

**OVERVIEW OF THE PROPOSED 2008 "FAIR SHARE PLAN"
FOR MONTGOMERY TOWNSHIP TO SATISFY ITS
COAH-MANDATED AFFORDABLE HOUSING OBLIGATION**

A. **MONTGOMERY TOWNSHIP'S CURRENT
COAH-MANDATED AFFORDABLE HOUSING OBLIGATION**

COAH stands for the Council on Affordable Housing, located in the state's Department of Community Affairs. COAH's new/proposed rules – the “third-round rules” – require that a municipality address three (3) components of its affordable housing obligation, including the "Rehabilitation Share", the "Prior Round Obligation" and the "Growth Share" obligation.

Rehabilitation Component

1. Montgomery Township has been assigned an 11 unit rehabilitation share obligation; the rehabilitation share is the number of unspecified housing units in the Township as of April 1, 2000 which have a physical deficiency such as problematic plumbing, heating or septic systems and which are occupied by eligible COAH households.
2. It is suggested that the Township address its rehabilitation share obligation via a rehabilitation program.

Prior Round Obligation

1. According to COAH, Montgomery Township's currently calculated prior round obligation is 307 units, versus the 315 units previously calculated.
2. The Township has provided a total of 305 affordable units to be credited to its prior round obligation, including 210 family units in Pike Run, 35 family units in Montgomery Hills and 60 age-restricted units, also in Montgomery Hills.
3. Montgomery also has received bonus credits for its rental housing, as follows:
 - a. Initially, the Township received a 1/3 bonus from the Superior Court for each of the 60 age-restricted units in Montgomery Hills, resulting in 20 credits.
 - b. However, when the Township received "Substantive Certification" from COAH on March 5, 1997, the rental credits changed because of COAH's adopted rules and the fact that all 210 family affordable units in Pike Run became rental units instead of being for-sale.

- c. As a result, instead of the 20 credits previously determined by the Court, Montgomery received a total of 77 bonus credits which is equivalent to 25% of its 307 affordable housing obligation and is the maximum number of credits permitted.
- 4. Given the 77 rental bonus credits, the following table summarizes Montgomery Township's prior round affordable housing obligation:

Development Name	Number Of Affordable Units & Type	Bonus Rental Credits	Total Affordable Housing Credits
Pike Run	210 Family Units	77	287
Montgomery Hills	35 Family Units	0	35
Montgomery Hills	60 Units	0	60
Total Affordable Housing Credits:			382 Units

- 5. The 382 credited units against Montgomery Township's 307-unit prior round obligation results in a surplus credit of 75 units to be applied against the third round "growth share" obligation.

Growth Share Obligation

- 1. Montgomery Township's presumptive growth share affordable housing obligation totals 501 affordable units, including 427.60 units calculated from projected residential unit growth and 73.13 units calculated from projected nonresidential job growth.
- 2. Subtracting the 75 surplus units credited in the prior round results in a net growth share obligation of 426 affordable units (i.e., 501 du - 77 du = 426 du).
- 3. The affordable housing obligation is for the time period between January 1, 2004 and December 31, 2018 and Montgomery Township, as well as every other municipality in the State, currently is required to submit an adopted "Housing Plan Element & Fair Share Plan" to COAH by the end of this 2008 calendar year addressing its affordable housing obligation.

B. LIKELY CONSEQUENCE OF "BUIDER'S REMEDY" LAWSUITS FOR NON-COMPLIANT MUNICIPALITIES

- 1. Because COAH's adopted/proposed rules obviously are impractical, are based upon faulty and unverifiable data, are inconsistent with the "Fair Housing Act", are inconsistent with the State Plan and now are the subject of various filed litigations, it is easy to feel that a municipality should do nothing to comply with

the rules and that somehow everything will work out in favor of the municipality.

