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A Legislative Overview of A4/S50

Juan Carlos Nordelo, MPA

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Affordable Housing101

- **Mt. Laurel Doctrine** – The NJ Supreme Court ruled in NAACP v Mt. Laurel that every municipality in a growth area had the constitutional obligation to provide a realistic opportunity for a fair share of its region's present and prospective need for affordable housing.

- **COAH** – The implementation of realistic opportunity mandates was left to the Legislature to lead resulting in the formation of the Council on Affordable Housing in 1985, an administrative entity that was considered defunct for their failure to adopt 3rd Round rules and formally abolished by A4.

- **Rounds of Affordable Housing** – Constitutional fair share obligations are settled in 10-year rounds. New Jersey is currently in the 3rd Round, which due to the inaction and failure of COAH lasted 25 years. The 4th Round will begin in 2025 and will be settled through the process laid out by A4.

What does A4 do?

1. Eliminates the Council on Affordable Housing and the court-led system that has resulted in protracted legal battles and delays in production.
2. Creates an efficient, transparent and uniform process for the calculation, dispute and settlement of municipal affordable housing obligations.
3. Empowers municipalities with more flexibility, negotiating power and strong legal protections from exclusionary zoning litigation, while maintaining the rights of housing advocacy organizations to challenge plans and ensure realistic opportunity for affordable housing.
4. Develops a comprehensive timeline that will accelerate the actual production of affordable housing to address New Jersey's growing affordable housing deficit.

Calculating Your Number under A4

What’s my Number?

- Prior to each new round of Affordable Housing Obligations, the Department of Community Affairs will utilize the formula created by A4 to calculate both regional need and municipal obligations for each municipality in the State.
- The Department will publish their findings for both regional need and municipal present and prospective need to be utilized as nonbinding guidance for municipalities in the calculation of their own present and prospective need based on the statutory formula created by A4.
- Municipalities must use the statutory formula to determine their present and prospective need for the round they are operating in.

What is the Formula created by A4?

- A4 creates a statutory formula for the calculation of both regional and prospective need for the 10-year-round beginning in 2025.
- **Regional Need** – is determined by calculating the projected household change utilizing the last two federal decennial census's to determine household growth over the last decade and dividing the overall growth by 2.5% to estimate the number of new affordable homes needed to address the growth in low- and moderate-income households.
- **Present Need Obligations** – are calculated by estimating the existing deficient housing units currently occupied by LMI households within the municipality following rules from the Jacobson Decision and utilizing federal decennial census data, American Community Survey Data including the Comprehensive Housing Affordability Strategy Data Set.
- **Municipal Prospective Need Obligation's**- are calculated through multiple factors spelled out in Section 7 of the legislation that account for a municipality's population, their share of the regional need, income capacity, employment potential, and land capacity; all of which can be utilized to adjust the municipality's ultimate share of the regional obligation to meet their unique needs.

The Affordable Housing Dispute Resolution Program

- A4 creates the Affordable Housing Dispute Resolution Program to efficiently resolve disputes between municipalities and external stakeholders under A4.
- The Program consists of seven members appointed by the Administrative Director of the Courts (consisting of Mt. Laurel Judges) and their staff.
- The Program is charged with establishing procedures for efficiently resolving disputes, over compliance with the legislation concerning the calculation of affordable housing obligation and the development of housing elements and fair share plans

Settling my Number under A4

- Once municipalities calculate their obligation utilizing the statutory formula they will submit their number to the Program with a presumption of validity.
- Municipal Need Determinations will then be subject to a challenge period by interested parties, whose challenge must be on the basis that the determination did not comply with the formula established by the legislation.
- All challenges will be vetted by the Program through an objective assessment standard and all challenges must state how the determination is incorrect with evidence and particularity.
- Utilizing these rules the Program will render a decision that :
  - The municipality's determination did not comply with the legislation and their immunity shall be revoked.
  - The municipality's determination must be adjusted to comply with the legislation
  - The challenge to the municipality's determination is rejected based on the challenge standards.
- Once a decision has been rendered the municipality's number is confirmed by the program as the basis for their fair share plan and housing element.

