



2017

# Third Round Housing Element & Fair Share Plan

July 11, 2017

Flemington Borough, Hunterdon County, New Jersey

Prepared by:

**Clarke Caton Hintz** | 100 BARRACK STREET | TRENTON, NJ | 08608



## 2017 Third Round

# Housing Element & Fair Share Plan

Flemington Borough, Hunterdon County, New Jersey

Adopted by the Planning Board on July 11, 2017

Endorsed by the Borough Council on July 24, 2017

Prepared for Flemington Borough by

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*A signed and sealed version is available at the municipal building.*



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## APPENDICES TO THE HOUSING ELEMENT & FAIR SHARE PLAN

1. 2017 Settlement Agreement	11. Flemington Electric Documentation
2. Planning Board Resolution	12. Main and Spring Street Redevelopment Documentation
3. Governing Body Resolution	13. Luster / Dodger Blue Documentation
4. Housing, Demographic & Employment Analysis	14. Inclusionary Zoning Overlay Ordinance
5. 2009 COAH Substantive Certification	15. Affordable Housing Ordinance
6. Rehabilitation Program Documentation	16. Affordable Housing Administrative Agent Policies & Procedural Manual
7. Anderson House Documentation	17. Affirmative Marketing Plan
8. Herman E. Kapp Apartments Documentation	18. Spending Plan & Trust Fund Documentation
9. Martin Village Documentation	19. Resolution of Intent to Fund
10. Flemington Cut Glass Documentation	

## EXECUTIVE SUMMARY

Flemington Borough is located in south-central Hunterdon County and is surrounded on all sides by the Township of Raritan. Flemington Borough has the distinction of being the county seat and a traditional center of population. The Borough is small in area, covering 1.07 square miles. Flemington is about 32 miles due west of the closet portion of New York City and 27 miles north of Philadelphia. The Borough is traversed by three (3) major transportation routes, State Route 31, State Route 12 and U.S. Route 202 and has access to major rail routes.



*Downtown Flemington along Main Street*

This Third Round Housing Element and Fair Share Plan has been prepared pursuant to a 2017 Settlement Agreement between Flemington Borough and Fair Share Housing Center (hereinafter “FSHC”). FSHC is an interested party in the Borough’s Declaratory Judgement filing, which was submitted to the Superior Court on July 7, 2015 as required by the March 10, 2015 NJ Supreme Court decision known as “Mount Laurel IV.” This Plan will serve as the foundation for the Borough’s application for a Judgment of Compliance and Order of Repose by the Court.

There are three (3) components to a municipality’s affordable housing obligation: the rehabilitation obligation, the Prior Round obligation, and the Third Round obligation. The Settlement Agreement identifies a 65-unit rehabilitation obligation, a 38-unit Prior Round obligation, and an 8-unit Third Round obligation.

The Borough satisfies the Prior Round and Third Round obligations with special needs facilities, inclusionary and 100% affordable housing developments, and rental bonus credits.

### Flemington’s Affordable Housing Obligation:

- Rehabilitation Share: 65 units
- Prior Round Obligation: 38 units
- Third Round Obligation: 8 units



## JUDICIAL & LEGISLATIVE BACKGROUND

In its landmark 1975 decision, now referred to as “Mount Laurel I”, the NJ Supreme Court ruled that developing municipalities have a constitutional obligation to provide a realistic opportunity for the construction of low and moderate income housing. In its 1983 “Mount Laurel II” decision, the NJ Supreme Court extended the obligation to all municipalities with any “growth area” as designated in the State Development Guide Plan (NJDCP 1978). Subject to a number of limitations, Mount Laurel II also gave developers, under appropriate circumstances, the opportunity to secure a builder’s remedy. A builder’s remedy, also referred to as exclusionary zoning litigation, is a mechanism that grants a developer the right to develop what is typically a multifamily project on land that was not zoned to permit this use at the time of the suit and where a “substantial” percentage of the units are reserved for low- and moderate-income households.

In 1985, the Legislature enacted the Fair Housing Act in response to Mount Laurel II. The Fair Housing Act created the Council on Affordable Housing (hereinafter “COAH”) and an administrative alternative to compliance in a court proceeding. The Legislature conferred “primary jurisdiction” on COAH and charged COAH with promulgating regulations: (i), to establish housing regions; (ii), to estimate low- and moderate-income housing needs; (iii), to set criteria and guidelines for municipalities to determine and address their fair share numbers, and (iv) to create a process for the review and approval of appropriate housing elements and fair share plans. As will be further discussed, COAH has been declared a moribund agency, which has forced the NJ Supreme Court to reactivate a judicial process in the review and approval of affordable housing plans. This document is being created to submit to the judicial process for determining affordable housing allocations and responses and, ultimately, to receive a Third Round Judgment of Repose for a 10-year period. This Judgment of Repose will provide protection from builder’s remedy suits during the time that it is in effect.

### COAH’s First and Second Rounds

COAH created the criteria and guidelines for municipalities to determine and address their respective affordable housing obligation, or number of affordable dwellings. COAH originally established a formula for determining municipal affordable housing obligation for the six-year period between 1987 and 1993 (*N.J.A.C. 5:92-1 et seq.*), which became known as the “First Round.” These rules established an existing need where sub-standard housing was being occupied by low- and moderate-income households (variously known as “present need” or “rehabilitation share”) and future demand to be satisfied with new construction (“prospective need” or “fair share”).

The First Round formula was superseded by COAH regulations in 1994 (*N.J.A.C. 5:93-1.1 et seq.*). The 1994 regulations recalculated a portion of the 1987-1993 affordable housing obligations for each municipality and computed the additional municipal affordable housing need from 1993 to 1999 using 1990 U.S. Census data. The regulations COAH adopted in 1994



to identify a municipality's "cumulative" obligations for the First and Second Rounds are known as "the Second Round" regulations. Under regulations adopted for the Third Round, the obligation of municipalities to create new affordable housing for the First and Second Rounds is referred to as the "Prior Round" obligation. This plan will refer to the new construction obligation for the First and Second housing cycles as the "Prior Round."

### COAH's Third Round and Related Judicial Activity

On December 20, 2004, COAH's first version of the Third Round rules became effective some five years after the end of round two in 1999. At that time, the Third Round was defined as the time period from 1999 to 2014, but condensed into an affordable housing delivery period from January 1, 2004 through January 1, 2014. In other words, 15 years of necessary affordable housing activity was to take place in 10 years. The Third Round rules marked a significant departure from the methods utilized in COAH's Prior Round. Previously, COAH assigned an affordable housing obligation as an absolute number to each municipality. These Third Round rules implemented a "growth share" approach that linked the production of affordable housing to residential and non-residential development within a municipality.

However, on January 25, 2007, the New Jersey Appellate Court decision, In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1, invalidated key elements of the first version of the Third Round rules, including the growth share approach. The Court ordered COAH to propose and adopt amendments to its rules within six months to address the deficiencies identified by the Court. COAH missed this deadline, but did issue revised rules effective on June 2, 2008 (as well as a further rule revision effective on October 20, 2008). COAH largely retained the growth share approach, but implemented several changes intended to create compliance with the 2007 Appellate Court decision. Additionally, the Third Round was expanded from 2014 to 2018. As such, this required 19 years of necessary affordable housing activity (1999-2018) to take place during a 10-year delivery period (2008-2018).