2. However, this thinking is dangerous because right now the adopted/proposed COAH rules are the law and the law requires that each municipality in the State of New Jersey submit a plan to COAH by December 31, 2008 addressing its mandated affordable housing obligation as determined by COAH.
3. The repercussion of not filing a plan to COAH by the end of the calendar year most definitely will be what was dubbed by the New Jersey Supreme Court as a "builder's remedy" lawsuit.
4. Essentially, such a lawsuit is filed by a property owner simply alleging that the municipality has not complied with COAH requirements; it is an easy and relatively inexpensive lawsuit to file.
5. Once filed, the presiding Judge will simply determine whether or not the municipality has or has not complied with COAH requirements, with absolutely no consideration as to the merits of COAH's rules, which the Judge rightfully will view as the law of the land.
6. When a municipality is found to be non-compliant, a "Court Master" is appointed by the Judge.
 - a. The court appointed master ordinarily is a licensed planner who is familiar with COAH's rules.
 - b. The fees for the court appointed master, currently at the rate of approximately \$200 to \$250 per hour, are paid entirely by the municipality, including time spent by the master with the municipality, the plaintiff/builder, the Judge and any and all other time for analyses and report preparation.
 - c. Should the court master need information to be generated by the municipality, then the municipality also may have to expend money in order to generate the requested information.
 - d. Moreover, the Judge traditionally instructs the master to settle the case so that as little time as necessary is spent by the Judge.
 - e. Essentially, the Judge and the court master will use and enforce COAH's rules and not deviate from them.
7. The municipality is entirely on the defensive and may end up with nothing more than a few affordable units relative to a large increase in the number of market

rate units relative to the number of units that could be constructed under the prevailing zoning.

8. As a result of settlement of the litigation, the municipality will not be determined by the Judge to have met its affordable housing obligation unless the total number of affordable housing units required by COAH has been provided; therefore, additional litigation may occur.

C. **COAH'S PRESCRIBED MINIMUMS & MAXIMUMS
FOR MONTGOMERY TOWNSHIP**

Based upon the 426 unit growth share affordable housing obligation for Montgomery Township, COAH's adopted/proposed rules establish the following minimum and maximum requirements:

1. At least 50% of the units within the municipality (i.e., not including any bonus credits) addressing its 426 unit "growth share" obligation must be family for-sale or for-rent housing [N.J.A.C. 5:97-3.9].

As defined by COAH, a family unit "means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is available to the general public and not restricted to any specific segment of the population."

2. At least 25% of its 426 unit affordable housing obligation, or 107 units (i.e., 106.5 du), must be rental housing units [N.J.A.C. 5:97-3.10(b)], and at least 50% of its 107 unit rental obligation, of 54 units (i.e., 53.5 du) must be family rental housing units [N.J.A.C. 5:97-3.4(b)].
3. No more than 25% of its 426 unit affordable housing obligation, or 106 units (i.e., 106.5 du), can be age-restricted units [N.J.A.C. 5:97-3.10(c) 1. & 2.].
4. At least 13% of its 426 unit "growth share" obligation, or 56 units (i.e., 55.38 du), must be provided for "very low income" households, and at least 50% or 28 of the "very low" income units must be family housing units [no citation at this time].
5. No more than 10% of its 426 unit affordable housing obligation, or 42 units (i.e., 42.6 du), can be "Accessory Apartments" [N.J.A.C. 5:97-6.8(b)1.].
6. In accordance with the proposed rule amendments, bonus credits for rental units will only be given to the second 25% of units provided; no rental bonuses will be given to the base number of required rental units (i.e., the first 25%) and no rental

bonuses will be given to either age-restricted housing or accessory apartments.

- a. Rental bonuses for supportive housing and group home bedrooms will be given at a ratio of 1:25 credits per bedroom.
- b. Rental bonuses for family units will be given at a ratio of 2 credits per unit.
- c. In any case, credits are limited to no more than 25% or 106 (i.e., 106.5) of the 426 unit affordable housing obligation.