Creating my Fair Share Plan and Housing Element under A4

- Based on the municipality’s determination, the municipality will create their fair share plan and housing element.
- Municipal Fair Share Plans and Housing Elements must be designed to achieve the goal of access to affordable housing that meets their present and prospective housing needs and shall contain a variety of analyses as prescribed by Section 10 of the legislation.
- Fair Share Plans must include an assessment of the degree to which the municipality has met its fair share obligation from the prior rounds to determine the extent to which their obligations have been unfulfilled or if the municipality has credits in excess from prior rounds. Prior Round unfulfilled credits shall not count on the 1,000-unit cap and must be addressed by the municipality.

Settling my Fair Share Plan and Housing Element

- Like the settlement process undertaken regarding Calculations, Fair Share Plans and Housing Elements will be open to challenges by interested parties that are facilitated by the Affordable Housing Dispute Resolution Program.
- Challenges to Housing Elements and Fair Share Plans will be submitted to the Program and must be based on noncompliance with the Fair Housing Act and Mt. Laurel Doctrine and cannot be based on claims that a site on real property proposed by the interested party is a better site than a site in the plan.
- To resolve challenges the program shall apply an objective assessment standard to the municipalities plan and element to determine compliance with the Fair Housing Act and Mt. Laurel Doctrine and all challenges must come with the basis for the challenge with particularity.
- Program Decisions as to Challenges to Fair Share Plans and Housing Elements will either:
- Be dismissed on the grounds the challenge does not meet the standards under the law
- Be facilitated by communication with the municipality and interested party to achieve a revised plan or an explanation as to why the requested changes cannot be made. These resolutions will be handled by the program until a resolution occurs and final plans are approved for consistency through the issuance of a compliance certification.

Timeline Contemplated by A4

Proposed Timeline
4th Round of Affordable Housing Obligations

3/20/24 Bill signed into Law

4/1/25 – 6/30/25
Draft Fair Share and Housing Element Planning Period

5/17/24 Program Appointed

6/30/25
Draft Fair Share and Housing Element Deadline to Program

7 Month Calculation Window

10/20/24
DCA Guidance Calculations Released

6/30/25 – 8/31/25
Fair Share and Housing Element Challenge Period

10/21/24 – 1/31/25
Resolution Adoption Period

8/31/25 – 12/31/25
Challenge and Expedited Compliance Certification Mediation Period
&
Program Determination Period on Immunity for Unresolved Cases

1/31/25
Binding Resolution on the Municipal Obligation Due Date

12/31/25 – 3/15/26
Formal Municipal Action on Final Fair Share Plan and Housing Element Period

1/31 – 2/28/25
Challenge window to Obligation

3/15/26
Formal Municipal Action Final Fair Share Plan and Housing Element or Binding Resolution Adoption Due Date

2/28/25 – 4/1/25
Mediation Period on Challenge to Obligation

For any case unresolved beyond 3/15/26 further action may be taken in Superior Court

Incentives and Penalties in A4

Incentives:

- Municipalities and interested parties have a clear statutory formula to calculate the determination of need.
- Municipalities that comply with the deadlines set within the legislation received immunity from builder's remedy suit and all exclusionary zoning litigation.
- The deadlines contemplated in the bill contain extensions based on reasonable circumstances and good faith efforts.
- Municipalities and other interested parties can request realistic opportunity reviews midway through the round, empowering the municipality to adjust their fair share plans and housing elements to comply with the legislation and propose alternative sites.
- Municipalities can utilize municipal affordable housing trust fund dollars to help develop and resolve and challenges to their obligation's calculation, housing element, or fair share plan.
- Municipalities avoid formal court action and lengthy litigation by handling their disputes through the Program.
- Municipalities have a 1,000 units or 20% of the total household's cap on their municipal determination for the next round not including their previous unfulfilled obligation if it exists.
- Municipal housing elements and fair share plans cannot be challenged based on real property claims.
- Challenges to municipal determinations and fair share plans and housing elements must be presented with evidence are vetted through an objective assessment standards and must be based on specific grounds with challenges that do not meet the criteria to be dismissed.
- Municipalities benefit from a host of new bonus credits to meet their obligation.