Just as various parties challenged COAH's initial Third Round regulations, parties challenged COAH's 2008 revised Third Round rules. On October 8, 2010, the Appellate Division issued its decision, In re Adoption of N.J.A.C. 5:96 and 5:97, 416 N.J. Super. 462, with respect to the challenge to the second iteration of COAH regulations. The Appellate Division validated the COAH Prior Round regulations that assigned rehabilitation and Prior Round numbers to each municipality, but invalidated the regulations by which the agency assigned housing obligations in the Third Round. Specifically, the Appellate Division ruled that COAH could not allocate obligations through a "growth share" formula. Instead, COAH was directed to use similar methods that had been previously used in the First and Second rounds. The Court gave COAH five months to address its ruling and provide guidance on some aspects of municipal compliance.



### ***Judicial Activity from 2011 to the Present***

COAH sought a stay from the NJ Supreme Court of the March 8, 2011 deadline that the Appellate Division imposed in its October 2010 decision for the agency to issue new Third Round housing rules. The NJ Supreme Court granted COAH's application for a stay and granted petitions and cross-petitions to all of the various challenges to the Appellate Division's 2010 decision. The NJ Supreme Court heard oral argument on the various petitions and cross-petitions on November 14, 2012.

On September 26, 2013, the NJ Supreme Court upheld the Appellate Court decision in In re Adoption of N.J.A.C. 5:96 and 5:97 by New Jersey Council On Affordable Housing, 215 N.J. 578 (2013), and ordered COAH to prepare the necessary rules. Subsequent delays in COAH's rule preparation and ensuing litigation led to the NJ Supreme Court, on March 14, 2014, setting forth a schedule for adoption.

Although ordered by the NJ Supreme Court to adopt revised new rules on or before October 22, 2014, COAH deadlocked 3-3 at its October 20th meeting and failed to adopt the draft rules it had issued on April 30, 2014. In response, FSHC filed a motion in aid of litigant's rights with the NJ Supreme Court and oral argument on that motion was heard on January 6, 2015.

On March 10, 2015, the NJ Supreme Court issued a ruling on the Motion In Aid of Litigant's Rights (In re Adoption of N.J.A.C. 5:96 & 5:97, 221 N.J.1, aka "Mount Laurel IV"). This long-awaited decision provides a new direction for how New Jersey municipalities are to comply with the constitutional requirement to provide their fair share of affordable housing. The Court transferred responsibility to review and approve housing elements and fair share plans from COAH to designated Mount Laurel trial judges. The implication of this is that municipalities may no longer wait for COAH to adopt Third Round rules before preparing new Third Round housing elements and fair share plans and municipalities must now apply to Court, instead of COAH, if they wish to be protected from exclusionary zoning lawsuits. These trial judges, with the assistance of an appointed Special Master to the Court, should review municipal plans much in the same manner as COAH previously did. Those towns whose plans are approved by the Court should receive a Judgment of Repose, the court-equivalent of COAH's substantive certification.

While the NJ Supreme Court's decision set a process in motion for towns to address their Third Round obligation, it did not assign those obligations. Instead, that must be done by the trial courts. Additionally, the Court stated that municipalities should rely on COAH's Second Round rules (N.J.A.C. 5:93) and those components of COAH's 2008 regulations that were specifically upheld (including but not limited to Redevelopment Bonuses), as well as the Fair Housing Act (N.J.S.A. 52:27D – 301 et seq.), in their preparation of Third Round housing elements and fair share plans. This plan is prepared in response to and in compliance with the March 10, 2015 NJ Supreme Court decision.





On January 17, 2017, the NJ Supreme Court issued a decision In Re Declaratory Judgment Actions Filed By Various Municipalities, 227 N.J. 508 (2017) that found that the “gap period,” defined as 1999-2015, generates an affordable housing obligation. This obligation requires an expanded definition of the municipal Present Need obligation to include low- and moderate-income households formed during the gap period. Accordingly, the municipal affordable housing obligation is now composed of the following four (4) parts: Present Need (rehabilitation), Prior Round (1987-1999, new construction), Gap Present Need (1999-2015, new construction), and Prospective Need (Third Round, 2015 to 2025, new construction). While the structure of the obligation established through the Borough’s Settlement Agreement with FSHC is different than the findings of this recent Supreme Court decision (i.e. no redefined Present Need and a Prospective Need specific to 1999-2025), the Borough’s obligation therein reflects that which was calculated for the 1999-2015 gap period.

### ***Legislative Activity***

In addition to the State agency negotiation and judicial decisions, the New Jersey Legislature has amended the Fair Housing Act in recent years. On July 17, 2008, Governor Corzine signed P.L. 2008, c. 46 (referred to as the “Roberts Bill”, or “A500”), which amended the Fair Housing Act in a number of ways. Key provisions of the legislation included the following:

- It established a statewide 2.5% nonresidential development fee instead of requiring nonresidential developers to provide affordable housing;
- It eliminated new regional contribution agreements (hereinafter “RCAs”) as a compliance technique available to municipalities whereby a municipality could transfer up to 50% of its fair share to a so called “receiving” municipality;
- It added a requirement that 13% of all affordable housing units and 13% of all similar units funded by the state’s Balanced Housing Program and its Affordable Housing Trust Fund be restricted to very low-income households (30% or less of median income); and
- It added a requirement that municipalities had to commit to spend development fees within four (4) years of the date of collection after its enactment, which commenced on the four-year anniversary of the law (July 17, 2012).

These amendments to the Fair Housing Act are not promulgated in any valid COAH regulations.



## AFFORDABILITY REQUIREMENTS

Affordable housing is defined under New Jersey's Fair Housing Act as a dwelling, either for sale or rent, that is within the financial means of households of low- or moderate-income, as is measured within each housing region. Flemington Borough is in COAH's Region 3, which includes Hunterdon, Middlesex, and Somerset counties. Moderate-income households are those with annual incomes greater than 50%, but less than 80% of the regional median income. Low-income households are those with annual incomes that are 50% or less than the regional median income. Very low-income households are a subset of "low-income" households and are defined as those with incomes 30% or less than the regional median income.

### Income Categories

**Moderate** = 50% to 80% regional median income

**Low** = 50% regional median income or less

**Very Low** = 30% regional median income or less

The Uniform Housing Affordability Controls (hereinafter "UHAC") at N.J.A.C. 5:80-26.3(d) and (e) requires that the maximum rent for a qualified unit be affordable to households with incomes 60% or less than the median income for the region. The average rent must be affordable to households with incomes no greater than 52% of the median income. The maximum sale prices for affordable units must be affordable to households with incomes 70% or less than the median income. The average sale price must be affordable to a household with an income of 55% or less than the median income.

The regional median income is defined by COAH using the federal income limits established by Department of Housing and Urban Development (hereinafter "HUD") on an annual basis. In the spring of each year, HUD releases updated regional income limits, which COAH reallocates to its regions. It is from these income limits that the rents and sale prices for affordable units are derived. However, COAH has not published updated income limits or rent increases since 2014.