D. **GOALS OF MONTGOMERY'S COAH WORK GROUP
REGARDING A "FAIR SHARE PLAN"**

1. The Township's COAH Work Group has been meeting since the beginning of the year to formulate and submit a "Housing Plan Element & Fair Share Plan" to COAH by the end of 2008 which will:
 - a. Protect Montgomery Township against a "builder's remedy" lawsuit which will negate the ability of the Township to determine what is in its best interests.
 - b. Provide most of the affordable housing in locations which are in proximity to job opportunities and public transit services, primarily along the Route 206 corridor within Planning Areas 1, 2 & 3 as identified in the current State Development & Redevelopment Plan.
 - c. Provide affordable housing development in a manner that is compatible with the existing development pattern of the Township.
 - d. Be a plan that promotes smart growth and context sensitive design while providing the required affordable housing units.
 - e. Be a plan that promotes the renovation and preservation of existing architecturally significant buildings and/or the development or redevelopment of existing infill properties or existing developments in need of renovation.
 - f. Be a plan which safeguards the quality of life and other interests of the citizens of Montgomery Township.
 - g. Be a plan which provides the greatest amount of flexibility for future changes to the plan should the rules change for any reasons,

including the results of the pending litigations.

E. **COMPONENTS OF PROPOSED "FAIR SHARE PLAN"**

1. **EXISTING "GROUP HOMES" (30 bedrooms/units)**

The existing group homes will provide 30 non-family rental unit credits.

The Crawford House, Inc.

Located at 362 Sunset Road in the Township, the "Crawford House" serves female residents of New Jersey, age 18 and older, who have been assessed with alcohol and/or drug dependence. The "Crawford House" offers an intensive, comprehensive and highly individualized six-month treatment program. The "Crawford House" facility currently has twenty-two (22) bedrooms, all for "very low" income people.

In addition to counseling, psycho-educational classes and employment readiness services, the program also emphasizes gaining experience in life skills management, such as budgeting, parenting, nutrition and stress management. While the program is free to residents upon admission, clients must obtain part-time employment after an orientation period. They then contribute half of their net salary to help pay for their own treatment. Obtaining employment is emphasized to foster self-worth, economic independence and personal responsibility while becoming sober members of the community.

The Devereux Corporation

Located at 797 Route 601 in the Township, the "Devereux Corporation" provides services to individuals with developmental disabilities and autism and is fully funded by the State Division of Developmental Disabilities. The residents learn life skills designed to increase their ability to live as independently as possible in the community. The community-based homes are designed to provide a family-like setting, with the practitioners providing consistency, teaching and stability for the individuals. The "Devereux Corporation" facility has four (4) bedrooms in Montgomery Township, and the residents receive Supplemental Security Disability Income (SSDI) from the federal government, which is their only source of income. All four (4) of the units are for "very low" income people.

The Developmental Residential Corporation

Located at 174 Opossum Road in the Township, the "Developmental Residential Corporation" provides services to individuals with

developmental disabilities and is fully funded by the State Division of Developmental Disabilities.

The "Developmental Residential Corporation" facility has four (4) bedrooms in Montgomery Township, and the residents receive Supplemental Security Disability Income (SSDI) from the federal government, which is their only source of income. All four (4) of the units are for "very low" income people.

2. **PROPOSED "GROUP HOMES" (22 bedrooms/units)**

The proposed group homes will provide 22 non-family rental unit credits.

Global Communities of Support (GCoS)

The Montgomery Township Master Plan was amended on November 14, 2005 to include a concept plan for the redevelopment of lands which were formerly owned by the State of New Jersey and used as the North Princeton Developmental Center. The lands have been purchased by the Township from the State and are now known as Skillman Village.

The concept plan includes approximately 3.6 acres of land specifically planned for the development of "group home" facilities, although the land area shown on the concept plan will be modified and/or expanded by the Township as necessary in order to meet the needs of the facilities.

Montgomery Township will have "Global Communities of Support" (GCoS), a 501 (c)3 organization formed in 2001, as the coordinator of the "group home" facilities to be located on the property, which will include twenty-two (22) bedrooms, all designated for "low" or "very low" income people.

The overall mission of GCoS is to enable programs and services that allow individuals with autism and other developmental disabilities to reach their potential. GCoS partners with service providers (e.g., Eden, PCDI, Midland, etc.) and other key stakeholders to design facilities for teenagers and adults with developmental disabilities.

3. **EXISTING FAMILY UNITS FOR SALE (19 units)**

The existing family units for sale will provide 19 family unit credits.

Montgomery Glen

Nineteen (19) affordable housing units for sale have been completed within the "Montgomery Glen" "inclusionary" residential development located along Princeton Avenue and Blue Spring Road within the Township's "APT/TH" Apartment/Townhouse zoning district.