Incentives and Penalties in A4

Penalties:

- Municipalities that fail to meet the deadlines contemplated by the legislation will have their immunity from builder's remedy and exclusionary zoning litigation revoked, leaving them to settle their obligations in superior court.
- Municipalities that have their immunity revoked and settle their obligations in superior court will not be allowed to use their Municipal Affordable Housing Trust Fund Dollars to defend themselves in court and will have to pay attorney's fees to the prevailing party.

Affordability Controls and Bonus Credits

Affordability Controls: A4 updates the Uniform Housing Affordability Controls to specify that the creation of affordable rental units must have a 40-year minimum deed restrictions and a 30-year minimum deed restrictions on for sale units. For housing units for which affordability controls are extended to a new term of affordability, a 30-year minimum deed restrictions would be required with certain flexibility on how the extension is provided to encourage affordable housing preservation.

A4 increased the percentage of a municipality's prospective need that may be satisfied through the creation of age restricted housing from 25% to 30%, allows for up to 10% of a municipality's obligation to be satisfied through transitional housing, and requires that a municipality satisfy a minimum of 50 percent of the actual affordable housing units, exclusive of any bonus credits, created to address its prospective need affordable housing obligation through the creation of housing available to families.

Bonus Credit(s):

A4 prohibits a municipality from satisfying more than 25% of its prospective need obligation using of bonus credits and allows the following credits:

1. 2 credits for housing for individuals with special needs or permanent supportive housing
2. 1.5 credits for ownership units created in partnership sponsorship with a non-profit housing developer
3. 1.5 credits for housing located within a half mile of transit stations (or 1 mile if the project is in a Garden State Growth Zone)
4. 1.5 credits for certain age-restricted housing units
5. 1.5 credits for family housing with at least three bedrooms above the minimum number required by the bedroom distribution
6. 1.5 credits for housing constructed on certain land previously used for retail, office, or commercial space
7. 1.5 credits for certain existing rental housing for which affordability controls are extended through municipal contributions
8. 2 credits for certain 100 percent affordable developments built through municipal contributions of real property or funding
9. 1.5 credits for certain housing for very low-income households above the minimum number required
10. 2 credits for the transformation of existing market rate units to affordable housing.

Additional Policy Impacted by A4

A4:

- Requires DCA to maintain certain affordable housing related information on its website including : (1) the start and expiration dates of deed restrictions; (2) residential and non-residential development fees collected and expended, including purposes and amounts of such expenditures; and (3) the current balance in the municipality's affordable housing trust fund and municipal spending plans for these trust funds.

- Amends various parts of the statutory law to remove references to COAH, and to transfer rulemaking authority, to the extent necessary, from COAH to DCA and the New Jersey Housing and Mortgage Finance Agency (HMFA).

- Establishes a new certification and compliance enforcement process for Administrative Agents and Municipal Housing Liaisons within DCA

- Appropriates $12 million to the program, and $4 million to DCA, from the General Fund, for the purposes of carrying out their respective responsibilities for the fourth round of affordable housing obligations

THANK YOU!

Questions:

