

# TOWNSHIP OF BERKELEY, OCEAN COUNTY

## AFFORDABLE HOUSING MIDPOINT “REALISTIC OPPORTUNITY” REVIEW REPORT

### PURPOSE

The purpose of this Report is for the Township of Berkeley to comply with the New Jersey Fair Housing Act (“FHA”) and the Township’s court-approved settlement agreement (“Agreement”) with affordable housing advocate Fair Share Housing Center (“FSHC”), dated October 3, 2016. The requirement for a this Report derives from Section 313 of the FHA, N.J.S.A. 52:27D-27, which requires a status report regarding the implementation of the Township’s court-approved Round 3 Housing Element and Fair Share Plan (“Fair Share Plan”); an analysis to determine whether any proposed affordable housing sites or other compliance mechanisms no longer create a realistic opportunity and therefore should be modified or replaced; and an analysis to determine whether any mechanisms to meet the Township’s unmet affordable housing need should be modified or replaced.

The Agreement also requires this Report to be posted on the Township’s website, with a copy provided to FSHC. The review acts as a status report regarding the Township’s compliance mechanisms and whether or not any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity. This review includes mechanisms addressing the unmet need.

### RELEVANT BACKGROUND

According to recent Census data and real estate sales records, the following facts reveal that the Township of Berkeley is one of the most “inherently inclusionary” municipalities in the State of New Jersey. For example:

- According to the 2010–2014 American Community Survey of the US Census Bureau, **the median value of the owner-occupied housing units in Berkeley is \$171,300**, which is far lower than the median values of \$264,100 in Ocean County and \$319,900 in the State of New Jersey.
- The 2010–2014 American Community Survey of the US Census Bureau also indicates that **Berkeley’s median gross rent is \$1,250 per month** is lower than the median gross rent of \$1,337 in Ocean County.
- Township-wide, **an estimated 67.6 percent of the township’s occupied housing stock is affordable to low- and moderate-income households**. This estimate is derived from the 2010–2014 American Community Survey, and includes both owner-occupied units and renter-occupied units. Specifically:
- An estimated 12,331 of the owner-occupied units reported in the 2010–2014 American

Community Survey have a value that would be affordable to lower moderate-income households.

- An estimated 1,585 of the renter-occupied units with a cash rent reported in the 2010–2014 American Community Survey have a cash rent that would be affordable to low- or moderate-income households when using affordable rental price calculators of the New Jersey Department of Community Affairs (n.b., affordable rental price is calculated based on a weighted average of one-, two-, and three-bedroom units at a bedroom distribution of 20 percent, 60 percent, and 20 percent, respectively).

**Based on the above, a total of 13,916 units have a value or rental price that is affordable to low-or moderate-income households.** When this number is divided by the total number of occupied housing units (i.e., 20,597 units) reported in the 2010–2014 American Community Survey<sup>2</sup>, **it is determined that an estimated 67.6 percent of the township’s occupied housing stock is affordable to low- and moderate-income households.**

- To further demonstrate the affordability of the township’s housing stock, the township conducted a search for “residential” and “multi-family” units with one or more bedrooms on the Multiple Listing Service of the Ocean County Board of Realtors on June 6, 2016. **The search yielded a total of 264 units, of which at least 164 units or approximately 62.1 percent were listed at a price that would be affordable to low- or moderate-income households** when using affordable rental price calculators of the New Jersey Department of Community Affairs to determine the maximum sale price for the specific unit.
- Information on recorded sales of Class 2 (Residential) properties in the period from January 2011 through May 2016 provides further evidence of the affordability of Berkeley Township’s housing stock. This information, which contains 4,290 records and was obtained in June 2016 from the Berkeley Township Tax Assessor’s Office, indicates that **the median sale price of all Class 2 (Residential) properties over the indicated period was \$145,000.30.**

To secure approval of its current Fair Share Plan, the Township took the following actions:

- Pursuant to the 2015 opinion in which the New Jersey Supreme Court declared COAH to be a defunct state agency, the Township filed a timely Declaratory Judgment Action (“DJ Action”) with the Ocean County Superior Court, Law Division, in early June of 2015.
- The Township executed a settlement agreement with FSHC on October 3, 2016 which, among other things, established the Township’s “fair share” obligations as follows:

Present Need (aka Rehabilitation obligation)	94
Prior Round obligation (1986-1999)	610
Round 3 obligation (1999-2025)	0

- On May 22, 2017, the Honorable Mark A. Troncone, J.S.C. approved the Township’s current Fair Share Plan and issued a Round 3 Judgment of Compliance and Repose

("JOR"), subject to the satisfaction of several conditions previously identified by Philip B. Caton, P.P., F.A.I.C.P., the court-appointed special master. See Exhibits A and B.

