

# THE CITY OF SUMMIT

NEW JERSEY

512 SPRINGFIELD AVENUE SUMMIT, NJ 07901

## **Overview of the History of Affordable Housing Law in New Jersey and Corresponding Actions by Summit, NJ**

### History of Mount Laurel decisions I to IV

In 1975, the State Supreme Court decision in Mount Laurel I (Southern Burlington County N.A.A.C.P. v. Mount Laurel Tp., 67 N.J. 151 (1975)) created affordable housing in New Jersey, which became known as the Mount Laurel doctrine. The Supreme Court determined that through its zoning, municipalities are required to provide for a “fair share” of the region’s need for affordable housing.

In 1983, the Supreme Court issued its decision in Mount Laurel II, (Southern Burlington County N.A.A.C.P. v. Mount Laurel Twp., 92 N.J. 158 (1983)) that created a legal enforcement mechanism to the Mount Laurel doctrine, which is commonly referred to as the builder’s remedy lawsuit. The Mount Laurel II decision extended the constitutional obligation to all municipalities in the state regardless of whether they were considered a “developing” municipality.

- Municipalities were given a choice to comply voluntarily and retain control or allow a developer to seize control of the process and overrule local zoning authority.

After the Mount Laurel II decision, a multitude of builder’s remedy lawsuits were filed. The courts, in turn, established affordable housing unit obligations for which municipalities were responsible to build and then issued what is called a Judgement of Compliance and Repose (JOR).

- A JOR approves a municipality’s Housing Element and Fair Share Plan. Summit’s Housing Element and Fair Share Plan (Fair Share Plan) contains various demographic information for the municipality, County of Union, and its respective housing region. Further, the Fair Share Plan outlines how Summit proposes to satisfy its affordable housing obligation. The Fair Share Plan is adopted by the City’s Planning Board, then endorsed by the governing body, and then becomes part of the City’s Master Plan.

The court-imposed municipal affordable housing obligations were so extreme that, in 1985, the New Jersey Legislature responded by adopting the New Jersey Fair Housing Act, requiring the creation of the Council on Affordable Housing (COAH). COAH is an administrative agency within the NJ Department of Community Affairs that was granted legal authority to adopt affordable housing regulations based upon the criteria set forth in the NJ Fair Housing Act.

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- COAH commenced operations in 1986 and, shortly thereafter, adopted Fair Share Housing Act regulations for municipal implementation.
- The Fair Housing Act gave municipalities the choice to have their Housing Element and Fair Share Plan approved in Court via a JOR or to have their plan approved at COAH through an administrative process called Substantive Certification.

For almost two decades, the City of Summit has voluntarily complied with its affordable housing obligations and requirements in accordance with the Fair Housing Act and COAH regulations.

- For the Third Round, which began in 1999, the City went through the COAH administrative process to obtain approval of its Housing Element and Fair Share Plan, which was granted in 2005. In 2008, the City's plan was amended when COAH further amended its Round 3 regulations.
- COAH's 2008 Third Round regulations were challenged in court and subsequently invalidated. Consequently, Summit's 2008 Fair Share Plan was never approved.
- In 2014, COAH proposed new regulations but, unfortunately, they were never properly adopted by COAH.
- Many legal actions were filed across the state that forced the NJ Supreme Court to act. In March 2015, the NJ Supreme Court made its decision known as Mount Laurel IV.

## Affordable Housing History Since Mount Laurel IV

Mount Laurel IV required all municipalities, such as Summit, that were working with COAH on its affordable housing plans to file a Declaratory Judgment ("DJ") action in court by July 2015. The Supreme Court in Mount Laurel IV also required that Fair Share Housing Center be notified of all municipal DJ actions and be given an opportunity to be heard in those actions.

- This court filing asks the Court to approve the municipality's Fair Share Plan and enter a JOR for the current affordable housing round, which is for its Third Round obligations (1999-2025).

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The City of Summit filed a DJ action on July 2, 2015, along with a simultaneous motion for temporary immunity from additional Mount Laurel-related lawsuits, including the builder's remedy.

- The court granted Summit temporary immunity while it pursued its JOR.
- Instead of enlisting expert assistance to create minimum housing requirements for a municipality, the NJ Supreme Court ruled that individual trial court judges should decree municipal affordable housing obligation numbers as well as standards of compliance in each county.
- In Union County, Hon. Camille M. Kenny, J.S.C. (now retired) was appointed as a Mount Laurel judge and was assigned Summit's DJ action.
- Unfortunately, the Court did not provide legal guidance on Summit's affordable housing obligations.

As a result, the City entered negotiations with housing advocacy group Fair Share Housing Center (FSHC). In October 2016, the City entered into a settlement agreement (Settlement Agreement) with FSHC regarding the City's DJ action.

- This Settlement Agreement was approved by the NJ Superior Court after a properly noticed Fairness Hearing was held on October 31, 2016.
- The settlement, in part, included an adjustment to the City's obligation based on the lack of vacant, developable land remaining in the City (36 affordable housing units) and an agreement the City would "take all reasonable steps" to facilitate the construction of 50 additional new affordable units within the municipality by the end of 2025. Of the 50 additional affordable housing units, 25 must be family rental units. Summit was also required to update the community annually on its affordable housing activity, which takes place in February each year.

To comply with the Settlement Agreement, Summit prepared its Housing Element and Fair Share Plan, which was adopted by the Summit Planning Board and endorsed by the Common Council.

- Thereafter, the Fair Share Plan was approved during a properly noticed Compliance Hearing by the NJ Superior Court, which concluded on September 25, 2017. The Court imposed several conditions on the City to satisfy, which it ultimately did.

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On January 22, 2019, the NJ Superior Court then issued Final Judgment of Compliance and Repose (“JOR”), which protects the City from Mount Laurel lawsuits until 2025.