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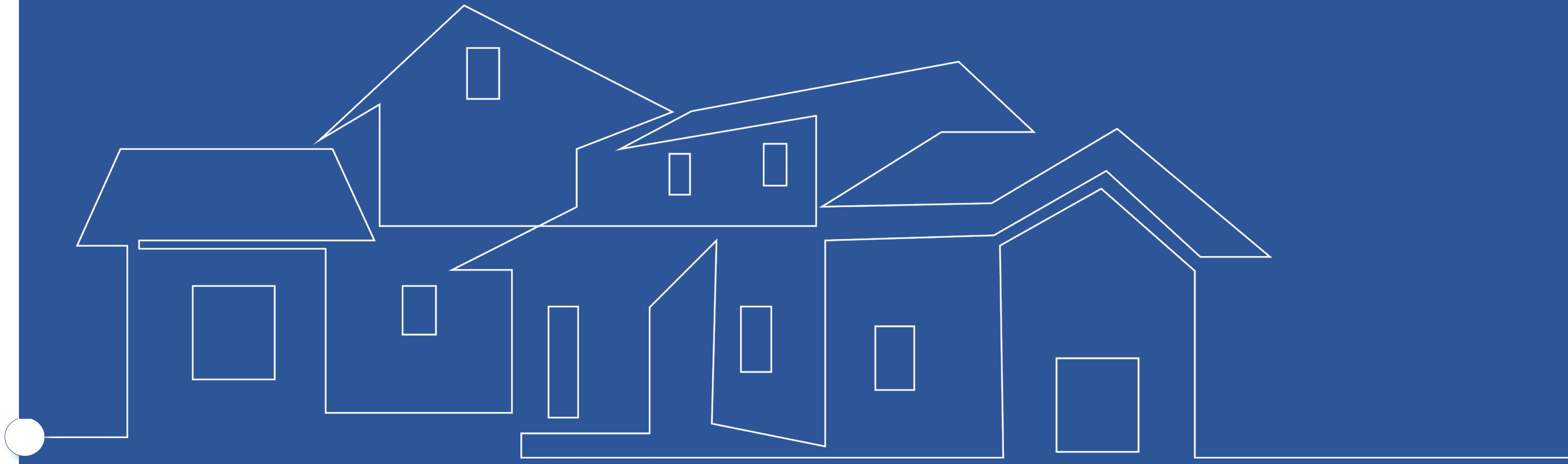


Financing Opportunities Available Through NJHMFA

Middlesex County Housing Policy Summit 2024

Jonathan Sternesky

HOUSING & MORTGAGE FINANCE AGENCY

ABOUT US:

The New Jersey Housing and Mortgage Finance Agency (NJHMFA) provides funding for affordable homeownership and housing opportunities for New Jersey residents. NJHMFA is the State's housing finance agency. We respond to the needs of residents by implementing creative programs and establishing alliances that: fund affordable home mortgages for first-time home buyers. NJHMFA's programs are offered through our network of approved lenders.

Our Role in Affordable Housing

- Official allocator in New Jersey of **Low-Income Housing Tax Credit (LIHTC),** the nation's largest supply subsidy for affordable housing developers. (Mostly 100% affordable but some mixed-income).

- Two variants:
  - **9% LIHTC** covers ~70% of total costs and is highly competitive, regulated by the Qualified Allocation Plan (updated earlier this year)
  - **4% LIHTC** covers ~30% of total costs and is non-competitive, but must identify gap financing

- Rents in LIHTC projects must not exceed 30% of the annual income of a household at 50%, 60%, or 80% of Area Median Income (adjusted for household size)

- NJHMFA also offers **three types of loan programs,** funded through bonds, for multifamily development:
  - Refinancing permanent loans
  - Construction loans that convert to permanent financing
  - Permanent loans with a construction escrow

Low-Income Housing Tax Credit (LIHTC)

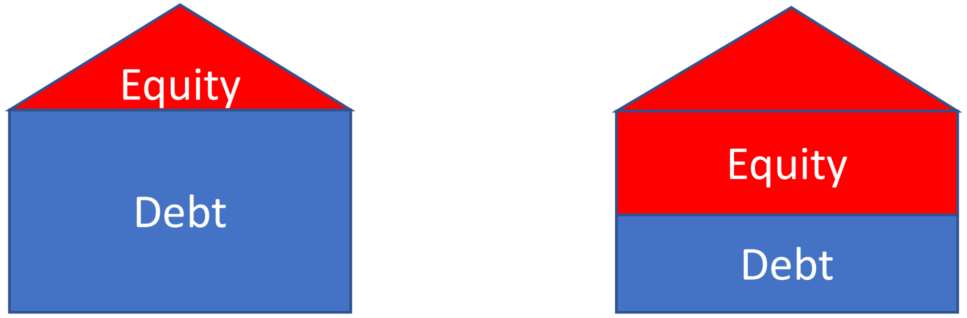
- LIHTC is a dollar-for-dollar tax reduction to incentivize public/private sector partnerships.
- Credits are awarded to developers and typically sold to an investor for up-front capital to build a rental housing project and are claimed by the investor for 10 years.
- Credit amount is based on construction costs.
- **Objective: To provide investor equity to lower Debt Service, to allow lower rents**

CONVENTIONAL APARTMENT

Typically, 80% debt 20% Equity

TAX CREDIT APARTMENT

Often, 30% debt or less



Qualified Allocation Plan (QAP)

- QAP serves as the regulation for the allocation of tax credits and oversees their compliance standards for 9% and 4% allocations.

