



TOWNSHIP OF WEST ORANGE

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West Orange Township Backgrounder on Affordable Housing Legal Action (as of February 24, 2017)

1. The 1975 Mount Laurel New Jersey Supreme Court decision found a state constitutional obligation for municipalities to provide affordable housing.
2. Over the years, West Orange has dealt with its obligation. The township fully complied with all COAH (state Council on Affordable Housing) regulations.
3. As we spoke about last year at council meetings, the town settled litigation with Garden Homes, which has been trying to develop a 124-acre site adjacent to West Essex Highlands off of Eagle Rock Avenue. The judge in this case ruled that as a matter of law, Garden Homes has the right to develop on its property. That settlement suspended litigation Garden Homes initiated after the town Planning Board rejected its application for 136 single family homes there. That litigation also included a challenge to the Township's tree ordinance. Garden Homes has the option to re-start that litigation.
4. Subsequently, following the Council on Affordable Housing's failure to establish calculations for affordable housing obligations, the state Supreme Court ruled that Superior Courts shall hear requests for court judgment from municipalities to set their affordable housing obligations. The town filed an action last year in Superior Court seeking this declaratory judgment.
5. Fair Share Housing Center, an intervenor in all of the Mount Laurel litigations throughout the State of New Jersey, has presented an expert's report putting the town's affordable housing obligation at 1,362 units. That number is subject to change through negotiation or litigation.
6. Once that obligation is determined, the town will then develop a plan to provide these units, by obligating developers to either build the units on-site or for units to be built off-site within West Orange.
7. Garden Homes subsequently intervened in West Orange's request for Superior Court judgement and became a party, offering to help meet the town's affordable housing obligation as part of an agreement to allow it to move ahead with development. This type of intervention in affordable housing legal actions often involves attempts to gain court approval for high-density development projects. The town is seeking a settlement with Garden Homes.



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8. If a settlement cannot be reached with both Garden Homes and Fair Share Housing Center, the issue will go to trial for a decision by the court. Going to trial represents a significant increase in the township's costs to deal with this issue, because it will require substantial costs for lawyers and expert witnesses.
9. The Superior Court has assigned a mediator to see if we can settle without a trial. The court has also said it plans to go to trial in April if mediation is unsuccessful.
10. The first mediation session, which involved representatives of the town, Garden Homes and Fair Share Housing Center, took place November 2, 2016.
11. In December, Garden Homes spoke publicly to the West Essex Highlands Condominium Association about its proposal for 782 luxury apartment rental units on the site.
12. The second mediation session occurred February 7, 2017. A group from the township -- including two council members, the business administrator, the town engineer, and the town attorney -- met with Garden Homes and a lawyer representing the condominium board of the adjacent West Essex Highlands. While the condo association board does not have the same status in this legal action as does intervenor Garden Homes, we recognize that the residents of the condo association have unique concerns based on their proximity adjacent to the Garden Homes 124-acre site that we should consider. Garden Homes explained its preliminary concept plan for the apartment complex. Town council held an executive session at its regular council meeting that evening.
13. Town council held another executive session at its February 21, 2017, meeting to discuss the situation and its next steps for the mediation. We're also planning further meetings and steps to try to clarify the proposal and to try to negotiate a potential settlement.
14. The Court Master has directed West Orange to respond to Garden Homes by Friday, February 24, 2017.
15. We were able to provide more information at the February 21 council meeting and subsequently through the town website. Ms. Shirley Bishop, an expert in affordable housing issues, has been retained as the Township's consultant and spoke extensively to the council and public at the February 21 council meeting. Video of this council meeting is available through local public access television and online at <https://youtu.be/Byw0jygHn5w>.
16. These discussions have the potential to resolve the Township's declaratory judgment action establishing its affordable housing obligation, while also settling the dispute with Garden Homes so that it can potentially move forward with a new application to the Planning Board for developing the site. If no settlement is achieved, further lengthy, expensive litigation will likely occur.