These affordable units were not included in Montgomery Township's "Fair Share Plan" previously approved by COAH for the Township's second round obligation.

The "Montgomery Glen" development is identified on the Township Tax Map as Block 37002/Lots 7.01 & 8-43 and all lots within Blocks 3700 through 37007

4. **EXISTING FAMILY UNITS FOR RENT (3 units)**

The existing family units for rent will provide 3 family rental unit credits.

Railsedge Enterprises

The "Railsedge Enterprises" mixed use development includes three (3) rental residential flats affordable to "moderate income" households which are located above three (3) retail/office uses on the first floor of a building located in the "NC" Neighborhood Commercial District on Belle Mead-Blawenburg Road (Lots 1 and 2 in Block 26002). The three (3) affordable family units for rent were not included in the Township's second round certified housing plan and was the result of a "use" variance approval by the Township's Zoning Board of Adjustment.

Montgomery Township is seeking a "waiver" from N.J.A.C. 5:97-3.3 (a) to permit this development to have all three (3) units in this development affordable to "moderate income" households; three (3) additional compensating "low income" units are provided in the plan from the group homes.

5. **PROPOSED FAMILY UNITS FOR SALE (25 units)**

The proposed family units for sale will provide 25 family unit credits.

RPM Development Group

The RPM Development Group will completely rehabilitate four (4) of the existing structures remaining on the Skillman Village property owned by Montgomery Township. RPM also proposes to construct five (5) additional "green design" buildings with brick facades to complement the existing buildings to be renovated.

Financing for the development will come predominantly from the New Jersey Housing and Mortgage Finance Agency's Tax Credit program and the New Jersey Department of Community Affairs Balanced Housing program.

A total of eighty-five (85) affordable family units will be created,

including twenty-five (25) units for sale and sixty (60) units for rent. All twenty-five (25) of the units for sale will be for "moderate" income households.

6. **PROPOSED AGE-RESTRICTED UNITS FOR SALE (40 units)**

The proposed age-restricted units for sale will provide 40 non-family unit credits.

Sharbell Plainsboro, Inc.

Sharbell Plainsboro, Inc. currently is developing 218 age-restricted market units as part of the "Tapestry At Montgomery" active adults community in a land area located west of Route 206 and north of Route 518.

When the active adult community was preliminarily approved on February 9, 2004, approval also was given for the construction of two (2) office buildings totaling approximately 29,600 square feet.

The lot approved for the office buildings is identified as Block 28004/Lot 7 on the Township Tax Maps. The lot contains 4.087 acres and is located at the intersection of Research Road and Hartwick Drive, just south of the "Tapestry At Montgomery" age-restricted active adult community.

Sharbell Plainsboro, Inc. now proposes to construct eighty (80) age-restricted apartment units for sale in a 3-story building, with forty (40) of the units (50%) set aside for occupancy by COAH eligible age-restricted households.

7. **PROPOSED AGE-RESTRICTED UNITS FOR RENT (80 units)**

It should be noted that a total of one hundred twenty (120) age-restricted affordable housing units are proposed in this "Fair Share Plan", with the understanding that only one hundred six (106) age-restricted units can be credited against Montgomery Township's affordable housing obligation at this time.

Therefore, although eighty (80) age-restricted units for rent are proposed, since forty (40) other age-restricted units are included in this "Fair Share Plan", only sixty-six (66) of the eighty (80) units can be credited against the Township's affordable housing obligation at this time; the additional fourteen (14) age-restricted units could be applied to a future affordable housing obligation.

Presbyterian Homes

Montgomery Township owns approximately 16.19 acres of land along Montgomery Road adjacent to the "Stonebridge" continuing care retirement community owned and operated by Presbyterian Homes. The "1860 House" is located on the subject property.

Montgomery Township proposes that the property be subdivided into two (2) lots; one lot will be approximately 11.5 acres in area and contain the existing "1860 House", while the other lot will be approximately 4.69 acres and will be developed with eighty (80) age-restricted affordable apartment units for rent.

8. **PROPOSED FAMILY UNITS FOR RENT (121 units)**

The proposed family units will provide 121 family rental credits plus 106 rental bonus credits.