- For the competitive 9% application process, the QAP sets forth the prioritization standards that allocations are based on.
  - Scoring is based on:
    - Proximity to transit and amenities, such as education, jobs, and services;
    - Terms of affordability; and
    - Design standards, such energy efficiency and climate resiliency.

- Currently 60% of allocations go to suburban communities and 40% to urban areas.
  - Due to the AHTF financing suburban deals, this is being temporary inverted to have a higher percentage of 9% allocations financing urban opportunities.

Example 9% Credit Calculation

50 Unit Project – all tax credit eligible, 100% affordable

Total Development Costs	$11,000,000	
Land & Non- Eligible Costs	- $2,000,000	
Eligible Basis	$9,000,000	
QCT/DDA Basis Boost (up to 130%)	x 130%	(for high cost areas)
Adjusted Basis	$11,700,000	
Applicable Fraction (affordable units)	x 100%	
Qualified Basis	$11,700,000	
Tax Credit Percentage	x 9.00%	
Annual Tax Credits	$1,053,000	

10 years of Tax Credits to Investor = $10,530,000

Example 4% Credit Calculation

Take the same 50 Unit Project – all tax credit eligible, 100% affordable

Total Development Costs	$11,000,000	
Land & Non- Eligible Costs	- $2,000,000	
Eligible Basis	$9,000,000	
QCT/DDA Basis Boost (up to 130%)	x 130%	(for high cost areas)
Adjusted Basis	$11,700,000	
Applicable Fraction (affordable units)	x 100%	
Qualified Basis	$11,700,000	
Tax Credit Percentage	x 4%	
Annual Tax Credits	$468,000	

10 years of Tax Credits to Investor = $4,680,000
Total Equity Paid at $.93 - $4,352,400
Financing Gap = $6.65M

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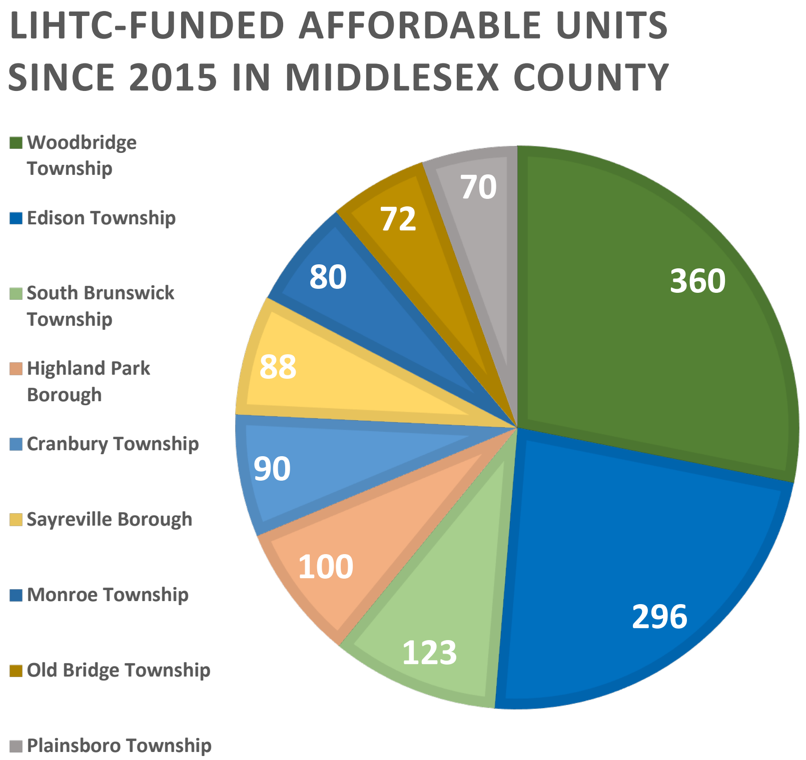
LIHTC Gap Subsidy Funding

