

OUTLINE FOR 10/1/18
AFFORDABLE HOUSING MEETING
DATED AS OF 10/1/18

POINT 1-HISTORY

- THE HISTORY OF AFFORDABLE HOUSING IN NJ BEGINS WITH THE FIRST MT LAUREL DECISION IN 1975 ISSUED BY THE NJ SUPREME COURT IN THE CASE: *SOUTHERN BURLINGTON COUNTY N.A.A.C.P. V. MOUNT LAUREL TOWNSHIP* (COMMONLY CALLED “MOUNT LAUREL I”)
- AS A RESULT OF THE MT LAUREL I DECISION, THE FAIR HOUSING ACT WAS PASSED BY THE NJ LEGISLATURE IN 1985. IT ESTABLISHED THE COUNCIL ON AFFORDABLE HOUSING OR “COAH” AS SOME OF YOU HAVE HEARD OF IT, AS AN AFFORDABLE HOUSING OPTION. THE COAH PROCESS IS NOT A MANDATORY PROCESS FOR TOWNS BUT AN OPTION. THOSE THAT TAKE ADVANTAGE OF ITS REGULATIONS (SUCH AS WARREN), ARE PROTECTED FROM “BUILDERS REMEDY” LAWSUITS FOR A 6 YEAR PERIOD AS LONG AS YOU FOLLOW THEIR REGULATIONS AND PROCEDURES. [DEFINE BUILDER’S REMEDY LAWSUIT]
- THE FIRST ROUND RAN FROM 1987 THROUGH 1993. WARREN WAS A KEY PLAYER IN THE INITIAL STAGES OF COAH IN THE CALCULATION OF “FAIR SHARE METHODOLOGY”. IN FACT, THE FORMULA USED BY COAH WAS ESTABLISHED BY A FAMOUS CASE CALLED “AMG REALTY VS WARREN TOWNSHIP” DECIDED IN 1984.
- THE SECOND ROUND RAN FROM 1994 THROUGH 1999. AGAIN, WARREN WAS FULLY COMPLIANT. ONE OF THE

MECHANISMS TO MEET ITS OBLIGATION WAS CALLED THE RCA AND WARREN TRANSFERRED AFFORDABLE HOUSING FUNDS TO PERTH AMBOY IN ORDER FOR THAT LOWER INCOME COMMUNITY TO BUILD AFFORDABLE HOUSING. [RCA MECHANISM NO LONGER CONSTITUTIONALLY PERMITTED]

- IN FACT, WARREN WAS SUCH A GOOD PLAYER IN THE SECOND ROUND THAT IT WAS AFFORDED 24 CREDITS TOWARD THE THIRD ROUND. I WILL CALL THEM “GOOD GUY CREDITS”.
- IT WAS THE THIRD ROUND WHERE THINGS STARTED TO GO WRONG. THE THIRD ROUND WAS TO START IN 1999 AND FINISH IN 2005.
- COAH MADE NUMEROUS ATTEMPTS TO ADOPT REGULATIONS BASED UPON DIFFERENT METHODOLOGIES THAN USED IN THE FIRST AND SECOND ROUNDS. THESE REGULATIONS WERE CHALLENGED AGAIN AND AGAIN IN COURT BY FAIR SHARE HOUSING CENTER AND THE BUILDERS. IT WAS A VERY FRUSTRATING TIME FOR TOWNS SINCE THEY HAD NO CERTAINTY AS TO WHAT TO DO. [DEFINE FSHC]
- TO GIVE YOU SOME IDEA OF THE FRUSTRATION WE FELT IN THIS TOWN, WARREN FILED 3 AFFORDALBE HOUSING PLANS SINCE 1999. ALL BECAME MEANINGLESS SINCE ALL OF THE COAH RULES WERE ULTIMATELY STRUCK DOWN BY THE COURTS.