On December 16, 2016, Judge Douglas K. Wolfson issued a Consent Order in the case entitled In the Matter of the Township of East Brunswick for a Judgement of Compliance of its Third Round Housing Element and Fair Share Plan that approved the Township of East Brunswick's methodology for updating its income limits, which adhered to COAH's Prior Round methodologies. Included in this Consent Order are updated 2016 regional income limits for all COAH regions calculated using HUD's determination of the median income for fiscal year 2016 and the methodology outlined above. These income limits for Region 3 will be utilized by Flemington until the Courts formally approve updated income limits for 2016 and/or 2017. See Table 1 for 2016 income limits for Region 3.



TABLE 1. 2016 INCOME LIMITS FOR REGION 3					
Household Income Levels	1-Person Household	2-Person Household	3-Person Household	4-Person Household	5-Person Household
<b>Moderate</b>	\$58,800	\$67,200	\$75,600	\$84,000	\$90,720
<b>Low</b>	\$36,750	\$42,000	\$47,250	\$52,500	\$56,700
<b>Very Low</b>	\$22,050	\$25,200	\$28,350	\$31,500	\$34,020
<i>Source: In the Matter of the Township of East Brunswick for a Judgement of Compliance of its Third Round Housing Element and Fair Share Plan, Middlesex County Superior Court, Consent Order filed December 16, 2016</i>					

Tables 2 and 3 provide illustrative sale prices and gross rents for 2016. The sample rents and sale prices are illustrative and are gross figures, which do not account for the specified utility allowance. Since COAH issued these illustrative sales prices and gross rents in 2014, rents increased 2.3% in 2015 and 1.1% in 2016, according to the calculations in Judge Wolfson's Order of December 16, 2016. Therefore, rents have increased by a collective 3.4% from 2014 levels. In Region 3, affordable sales prices did not increase in either 2015 or 2016.

TABLE 2. ILLUSTRATIVE 2016 AFFORDABLE GROSS RENTS FOR REGION 3			
Household Income Levels (% of Median Income)	1-Bedroom Unit Rent	2-Bedroom Unit Rent	3-Bedroom Unit Rent
<b>Moderate</b>	\$1,221	\$1,466	\$1,694
<b>Low</b>	\$937	\$1,124	\$1,299
<b>Very Low</b>	\$611	\$733	\$847
<i>Source: NJDCA 2014 Illustrative Rents; In the Matter of the Township of East Brunswick for a Judgement of Compliance of its Third Round Housing Element and Fair Share Plan, Middlesex County Superior Court, Consent Order filed December 16, 2016</i>			

TABLE 3. ILLUSTRATIVE 2016 AFFORDABLE SALES PRICES FOR REGION 3			
Household Income Levels (% of Median Income)	1 Bedroom Unit Price	2 Bedroom Unit Price	3 Bedroom Unit Price
<b>Moderate</b>	\$141,462	\$169,755	\$196,161
<b>Low</b>	\$93,442	\$112,130	\$129,572
<b>Very Low</b>	\$45,421	\$54,505	\$62,984
<i>Source: NJDCA 2014 Illustrative Sales Prices for New Construction; In the Matter of the Township of East Brunswick for a Judgement of Compliance of its Third Round Housing Element and Fair Share Plan, Middlesex County Superior Court, Consent Order filed December 16, 2016</i>			



## HOUSING ELEMENT & FAIR SHARE PLAN REQUIREMENTS

In accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1, et seq.), a municipal Master Plan must include a housing element as the foundation for the municipal zoning ordinance. Pursuant to the Fair Housing Act, a municipality's housing element must be designed to provide access to affordable housing to meet present and prospective housing needs, with particular attention to low- and moderate-income housing. The housing element must contain at least the following, as per the Fair Housing Act at N.J.S.A. 52:27D-310:

- An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics, and type, including the number of units affordable to low- and moderate-income households and substandard housing capable of being rehabilitated;
- A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next ten years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development, and probable residential development trends;
- An analysis of the municipality's demographic characteristics, including, but not necessarily limited to, household size, income level, and age;
- An analysis of the existing and probable future employment characteristics of the municipality;
- A determination of the municipality's present and prospective fair share of low- and moderate-income housing and its capacity to accommodate its present and prospective housing needs, including its fair share of low- and moderate-income housing; and
- A consideration of the lands most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low- and moderate-income housing, including a consideration of lands of developers who have expressed a commitment to provide low- and moderate-income housing.

*This portion of the Housing Plan Element can be found in the "Appendices to the Housing Element and Fair Share Plan."*

*See the section titled "Flemington's Affordable Housing Plan" for information on the Borough's fair share of low- and moderate-income housing.*

*See the section titled "Consideration of Lands Appropriate for Affordable Housing" for this information.*



## **FLEMINGTON'S AFFORDABLE HOUSING HISTORY**

Flemington Borough petitioned for second round substantive certification from COAH on October 2, 2000. COAH granted interim substantive certification on August 6, 2003. Flemington's affordable housing obligation consisted of a 38 unit new construction obligation and a 32 unit rehabilitation obligation. As part of this certification, COAH approved a vacant land adjustment for the Borough that resulted in a realistic development potential (hereinafter "RDP") of 4 units. Flemington satisfied the RDP with units at the then proposed Martin Village inclusionary development (formerly known as the Villages at Allen Street or the Allen Street Inclusionary development) and the unmet need was satisfied through an accessory apartment program, the age-restricted 100% affordable Herman E. Kapp apartments (no credit was sought for this project at that time), and a development fee ordinance.

On November 10, 2005, the Borough adopted a third round Housing Element and Fair Share Plan that was consistent with COAH's 2004 rules. The Borough also petitioned for third round substantive certification on December 20, 2005; however, the application had not been certified by COAH prior to the issuance of the 2007 Appellate Court decision overturning portions of COAH's regulations. The Borough was protected pursuant to a Final Judgment of Compliance and Repose entered in 2002.

On June 2, 2008, COAH adopted certain third round rule amendments; however, at the same meeting COAH simultaneously proposed additional amendments to the third round rules which were adopted and became effective in October, 2008. The Borough petitioned for substantive certification under the Third Round of regulations with COAH on December 30, 2008. Pursuant to this petition, the Borough submitted its December 17, 2008 Housing Element and Fair Share Plan to COAH. The petition was determined to be complete on January 9, 2009. No objections were filed, and COAH issued its Resolution #3-09(a) granting Final Third Round Substantive Certification on July 8, 2009.

The Borough adopted an affordable Housing Ordinance in Section 2632 of the Borough code, which was approved by COAH. The Borough has also amended its zoning ordinance pursuant to Ordinance 2009-15 to provide an inclusionary housing overlay covering nearly all of the Borough. The Borough adopted an affirmative marketing plan on May 27, 2009, which was approved by COAH. Additionally, the Borough adopted a resolution on June 4, 2009 authorizing NORWESCAP, the former administrative agent, to operate the Borough's rehabilitation program and an operating manual for its rehabilitation program. The Borough adopted a Development Fee ordinance pursuant to Ordinance 1-2002 in its Land Use and Development Ordinance and subsequent amendments which was last approved by COAH on February 25, 2009. The Borough adopted an Affordable Housing Trust Fund Spending Plan that was last approved by COAH in 2009.