Harlingen Village Square

"Harlingen Village Square" is a proposed mixed use "inclusionary" development to include 24,800 square feet of retail space, 9,200 square feet of office space, an 8,400 square foot child care center and thirty (30) apartment units, fifteen (15) of which will be COAH qualified family units for rent.

Seven (7) of the units will be for "moderate" income households, five (5) units will be for "low" income households, and three (3) units will be for "very low" income households.

The subject property is located on the east side of Route 206 north of Harlingen Road and extends from Route 206 to Fox Brook. Identified as Block 6001/Lots 33, 34, 34.01, 35, 35.01 & 36 on the Township Tax Maps, the property contains approximately 22.1781 acres.

The "Harlingen Village Square" development will be situated on approximately 10.5117 acres of the property towards Route 206.

Montgomery Five, LLC

The subject property is situated along the west side of Route 206 south of Applegate Road. Identified as Block 34001/Lots 60, 61 & 62 on the Township Tax Maps, the property contains approximately 1.692 acres.

The conceptual site plan that has been prepared for the property includes a multi-use building with 12,600 square feet of retail space on the first floor and six (6) affordable housing units on the second floor.

Three (3) of the units will be for "moderate" income households, two (2) will be for "low" income households and one (1) unit will be for a "very low" income household.

Given the relatively small size and depth of the subject property, all six (6) of the residential units will be 1-bedroom units and a waiver from the

bedroom distribution requirements of N.J.A.C.5:80-26.3 (b) is requested; two (2) additional 2-bedroom and 3-bedrooms units will be provided among the 25 for sale units to be provided by the RPM Development Group on the Skillman Village Property (i.e., 3 1-bedroom, 15 2-bedroom & 7 3-bedroom du).

RPM Development Group

As previously noted for the proposed family units for sale, the RPM Development Group will completely rehabilitate four (4) of the existing structures remaining on the Skillman Village property owned by Montgomery Township. RPM also proposes to construct five (5) additional "green design" buildings with brick facades to complement the existing buildings to be renovated.

Financing for the development will come predominantly from the New Jersey Housing and Mortgage Finance Agency's Tax Credit program and the New Jersey Department of Community Affairs Balanced Housing program.

A total of eighty-five (85) affordable family units will be created, including twenty-five (25) units for sale and sixty (60) units for rent. Thirty-eight (38) of the sixty (60) units for rent will be for "moderate" income households, five (5) for "low" income households, and seventeen (17) for "very low" income households.

JER Herring Orchard, LLC

The subject property is situated at the southwestern corner of the Route 206/Orchard Road intersection and contains an existing 238,947 square foot office building. Identified as Block 28001/Lot 5 on the Township Tax Maps, the property contains approximately 70.194 acres.

The proposed development will subdivide the existing lot into two (2) new lots; proposed Lot 5.01 will be approximately 45.808 acres and contain the existing office building, and proposed Lot 5.502 will be approximately 24.386 acres and contain an "inclusionary" residential development.

The "inclusionary" residential development will develop a total of one hundred sixty (160) units, including one hundred twenty (120) market family units for sale and forty (40) affordable family units for rent.

Twenty-five (25) of the affordable family units will be for "moderate" income households, eight (8) will be for "low" income households, and seven (7) will be for "very low" income households.

F. SUMMARY OF PROPOSED "FAIR SHARE PLAN"

The currently proposed "Fair Share Plan" to satisfy the Township's COAH mandated affordable "growth share" housing obligation of 426 units is summarized on the chart on the following page of this report.

Compared to COAH's prescribed minimums and maximums for Montgomery Township, the proposed "Fair Share Plan" addresses these requirements as follows:

- Family Units: At least 160 family units are required (i.e., 426 du "growth share" - 106 du bonus rental credits = 320 du x 50% = 160 du), and 168 family units are provided.
- Rental Units: At least 107 rental units are required and 242 rental units are provided, including 52 group home bedrooms, 66 age-restricted rental units and 124 family rental units.
- Family Rental Units: At least 54 family rental units are required and 124 family rental units are provided.
- Age-Restricted Units: No more than 106 age-restricted units are permitted and 106 age-restricted units are provided.
- Very Low Income Units: At least 56 "very low" income units are required and 58 "very low" income units are provided, and, also as required, 28 of the "very low" income units are family units.

