

**AFFORDABLE HOUSING
THIRD ROUND MIDPOINT REALISTIC OPPORTUNITY REVIEW
TOWNSHIP OF PENNSVILLE
SALEM COUNTY, NEW JERSEY**

July 1, 2020

PURPOSE

The requirement for a midpoint realistic opportunity review derives from the Fair Housing Act (“FHA”) at N.J.S.A. 52:27D-313, which provides: “[t]he Council (Council on Affordable Housing or COAH) shall establish procedures for a realistic opportunity review at the midpoint of the certification period and shall provide for notice to the public.” Although COAH failed to adopt regulations or procedures for a midpoint realistic opportunity review, the purpose and process is set forth in Pennsville Township’s Court-approved Settlement Agreement with Fair Share Housing Center (“FSHC”).

The purpose of the midpoint realistic opportunity review is for Pennsville Township to provide a status report as to the Township’s implementation of its Court-approved Housing Element and Fair Share Plan (“Plan”) and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. Pursuant to the Pennsville Township/FSHC Agreement, there is a requirement for the Township to submit a copy of this report to the Court, and for the Township to provide notice to FSHC and “other interested parties identified in this [FSHC] agreement, including all entities on the affirmative marketing list in this agreement.” In the event the Court determines that a previously approved site or mechanism no longer presents a realistic opportunity and should be replaced, then Pennsville Township shall have the opportunity to supplement or revise its plan to correct any deficiency.

To facilitate the review process, in addition to providing a copy of this Mid-Point Review Report to the Court, the Township will also provide a copy of this report to FSHC, will post the report on the Pennsville Township website and will place a copy of this report on file for public inspection at the office of the Township Clerk or, if the municipal building is closed due to

the pandemic, interested parties may request a copy be mailed. The Township's notice to the public of this Mid-Point Review Report will include a 30-day deadline for any interested party comments/requests for a court hearing to be submitted.

BACKGROUND

The Pennsville Township/FSHC Settlement Agreement was executed on November 15, 2016. Following a January 12, 2017 Fairness Hearing in Superior Court, the Settlement Agreement was approved by Court Order, dated January 27, 2017, which found the Agreement and the Township's Preliminary Affordable Housing Compliance Measures (including a Durational Adjustment), fair to the interests of low- and moderate-income citizens of the region. Pennsville Township prepared a Housing Element and Fair Share Plan which was adopted by the Township's Planning Board on July 10, 2017 and endorsed by the Township Committee on July 20, 2017.

The Township's Plan was reviewed at a Court Compliance Hearing on November 28, 2017 at which time the Court approved Pennsville's Plan with a further reduction of the Township's Third Round obligation as reflected in the Order granting a Judgment of Compliance and Repose ("JOR") dated December 19, 2017. This JOR approved the Township's 2017 Plan including the Township's compliance measures to address its Rehabilitation Share, fully satisfy its Prior Round obligation and for a durational adjustment of the balance of its Third Round obligation (after first subtracting existing surplus Prior Round senior credits and Third Round bonuses) as more fully described below. In addition, the 2017 JOR provided Pennsville Township with immunity from builder remedy lawsuits through June 29, 2025.

As reflected in the Township's Court-approved Settlement Agreement and as further modified by the Court-approved Plan and the Court's JOR, Pennsville Township's Third Round Fair Share obligation is as follows:

- Third Round Rehabilitation Share: **38**
- Prior Round 1987-1999 Obligation: **228**
- Third Round 1999 – 2025 Gap and Prospective Obligation: **234** per JOR

REALISTIC OPPORTUNITY REVIEW – COMPLIANCE MECHANISMS

Pennsville Township Rehabilitation Share –

To address its 38-unit Rehabilitation Share, the Township implemented a local rehabilitation program that is available to both renter- and owner-occupied housing units. Pennsville retained Triad Associates (“Triad”), an experienced housing rehabilitation administrative agent, to administer and implement its local rehabilitation program which has access to funds from the Township’s Affordable Housing Trust Fund as well as funds received from a Small Cities Community Development Block Grant award of \$120,000 by NJDCA. According to Triad, three (3) rehabilitations were completed in the Township (with others underway) with the Small Cities funds since the date of the Township’s Plan (2017) as detailed on the Township’s 2020 Rehabilitation Monitoring form which is posted on the Township’s webpage. The Township anticipates applying for an additional Small Cities award as early as October 2020. Depending on the Township’s success with its DCA application, the Township will continue to fund local rehabilitations with development fees collected in the Township’s Affordable Housing Trust Fund. The Township will provide additional advertisement of its local rehabilitation program with postings on its municipal website and also through direct mailings of tax bills, etc.