To comply with the March 10, 2015 Mount Laurel IV decision, Flemington petitioned to the Superior Court on July 7, 2015 for Declaratory Judgement and temporary immunity from



builder's remedy suits. Fair Share Housing Center (FSHC) is an interested party in its Declaratory Judgement, and in 2016, the Borough entered into successful negotiations with FSHC to identify its fair share obligation and preliminarily how that obligation would be satisfied. These negotiations resulted in a Settlement Agreement between the Borough and FSHC that was executed by the Borough on February 13, 2017 (see the Housing Element and Fair Share Plan Appendices for a copy of this Settlement Agreement). This 2017 Third Round Housing Element and Fair Share Plan incorporates and implements the terms of the 2017 Settlement Agreement between the Borough and FSHC and will serve as the foundation for the Borough's application for a Judgment of Compliance and Order of Repose by the Court.



## **CONSIDERATION OF LANDS APPROPRIATE FOR AFFORDABLE HOUSING**

As part of this Plan, the Borough has considered land that is appropriate for the construction of low- and moderate-income housing. The Borough has limited vacant or redevelopable lands; however, there are a small number of properties that may be appropriate for inclusionary housing or a 100% affordable housing project. The Borough's zoning supports residential development at moderate to high densities throughout the majority of the residential districts that are served by public sewer and water systems. The Borough's 2015 Master Plan Reexamination Report includes policies that support construction of new residential units in specified locations in the Borough as a method of promoting revitalization. This new construction should consist of inclusionary housing, as specified in the proposed inclusionary housing overlay ordinance (Appendix 14) as a way of continuing the Borough's tradition of providing housing opportunities for households of all incomes.

The Borough believes that the mechanisms proposed in this document represent the best options for affordable housing in Flemington. The mechanisms entirely satisfy the Borough's affordable housing obligations as established through the Settlement Agreement. While the Borough recognizes that developers may, in the future, present sites that possess characteristics that could lend themselves to affordable housing development, additional sites are not needed to satisfy the obligation at this time.



## FLEMINGTON'S AFFORDABLE HOUSING OBLIGATION

### Rehabilitation Obligation

The rehabilitation obligation can be defined as an estimate of the number of deteriorated housing units existing in Flemington Borough that are occupied by low- and moderate-income households. The Settlement Agreement with FSHC establishes Flemington's rehabilitation obligation as 65 units. The basis for this obligation is FSHC's May 2016 calculations, which used the most recent decennial census year, 2010, as the point in time in determining the number of deteriorated housing units.

Rehabilitation	
Obligation:.....	65
Prior Round	
Obligation:.....	38
Third Round	
Obligation:.....	8

### Prior Round Obligation

The Prior Round obligation can be defined as the cumulative 1987 through 1999 new construction affordable housing obligation. This time period corresponds to the First and Second Rounds of affordable housing (1987-1999). Flemington has a four (4) unit Realistic Development Potential ("RDP") that was approved and reaffirmed by COAH in both the second and third rounds. This vacant land adjustment was approved by COAH in the Borough's 2003 substantive certification and reaffirmed by COAH in the Borough's 2009 substantive certification. In addition to its 4-unit RDP, the Borough must address its Prior Round unmet need of 34 units.

FSHC's May 2016 calculations, as well as the Settlement Agreement with FSHC, establish Flemington's Prior Round obligation as 38 units. The May 2016 calculations adhere to the Prior Round obligations, as calculated in 1993-1994, and published by COAH.

### Third Round Obligation

The future demand for affordable housing includes the portion of the Third Round (1999- 2015) that has already passed, as well as a 10-year projection into the future (2015-2025) known as the prospective need. The 10-year period is derived from the Fair Housing Act that, when amended in 2001, set the projection for this length of time (*N.J.S.A. 52:27D-310*). As established by the Borough's 2017 Settlement Agreement with FSHC, Flemington's Third Round obligation is 8 units; this represents the number calculated by FSHC in May 2016 for years 1999-2025.

On January 17, 2017 New Jersey Supreme Court decided In Re Declaratory Judgment Actions Filed By Various Municipalities, County Of Ocean, Pursuant To The Supreme Court's Decision In In Re Adoption of N.J.A.C. 5:96, 221 N.J. 1(2015), that the "gap period", defined as 1999 to 2015, generates an affordable housing obligation. Until that time, it was unclear if the years between the end of the Prior Round, 1999, and the Mt. Laurel IV decision, 2015, generated an affordable housing obligation. The decision requires an expanded definition of





municipal Present Need obligation to include low- and moderate-income (“LMI”) households that were formed during the gap period and are entitled to their delayed opportunity to seek affordable housing. Present Need, often referred to as the rehabilitation obligation, has historically been an estimate of LMI households living in substandard housing at the beginning of an affordable housing round. Although some parties argued the gap obligation should be calculated as part of the Prospective Need, the Supreme Court found that such a position is not supported by the Fair Housing Act (“FHA”), which defines Prospective Need as a *projection* of new LMI households formed during a future housing cycle.

Accordingly, the municipal affordable housing obligation is now composed of the following four parts:

- Present Need (rehabilitation);
- Prior Round (1987 to 1999, new construction);
- Present Need (1999 to 2015, new construction); and
- Prospective Need (Third Round, 2015 to 2025, new construction).

While the structure of the obligation identified in the Settlement Agreement and this Housing Element and Fair Share Plan is different than the findings of this recent Supreme Court decision (i.e. no redefined Present Need and a Prospective Need specific to 1999 – 2025), the Borough’s obligation reflects that which was calculated for the entire 1999 through 2025 time period by FSHC (8 units).



## FLEMINGTON'S AFFORDABLE HOUSING PLAN

### Satisfaction of the Rehabilitation Obligation

As stated, Flemington's rehabilitation obligation is 65 units. In order to address this obligation, the Borough will utilize Hunterdon County's rehabilitation program and will utilize the County as the administrative agent of the program. Additionally, the Borough will operate a supplementary rehabilitation program in order to expand the reach of the program and to also ensure it is available to renter-occupied households. Flemington will contract with its affordable housing administrator, Community Grants, Planning & Housing ("CGP&H"), to operate its rehabilitation that conforms to *N.J.A.C. 5:93-5.2*. All rehabilitated units will comply with the definition of a substandard unit in *N.J.A.C. 5:93-5.2(b)*, which states, "a unit with health and safety code violations that require the repair or replacement of a major system."

Major systems include weatherization, roofing, plumbing, heating, electricity, sanitary plumbing, lead paint abatement and/or load bearing structural systems. All rehabilitated units shall meet the applicable construction code. Additionally, all rehabilitated units shall be occupied by low- or moderate-income households and subject to 10-year affordability controls on sale units and 6-year affordability controls on rental units, which shall be placed on the property in the form of a lien or deed restriction. All rehabilitations have an average hard cost of \$8,000 and administration shall not exceed \$2,000 per unit. While the County will utilize Community Development Block Grant ("CDBG") funds, Flemington Borough will provide the necessary funding from the affordable housing trust fund.

### Satisfaction of the Prior Round Obligation

As confirmed in the Settlement Agreement, Flemington's Prior Round obligation (1987-1999) is 38 units. The Borough's Prior Round obligation of 38 units was reduced to a realistic development potential ("RDP") of four (4) units that was approved and reaffirmed by COAH in the Borough's 2003 substantive certification and reaffirmed by COAH in the Borough's 2009 substantive certification. The RDP of four (4) units, subtracted from the Prior Round obligation of 38 units, results in an Unmet Need of 34 units.