- On February 22, 2018, Special Master Caton informed Judge Troncone that the Township satisfied each of the aforementioned conditions, thereby rendering its Round 3 Judgment of Compliance and Repose final and unconditional. See Exhibit C.

The following information provides a update on the successful and ongoing implementation of the Township's Fair Share Plan.

### **THE TOWNSHIP'S REHABILITATION PROGRAM**

As stated above, the Township's rehabilitation obligation is 94. When Judge Troncone approved the Township's Round 3 Fair Share Plan in May of 2017, Berkeley had already rehabilitated 69 affordable units since April 1, 2010 through the Ocean County Community Development and Block Grant Rehabilitation Program. Subsequently, the Township has rehabilitated an additional 44 additional units, for a total of 113, meaning it has fully-satisfied its 94-unit Round 3 obligation with a surplus of 19 rehabilitated units.

The Township shall continue affirmatively marketing its Rehabilitation Program and, given past successes, it expects to successfully rehabilitate numerous additional affordable units between now and July of 2025.

### **THE TOWNSHIP'S PRIOR ROUND OBLIGATION**

The Township's Prior Round obligation is 610 units, for the period between 1987-1999. As with its Rehab obligation, the Township has substantially exceeded its Prior Round quota.

Specifically, Berkeley secured 826 "Credits Without Controls" based upon the results of two surveys, the first of which identified 276 units and was approved by order of Judge Gibson in 1994; and the second of which identified 550 units and was approved by order of Judge Serpentelli in 2000. Based on the above, the township has exceeded its prior round obligation by 216 units, or more than 35 percent.

### **THE TOWNSHIP'S ROUND 3 OBLIGATION**

As stated above, the Township's Round 3 obligation is zero. Nevertheless, the Township remains dedicated to creating additional affordable housing opportunities, which so far includes the following creditworthy affordable housing developments and programs:

#### **Site 1: Foxmoor Berkeley Associates**

The Foxmoor Berkeley Associates development is an inclusionary development, which was approved for a total of 136 family-sale units. Of the total of 136 units, 15 were to be affordable, family-sale units. The developer made a payment-in-lieu of construction for 13 affordable units and constructed two units onsite. However, one of the affordable units that was constructed onsite was the subject of a foreclosure that resulted in the loss of the affordability control. One

affordable unit remains on Block 973.03, Lot 15, which is located on Dolphin Circle West; tax records indicate that the unit was constructed in 2000.

### **Site 2: Bay Ridge I**

Bay Ridge I is located along US Route 9, on Block 858.17, Lot 17. It is an existing, 95- unit apartment complex with a total of 87 age-restricted units and eight family units. It was completed in 1984, is run by the Berkeley Township Housing Authority, and subject to HUD affordability controls.

### **Site 3: Bay Ridge II**

Bay Ridge II is located along US Route 9, on Block 858.17, Lot 18. It is an existing, 95-unit apartment complex. All units are age-restricted. It was completed in 1989, is run by the Berkeley Township Housing Authority, and subject to HUD affordability controls.

### **Site 4: OCEAN, Inc. — No. 1**

In 1998, OCEAN, Inc., a non-profit developer, received approvals for two minor subdivisions in the Manitou Park neighborhood of the township. These subdivisions resulted in the creation of eight low-and moderate-income, family-rental units, which are subject to affordability controls. These units contain three or four bedrooms each, and are located on: Block 76, lots 406.01 and 406.02; Block 38, lots 122.01, 122.02 and 123.01; Block 39, lots 110.01 and 110.02; and, Block 60, Lot 571.

