

Affordable Housing Update

Policy & Implementation Committee
March 23, 2018



Purpose

To update Committee on affordable housing matters in Pinelands Area post Mount Laurel IV

- Summarize the status of Pinelands Area municipalities
- Discuss Pinelands Commission role
- Make Committee aware of strategies being adopted by Pinelands Municipalities

Background – Mount Laurel Doctrine

New Jersey affordable housing laws are rooted in the “Mount Laurel Doctrine”

- Stem from landmark N.J. Supreme Court decisions
 - **Mount Laurel I (1975)**
So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel
 - **Mount Laurel II (1983)**
So. Burlington County N.A.A.C.P. v. Tp. of Mount Laurel
- Mount Laurel I & II decisions recognize that the power to zone carries a constitutional obligation to create a realistic opportunity for the development of a municipality’s fair share of the regional need for affordable housing.

Background – Fair Housing Act 1985

-- In 1985 N.J. legislature adopts the Fair Housing Act (FHA)

- Incorporated the legal principles of the Mount Laurel decisions and established the means by which municipalities can satisfy their affordable housing obligation outside of litigation
- Establishes the Council on Affordable Housing (COAH):
 1. To estimate the affordable housing need statewide and by region
 2. To establish methods for municipalities to determine their affordable housing obligation as well as adjustments (based on developable land, available infrastructure, environmental or historic preservation factors)
 3. To administer the substantive certification process and the mediation process

Background – Fair Housing Act 1985

-- In 1985 N.J. legislature adopts the Fair Housing Act (FHA)

Continued.....

- FHA creates systems where municipalities may voluntarily apply to COAH for “**substantive certification**”
- COAH certifies if submitted housing plan is found to create a realistic opportunity for the creation of their affordable housing obligation
- With substantive certification, a municipality is insulated to a substantial extent, for 10 years, from exclusionary zoning litigation (aka, builder’s remedy litigation or Mount Laurel Lawsuits)
- Without substantive certification, municipalities are vulnerable to exclusionary zoning litigation (e.g., forced rezoning).

Background – COAH Rules

First Round rules: 1987-1993 | Second Round rules: 1987-1999

Third Round rules --

➤ **December, 2004**

COAH adopts Third Round rules for 1987-2014

- January, 2007 – Rules invalidated by NJ Appellate Court

➤ **October, 2008**

COAH adopts revised Third Round rules 1987-2018

- October, 2010 – Rules again invalidated by NJ Appellate Court
- September, 2013 – Appellate decision upheld by NJ Supreme Court

➤ **May, 2014**

COAH proposes another revised Third Round rules, but fails to adopt in October, 2014

Background – Mount Laurel IV

March, 2015 – “Mount Laurel IV”

- NJ Supreme Court instructs trial courts to assume responsibilities of COAH
- Certain* municipalities are able to file declaratory judgment actions to obtain a judicial version of the substantive certification
- Court to assess obligation on a municipality by municipality

Background - Post-Mount Laurel IV

Process

- Eligible municipalities file applications for declaratory judgment
- Negotiations ensue between parties within individual cases
- Court-approved settlements between individual municipalities, Fair Share Housing Center and other interested parties