- [DISCUSS NJ LEAGUE OF MUNICIPALITIES SPEECH I GAVE IN NOVEMBER, 2014 WARNING OF WHAT WAS AFOOT. I WAS ULTIMATELY PROVEN RIGHT BUT WAS TOLD BY MODERATOR TO SIT DOWN AND SHUT MY MOUTH]
- AFTER COAH WAS GIVEN MULTIPLE OPPORTUNITIES TO FINALIZE A SET OF RULES THAT COMPLIED WITH THE FHA AND THE CONSTITUTIONALLY MANDATED MT. LAUREL DOCTRINES, COAH DEADLOCKED ON A 3-3 VOTE ON A FINAL SET OF RULES IN EARLY 2015.
- SO YET AGAIN, THE PROCESS WAS STALLED.
- THE WRITING WAS THEN ON THE WALL FOR THE SUPREME COURT TO STEP IN.
- ON MARCH 10 2015, THE NJ SUPREME COURT ISSUED A RULING, NOW CALLED “MT. LAUREL IV”, WHICH DISSOLVED COAH [SUPREME COURT RULED “ENOUGH IS ENOUGH”], AND TRANSFERRED ALL FUTURE AFFORDABLE HOUSING ISSUES TO THE SUPERIOR COURTS.
- EACH TOWN HAD UNTIL MAY 30, 2015 TO FILE A PROTECTIVE LAWSUIT [CALLED A DJ ACTION] OR FACE OPENING THE TOWNSHIP UP TO BUILDER’S REMEDY LAWSUITS BY ANY BUILDER WHO DESIRED TO BUILD IN THE TOWNSHIP. WARREN TIMELY FILED ITS DJ ACTION.
- UNDER THE IN MT. LAUREL IV DECISION, THE NJ SUPREME COURT DIRECTED THAT A MUNICIPALITY MAY FILE A DJ ACTION SO THAT A COURT CAN

REVIEW AND DETERMINE A MUNICIPALITY'S "FAIR SHARE OBLIGATION", AND TO DETERMINE WHETHER THE TOWN'S ZONING PLAN REALISTICALLY SATISFIES THAT OBLIGATION.

- THE COURT IDENTIFIED FSHC AS THE ENTITY THAT REPRESENTS THE INTERESTS OF THOSE IN NEED OF AFFORDABLE HOUSING, EFFECTIVELY GIVING FSHC A SEAT AT THE TABLE IN **EVERY CASE IN THIS STATE**.
- LET ME BE CLEAR: THE SUPREME COURT HAS ENDOWED FSHC WITH TREMENDOUS POWERS TO DETERMINE A TOWN'S AFFORDABLE HOUSING OBLIGATION. SOME ARGUE THAT THEY SHOULD BE ENDOWED WITH THAT POWER SINCE THEY WERE THE ENTITY THAT WENT TO COURT AND SAID THAT COAH IS A FAILURE AND THAT SOMETHING NEEDED TO BE DONE. THEY WERE RIGHT.
- FSHC, ALONG WITH THE JUDGES, HAVE BEEN CALLING THE SHOTS ON AFFORDABLE HOUSING SINCE MARCH OF 2015.
- THE NJ SUPREME COURT DIRECTED THAT ONE TRIAL JUDGE IN EACH COURT SYSTEM HANDLE ALL THE AFFORDABLE HOUSING CASES IN ITS VICINAGE.
- THE TRAIL COURTS FIRST NEEDED TO DETERMINE THE OBLIGATION OF EACH MUNICIPALITY.
- THE COURTS WERE THEN TASKED WITH EVALUATING WHETHER THE PLANS DEVELOPED BY EACH TOWN MET THAT OBLIGATION.

- AT THE BEGINNING OF THIS COURT PROCESS, FSHC SUBMITTED A REPORT PREPARED BY DR. DAVID KINSEY TO CALCULATE A TOWN'S OVERALL AFFORDABLE HOUSING OBLIGATION. DR. KINSEY HAD BEEN THE ARCHITECT OF THE FORMULAE USED IN THE FIRST AND SECOND ROUNDS.
 - DR. KINSEY SET WARREN'S NUMBER AT 1330 AFFORDABLE HOUSING UNITS. IF THAT NUMBER WERE APPLIED TO WARREN, THEORETICALLY THE TOWN WOULD HAVE HAD TO BUILD 6,650 NEW HOUSING UNITS, NEARLY DOUBLING OUR CURRENT POPLULATION.
- MANY MUNICIPALITIES, INCLUDING WARREN, JOINED FORCES AND RETAINED ANOTHER EXPERT TO CALCULATE THE MUNICIPAL FAIR SHARE OBLIGATION. THAT EXPERT WAS DR. ANGELIDES FROM E-CONSULT SOLUTIONS.
- DR. KINSEY AND D. ANGELIDES HAD WIDELY DIVERGENT VIEWS AS TO THE STATEWIDE OBLIGATION AND THE ULTIMATE OBLIGATION OF EACH MUNICIPALITY.
- SOME JUDGES ELECTED TO APPOINT THEIR OWN SPECIAL NUMBERS MASTER TO EVALUATE THE APPROACHES BEING PRESENTED BY DR. KINSEY AND DR. ANGELIDES.
- CERTAIN JUDGES APPOINTED A FINANCIAL EXPERT NAMED RICHARD READING AS A NUMBERS MASTER