Pennsville Township Prior Round Credits/Bonuses –

As noted in the Township’s Court-approved Plan, Pennsville satisfied its 228-unit Prior Round Obligation with 173 credits/bonuses for existing affordable units, as well as 55 credits from any one of nine (9) purposefully determined inclusionary zoned sites (five (5) initial sites from its earlier 2008 Plan and four (4) additional sites added to the 2017 Plan) which were all rezoned in 2017 to permit higher densities and additional residential unit types. As described in more detail below, the Township has limited sewer/water infrastructure capacity and limited municipal fiscal capacity and, as such, the Court approved a modified durational adjustment reflecting a requirement that the Township solely reserve part of its limited infrastructure

capacity for the 55 affordable housing units and the related market-rate housing units (a maximum of 367 total housing units including 312 market-rate units and 55 affordable units) zoned to fully address its Prior Round Obligation.

Specifically, the Township's Prior Round Plan consists of the following:

- Completed Prior Cycle 100% Affordable Housing Development:
 - ✓ Pennsville Towers - 99 Affordable Rentals

- Completed 100% Affordable Housing Development
 - ✓ Kent Avenue - 41 Senior Affordable Rentals (86 Age-Restricted of 100 Total Units)
 - ✓ Kent Avenue - 14 Special Needs Affordable Rentals (14 of 100 Total Units)
 - ✓ Prior Round Rental Bonuses – 19

- Revised 2017 Inclusionary Zoning Sites – 55 Family Affordable Credits

Pennsville Township Third Round Durational Adjustment –

As shown above, the Township has completed the vast majority of its Prior Round compliance mechanisms and the Township continues to provide a realistic opportunity for the remaining 55-unit balance of the Prior Round through its 2017 adopted inclusionary zoning.

As detailed in the January 27, 2017 and December 19, 2017 Court Orders, the Court-approved a reduction in the Township's Third Round Obligation to 234 units (down from a 378-unit obligation provided in the 2016 Pennsville/FSHC agreement) and also approved a Durational Adjustment of the Township's Third Round fair share obligation (after first subtracting surplus senior credits and Third Round bonuses). As a result of the Township's limited fiscal and infrastructure capacity, the Court required the Township to reserve water and sewer capacity solely for the inclusionary housing site(s) (both market-rate housing units and a smaller percentage affordable housing units) to be developed to fully satisfy the remaining 55-unit balance of the Prior Round obligation. Since these 55 affordable housing units will be in inclusionary development(s), which will also have a market-rate component, the Township estimates the need to reserve public water and sanitary sewer capacity for a maximum of 367

total housing units (if developed at a rental affordable housing setaside of 15% or 312 market-rate housing units and 55 affordable housing units.)

After deducting the Court-approved 45 Third Round credits for existing surplus Prior Round senior affordable housing credits at Kent Avenue and 10 Third Round rental bonuses, the remaining 179 affordable housing units (and the related market-rate housing units) to be developed on any of the nine (9) inclusionary zoned sites to address the 179-unit balance of the Third Round Obligation are entirely subject to the availability of future additional water and sewer capacity. As confirmed and approved by the Court, the Township purposefully sited these nine (9) inclusionary sites and the Township’s inclusionary sites shall be limited to these nine (9) sites. These sites represent the best options for future affordable housing development due to environmental constraints and the fiscal and infrastructure capacity limitations as stated by the Court. In addition, pursuant to the Court Order, the Township is not required to have durational adjustment overlay zoning per N.J.A.C. 5:93-4.3(b). Lastly, the Township’s enacted inclusionary zoning allows multi-family apartment units at an increased density on the Orchard Avenue site (Site #5) and the Churchtown Road site (Site #6) in order to provide a realistic opportunity for the provision for affordable family rental housing.

The Township’s Court-approved and previously adopted inclusionary zoning on nine (9) sites and a status update are shown below:

<u>Compliance Mechanisms- Inclusionary Sites</u>	<u>Block/Lot</u>	<u>Inclusionary Zoning Description</u>	<u>Status</u>
Site #1 - South Broadway/ Hook	Block 4401/ Lot 16	TH - Townhouse Inclusionary Zoning District	Prior developer interest in this site and adjacent Site #2, but no formal application received since 2017 new zoning provided a density increase.
Site #2 - Supawna	Block 4401/ Lot 17	TH - Townhouse Inclusionary Zoning District	Prior developer interest in this site and adjacent Site #1, but no formal application received since 2017 new zoning provided a density increase.