#### Prior Round Rental Obligation = 1 units

0.25 (RDP)

= 0.25 (4) = 1

#### Prior Rental Credits:

A rental unit available to the general public receives one (1) rental bonus;

An age-restricted unit receives a 0.33 rental bonus, but no more than 50% of the rental obligation shall receive a bonus for age-restricted units; and

No rental bonus is granted in excess of the rental obligation.

#### Prior Round Maximum Age-Restricted = 1 units

0.25 (RDP)

= 0.25 (4) = 1



COAH permits new construction credits and bonuses addressing a First or Second Round affordable housing obligation to be used to address the Prior Round obligation.

In addition to satisfying the total obligation, the Borough must also adhere to a minimum rental obligation and maximum number of age-restricted units.

As demonstrated in the Summary Tables at the end of this section, the Borough has satisfied its Prior Round obligation with special needs facilities, inclusionary development, and 100% affordable housing development. The rental obligation is satisfied with the special needs facility, the Herman E. Kapp Apartments, the Flemington Cut Glass, the Flemington Electric and the Main and Spring Street Redevelopment projects.

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## SPECIAL NEEDS FACILITY

### ***Anderson House***

This special needs facility is a residential treatment facility for women that has been in operation since October 2004, located at 96 Broad Street, on Block 39, Lot 1. There are six (6) bedrooms at the facility available for low and very low income households. The population served by this facility are women recovering from alcoholism and drug addiction. Anderson House received one credit for each bedroom in the Borough's 2009 substantive certification.

Four (4) bedrooms will contribute to the Borough's Prior Round unmet need and two (2) bedrooms will contribute to the Borough's third round obligation.

#### **Alternative Living Arrangement / Supportive & Special Needs Housing**

A structure in which households live in distinct bedrooms, but share kitchen and plumbing facilities, central heat and common areas.

They may be restricted to special needs groups, such as persons with developmental disabilities, veterans and their families, and victims of domestic abuse.

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## 100% AFFORDABLE HOUSING PROJECT

### ***Herman E. Kapp Apartments***

The Herman E. Kapp apartments (also known as the Church Street complex) is a 60-unit age-restricted 100% affordable rental complex located at Block 39, Lot 5. Fifty-nine (59) of the units are affordable and one (1) is a manager's unit. The property is 1.65 acres and is located at the intersection of Church Street and Broad Street. It is surrounded by a mix of commercial and residential uses. Pennrose Development built and owns the complex and received funding through the Federal Home Loan Bank (\$500,000), Balanced Housing Funding through the New Jersey Department of Community

#### **100% Affordable Development**

A development in which all units are affordable to low- and moderate-income households.



Affairs (\$2,000,000) and Federal Low Income Housing Tax Credits (4 percent) through the New Jersey Housing and Mortgage Finance Agency. All units in the complex are administered by Pennrose. The Borough approved the complex to make an annual payment in lieu of taxes (“PILOT”) equal to 6.28% of gross rental revenue. Certificates of occupancy were issued in 2006. This project was approved by COAH as part of the August 6, 2003 second round substantive certification.

The Hunterdon County Housing Corporation owns the land, which it leases on a long term basis (99 years) to Pennrose. This site was previously home to the County public work garage, which was demolished to make way for the rental complex. The Church Street complex is comprised of 51 one-bedroom and nine (9) two-bedroom apartments; three (3) of the units are fully handicapped accessible.



*Herman E. Kapp Apartments along Church Street*

Of the 59 affordable units in this development, one (1) will contribute toward the RDP. The remaining units will contribute toward the Prior Round unmet need and surplus units toward the fourth round as approved by COAH in the Borough’s 2009 substantive certification.

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## INCLUSIONARY DEVELOPMENT

### ***Martin Village***

The Martin Village (also known as the Allen Street Inclusionary Development or the Villages at Allen Street) is a 2.8-acre site that fronts on Allen Street. The project, which was completed in 2008, hosts a total of 22 units (7.86 dwelling units per acre), of which 4 are affordable (an 18% set-aside). The four (4) affordable units were initially developed as age-restricted units, but are currently family sale units. The affordable units are integrated within the development of attached dwelling units. The site is identified on the tax map as Block 2, Lots 23, 44-47. It is not located in an urban center or workforce housing census tract. The site is zoned Senior

### **Inclusionary Development**

A residential or mixed-use development containing low- and moderate-income units among market rate units. *N.J.A.C. 5:93* requires 20% of total units to be affordable in for-sale developments and 15% of total units to be affordable in rental developments

Citizen Residential which allows age-restricted housing at a density of ten (10) units to the acre with a 20% set-aside for affordable housing. The zoning was adopted on July 8, 2002. The property is surrounded by residential uses and is currently provided public water and sewer.

The project was certified by COAH during the August 6, 2003 second round substantive certification. The Flemington Borough Land Use Board granted amended final site plan approval on July 26, 2005. Subsequent to this amended final approval, the developer began construction in September 2005 and the project has since been completed.<sup>1</sup> The units were placed on the open sale market on October



*Martin Village along Allen Street*

2, 2006. Despite active efforts by the developer to sell the units in the project, including the affordable units, there was only minimal interest and no sales.

On July 24, 2007, the Flemington Borough Land Use Board approved a variance request by the developer of the site to convert the units from age-restricted to family units. The Resolution approving this decision was memorialized in October 2007. This resolution includes the following condition:

*“3. Under the previous approval the Applicant was required to provide four (4) on-site age-restricted affordable housing units. The Applicant continues to be required to provide four (4) affordable housing units and the age-restriction is removed from these units also. The affordable units shall be family for-sale units and shall be distributed as follows: one (1) two-bedroom low income unit, one (1) one-bedroom low income unit and two (2) one-bedroom moderate income units.”*

The bedroom distribution is inconsistent with the requirements of the Uniform Housing Affordability Control Rules (hereinafter “UHAC”). This can be attributed to the fact that the project was designed as age-restricted units, which require fewer bedrooms than family units.

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<sup>1</sup> The project has since received an additional amended final approval on January 10, 2007. However, this approval only clarified the required lighting fixtures. The applicant had begun construction prior to this January 2007 amended approval.



UHAC, N.J.A.C. 5:80-26.3(b), requires that the bedrooms in age-restricted affordable units at a minimum equal the number of units. However, family affordable units must provide a specific mix of 1, 2, and 3 bedroom units. The Borough requested a waiver from the applicable UHAC requirements in September 2007. COAH responded in November 2007 by granting the waiver. Therefore, the Borough is entitled to credit for each of the four (4) family sale affordable units, despite that they do not meet the bedroom distribution requirements.

The affordable units have 30-year affordability controls and is administered by the Borough's affordable housing administrator. All units are built and occupied.

Of the four (4) affordable units in this development, three (3) will contribute toward the Prior Round RDP. The remaining unit will contribute toward the third round obligation.

### ***Flemington Cut Glass***

This project received final site plan approval from the Flemington Borough Land Use Board on December 1, 2014 (decision memorialized in Resolution 2014-12) to remove all existing structures and construct 16 buildings with a total of 59 residential units, including six (6) affordable units, and 3,789 square feet of commercial space. The six (6) affordable units will be located above the proposed commercial space.