- **Affordable Housing Production Fund**: Created as part of the Fiscal Year 2023 Budget with a $305 million investment to pair with 4% LIHTC to spur new affordable housing production in municipalities with substantive certifications for fully affordable projects. Supplemented with another $100 million investment in the Fiscal Year 2024 Budget.
- **Urban Preservation Program**: Created as part of the Fiscal Year 2023 Budget with a $80 million investment to pair with 4% LIHTC to ensure the long-term preservation of existing affordable units in urban centers.
- **Workforce Housing Program**: Created as part of the Fiscal Year 2023 Budget with a $50 million investment to pair with 4% LIHTC on mixed income projects to ensure that a percentage of market rate units are subject to affordability controls for families at 80% to 120% AMI.
- **Hospital Partnership Subsidy Program**: The Hospital Partnership Subsidy Program matches funding contributions from participating hospitals to provide affordable rental apartments for low- and moderate-income families, as well as apartments with access to supportive and wrap-around services for residents with special needs.

A Proud Track Record of Helping Middlesex County Finance Affordable Housing

- **68,000+ affordable apartments** financed through LIHTC in 40 years of operation

- Significant assistance to municipalities during the Third Round of affordable housing obligations
  - **16 municipalities in Middlesex County** have had a court-approved settlement with FSHC since 2015
  - NJHMFA has financed **1,200+ LIHTC apartments** in these municipalities since 2015, aiding municipal goals



What LIHTC Can Do For Your Municipality

- **Camp Kilmer (Edison)**
  - Opened in 2021
  - Two-phase redevelopment project providing 180 affordable rentals
  - 9% LIHTC provided nearly $30 million in equity out of a total development cost of $42 million

- **Jacobs Landing (Woodbridge)**
  - Opened in 2020
  - Three-phase 204-unit affordable development
  - 9% LIHTC provided $36.9 million in equity out of a total development cost of $57.7 million

How To Utilize NJHMFA Financing

- Complete Unified Application (**UNIAP**) for NJHMFA Multifamily Rental Housing Production Programs
  - Covers LIHTC, supportive housing subsidies, and other multifamily financing programs
    - Application timelines are available through nj.gov/dca/hmfa
- Deadlines for submitting 9% LIHTC applications for the 2024 cycle passed recently (August 9)

For more information, get in touch with NJHMFA staff at our booth here or reach out to:

Donna Spencer, Director of Multifamily/Supported Housing and Lending

dspencer@njhmfa.gov

Laura Shields, Assistant Director of Tax Credits

lshields@njhmfa.gov

HOUSING & MORTGAGE FINANCE AGENCY

Visit Us at NJHousing.gov by Scanning the QR Code!

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ADDRESSING MUNICIPAL AFFORDABLE HOUSING OBLIGATION

COUNTY FUNDING OPTIONS

Middlesex County Housing Policy Summit

Tuesday, August 13, 2024

Middlesex College

Presented By: Melissa Bellamy, Division Head

TWO FUNDING SOURCES

- **HOME Investment Partnerships Program**
  - Creation of affordable housing for low-income households
  - Funded by US Dept. of Housing & Urban Development (HUD)
  - Also available in cities of New Brunswick & Perth Amboy and in State of NJ through Dept. of Community Affairs

- **Middlesex County Housing First Capital Fund**
  - Creation of permanent housing for homeless households
  - Standalone projects or as units in a larger development

HOME Investment Partnerships Program

<u>Eligible Activities</u>

- Acquisition of existing properties
- Acquisition & rehabilitation
- Rehabilitation
- Conversion to housing
- New construction

