total of **60** credits;
16. Conifer Senior Housing - Block 729, Lot 16.02: A 100%-affordable age restricted development consisting of 180 rental units. The 39-credit balance of the Prior Round age-restricted rental bonus allowance can be applied to this project, for a total of **219** credits;
17. Cottage Gate - Block 729, Lots 6-14 and Block 746, Lots 18, 19, and 23-31: This project resulted in two separate developments completed in 2008; a family sale development consisting of 13 affordable family sale units, and a five (5) bedroom group home at Block 746, Lot 29.43. The five-bedroom group have 30-year controls and are eligible for rental bonuses, pending additional information, so that the 18 units tied to the Cottage Gate project are eligible for **23** credits;

18. RMF-4 and -5 Zones (a.k.a. Steiner 1 and 2) – Block 795, Lots 19, 23, and 24: These properties were zoned in 2009 for densities that could result in a total of **44** affordable units based upon the set-asides required by those zones;
19. Browns Landing (aka Middletown Crossing) - Block 517, Lots 3 to 8: An inclusionary project completed in 2010, consisting of 21 total family for-sale units including **two (2)** affordable;
20. Meadowview - Block 281, Lots 14 to 15: The project was approved in 2010 and is currently beginning the construction process to create a 38-unit inclusionary development consisting of **nine (9)** affordable family for-sale units;
21. Harmony Glen - Block 615, Lot 82: An inclusionary development completed in 2012, having 90 units of which 18 are affordable family rental units eligible for 18 rental bonuses for a total of **36** credits;
22. Mountain Hill - Block 825, Lot 53.03: Zoned to allow for as many as 400 units which would have resulted in **80** affordable family rental units; however, the project was designed and constructed with only 350 units including 70 affordable family rentals. Those 70 units are eligible for 70 rental bonuses for a total of **140** credits;
23. Port Belford Redevelopment Plan: The Redevelopment Plan was originally adopted in 2017, and the Housing Element of the March 2023 adopted Master Plan Amendment identifies the site for a total of 403 new housing units including 60 affordable family rentals (the actual set-aside will be 61 units due to rounding). The Township adopted a resolution on June 5, 2023 conditionally designating Port Monmouth Residential Holdings, LLC as the Master Redeveloper to create 403 units in the Redevelopment Area with an affordable housing set-aside. The Amended Redevelopment Plan was adopted on August 21, 2023 permitting the same number of units with a 15% set-aside requirement. This project will be eligible for 61 rental bonuses, upon its approval, for a total of **122** credits. These units are exclusive of and separate from the nine (9) affordable units at the Meadowview site;
24. Scattered Sites: From 1987 to 2005 the Township created **19** scattered site affordable housing units in the form of one- and two-family dwellings, eligible for one (1) credit each;
25. Accessory Apartments: Between 1999 and 2008 the Township created **36** accessory apartments through its accessory apartment program. These units were approved by COAH in its Third Round Substantive Certification. DMR understands that the units only have 10-year controls and therefore are not eligible for bonuses;

The above listed projects contain **1,271** units, which are eligible for up to **300** bonuses or a total of **1,571** credits against the 1,561-unit prior round obligation, leaving a surplus of **10** credits that can be applied to the Third Round obligation of 1,026 units.

In addition to the Prior Round surplus, the following projects can be credited to the Third Round:

1. Impact Oasis - Block 871, Lot 163.01: A 10-unit special needs housing facility that was completed in 2012 and which is eligible for 10 rental bonuses, for a total of **20** credits;
2. 26 Unity Court Group Home: Consists of four (4) bedrooms for persons with special needs. Pursuant to an agreement between the Township and Housing and United Services executed on February 7, 2013, the group home is required to have 30-year

affordability controls making it eligible for four (4) rental bonuses for a total of **eight (8)** credits;