The subject property is a 4.72-acre site that has frontage on Main Street, Broad Street and Elmwood Avenue; Broad Street bisects the site. The western portion of the property, Block 39, Lot 2, is situated in the DB Downtown Business district; the eastern portion of the property, Block 38, Lots 3, 5, 6 and 7, is situated in the TC Transition Commercial district. The development plan approved by the Board indicates that Phase I of development would be located entirely in the DB district (Block 39) and Phase 2 of development would be entirely in the TC district (Block 38). As a site that previously received Land Use Board approval, the site meets COAH's site suitability standards, pursuant to N.J.A.C. 5:93.

All six (6) units will contribute towards the Borough's Prior Round unmet need.

### ***Flemington Electric***

Flemington Electric is a mixed use inclusionary project located on Block 29, Lot 6 and Block 38, Lot 1. The property is located at 130 Main Street, at the corner of Main Street and William Street. Specifically, Block 29, Lot 6 is at the corner and Block 38, Lot 1 is across William Street with no frontage on Main Street. The project was granted preliminary site plan approval on January 24, 2006 and final site plan approval on March 28, 2006. The project is currently



built and occupied. The subject site is a 0.34-acre property located in the DB Downtown Business district.

The project involved improvement of an existing developed lot. The developer retained five (5) existing apartments, approximately 800 square feet of commercial space and constructed six (6) additional apartments, one (1) of which is a moderate income rental unit. The certificate of occupancy of the existing building was issued on July 5, 2007 and the certificate of occupancy for the new building, which includes the affordable unit, was issued on June 21, 2007.



Flemington Electric building at the corner of Main Street and William Street

The affordable unit has 30-year affordability controls and was affirmatively marketed in accordance with the UHAC rules, N.J.A.C. 5:26-1 et seq. Additionally, the affordable unit complies with N.J.A.C. 5:97-3.14, accessible and adaptable affordable units. The unit is administered by the Borough's affordable housing administrator.

However, the unit does not meet the bedroom and income requirements. Instead of providing a two-bedroom low income unit, pursuant to N.J.A.C. 5:80-26.3, the unit is a one-bedroom moderate income unit. This unit received a waiver from COAH as part of the Borough's 2009 substantive certification; it was used to satisfy the third round obligation at that time. Page 9 of the March 19, 2009 COAH Report on the Borough's 2008 Third Round Housing Element and Fair Share Plan states the following in this regard:

*"Instead of providing a two-bedroom low-income unit, the affordable unit is a one-bedroom moderate-income unit. Pursuant to N.J.A.C., 5:96-15, the Borough is requesting a waiver from the low/mod split [N.J.A.C. 5:80-26.3(a)] and bedroom distribution requirements [N.J.A.C. 5:80-26.3(b)]. The Borough proposed to mitigate the loss of a two-bedroom low income unit by making up the unit in the proposed market to affordable program. The waiver meets the requirements of N.J.A.C. 5:96-15.2(a) in that the strict application of the rule would create an unnecessary financial hardship. The Borough states that the one-bedroom moderate-income unit was necessary in order to support the financial feasibility of the project because rehabilitation in older historic downtowns can be costly due to the structural and cosmetic impact of the age of the building and the detailed architectural necessary to be structural and cosmetic impact of the age of the building and the detailed architecture necessary to be compatible with the historic downtown. In addition, the*

*Borough has satisfied the other waiver criteria in that the waiver fosters the production of affordable housing by providing a unit in the downtown area in walking distance to shops, service and employment, granting the waiver fosters the intent, if not the letter of the rules in that the Borough will make up the unit, and the Borough's Fair Share Plan provides a mix of housing options. COAH staff recommends approval of this waiver."*

The Borough is not proposing to mitigate the waiver since the unit will be used to satisfy the unmet need and will no longer be used to satisfy the third round obligation.

The Settlement Agreement between the Borough and Fair Share Housing Center mistakenly identifies the one unit at the Flemington Electric site as satisfying both the Prior Round and Third Round. This Housing Element and Fair Share Plan provides a correction with Flemington Electric's one unit satisfying the Prior Round and the one unit at the Luster / Dodger Blues site satisfying the Third Round.

### **Main and Spring Street Redevelopment**

This area, also referred to as the "Union Hotel" is an Area In Need of Redevelopment that was declared by Borough Council in 2013 and expanded to include additional properties in 2017. It is composed of Block 22, Lots 4, 5, 6, 7, 8, 9, 10, 12, 13 and 14; Block 23, Lots 1 and 7; and Block 24, Lots 1, 2, 3, and 5. It is composed of 3.88 acres located along Main Street with additional frontage along Bloomfield Avenue, Spring Street, and Chorister Place.



*Union Hotel building within the Redevelopment Area*

A Redevelopment Plan was initially adopted in 2010. After review of a conceptual proposal in 2016, the Borough designated Flemington Center Urban Renewal, LLC the redeveloper for the Union Hotel Redevelopment Area, and subsequently is in the process of preparing an amended Redevelopment Plan that reflects the developer's conceptual proposal and the 2017 executed Redevelopment Agreement. This Redevelopment Plan will include a variety of uses, including multi-family rental, hotel, retail, restaurants and a parking garage. Fourteen (14) or more affordable rental units will be provided in this project to fulfill the remaining Prior Round unmet need. The Redevelopment Agreement, as will the upcoming Redevelopment Plan, requires the project to provide *"the greater of 14 units or five percent (5%) of the total number of residential units constructed, whichever is greater."*





The redevelopment area meets COAH's site suitability standards, pursuant to *N.J.A.C. 5:93*. There are no environmental constraints, such as wetlands or special flood hazard areas, within the redevelopment area and none of the lots are listed on the NJDEP Known Contaminated Sites List. It is located within the State Development and Redevelopment Plan ("SDRP") Planning Area 3, the Hunterdon County Wastewater Management Plan, and within the Flemington Water Department purveyor area.

### Prior Round Summary

The Borough has met its 38-unit Prior Round obligation with a special needs facility, a 100% affordable housing development, and inclusionary developments. See the tables on pages 23 and 24 herein for additional information.

## SATISFACTION OF THE THIRD ROUND OBLIGATION

Pursuant to the Settlement Agreement, Flemington's Third Round obligation (1999-2025) is 8 units.

In addition to satisfying the total obligation, the Borough must also adhere to a minimum rental obligation, a maximum number of age-restricted units, and a minimum very low-income requirement.

As demonstrated in the Summary Tables at the end of this section, the Borough has satisfied its Third Round obligation with a special needs facility, 100% affordable housing developments, and inclusionary housing developments.

### Third Round Rental Bonus Credits

- A rental unit available to the general public receives one rental bonus;
- An age-restricted unit receives a 0.33 rental bonus, but no more than 50% of the rental obligation shall receive a bonus for age-restricted units; and
- No rental bonus is granted in excess of the rental obligation.

### Third Round Rental Obligation = 2 units

0.25 (Third Round obligation – Prior Cycle credits – impact of the 20% cap – impact of the 1,000-unit cap – rehabilitation obligation)

$$= .25 (8 - 0 - 0 - 0) = 2$$

### Third Round Maximum Age-Restricted = 2 units

0.25 (Third Round obligation – Prior Cycle credits – rehabilitation credits – impact of the 20% cap – impact of the 1,000-unit cap)

$$= .25 (8 - 0 - 0 - 0) = 2$$

### Third Round Minimum Very Low Income = 3 units

0.13 (units created after 7/2008)

$$= .13(20) = 2.6, \text{ rounded up to } 3$$



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## SPECIAL NEEDS FACILITY

### **Anderson House**

The two (2) remaining units in this project contribute toward the third round. See this project's Prior Round discussion for additional information.