IN THE CASES IN THEIR COURTS. THESE JUDGES WERE GOING TO HOLD ONE TRIAL TO DETERMINE THE OBLIGATION FOR ALL MUNICIPALITIES IN THAT JUDGE'S COURT SYSTEM. OTHER JUDGE DECIDED TO HANDLE THE CASE ONE TOWN AT A TIME.

- ONE OF THE MOST SIGNIFICANT ISSUES TO BE DETERMINED WAS HOW TO ADDRESS THE PERIOD BETWEEN 1999 [WHEN THE SECOND ROUND RULES EFFECTIVELY ENDED], AND 2015, WHEN MT. LAUREL IV WAS DECIDED. THIS PERIOD OF TIME, WHICH HAS BEEN REFERRED TO AS THE “GAP PERIOD”. THE POSITION OF FSHC WAS THAT NO AFFORDABLE HOUSING WAS CREATED IN OVER 15 YEARS WHILE COAH WAS GETTING THE RULES WRONG. DR. ANGELIDES ARGUED THAT AFFORDABLE HOUSING WAS BEING CREATED BY THE FREE MARKET.
- ULTIMATELY, THE NJ SUPREME COURT RULED THAT THE GAP PERIOD MUST BE INCLUDED AND GAVE SOME GENERAL GUIDELINES AS TO HOW THE GAP PERIOD WAS TO BE CALCULATED.
- THE FIRST ACTUAL TRIAL INVOLVED SOUTH BRUNSWICK, WHICH WAS HANDLED BY JUDGE WOLFSON IN MIDDLESEX COUNTY.
- JUDGE WOLFSON HAD NOT APPOINTED RICHARD READING AS A SPECIAL NUMBERS MASTER.
- JUDGE WOLFSON COMPLETELY DISCOUNTED AND REJECTED THE E-CONSULT ANALYSIS, AND FOLLOWED MOST OF DR. KINSEY'S ANALYSIS.

- JUDGE WOLFSON WENT SO FAR AS TO WITHDRAW SOUTH BRUNSWICK'S IMMUNITY, AND ALLOWED THE CASE TO PROCEED AS A "BUILDER'S REMEDY" CASE, EFFECTIVELY GIVING SIGNIFICANT POWER AND DEFERENCE TO THE DEVELOPERS.
- A TRIAL WAS THEN COMMENCED IN OCEAN COUNTY BEFORE JUDGE TRONCONE. BY THE THIRD DAY OF TRIAL ALL BUT ONE MUNICIPALITY, JACKSON TOWNSHIP, HAD SETTLED. JACKSON FINALLY SETTLED A FEW DAYS LATER.
- THE NEXT TRIAL WAS IN MERCER COUNTY BEFORE JUDGE MARY JACOBSON. ALL BUT 2 MUNICIPALITIES SETTLED PRIOR TO OR DURING THE COURSE OF THE TRIAL. JUDGE JACOBSON HAD APPOINTED RICHARD READING. AFTER APPROXIMATELY 40 DAYS OF TRIAL AND OVER \$600,000 IN LEGAL FEES TO THE 2 REMAINING TOWNS, JUDGE JACOBSON ISSUED A COMPREHENSIVE 209 PAGE OPINION IN WHICH SHE DETERMINED THE AFFORDABLE HOUSING OBLIGATION FOR EACH MUNICIPALITY IN MERCER COUNTY.
- RICHARD READING HAD AGREED WITH A SIGNIFICANT PORTION OF DR. ANGELEDIS'S ANALYSIS. JUDGE JACOBSON ADOPTED MANY OF RICHARD READING'S RECOMMENDATIONS, BUT REJECTED SOME ON POLICY GROUNDS.
- RICHARD READING THEN RECALCULATED THE NUMBERS BASED UPON JACOBSON'S RULING ON A STATE-WIDE BASIS.

