

November 12, 2019

Dear Residents and business owners,

As you may have read and heard, affordable housing has been a long-standing issue in the State of New Jersey. Mendham Borough is currently in the 3rd round of negotiations which began in 2000 and will end in 2025. Each municipality is constitutionally obligated to provide affordable housing for residents, in an amount that is set primarily by the courts and housing advocate Fair Share Housing Center, **not by the municipality.**

In 2013, the New Jersey Supreme Court ordered that each town must demonstrate to a judge exactly how it intends to fulfill its affordable housing obligation. If a judge determines that a town's plan is acceptable, the judge can deem the town "compliant" and grant "immunity" for a set number of years. Achieving compliance and immunity is important to a community like Mendham because it allows the Borough to retain some control in adopting ordinances and proactively guiding development on the local level. Without compliance and immunity, a builder could file a "builder's remedy lawsuit," which could ultimately result in a judge ordering for high-density development throughout the Borough. This could include a large housing tract, tall residential towers, or buildings located in our historic district that are not required to fit in with the look and feel of our main street corridor.

It is important to note that municipalities have not fared well in affordable housing matters since they were taken over by the courts. In 2017, several Mercer County towns participated in a six-week trial, which resulted in a 250-page court opinion that generally supported the Fair Share Housing Center's formula to calculate the affordable housing obligations of the towns. To date, there has been no affordable housing trials in Morris County, as many municipalities have opted to negotiate a settlement and lower obligation with the Fair Share Housing Center rather than risk going through a lengthy and expensive litigation process that could end with a court ordering a higher obligation. As such, some of our neighboring Morris County communities have included significant high-density residential development in their affordable housing plans.

Let's look at the math. Affordable housing numbers work like this: if the units that are built are rentals, 15% of the total must be "affordable" as defined by the State. If the units are for purchase than the total is 20%. If a Judge determines that a municipality's number is 200 affordable units, the total amount that would need to be built by a developer to support this would be approximately 1,000 total units. Needless to say, the affordable units pay a reduced property tax, meaning that the added costs for wear and tear on services and utilities fall to other taxpayers. Another piece of the equation

are utilities. If a municipality lacks sewer capacity, the Judge could determine that the town would need to take on the burden of expanding the sewer system, which would also fall to the taxpayers - not the developers. Lastly, municipalities across the state have paid dearly to lawyers and consultants to help negotiate housing numbers that a town can realistically absorb. This includes paying the legal bills for the Fair Share Housing Center.

The Governing Body has worked diligently to review various strategies over the past years to obtain Mendham Borough's "Third-Round" affordable housing numbers while remaining in compliance and receiving immunity. Over the last couple of years a developer approached the Fair Share organization and the Court with a development project for Mendham Borough. A Judge then determined that Mendham Borough would need to consider this proposed development as an answer to settle some of our obligation. We are in the final stages of the completion of this process and I anticipate that over the next few months we will complete the review and evaluation process and make a good-faith effort to arrive at a settlement of our affordable housing obligation with the Court and with the Fair Share Housing Center.

There is not much room for negotiation in this matter because the Borough is obligated to provide a designated amount of affordable housing and we have limited land, resources and infrastructure to do so. On the other hand, the Borough does not want the Court or a developer to dictate our development in a way that could dramatically change our town.

If we fail to accept what the Judge feels is a reasonable offer to comply with providing affordable housing, we put our town in jeopardy of losing our legal ability to curb excessive development plans.

Working with Council, our Planning Board, the Board of Adjustment, the Historic Preservation Commission, the Environmental Committee and all Morris County and State agencies that are a required part of a development process we will do our best, within State requirements and town codes and ordinances, to make certain that our town's needs are met.

We will continue to work on a solution that will best protect our Borough and the character of our community. I will continue to keep you apprised of this matter.

Very truly yours,

Christine Serrano Glassner

Mayor