### **Site 5: OCEAN, Inc. — No. 2**

In 2003, the township conveyed 20 municipal lots to OCEAN, Inc. to facilitate the construction of affordable housing. The lots included: Block 572, lots 19 through 26; Block 573, lots 28 through 31; Block 568, lots 10 through 13; and, Block 569, lots 14 through 16 and 18. Through December 2014, the township also expended \$500,000 to subsidize a total of 12 affordable, family-sale units. As of the preparation of this Housing Plan Element and Fair Share Plan, a total of six units had been completed and six units remained to be completed. It is anticipated that the six units that remained to be completed as of the preparation of this Housing Plan Element and Fair Share Plan will be completed by the end of 2025. Housing Plan Element and Fair Share Plan Township of Berkeley.

### **Site 6: Homes for All, Inc.**

In 2003, the township entered into a developer's agreement with Homes for All, Inc., a non-profit developer, to develop a total of 82 family-sale units in the Manitou Park neighborhood of the township. The township also: committed \$500,000 from its affordable housing trust fund to assist Homes for All, Inc. with engineering costs, permitting, and extension of water and sewer lines to the tract; and, conveyed numerous sites on blocks 30, 36, 37, 38, 39, 40, 42, 44, 45, 48, 49, 50, 51, 53, 54, 55, 59, 60, 62, 63, 65, 67, 68, 70, 73, 76, and 77 to the developer. Of the 82 family-sale units, a maximum of 50 percent was to be market-rate, a maximum of 40 percent was to be affordable to moderate-income families; and, a minimum of ten percent was to be affordable to

low-income families. As of 2013, all 41 affordable units had been constructed and sold.

**Site 7: Habitat for Humanity**

Through December 2014, the township expended \$100,000 to subsidize the acquisition of six properties by Habitat for Humanity in the Manitou Park neighborhood of the township. This has resulted in the construction of three family for-sale units for low-income families on Block 30, lots 46, 50 and 53 during 2014 and 2015. All three units are occupied. In addition, the township has also agreed to convey another township-owned parcel to Habitat for Humanity (viz., Block 30, Lot 28) to facilitate the construction of another family-sale unit for a low-income family. This additional unit is expected to be complete by the end of 2017.

**Site 8: Association for the Multiple-Impaired Blind — Original Units**

The Association for the Multiple-Impaired Blind operates a group home along Muller Avenue, on Block 937, lots 6 through 11. The group home contains six bedrooms, is licensed by the State of New Jersey, and has been in operation since 1980. Occupancy is restricted to disabled adults.

Site 9: Association for the Multiple-Impaired Blind — Rehabilitation and Extension of Controls  
As stated in the description for Site 8 (above), the Association for the Multiple-Impaired Blind operates a group home along Muller Avenue, on Block 937, lots 6 through 11. The group home contains six bedrooms, is licensed by the State of New Jersey, and has been in operation since 1980. Occupancy is restricted to disabled adults. In 2015, the township provided \$160,000 to rehabilitate the group home and extend affordability controls. The rehabilitation resulted in two additional bedrooms. Thus, there are now a total of eight bedrooms. Housing Plan Element and Fair Share Plan Township of Berkeley.

**Site 10: Preferred Behavioral Health of New Jersey**

Preferred Behavioral Health of New Jersey operates a group home along Mallard Road, on Block 1837.10, Lot 8. The group home contains two bedrooms, is licensed by the State of New Jersey, and has been in operation since 2006. Occupancy is restricted to disabled adults.

**Site 11: Ocean Mental Health Services (Anchor House)**

Ocean Mental Health Services operates a group home along Harbor Court, on Block 896, Lot 470. The group home contains nine bedrooms, is licensed by the State of New Jersey, and has been in operation since 2008. Occupancy is restricted to disabled adults.

**Site 12: Ocean Mental Health Services (Sharon's House)**

Ocean Mental Health Services operates a group home along Pine Tree Road, on Block 847, Lot 11. The group home contains four bedrooms, is licensed by the State of New Jersey, and has been in operation since 2008. Occupancy is restricted to disabled adults.