- WARREN TOWNSHIP’S “JACOBSON” # IS 986 AFFORDABLE HOUSING UNITS WHICH THEORETICALLY COULD HAVE RESULTED IN NEARLY 5,000 NEW UNITS OF HOUSING CONSTRUCTED IN THIS TOWN.

POINT 2- RAMIFICATIONS OF THE JACOBSON RULING

- IT BECAME QUICKLY APPARENT THAT THE JUDGES IN THE REMAINING COURT SYSTEMS WHERE TRIALS HAD NOT YET STARTED, LIKE VICINAGE 13 WHICH INCLUDES SOMERSET, WARREN AND HUNTERDON COUNTIES, WERE GIVING GREAT DEFERENCE TO THE JUDGE JACOBSON RULING AND WERE RELUCTANT TO DISRUPT HER WELL-CONSIDERED OPINION ON HOW TO CALCULATE A TOWN’S AFFORDABLE HOUSING OBLIGATION.
- I ATTENDED A SEMINAR AT THE NJ LAW CENTER IN NB SHORTLY AFTER THE JACOBSON RULING CAME OUT WITH ALL OF THE LAWYERS AND PLANNERS WHO HAD ARGUED THE CASE AS PANELISTS. THE UNANIMOUS TAKE AWAY FROM THE SEMINAR WAS:
 - NONE OF THE REMAINING JUDGES WANT TO DISRUPT THE JACOBSON RULING
 - FSHC (ADAM GORDON AND KEVIN WALSH) WOULD BE CALLING THE SHOTS ON AFFORDABLE HOUSING IN NJ FOR THE FORESEEABLE FUTURE

- THERE WOULD BE NO LEGISLATIVE FIX BY THE NJ LEGISLATURE SINCE KEVIN WALSH SAT ON GOVERNOR MURPHY’S AFFORDABLE HOUSING TASK FORCE AND THERE WAS LITTLE SUPPORT FOR COMING UP WITH A LEGISLATIVE FIX AT THIS LATE STAGE.
 - WHILE ASSEMBLYMAN JOHN BRAMNICK IS PUTTING UP A GOOD FIGHT, THERE IS LITTLE IF NO LIKELIHOOD THAT THE LEGISLATURE WILL DISTURB THE JACOBSON RULING. A DAY LATE AND A DOLLAR SHORT.
 - THE OVERARCHING THEME WAS “SETTLE WHILE YOU STILL CAN”.
- IN VICINAGE 13, OF THE 59 TOWNS IN THIS COURT SYSTEM, ALL BUT 12 HAVE SETTLED WITH FSHC.

POINT 3-SETTLEMENT NEGOTIATIONS IN WARREN

- WARREN BEGAN IN EARNEST WITH SETTLEMENT NEGOTIATIONS OVER 3 YEARS AGO.
- NEGOTIATING TEAM WAS COMPRISED OF 2 TC MEMBERS, MICK MARION AND CAROLANN GARAFOLA, OUR TOWNSHIP PLANNER, JOHN CHADWICK, ME AND MARK KRANE, THE TOWNSHIP ADMINISTRATOR.
- NUMEROUS MEETINGS OCCURRED WITH FSHC BEFORE JUDGE MILLER AND THE VARIOUS DEVELOPERS WHO HAD INTERVENED IN OR FILED OBJECTIONS TO WARREN TOWNSHIP’S LAWSUIT.