3. 55 Middletown Avenue Group Home: Created in 2016, contains four (4) bedrooms for persons with disabilities. Pursuant to an agreement between the Township and Housing and United Services executed on February 7, 2013, the group home is required to have 30-year affordability controls making it eligible for four (4) rental bonuses for a total of **eight (8)** credits;
4. 33 Vanderbilt - Block 386, Lots 4 through 6: Fifteen (15) affordable family rentals were created at this site in 2017 through the Township's B-1A zone and are the subject of a financial agreement with the Township, both of which requires any residential units on the site to be affordable consistent with COAH and the State's requirements. These units may be eligible for up to 15 rental bonuses for a total of **30** credits;
5. Taylor Lane / American Properties / Heritage - Block 600, Lot 34.01 and Block 600.01, Lot 35.03: An inclusionary project completed in 2022 consist of 176 units of which **36** are affordable family for-sale units. The Township had approved the project with 245 units, which would have included a 49-unit affordable housing set-aside, but the developer reduced the size of the project in a settlement with objectors.
6. Bayshore Village - Block 122, Lot 2: Consists of 110 affordable senior rental units, which are eligible for 36 rental bonuses for a total of **146** credits.
7. Atlantic Pier / Navesink Woods - Block 732, Lot 10.01: A 40-unit inclusionary development consisting of 10 family rental units, which are eligible for 10 rental bonuses for a total of **20** credits.
8. Habitat for Humanity: A single-family house constructed in 2022 is worth **one (1)** credit.
9. Veterans Housing - Block 502, Lots 1 and 7: The Middletown Redevelopment Corporation's Veterans' Housing development approved in 2022 consists of 12 rental units which will be creditable and eligible for 12 rental bonuses, for a total of **24** credits.
10. Whirl - Block 260, Lot 2: Three (3) family rentals were approved through the Township's Residential Over Commercial Overlay of which two (2) are affordable. They are eligible for two (2) rental bonuses for a total of **four (4) credits**.
11. 32 Herb Road and 4 Scott Road: These two group homes were approved with five (5) and four (4) bedrooms, respectively, for persons with special needs. According to Special Needs survey forms provided by the Township, the two sites have 30-year controls and are eligible for rental bonuses for resulting in a total of **18** credits.
12. North Middletown Redevelopment Plan: The Redevelopment Plan contemplates a development consisting of twenty (20) total units. This project is included in the Township's March 2023 Master Plan as an affordable housing compliance mechanism generating three (3) affordable units, representing a 15% set-aside. For the purpose of this analysis, DMR assumes that the Township will negotiate the 15% set-aside requirement, or **three (3)** units, as part of any Redevelopment Agreement.
13. Accessory Apartments Since 2008: The Township has created **11** additional accessory apartments since 2008 through its accessory apartment program consistent with COAH's approval of a 21-unit program in its 2009 Resolution of

Compliance. While the total number of accessory apartments created by the Township exceeds what is permitted by COAH's Second Round rules, an exception would be appropriate given the extended length of the Third Round and the fact that the program was maintained as a good faith effort to comply with its 2009-approved Third Round Housing Element and Fair Share Plan.

14. Residential Over Commercial Overlay: Based on information I have received from the Township, the remaining properties in the Residential Over Commercial Overlay Zone have the potential to create as many as **five (5)** additional affordable units based on available parking on the affected sites.
15. Exit 109 Redevelopment Plan: The Township adopted a Redevelopment Plan for the Exit 109 Redevelopment Area which permits 340 units and requires a 34-unit affordable housing set-aside. There is a conditionally designated redeveloper for the project, and upon approval the project would be eligible for rental bonuses for a total of **68** credits;
16. Block 238, Lots 5 and 6: The Township is in negotiations to redevelop this property, which would create an opportunity for **three (3)** affordable units;
17. East Pointe Shopping Center: A proposed redevelopment of the East Pointe Shopping Center, identified in the 2023 Master Plan, contemplates 60 total units of which **nine (9)** would be affordable.

The above represent **278** units and **136** bonus credits toward the Third Round, plus **10** prior round surplus credits, for a total of **424** Third Round credits.

CONCLUSIONS

The Township is eligible for as many as **1,985** credits for projects/programs built, zoned, approved, operating, or contemplated as part of upcoming redevelopment plans and projects, including **1,549** units, RCAs, and Prior Cycle Credits / Credits Without Controls, and **436** rental bonuses. The credits across both rounds exceed the minimum rental requirement, with **614** rental units required and more than 700 created, planned, or in negotiation.

This analysis does not consider any impact that the 1,000-unit limitation addressed at N.J.S.A. 52:27D-307.e may have or have had on the Third Round or Prior Round obligations.

The Fourth Round is expected to begin on July 1, 2025. I understand from my discussions with the Township that it is already in the process of considering zoning opportunities and extending controls on units that would otherwise expire, which will help it to address the balance of its Third Round obligation and an upcoming Fourth Round obligation.

Sincerely,



Dan Hauben, PP, AICP, LEED® Green Associate™
DMR Architects