<u>Eligible Applicants</u>

- Non-profit developers, including municipalities
- For-profit developers

<u>Examples of projects</u>

- East Brunswick Community Housing Corp. Buy-Down Program
- Reformed Church of Highland Park Affordable Housing Corp. acquisition/rehab properties
- Community Options Inc. rehab of consumer homes in various towns
- Ingerman conversion of school to create Reinhard Manor in Woodbridge
- Catholic Charities new construction of St. Paul the Apostle Senior Housing in Edison

Housing First Capital Fund

- Funds can be used for acquisition, rehabilitation, conversion and new construction just like HOME program
- Since units are dedicated to homeless households, rents for assisted units need to be lower than regular affordable housing
  - Project based vouchers or subsidy
  - Rents targeted to those at 20% area median income
- Units must be filled from county's Coordinated Entry system, which prioritizes homeless households based on need
- Housing should have some connection to services & be in a location near resources like transportation, shopping/food, medical, schools, etc.

Leveraging HOME and Housing First Capital Fund (HFCF)

- With the exception of small projects (1-4 units), larger projects usually needs more than just HOME and/or HFCF funding

- Examples of funding sources that HOME & HFCF leveraged in recent projects:
  - Low Income Housing Tax Credits (LIHTC)
  - Municipal Affordable Housing Trust Funds
  - NJDCA National Housing Trust Fund
  - NJDCA Affordable Housing Trust Fund
  - Federal Home Loan Bank of NY Affordable Housing Program
  - NJ Division of Developmental Disabilities (special needs)

Application Process for HOME & Housing First Capital Fund

- Application must include project description, experience & capacity, sources of funds, development budget, pro-forma for term of affordability and municipal support
- **"Soft Commitment"** – if project hasn't secured all funding, Board of County Commissioner (BCC) can do a resolution committing funds contingent upon project securing other funding AND not fundamentally changing.
- **"Full Commitment"** – if HOME and/or HFCF is last funding source needed, then can have resolution authorizing agreement

For Technical Assistance or More Information Contact:

HOME and/or Housing First Capital Fund

Melissa Bellamy, Division Head

Middlesex County Division of Housing

732-745-3025 or 732-745-2922

melissa.bellamy@co.middlesex.nj.us

Housing First Capital Fund

Frances O'Toole, Director of Housing Development

Coming Home of Middlesex County, Inc.

732-937-3775

frances.otoole@co.middlesex.nj.us

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COMING HOME

Ending Homelessness in Middlesex County

Coming Home of Middlesex County Inc.
Middlesex County Administration Building
75 Bayard Street, 2nd Floor,
New Brunswick, NJ 08901
www.cominghomemiddlesex.org

HOMES FOR ALL

CHM Development LLC

Affordable Housing Developer

HOMES FOR ALL

- Coming Home of Middlesex County, Inc., a 501(c)(3) corporation, founded and funded in part by the Middlesex County Administration in 2012.
- Coming Home created the **Homes for All** program in 2013, which calls for its downstream LLC, CHM Development, to create partnerships with stakeholders to catalyze permanent and affordable, supportive housing projects.
- CHM identifies suitable properties and funding sources.
- CHM is instrumental in the formation of the development team.
- CHM supports all participants in the development team (e.g., Development Partner, Project Manager, Builder, Service Provider, Property Manager, and Municipality) and serves as Project Manager if needed.
- CHM maintains working relationships with all participants in a housing project, during and post completion, and assists with interventions requested by and between the participants.
- CHM seeks additional funding from public and private philanthropic sources for continued support services.
- CHM makes recommendations to the County Administration on funding applications for the HFCF.

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Affordable Housing in New Jersey: What's Next?

Chris iana Foglio • cfoglio@cisnj.com • 609.298.2229 • www.cisnj.com

Community Investment Strategies, Inc.

