

Frequently Asked Questions

Q. Is Randolph required to participate in the process?

A. No. But the failure to participate and comply with the directive of the courts will result in Randolph's temporary immunity issued by the court being revoked, which will subject the Township to Builder's Remedy lawsuits (further explained below).

Q. Who is Randolph's Adversary in Court?

A. There are five "interveners" in the Randolph court action. These interveners are property owners or contract purchasers who have presented plans to the court on how they can assist Randolph meet its affordable housing obligation. At the present time, the Township is working collaboratively with two of these five interveners to assist in meeting our ultimate affordable housing obligation. In addition, Fair Share Housing Center (FSHC), a 501(c)3 organization out of Cherry Hill, New Jersey was designated by the Supreme Court as an "interested party" in all Declaratory Judgment Actions that were filed in the Superior Court of New Jersey in all 21 counties of the state. According to their website, FSHC is "the only public interest organization entirely devoted to defending the housing rights of New Jersey's poor through enforcement of the Mount Laurel Doctrine, the landmark decision that prohibits economic discrimination through exclusionary zoning and requires all towns to provide their "fair share" of their region's need for affordable housing."

Q: What is Randolph's obligation for affordable housing and its plan for fulfillment?

A: Only obligations for the First and Second Rounds of Council on Affordable Housing (COAH) regulations (1987-1999) are actually established. Randolph was assigned an obligation of 261 affordable units for this time period. The Township has satisfied the entirety of this obligation and has credit for an additional 208 units for projects that have already been completed or have approval. The Settlement Agreement establishes a 643-unit cumulative Third Round (1999-2025) obligation for Randolph based upon the fair share methodology calculated by the Richard Reading report dated July 17, 2018 which was prepared for Morris County at the direction of the Honorable Maryann L. Nergaard, JSC by Court Order of June 20, 2017. These obligations were based upon the application of the principles elucidated in the Mercer County Opinion decided upon by the Honorable Judge Mary C. Jacobson in her opinion dated March 8, 2018 for the determination of each of the categories of affordable housing need for the municipalities located in Mercer County.

Q: What is a Builder's Remedy lawsuit and how does it function?

A: A builder's remedy is a court-imposed judgment in favor of a litigant in which the court requires a municipality to rezone the developer's property to allow for high density development provided that a substantial portion of the units to be constructed are reserved for, or set-aside for, low- and moderate-income households. The additional market units that are allowed through the higher density development are intended to create an additional profit to the developer who will use some of those profits to subsidize the low- and moderate-income units that the developer must now construct as part of its development and either sell or rent the units at below market amounts. A developer is entitled to a builder's remedy if (1) it succeeds in proving that the municipality has not satisfied its constitutional affordable housing obligation (Mount Laurel obligation); (2) it proposes a project with a substantial amount of affordable

housing, and (3) the site is suitable, i.e., the municipality fails to meet its burden of proving that the site is environmentally constrained or construction of the project would represent bad planning.

Toll Bros. v. Twp. Of West Windsor, 334 NJ Super. 109 (App.Div.2000) established the principle that a successful developer in a builder's remedy suit is entitled to a court ordered zoning designation, including all aspects of zoning such as density, setbacks, building heights, lot coverage, green area, etc. Municipalities in builder's remedy lawsuits may be held liable for developers' attorney's fees and costs of suit, the fees of a special master appointed by the court to assist in developing the zoning scheme on the affected property, the costs of any infrastructure improvements, such as sewer and water system upgrades and road improvements. When a builder's remedy is granted against a municipality, the town and its planning and zoning boards lose all control over the zoning of the subject property, which is left to the special master, who only reports to the court or just to the courts.

Q: How does a municipality succeed in a builder's remedy lawsuit?

A: A municipality can win a builder's remedy lawsuit by proving that it has satisfied its Mount Laurel obligation voluntarily by adopting zoning that provides a realistic opportunity for the construction of the municipality's fair share of the region's affordable housing needs. Randolph is part of a four county region comprised of Morris, Union, Essex and Warren counties. Barring that defense, it is not an overstatement to say that over the course of judicial history since the builder's remedy was created by the New Jersey Supreme Court in 1983 (Mount Laurel II), it is nearly impossible to find a New Jersey municipality that prevailed in a builder's remedy lawsuit. When a builder's remedy is granted, the municipality is left paying its own attorney's and other professionals' fees, the fees of the court appointed Special Master, as well as in many cases, the attorney's fees of the developer and all infrastructure improvements such as sewer and water system upgrades and road improvements, required by the court-imposed development plan. The municipality also loses virtually all zoning and development regulation control, including density, height, setbacks, landscaping.

Q. Why can't the Township object to allowing new housing to be built based upon the impact such housing will have on our local school system and on traffic congestion?

A. The State of New Jersey and courts do not consider nor do they allow municipal consideration of these factors when calculating affordable housing obligation. Infrastructure such as water and sewer capacity can be considered by the court; however, the obligation remains and is only deferred to a future round.

Q: How do we protect the Township from a Builder Remedy Lawsuit?

A: The only way any community can be protected from a Builder Remedy Lawsuit is to submit a Housing Element and Fair Share Plan that complies with the required obligations and receives a Judgment of Compliance/Repose from the court. This replaces the previously granted Substantive Certification, which was granted by COAH. So long as the Township is complying with its Housing Element and Fair Share Plan, the Township will be "immune" from Builder Remedy.