

# **TOWNSHIP OF COLTS NECK**

## **REPORT TO RESIDENTS ON AFFORDABLE HOUSING**

The Township of Colts Neck, like many municipalities in the state of New Jersey, has been working hard for many years to navigate the ever changing landscape of state mandated affordable housing. This report, coupled with a Special Meeting to be held on April 19, 2016 at 7:00 p.m. at Conover Road Primary School, is intended to give residents a brief history of the affordable housing issues, detail the steps Colts Neck has taken to meet its legal obligations, bring residents up to date as to where we are now, and finally inform residents on what the Township can anticipate in the near future.

In 1975, a decision by the New Jersey Supreme Court involving the Township of Mt. Laurel imposed a constitutional requirement on municipalities in the State of New Jersey to use their zoning power for the general welfare, not just for the welfare of individual towns. The Court found that most towns only permitted relatively high-priced, single-family detached dwellings on sizable lots. As such, the Court required towns to act “in the spirit we have suggested, both by appropriate zoning ordinance amendments and whatever additional action encouraging the fulfillment of their fair share of the regional need for low and moderate income housing may be indicated as moral and advisable.” The Court further warned that should towns not perform as expected, further judicial action would take place.

In 1983, unhappy with the progress, the Supreme Court gave the courts the assignment to implement affordable housing obligations thus requiring towns to accept their “fair share” of the State’s affordable housing needs. At that time, the Court allowed “builders’ remedy” lawsuits in which builders were given the right to sue towns to force compliance. Builders were given the right to build more units at a higher density in non-compliant towns with a portion of the builders’ units being allocated to low and moderate income housing. Even though the Supreme Court acknowledged that the courts were ill-equipped to manage this function, the Court found that there was no other agency available to take on the task.

In 1985, the State Legislature passed the Fair Housing Act (FHA) under which the New Jersey Council on Affordable Housing (COAH) was established. COAH was tasked to set rules and procedures for towns to follow including how many affordable housing units each town was to create during specific time periods or “rounds”.

Colts Neck Township successfully fulfilled its first and second round obligations which expired in 1999. At the end of the second round, COAH failed to promulgate new third round rules. Finally, in 2005 COAH proposed third round rules utilizing a “Growth Share” methodology. These rules were quite different from the first and second round rules and ended up being legally challenged on many fronts. A decade long state of confusion ensued that included changing rules and methods which prevented towns from complying with their third round obligations. As a result of this delay, today we are faced with a Third Round affordable housing gap ranging from 1999 to 2025.

During this same time, Governor Christie initiated a series of steps to abolish or reduce the role of COAH, including transferring COAH's powers to the State Department of Community Affairs and vetoing legislation in an effort to change both COAH and the affordable housing process.

Again, fueled by frustration with the lack of movement on the third round COAH rules and the Governor's efforts to dismantle COAH, the Supreme Court stepped in and issued multiple deadlines for COAH to issue "constitutionally compliant" third round rules. If COAH's last version of third round rules were promulgated, Colts Neck would have been obligated to provide an additional three affordable housing units. However, COAH's vote on these rules failed to pass due to a 3 to 3 tie vote. Furious by their lack of action the Court striped COAH of its authority and again transferred the responsibility of administering affordable housing obligations to the courts.

In March of 2015, the Supreme Court issued a new ruling, which became effective on June 8, 2015, allowing towns to file declaratory judgment complaints, or "DJ's" as they've been called, to protect themselves from expensive "builders' remedy" lawsuits. Simply put, the "DJ" was a way for municipalities to convey to the courts that they were preparing to comply with the affordable housing mandates and would agree to develop a plan by December 8, 2015. During this period, June 8, 2015 to December 8, 2015, while under the protection from builder lawsuits, the municipalities would presumably have time to develop and file a "constitutionally compliant" housing plan. However, unlike with rounds one and two, the Court did not provide rules or methodology for towns to use in developing their plans or affordable housing obligations.

An organization called the Fair Share Housing Center (FSHC) has been the primary driver of the effort to force municipalities to allow additional high density housing ostensibly to help satisfy the lack of affordable housing in the State. A report generated on behalf of the FHSC would impose an obligation of 553 affordable housing units on the Township of Colts Neck. A preliminary report by a special master appointed by the court estimates Colts Neck Township's third round obligation at 277 affordable housing units. An expert retained by Colts Neck set a preliminary obligation of 46 units. Prior methodologies included the number of affordable housing units a developer must build (at their cost) in relation to the number of non-affordable (market) units. A town could assume for every 10 units a developer built, the town would get two (2) affordable housing units. This has been referred to as a 20% "set aside". By way of example, for Colts Neck to build 277 affordable housing units, it would need to work with developers to build no less than 1,385 new dwelling units.

The Township currently has approximately 3,300 residential properties. Adding 1,385 new homes (a 41% increase) would obviously have an enormous impact on our Town in many respects. The easiest to understand is the economic impact that would be visited on our taxpayers as the result of the increase in the number of school age children. Colts Neck currently has three schools that can accommodate approximately 1,500 children. There are approximately 1,000 children currently enrolled. The most recent census estimates approximately 1.7 children per household which could result in as many as 2,320 additional students. This would likely necessitate the construction of at least one and perhaps more than one new school at an enormous taxpayer expense. Colts Neck would also have a need to increase its workforce to accommodate the increase in population and roads. We would need more police officers and department of public works employees. An enormous strain would be placed on our volunteer first aid squad and fire department.

Colts Neck Township has been carefully planned over the last fifty years to preserve its rural character. The Township prides itself on its large tracts of open space, agricultural and horse farms and well-maintained residential properties in two and ten acre zones. The addition of 1,385 new high density homes would decimate everything the Township has tried to preserve for all of these years.

The Township Committee by and through its COAH subcommittee is aggressively trying to prevent this catastrophe from befalling our town. We have recently engaged the services of the law firm of Chiesa, Shahinian and Giantomasi to represent the Town and are in the process of engaging the services of a number of experts to support our arguments many of which are unique to the Township of Colts Neck. We are constantly looking "outside of the box" for ways to at least mitigate the impact of this court imposed mandate. The court has set a very aggressive schedule for moving the COAH cases. We may even see a trial in June on one aspect of the litigation.

We will keep you updated on our progress, however, understand that the Township cannot compromise its litigation and other strategies by publically disclosing information which may be used against us by our adversaries. We look forward to seeing you on April 19, 2016 to discuss this matter of grave concern and to answer any questions you may have.

Colts Neck Township Committee