Mixed-Use Redevelopment
Heritage Village at Lawrence, Lawrence, NJ

100% Affordable / Municipally Sponsored
Bayshore Village, Middletown, NJ

Existing Rehabilitation (Before and After)
North Brunswick Crescent, North Brunswick, NJ

Inclusionary
Marveland Crescent, Flanders, NJ

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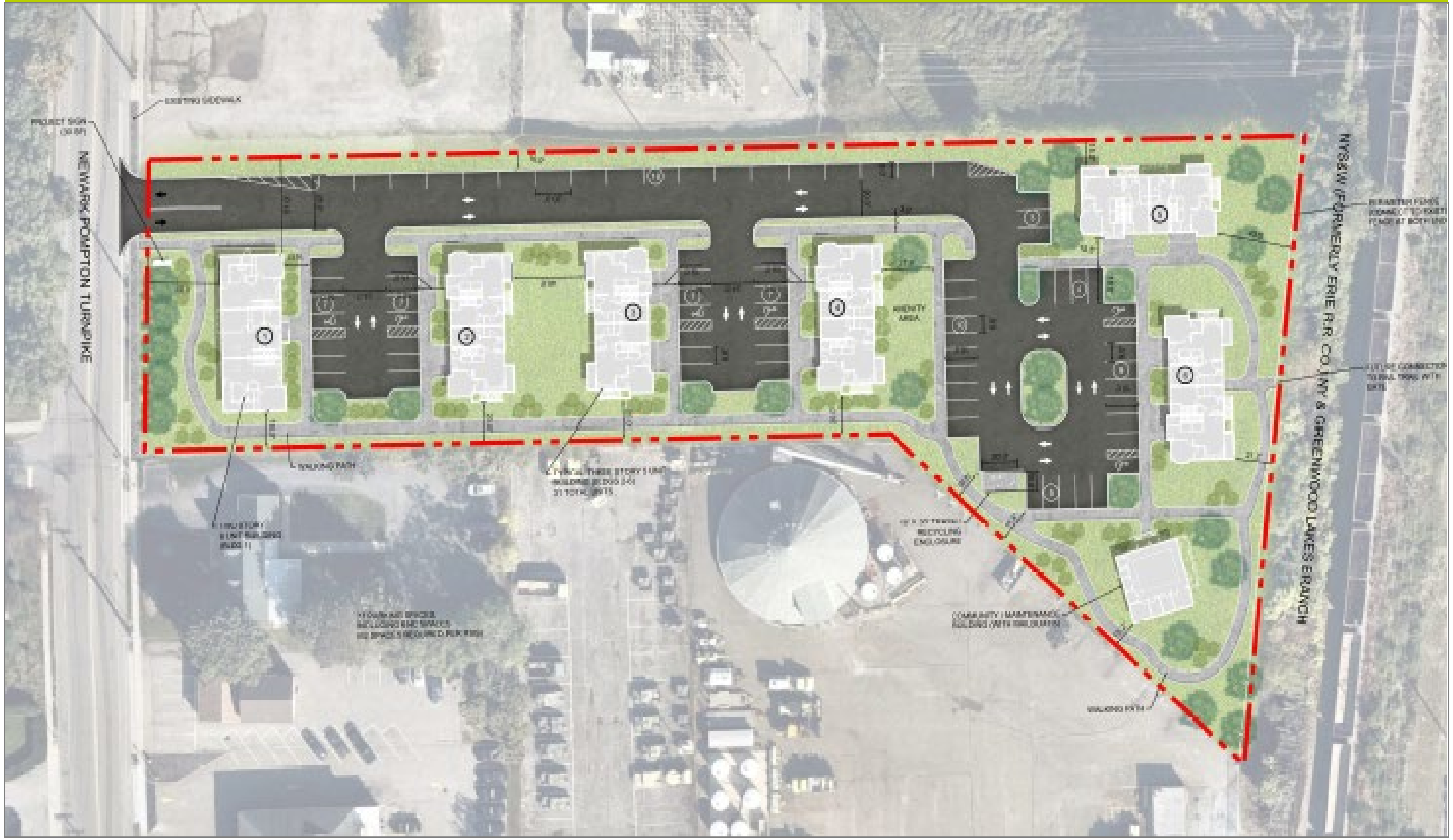
Former DPW site is now 12 condominiums

Liz DeCoursey, CEO

31-Unit Redevelopment Project



Former Verizon Truck Repair Garage

Home Repair Project

Assisting towns with their Present Need/ Repair obligation.

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