**Site 13: Ocean Mental Health Services (Beacon House)**

Ocean Mental Health Services operates a group home along JFK Boulevard, on Block 882, Lot 2.01. The group home contains three bedrooms, is licensed by the State of New Jersey, and has been in operation since 2008. Occupancy is restricted to disabled adults.

**Site 14: Ocean Mental Health Services (Park Avenue)**

Ocean Mental Health Services operates a group home along Park Avenue, on Block 842, Lot 6. The group home contains two bedrooms, is licensed by the State of New Jersey, and has been in operation since 2006. Occupancy is restricted to disabled adults.

**Site 15: Ocean Mental Health Services (Point Pleasant Avenue)**

Ocean Mental Health Services operates a group home along Point Pleasant Avenue, on Block 1062, Lot 19. The group home contains two bedrooms, is licensed by the State of New Jersey, and has been in operation since 2005. Occupancy is restricted to disabled adults.

**Site 16: Homes for All, Inc. — Manitou Park Neighborhood Redevelopment Plan (Phase 4)**

Homes for All has been selected as the redeveloper for Phase 4 of the Manitou Park Neighborhood Redevelopment Plan, which is in an area that is generally adjacent to Site 6, and includes numerous sites on blocks 25, 26, 28, 29, 30, 32, and 33. Plans for Site 16 are currently being developed, and the total number of affordable units that will be yielded is unknown. However, the redeveloper's agreement indicates that the redevelopment will result in at least 60 units, of which 20 percent Housing Plan Element and Fair Share Plan Township of Berkeley must be affordable. The redevelopment plan also requires that at least five of the affordable units be affordable to very low-income households. Please note that Site 16 was not identified in the compliance plan referenced in the court-approved settlement agreement with the Fair Share Housing Center but represents the Township's ongoing efforts to support the development of new affordable housing in Berkeley.

**Point-Based Mechanism to Capture Additional Affordable Housing Opportunities**

Berkeley will also capture future opportunities to increase the supply of affordable housing by imposing an affordable housing set-aside of up to: 15 percent on all multifamily development approvals throughout the township; and, 20 percent on all multifamily for-sale development approvals throughout the township.

Developers would be able to meet this set-aside requirement by either providing all of the required set-aside onsite; or, at the developer's option: by providing a minimum of one-third of the required set-aside for multifamily rental development onsite and a payment-in-lieu to fund the construction of a maximum of two-thirds of the required set-aside for multifamily rental development on another site within the township; or, in the case of multifamily for-sale development, by providing one-half of the required set-aside onsite and a payment-in-lieu to fund the construction of a maximum of one-half of the required set-aside on another site within the township.

The actual percentage breakdown of payments-in-lieu of construction and on-site set-aside will be determined by the point-based assessment described below. Specific per-unit, payment-in-lieu dollar amounts would be reviewed annually and determined in accordance with applicable rules and regulations, and local real estate dynamics.

A developer's ability to exercise the option to provide a payment-in-lieu would be determined by a point-based assessment of a site's: proximity to bus stops, schools, parks and open space, the Route 9 corridor, and entrances and exits from the Garden State Parkway; location in a town center or corridor node overlay; location in the sewer service area; and, location outside of sending areas associated with the township's transfer of development rights (TDR) plan. The higher the number of points, the greater the proximity to these features and the requirement for the onsite provision of the set-aside would be. The lower the number of points, the lower the proximity to these features and the requirement for the on-site provision of the set-aside would be. The point-based graduation between providing one-third of the required set-aside for multifamily rental development onsite (i.e., the equivalent of a 5-percent set aside onsite) and all of the required, 15-percent set-aside onsite is outlined on page 20 of the Township's approved Fair Share Plan. In addition, the manner in which points will be accumulated and the conditions associated with same are found in narrative form on pages 20 and 21 therein.

## **CONCLUSION**

As is clear, the Township's court-approved Housing Element and Fair Share Plan continues to create a realistic opportunity for the construction of *far more than its fair share* of the regional need for affordable housing. Therefore, modification or replacement of any of the compliance techniques discussed above is unnecessary. The Township will continue to implement its Fair Share Plan in good faith, as it has done for more than three decades, and will continue to look for new affordable housing opportunities in the future.