- NUMEROUS VERY CONTENTIOUS MEETINGS WERE HELD IN CLOSED SESSION WITH THE GOVERNING BODY DURING THIS ENTIRE PROCESS.
- WELL BEFORE THE JACOBSON RULING, THE TOWNSHIP HAD DEVELOPED A PLAN FOR SETTLING THE CASE AT A NUMBER OF 865, A NUMBER ROUGHLY 35% BELOW THE ORIGINAL 1330 NUMBER DR. KINSEY HAD COME UP WITH FOR WARREN TOWNSHIP'S OBLIGATION.
- AFTER THE JACOBSON RULING, FSHC DUG IN AND SAID THAT WARREN'S NUMBER CAN BE NOTHING OTHER THAN THE JACOBSON #, NAMELY 986.
- TO GET FSHC TO AGREE TO A MUCH LOWER NUMBER THAN THE JACOBSON # TOOK SOME CREATIVE THINKING BY THE TOWNSHIP COMMITTEE AS TO WHY WARREN WAS DIFFERENT THAN OTHER TOWNS.
- THE ARGUMENTS WE REALIZED THAT MADE WARREN UNIQUE ARE SEWER AS WELL AS THE GOOD FAITH EXHIBITED BY WARREN SINCE 1999 IN PROVIDING AFFORDABLE HOUSING.
- IN OTHER WORDS, UNLIKE OTHER TOWNS, WARREN DID NOT SIT ON ITS HANDS. IT CREATED AFFORDABLE HOUSING DURING THE PERIOD FROM 1999 THROUGH 2018:
 - EXTENDED AFFORDABILITY CONTROLS ON THE 60 UNITS AT WHISPERING HILLS;
 - IT CREATED SPECIAL NEEDS BEDS AT CAMP JATONI, MT BETHEL VILLAGE, ARC AND COOPERATIVE HOUSING.

- IT CREATED AFFORDABLE AGE RESTRICTED HOUSING AT BRIGHTVIEW AND THE CHELSEA
 - IT EXTENDED AFFORDABILITY CONTROLS ON THE 57 UNITS AT WOODLAND ACRES; AND
 - THE LIST GOES ON.
- IN TERMS OF SEWER, WARREN HAS 4 DIFFERENT SEWER SERVICE AREAS UNLIKE MOST TOWNS WHICH HAVE ONLY 1 SEWER SYSTEM.
 - DEVELOPERS INTERESTED IN DEVELOPING IN WARREN, BY AND LARGE, SOUGHT TO BUILD IN AREAS WHERE SEWER WAS NOT AVAILABLE, NAMELY AT RT 78 EXITS 40 AND 36.
 - THESE TWO ISSUES MADE WARREN UNIQUE.
 - THROUGH A SERIES OF INTENSE NEGOTIATIONS THROUGHOUT SPRING AND SUMMER OF THIS YEAR, WE PERSUADED FSHC TO REDUCE WARREN'S NUMBER TO 865 WITH AN AGREEMENT TO ALSO PROVIDE 25 ADDITIONAL SPECIAL NEEDS BEDS OVER AN 8 YEAR PERIOD, WITH NO IDENTIFIED SITE OR SEQUENCE AS TO WHEN AND WHERE THOSE BEDS WERE TO BE PROVIDED.
 - I WAS TASKED WITH DRAFTING THE SETTLEMENT AGREEMENT WITH ADAM GORDON FROM FSHC. WE ARE STILL REFINING THAT AGREEMENT WITH THE SEWER LANGUAGE BEING THE SUBJECT TO THE MOST DISCUSSION.
 - I AM WORKING CLOSELY WITH DERRICK FREIJOMIL, COUNSEL FOR THE W TSA AND SPENCER PIERINI, THE

EXECUTIVE DIRECTOR OF W TSA TO FINALIZE THAT LANGUAGE.

- SO THAT IS WHERE WE ARE AND HOW WE GOT HERE.

POINT 4- THE SITES AND CREDITING

- AFTER ALL OF THE CREDITING FOR AFFORDABLE HOUSING ALREADY PROVIDED BY WARREN TOWNSHIP SINCE 1999 AS WELL AS THE “GOOD GUY” CREDITS FROM THE SECOND ROUND, THE NUMBER OF “BRICK AND MORTAR” AFFORDABLE HOUSING UNITS TO BE PROVIDED BY 2025 IS 362. THE NUMBER OF MARKET RATE UNITS TO BE BUILT BY 2025 IS 616. THE TOTAL NUMBER OF BRICK AND MORTAR UNITS (INCLUSIVE OF AFFORDABLE HOUSING UNITS) IS 1,048 BY 2025.
- AGAIN, THE 865 NUMBER IS 35% LOWER THAN WHAT FSHC ORIGINALLY SOUGHT, ONE OF THE BEST, IF NOT THE BEST SETTLEMENT OF ALL OF THE TOWNS IN VICINAGE 13.
- THIS NUMBER WILL BE MET THROUGH VARIOUS HOUSING DEVELOPMENTS:
 - [TURN OVER TO JOHN CHADWICK TO DISCUS SITES AND NUMBERS OF UNITS-REFER TO MAP SHOWING LOCATIONS]