Background - Post-Mount Laurel IV

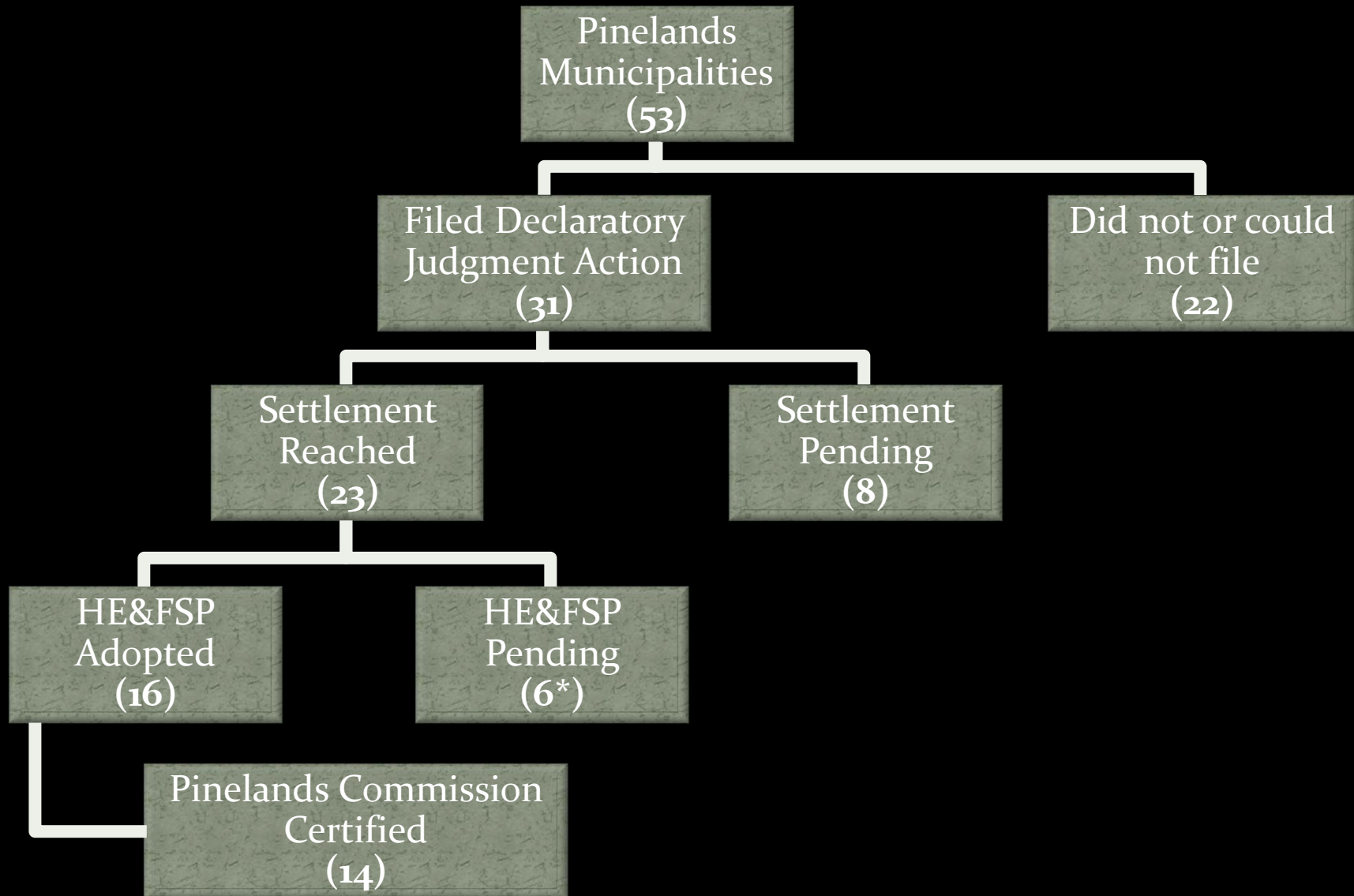
Process *Continued...*

- **Housing Element and Fair Share Plans are adopted by Planning Boards**
 - Housing needs analysis
 - Affordable housing obligation
 - Accounting of how obligation is met (e.g., existing/planned sites)
 - Recommended ordinance changes to implement plan
- **Implementing ordinances are adopted by Governing Bodies**
 - Zoning changes/Inclusionary zoning
 - Density bonuses/Mandatory set-asides
 - Developer fees/Affordable housing trust funds
 - Controls on affordability
 - Affirmative marketing plan

Pinelands Commission Role

- Ensure Pinelands CMP regulations are acknowledged in advance when possible
- Municipal conformance process
 - Housing Elements
 - Affordable Housing Ordinances
 - Zoning Changes
- Review planned sites in Pinelands Area
 - Ensure conformance with existing zoning
 - Ensure zoning changes are consistent with CMP (e.g., PDCs)
 - Environmental constraints of sites

Municipal Status Summary



Recent P.C. Certified HE&FSPs

Atlantic County

- Buena Vista Twp
- Mullica Twp

Burlington County

- Pemberton Twp

Camden County

- Berlin Boro
- Waterford Twp
- Winslow Twp

Cumberland County

- Vineland City

Ocean County

- Berkeley Twp
- Jackson Twp
- Lacey Twp
- Little Egg Harbor Twp
- Manchester Twp
- Ocean Twp
- Stafford Twp
- Barnegat Twp*

Total: 15

Recent Zoning Changes

Muni	Density	Set-aside	Housing Types
Barnegat Twp	4.3-7.5 du/acre	10% of the Shoreline S&G Redevelopment Area	Single family detached, Townhouses, Apts
Jackson Twp	3-4.5 du/acre	20% of units in RG-2 and RG-3 zones	Townhouses
Manchester Twp	4.5 du/acre	20% of MDG Tract	Apts, Townhouses
S. Toms River Borough	7.15 du/acre	Up to 20%	Apts, Townhouses
	17 du/acre	10-20%	Apts, Townhouses
Waterford Twp	5-12 du/acre	20% of Haines Blvd Redevelopment Area	Single family detached, Townhouses, Apts, Mixed Use

Preliminary Conclusions & Future

- So far, not a lot of new development in the Pinelands Area is expected as a result of this new round of affordable housing court cases
- Many Pinelands muni's still need to be certified by the courts,.....
- ...other Pinelands Muni's are vulnerable to Mount Laurel lawsuits
- Staff will continue in its role regarding conformance and stay up to date with further developments on affordable housing in the state.



Questions?