CURRENTLY PROPOSED "FAIR SHARE PLAN" TO SATISFY MONTGOMERY TOWNSHIP'S 426 UNIT AFFORDABLE HOUSING OBLIGATION					
			Income Limits		
	Location	BR's/Units	Very Low	Low	Moderate
EXISTING GROUP HOMES					
	The Crawford House, Inc.	362 Sunset Road	22 bedrooms	22	-
	The Devereux Corporation	797 Route 601	4 bedrooms	4	-
	Developmental Residential Corp	174 Opossum Road	4 bedrooms	4	-
PROPOSED GROUP HOMES					
	Global Communities of Support	Skillman Village	22 bedrooms	22	-
EXISTING FAMILY FOR SALE					
	Montgomery Glen	APT/TH District	19 units	-	10
EXISTING FAMILY FOR RENT					
	Railsedge Enterprises	Blawenburg	3 units	-	3

PROPOSED FAMILY FOR SALE					
RPM At Skillman Village	Skillman Village	25 units	-	-	25
PROPOSED AGE-RES FOR SALE					
Sharbell Plainsboro, Inc.	Tapestry Out-Parcel	40 units	-	20	20
PROPOSED AGE-RES FOR RENT					
Presbyterian Homes	1860 House Property	66 units	-	33	33
PROPOSED FAMILY FOR RENT					
Harlingen Village Square Mixed Use	Harlingen	15 units	3	5	7
Montgomery Five Mixed Use	Route 206	6 units	1	2	3
RPM At Skillman Village Renovation	Skillman Village	60 units	17	5	38
JER Herring Orchard Inclusionary	Orchard Road	40 units	7	8	25
	TOTALS:	326 Units	58	105	163
RENTAL BONUS CREDITS					
106 Family Rental Units @ 1:1		106 units			
	TOTAL CREDITS:	432 Units			

The numerical breakdown and percentage of the actual units included in the plan (i.e., 326 units not including the 106 rental bonus credits) is as follows for group home bedrooms, age-restricted units, and family units:

- Group Home Bedrooms: 52 units (15.95%)
 - Age-Restricted Units For Sale: 40 units (12.27%)
 - Age-Restricted Units For Rent: 66 units (20.24%)
 - Family Units For Sale: 44 units (13.50%)
 - Family Units For Rent: 124 units (38.04%)
- Totals: 326 units (100.00%)

G. **ADDITIONAL POTENTIAL COMPONENTS OF "FAIR SHARE PLAN"**

Accessory Apartments

1. "Accessory Apartments" are not included in the "Fair Share Plan", but could be added. As discussed with the Township officials at the September 4, 2008 public

meeting, an "Accessory Apartment" is defined by COAH as follows:

"A self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the site."

2. As previously noted, Montgomery Township could include no more than forty-two (42) "Accessory Apartments" in the "Fair Share Plan" (i.e., $10\% \times 426 \text{ du} = 42.6$ or 42 du).
3. Unfortunately, however, "Accessory Apartments" are not considered "family" units by COAH and, therefore, cannot be credited to the required number of family units in the Township.
4. Therefore, the number of "family" units would not be significantly affected with the inclusion of "Accessory Apartments" in the plan.
5. Moreover, the Township would have to provide a minimum of \$20,000 per unit to subsidize a "moderate" income accessory apartment or \$25,000 per unit for a "low" income apartment. Therefore, if forty (40) "moderate" income "Accessory Apartments" are provided in the plan, the cost to the Township would be a minimum of \$800,000.

Devan Development Company, LLC

1. The subject property is located on the east side of Route 206 between the "Montgomery Township Shopping Center" to the south and the "Montgomery Knolls" condominium office development to the north.
2. Identified as Block 29002/Lot 45 on the Township Tax Maps, the property contains approximately five (5) acres. The property currently is developed with a warehouse/office flex building containing approximately 33,186 square feet.
3. The landowner has offered to redevelop the property with a mix of non-residential land uses and thirty (30) family rental units.
4. However, at this time, the units are not necessary to effectuate a COAH compliant plan, but could be included in the plan if necessary and/or desired.