## Fair Share Plan Implementation

Since the JOR was entered, the City has complied with and implemented its Third Round Plan and Settlement Agreement with FSHC.

## Affordable Housing Obligations:

Summit’s affordable housing obligations under the FSHC settlement agreement and its Housing Element and Fair Share Plan are as follows:

- Rehabilitation Obligation: 131
- Prior Round Obligation (1987-1999): 171
- Third Round Obligation (1999-2025): 567

Summit’s Prior Round and Third Round obligations were adjusted based upon its lack of vacant land. This is what is referred to as a “vacant land adjustment.”

## Rehabilitation Obligation:

To satisfy rehabilitation obligation, a municipality participates in rehabilitation programs to improve substandard units of affordable households that currently live in its municipality.

According to Summit’s Fair Share Plan, the City continues to participate in Union County’s rehabilitation program and work with the Summit Housing Authority (SHA) to rehabilitate existing SHA units.

- SHA units are currently only creditworthy as rehabilitation credits because SHA unit waiting lists use a “residency preference.” This means that applicants who are Summit residents get priority to fill vacant units. Under the Mount Laurel framework, the New Jersey Supreme Court determined that residency preferences on affordable units cannot be counted toward a municipality’s new construction affordable housing obligation (Prior Round and Third Round).
- Units that have a residency preference can participate in a municipality’s rehabilitation program.

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## Vacant Land Analysis:

### **Definitions:**

When a municipality, like Summit, lacks sufficient, developable land to meet its new construction obligation, it is entitled to an adjustment of that number known as a “vacant land adjustment” (VLA).

- The adjusted number is known as the Realistic Development Potential (RDP), and the remainder is known as the Unmet Need.

**Summit’s RDP is 36:** Under the terms of the FSHC Settlement Agreement, the City’s Prior Round and Third Round RDP is 36. The City must create a “realistic opportunity” for the satisfaction of its RDP between now and July 2, 2025, which is the end of the Third Round. That means that the City must ensure 36 affordable housing units are constructed by the end of 2025.

- Summit has already satisfied its RDP with affordable units constructed and has a surplus of at least 13 units to apply toward its Unmet Need.

The City’s Unmet Need is 702 ( $738 - 36 \text{ RDP} = 702$ ); however, the City has credits toward its Unmet Need:

- 24 units from a Regional Contribution Agreement with Elizabeth
- 13-unit surplus from existing projects over and above the RDP
- 14 units will be built from a settlement with Habitat for Humanity
- 1 unit from one of the overlay zones
- 3 units captured from an inclusionary project

- The operative legal standard for Unmet Need is less onerous and more flexible than that for RDP. The City must take reasonable efforts to address it – most typically in the form of overlay zoning and mandatory set-aside ordinances.

- However, the City’s Settlement Agreement also contains a more formal requirement to address the City’s Unmet Need: the City will “take all reasonable steps” to facilitate the construction of an additional 50 new affordable units within the City by the end of Round 3 in 2025.

- 25 of the 50 units must be family rental units.

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## Satisfaction of Affordable Housing Obligations:

**Rehabilitation Obligation of 131:** The City has rehabilitated 40 units out of its 131-unit rehabilitation obligation and continues to participate in the county’s Home Improvement Program and to explore rehabilitation opportunities with the Summit Housing Authority.

## **RDP of 36 Units:**

The City satisfied its RDP as follows:

<b>Project</b>	<b>Address</b>	<b># AH Units</b>
	50 Parmley Place	2
Tiger Baron	120 Morris Ave.	2
Summit Place (off site)	13 North Street	3
Franklin Place (off site)	31 Russel Place	2
Summit Place (off site)	708-710 Springfield Ave.	4
Providence Crossing	785 Springfield Ave.	2
Promenade	545 Morris Ave.	5
Sunrise Assisted Living	River Street	8
Our House	43 Glendale Road	4
Habitat for Humanity	39 Morris Ave	6
	4-6 Ashwood Ave.	2
<b>Subtotal:</b>		<b>40</b>
		9
<i>Rental Bonuses:</i>		
<i>Total Credits:</i>		<b>49</b>
<i>Surplus Toward Unmet Need:</i>		<b>13</b>

## **Unmet Need of 702:**

The City has taken the following actions to capture affordable housing units as the City redevelops:

- The City has adopted seven overlay zones and 12 multi-family set-aside zones. o The MF Zone has produced 1 affordable unit so far.
- The City has also implemented a City-wide Mandatory Set-Aside Ordinance, which captures affordable units in multi-family projects of five units or more.
- The City has also agreed to “take all reasonable steps” to facilitate the construction of 50 new affordable units within the City by the end of Round 3 in 2025.

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The status of the City's **Unmet Need** is as follows:

Project	# AH Units	50 Unit Goal	Balance
<b>Unmet Need</b>			<b>702</b>
Elizabeth RCA	26		676
RDP Surplus	13		663
412 Morris (MF Zone)	1	1	662
146 Morris Ave (Habitat for Humanity)	12	12	650
123-127 Summit Ave	3	3	647
Ashwood Court (Habitat Settlement)	2	2	645
557-565 Morris Avenue (46 Unit Project)	7	7	638
Broad Street West Redevelopment	TBD	TBD	
Overlay Zones 1-7	TBD		
Multi-Family Set-Aside Ordinance	TBD		
<b>Current Subtotal:</b>		<b>25/50</b>	<b>638</b>

The City continues to explore all options for facilitating the construction of the 50 units as projects are proposed throughout the City.

*\*(Last Update: 8/7/2023) This table will be updated as new projects bringing affordable housing to the City are approved by the Planning and Zoning Boards, as well as the outcome of the Broad Street West Redevelopment Project.*