<u>Compliance Mechanisms- Inclusionary Sites</u>	<u>Block/Lot</u>	<u>Inclusionary Zoning Description</u>	<u>Status</u>
Site #3 - Supawna	Block 4504/ Lot 7	TH - Townhouse Inclusionary Zoning District	Recent developer interest in this site and adjacent Site #4, but no formal inclusionary development application received as of this date.
Site #4 - Supawna	Block 4504/ Lot 21	TH - Townhouse Inclusionary Zoning District	Recent developer interest in this site and adjacent Site #3, but no formal inclusionary development application received as of this date.
Site #5 - Orchard Avenue	Block 501/ Lot 6	MF-1 Multifamily Inclusionary Zoning District	
Site #6 - Churchtown Road	Block 1101/ Lot 31	MF-2 Multifamily Inclusionary Zoning District	
Site #7 - Hook Road	Block 4301/ Lot 40	TH - Townhouse Inclusionary Zoning District	
Site #8 - Hook Road	Block 4301/ Lot 41	TH - Townhouse Inclusionary Zoning District	
Site #9 - South Broadway	Block 4201/ Lot 17	MU-2 Mixed-Use Commercial and Residential Inclusionary Zoning District	Recent developer interest in this site, but no formal inclusionary development application received as of this date.

As set forth in the Township's 2017 Plan, the Pennsville Township Water Department confirmed that it has capacity to support the potential demand generated by the estimated maximum 367 new residential units which would support the required 55 units to fully address the Township's Prior Round Obligation. The Water Department noted that the Township would not have the capacity to address the entirety of the Township's Third Round affordable housing obligation without inclusionary developers financing necessary upgrades to the Township's water system. Further, the Court's modified durational adjustment took into account that the Township will devote a portion of the remaining firm water capacity surplus for future nonresidential development. As confirmed by Jack Lynch, Pennsville

Township Administrator, for this Mid-Point Review Report, there are no changed circumstances with regards to the Township's limited water capacity and specifically no changes to the gallons of water available for affordable housing as reported in the Township's 2017 Plan due to DEP's existing standards/regulations. Mr. Lynch stated, "Pennsville Township Water Department is permitted to withdraw 1.8 million gallons per day under the NJDEP water allocation permit. This will not change since [the Township is] in the critical area 2 set forth by NJDEP."

Also as set forth in the Township's 2017 Court-approved Plan, the Pennsville Sewer Authority ("PSA") Engineer stated that based on the maximum new 367 residential units including 55 affordable units to address the Township's remaining Prior Round obligation, there is sufficient capacity to support this proposed development although there are some constraints to the system's capacity as detailed in the 2017 Plan. Additionally, the Court's approval ensures the PSA will have capacity to support other development in the Township including non-residential developments that had already received approval but had not been constructed. Also, the Township's Court-approved plan noted that while reserving sewer capacity for the development of 367 total new residential units will impact the Township's ability to support future nonresidential development, the opportunity to service additional nonresidential development still remains. Per the Court-approved durational adjustment, inclusionary developers would be required to finance any necessary upgrades to the Township's sanitary sewer system to serve any inclusionary development beyond the initial maximum of 367 total housing units (312 market-rate and 55 affordable) to address the Prior Round 55-unit affordable housing obligation.

According to Mark Brunermer, PE, President, and Dave Palgutta, PE, PSA Sewer Engineer, of Sickels & Associates, Inc., there are no changed circumstances with regards to the Township's limited sewer system capacity and specifically no changes from the information set forth in the Township's 2017 Plan with respect to DEP's existing standards/regulations and their impact on the Township's sanitary sewer capacity or system. Also, there are no changes to the Township's sanitary sewer capacity or system, other than maintenance repairs on the existing sewer system.

VERY LOW-INCOME HOUSING ANALYSIS

The Township will address its very-low income housing statutory requirements at N.J.S.A. 52:27D-329.1 and as set forth in the FSHC Settlement Agreement with 14 existing very-low income special needs units at the Kent Street 100% affordable housing development as well as through a requirement on future inclusionary development. The Township will require each inclusionary developer to address the 13% requirement of all affordable units to be set at a price or rent affordable to households at 30% of regional median income and reserved for households earning no more than 30% of regional median income. Lastly, the Township will also address its family very-low income requirement (half of the very-low income requirement) with very-low income units required to be family units.

CONCLUSION

As found by the Court in granting the 2017 JOR to Pennsville Township,

“As detailed in the Township’s Housing Element and Fair Share Plan, the Township has demonstrated that it has met its Prior Round obligation and has in place a plan to meet its Present Need/Rehabilitation Share obligation and its Third Round Prospective Need obligation as modified by the Court-approved durational adjustment. As such, the Township’s Plan and implementing ordinances are constitutionally sufficient and compliant with the Township’s Third Round Mount Laurel affordable housing obligation and are therefore approved.”

The Township’s Court-approved compliance mechanisms continue to create a realistic opportunity as the revised 2017 inclusionary zoning remains in place. In the event the Court determines that a compliance site or mechanism no longer presents a realistic opportunity and should be replaced, then Pennsville Township shall have the opportunity to supplement or revise its plan to correct any compliance deficiency.

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