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## 100% AFFORDABLE HOUSING PROJECTS

### **Herman E. Kapp Apartments**

Two (2) units in this project will contribute toward the third round obligation. Both of these units will be reserved for low income households. See this project's Prior Round discussion for additional information.

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## INCLUSIONARY DEVELOPMENT

### **Martin Village**

The one unit in this project that is not contributing toward the RDP will be used to address the third round. See this project's Prior Round discussion for additional information.

### **Luster / Dodger Blues**

Luster / Dodger Blues is a mixed use inclusionary project located on Block 18, Lot 5. The property is located 112-16 Main Street. The project was granted preliminary site plan approval on August 28, 2007. The subject site is a 0.29-acre property located in the DB Downtown Business district. The project is not yet constructed.

The project involves the improvement of an existing developed lot. The applicant will reconfigure an existing mixed use building such that it will have approximately 1,000 square feet of commercial space and five (5) apartments. Additionally, garages at the rear of the property will be converted to a mixed use building with five (5) apartments on the second floor and garage space on the first. One (1) of the apartments on the second floor of the rear building (over the garage) will be an affordable unit. Condition 6 of the resolution approving the preliminary site plan states the following:

*“Applicant shall provide one (1) two-bedroom low income affordable unit in the building at the rear of the site and above the existing garage space. Said unit shall be handi-capped accessible and shall not be age-restricted. Said unit shall comply with COAH’s substantive rules, N.J.A.C. 5:94, and the Uniform Housing Affordability Control Rules, N.J.A.C. 5:80-26.1 et seq.”*



The affordable unit will be developed and occupied in accordance with the UHAC rules, *N.J.A.C. 5:26-1 et seq.*, including but not limited to, bedroom distribution and affordability controls of at least 30 years. Additionally, the affordable unit will comply with *N.J.A.C. 5:97-3.14*, accessible and adaptable affordable units. The unit will be administered by the Borough's affordable housing administrator. As a site that already received Land Use Board approvals, the site meets COAH's site suitability standards, pursuant to *N.J.A.C. 5:93*. Furthermore, the site was previously approved by COAH as it was included in the Borough's 2009 substantive certification.

The Settlement Agreement between the Borough and Fair Share Housing Center mistakenly identifies the one unit at the Flemington Electric site as satisfying both the Prior Round and Third Round. This Housing Element and Fair Share Plan provides a correction with Flemington Electric's one unit satisfying the Prior Round and the one unit at the Luster / Dodger Blues site satisfying the Third Round.

### **Third Round Summary**

The Borough has met its 8-unit Third Round obligation with a special needs facility, a 100% affordable housing development, and inclusionary developments. See the tables on pages 23 and 24 herein for additional information.

### **Surplus Affordable Housing Units**

While the Borough has fully satisfied the Prior Round and third round obligations, there are additional affordable units the Borough will carry over into the fourth round. These surplus units include the 47 remaining units at the Herman E. Kapp Apartments.



SATISFACTION OF THE PRIOR ROUND & THIRD ROUND OBLIGATIONS											
Program	Rental	Senior	Family	Total Units	Prior Round: 38 units			Third Round: 8 units			
					RDP (4 units)	Bonus Credits	RDP Credits	Unmet Need	Units	Bonus Credits	Total Credits
<u>Special Needs</u>											
Anderson House	x		x	6	o	o	o	4	2	1	3
<u>100% Affordable Housing Developments</u>											
Herman E. Kapp Apartments	x	x		59	1	o	1	9	2	o	2
<u>Inclusionary Housing Developments</u>											
Martin Village			x	4	3	o	3	o	1	o	1
Flemington Cut Glass	x		x	6	o	o	o	6	o	o	o
Flemington Electric	x		x	1	o	o	o	1	o	o	o
Main & Spring Streets Redevelopment	x		x	14	o	o	o	14	o	o	o
Luster / Dodger Blues	x		x	1	o	o	o	o	1	1	2
<b>Total</b>				<b>91</b>	<b>4</b>	<b>o</b>	<b>4</b>	<b>34</b>	<b>6</b>	<b>2</b>	<b>8</b>



PRIOR ROUND RDP CREDIT SUMMARY		
	Required	Provided
Prior Round RDP Total Credits	4	4
Prior Round RDP Total Units		4
Prior Round RDP Rental	1 (min.)	1
Prior Round RDP Senior	1 (max.)	1

PRIOR ROUND UNMET NEED CREDIT SUMMARY		
	Required	Provided
Prior Round Unmet Need Total Credits		34
Prior Round Unmet Need Total Units		34

THIRD ROUND CREDIT SUMMARY		
	Required	Provided
Third Round Total Credits	8	8
Third Round Total Units		6
Third Round Rental	2 (min.)	5
Third Round Senior	2 (max.)	2



## VERY-LOW INCOME HOUSING

The Borough has 22 affordable units constructed on or after July 1, 2008. As such, the very low income obligation is 3 units ( $0.13 \times 22$ ).

Units constructed on or after July 17, 2008 include the following:

VERY-LOW INCOME OBLIGATION CALCULATION	
Project	Affordable Units
Flemington Cut Glass	6
Flemington Electric	1
Main & Spring Street Redevelopment	14
Luster / Dodger	1
<i>Total</i>	<b>22</b>
<i>13%</i>	<b>2.86</b>

Very-low income units include the following:

VERY-LOW INCOME UNITS	
Project	Affordable Units
Special Needs	
Anderson House	6
Inclusionary Housing Developments	
Main & Spring Streets Redevelopment	2
<i>Total</i>	<b>8</b>



## **AFFORDABLE HOUSING ADMINISTRATION & AFFIRMATIVE MARKETING**

Flemington Borough has prepared an Affordable Housing Ordinance in accordance with COAH's substantive rules and UHAC. The Affordable Housing Ordinance will govern the establishment of affordable units in the Borough as well as regulating the occupancy of such units. The Borough's Affordable Housing Ordinance covers the phasing of affordable units, the low/moderate income split, bedroom distribution, occupancy standards, affordability controls, establishing rents and prices, affirmative marketing, income qualification, etc.

The Borough has established the position of the Municipal Housing Liaison and has appointed a staff member to the position. However, the Borough relies on Community Grants Planning & Housing (hereafter "CGPH") to conduct the administration and affirmative marketing of its affordable housing sites. The affirmative marketing plans are designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to the affordable units located in the Borough. Additionally, the affirmative marketing plan is intended to target those potentially eligible persons who are least likely to apply for affordable units and who reside in the Borough's housing region, Region 3, consisting of Hunterdon, Middlesex and Somerset counties.

The affirmative marketing plans include regulations for qualification of income eligibility, price and rent restrictions, bedroom distribution, affordability control periods, and unit marketing in accordance to *N.J.A.C. 5:80-26*. All newly created affordable units will comply with the 30-year affordability control required by UHAC, *N.J.A.C. 5:80-26-5* and *5:80-26-11*. This plan must be adhered to by all private, non-profit, and municipal developers of affordable housing units and must cover the period of deed restriction or affordability controls on each affordable unit.

### **Affirmative Marketing**

The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups...to housing units which are being marketed by a developer or sponsor of affordable housing. It is a continuing program and covers the period of deed restriction.



## AFFORDABLE HOUSING TRUST FUND

On December 20, 2001, Flemington received COAH approval for a development fee ordinance. This ordinance was adopted by the municipality on February 11, 2002. COAH granted Flemington approval of an amendment to its development fee ordinance on June 5, 2008, which was adopted by the Borough on July 28, 2008. A second amendment to the development fee ordinance was approved by COAH on February 25, 2009, which set to establish residential development fees in the amount of 1.5% of the equalized assessed value of residential development and nonresidential development fees in the amount of 2.5% of the equalized assessed value of nonresidential development.

While the Borough received Spending Plan approval in 2009, a new spending plan has been prepared consistent with this Plan. The Spending Plan, which discusses anticipated revenues, collection of revenues, and the use of revenues, was prepared in accordance with COAH's applicable substantive rules. The Spending Plan also demonstrates compliance with the requirement to expend development fee revenues within four years of collection, beginning on the date which the Spending Plan is approved. All collected revenues will be placed in the Borough's Affordable Housing Trust fund and may be dispensed for the use of affordable housing activities.

### Eligible Trust Fund Expenditures

"A municipality may use revenues collected from the development fees for any activity approved by the Council (now the Court) for addressing the municipal fair share...Municipalities are encouraged to use development fee revenues to attract other funds..."

- Rehabilitation program;
- New construction of affordable housing units and related development costs;
- Extensions or improvements of roads and infrastructure directly serving affordable housing development sites;
- Acquisition and/or improvement of land to be used for affordable housing;
- Purchase of affordable housing units for the purpose of maintaining or implementing affordability controls;
- Accessory apartment or market to affordable programs;
- Maintenance and repair of affordable housing units;
- Repayment of municipal bonds issued to finance low- and moderate-income housing activity; and
- Any other activity as specified in the approved spending plan.



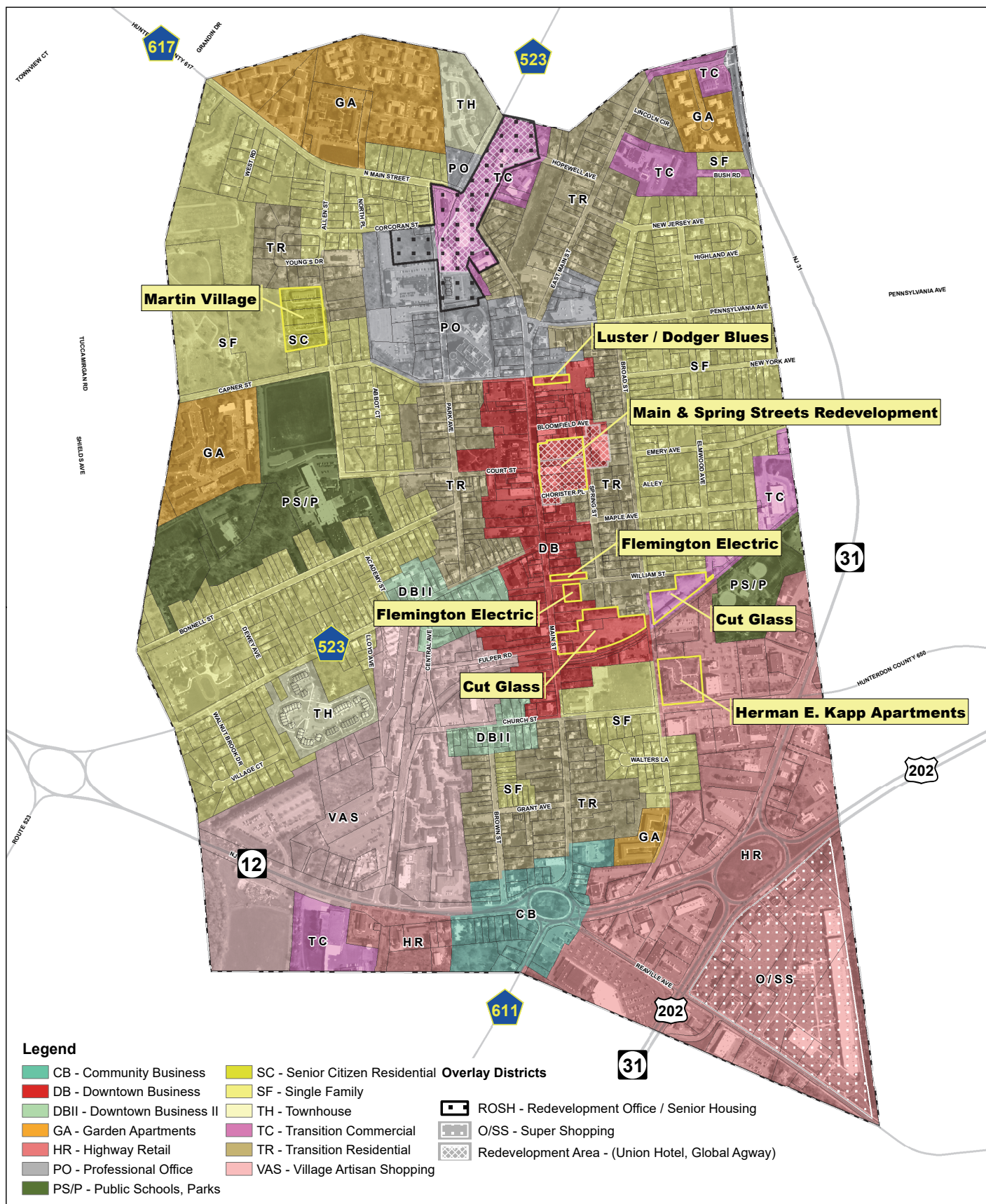


At least 30% of collected development fees, excluding expenditures made from the inception of the fund to June 2, 2008 on all new construction, previously funded RCAs and rehabilitation activities, shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in a municipal Fair Share Plan. Additionally, no more than 20% of the revenues collected from development fees each year, exclusive of the fees used to fund an RCA, shall be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to prepare or implement a rehabilitation program, a new construction program, a housing element and fair share plan, and/or an affirmative marketing program.



## **COST GENERATION**

Flemington Borough's Land Development Ordinance has been reviewed to eliminate unnecessary cost generating standards; it provides for expediting the review of development applications containing affordable housing. Such expedition may consist of, but is not limited to, scheduling of pre-application conferences and special monthly public hearings. Furthermore, development applications containing affordable housing shall be reviewed for consistency with the Land Development Ordinance, Residential Site Improvement Standards (*N.J.A.C. 5:21-1 et seq.*) and the mandate of the FHA regarding unnecessary cost generating features. Flemington shall comply with COAH's requirements for unnecessary cost generating requirements, *N.J.A.C. 5:93-10.1*, procedures for development applications containing affordable housing, *N.J.A.C. 5:93-10.4*, and requirements for special studies and escrow accounts where an application contains affordable housing, *N.J.A.C. 5:97-10.3*.



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**Clarke Caton Hintz** ● ● ●  
 Architecture  
 Planning  
 Landscape Architecture

# Affordable Housing Sites

LOCATION:  
 Flemington Borough, Hunterdon County, NJ

DATE:  
 June 2017