

Memorandum

To: Township of Berkeley Heights
 From: Econsult Solutions, Inc.
 Date: March 24, 2020
 RE: Berkeley Heights Connell Project Impact Analysis

1. Background

Econsult Solutions, Inc. (“ESI”) has been asked to prepare an analysis of the potential implications of the proposed rezoning of a redevelopment parcel (“the Connell property” or “the property”) on future affordable housing obligations for the Township, within the context of Berkeley Heights Township’s affordable housing compliance plan.

The Connell Company has requested zoning changes on its property that would increase both retail and residential square footage allowances. Under the current zoning, the Connell Company has constructed over 1.5 million square feet of office and hotel space on the property. The proposed zoning would decrease the remaining allowable square footage for office space from 1.2 million to 91,000. Additionally, the allowable square footage for retail and residential would increase from 85,000 to 185,000 and 373,000 to 450,000, respectively (see Figure 1).¹

Figure 1: Square Footage by Area Use, Current vs. Proposed Zoning

Use	Current Zoning			Proposed Zoning		
	Max	Existing	Remaining	Max	Existing	Remaining
Office	2,544,000	1,342,000	1,202,000	1,433,000	1,342,000	91,000
Hotel	182,000	182,000	0	182,000	182,000	0
Retail	85,000	0	85,000	185,000	0	185,000
Residential	373,000	0	373,000	450,000	0	450,000
Total	3,184,000	1,524,000	1,660,000	2,250,000	1,524,000	726,000

A potential implication of the proposed zoning is how it could impact the Township’s affordable housing compliance plan and affordable housing obligations in the future, specifically due to the increase in retail square footage and the jobs the increased retail space would create. Therefore, ESI’s analysis estimates the implications of differing levels of commercial space within the development on the Township’s

¹ The increase in residential square footage will allow for appropriate amenity space, rather than increased residential units.

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anticipated “employment allocation factor” within potential affordable housing obligation methodologies.

In 2017, ESI Principal Dr. Peter Angelides presented a comprehensive affordable housing methodology to Judge Mary J. Jacobson at trial in Mercer County. Dr. David Kinsey and Fair Share Housing Center (FSHC/Kinsey) also presented a methodology during this trial. Judge Jacobson’s March 2018 Opinion² (Jacobson Opinion) includes parts of both methodologies presented, and was preceded by a “recommendations report” submitted by Special Master Richard Reading at the conclusion of the trial.³⁴

Since the Jacobson Opinion, both experts have submitted additional methodologies, leading to a number of different affordable housing obligation figures for Berkeley Heights Township. However, the methodology adopted in the Jacobson Opinion determined affordable housing obligations for municipalities for Round 3. As such, the adopted methodology and the two expert submissions that contributed to that methodology are used in this analysis.

The impact to Berkeley Heights is influenced by two factors, the share of the regional Prospective Need allocated to Berkeley Heights and the overall Round 4 regional Prospective Need. The zoning change impacts the allocation, and is addressed in Sections 2 and 3. The application of the allocation to overall regional Prospective Need, and hence Berkeley Height’s obligation, is addressed in Section 4.

2. Municipal Allocation

Within the Prospective Need calculation, affordable housing need is calculated first at the regional level, then allocated to the municipalities within each region based on the municipalities’ shares of certain factors determining need. The average of a municipality’s shares of these factors is the municipality’s allocation share.⁵ That allocation share is then applied against the regional Prospective Need (as well as regional Gap Present Need for Round 3 obligations) to determine the obligation assigned to each municipality prior to further adjustments for Secondary Sources and Allocation Caps. Within the Jacobson Opinion, the factors used to determine regional Prospective Need are employment growth, household income, and developable land.

² “Opinion on Fair Share Methodology to Implement the Mount Laurel Affordable Housing Doctrine for the Third Round.” Superior Court of New Jersey Law Division: Mercer County.

³ These recommendations are summarized in two reports to the Court over the course of the two-phase trial:

“Low and Moderate Income Housing Needs in Mercer County, New Jersey: Methodology Review and Recommendation Summary.” April 24, 2017.

“Mercer County Report and Recommendations: Expanded Present Need during the 1999-2015 Gap Period.” May 8, 2017.

⁴ The report submitted by Special Master Reading proposed a somewhat different methodology than that ultimately adopted by the Court.

⁵ Berkeley Heights is situated within Housing Region 2 (out of six statewide regions), which is comprised of all municipalities within the counties of Essex, Morris, Union, and Warren. Shares sum to 100% within each region.

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2.1 Employment Allocation Factor

The method for measuring employment growth was considered at length in the Jacobson trial, largely due to the fact that COAH used different approaches in Rounds 1 and 2, leading to disagreement among submissions over which approach was superior.

In Round 1, COAH calculated employment growth using “covered employment” data tracked by the New Jersey Department of Labor. However, concerns with data accuracy at the municipal level led to a revised approach for Round 2, in which COAH utilized non-residential property valuation, a proxy for employment change over time.

During the trial, ESI argued that the valuation proxy was an inaccurate measurement of employment growth, and Special Master Reading affirmed this argument. Instead, ESI proposed again measuring employment growth based on actual employment data by utilizing the U.S. Census Bureau’s LEHD Origin-Destination Employment Statistics (LODES) dataset, which consisted of employment numbers by municipality and was not available when COAH developed its Round 2 methodology.⁶

Ultimately, the Court acknowledged deficiency in both proposed approaches, but followed COAH’s Round 2 method, calculating employment growth share based on non-residential property valuation. The Jacobson Opinion methodology follows the FSHC/Kinsey methodology, evaluating the change in valuation for each municipality from 1990 – 2015.

Special Master Reading expressed concern over the basis for and execution of this component of the methodology, stating that “the use of the non-residential valuation surrogate and 1990 time frame selected for the measurement of valuation changes are factors that impact the reliability of this particular calculation.”⁷ In response to using valuation as a proxy for employment change, he stated that it “does not indicate the number of jobs or increases thereof.”⁸

The Special Master’s recommendation for adjusting the time frame was to move the starting point to 2005, thereby making the observation period a ten-year period, which matches the increment to be used for Prospective Need, which was, at the time of the trial, 2015 – 2025. ESI recreated the calculation using the suggested time frame and found significant differences in the incremental employment growth than was indicated using 1990 – 2015 data.

3. Impact of the Proposed Zoning Change on the Municipal Allocation Factor

Since the Jacobson Opinion adopted the non-residential valuation proxy as the measurement for employment change in the Prospective Need calculation, we use the same general approach for the present analysis. However, to estimate the impact of the proposed zoning change on the municipal

⁶ Data and documentation for this program are made available by the Census Bureau at: <<https://lehd.ces.census.gov/data/>>

⁷ “Determination of Low and Moderate Income Housing Needs in Morris County: Based upon the Mercer County Opinion,” page 40.

⁸ *Ibid*, emphasis in original.

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obligation in Berkeley Heights, the observation time period was adjusted to reflect the most up-to-date changes in valuations and more accurately project the employment change factor for the next round's Prospective Need period of 2025 – 2035. The remainder of this section details the steps taken to complete this analysis and the results.

First, we estimated the value of the additional 100,000 square feet of retail space in Berkeley Heights using the New Jersey Property Tax System, known as MOD-IV. To do so, all commercial properties in Union County were analyzed to determine the median value per square foot of commercial space in the area. Specifically, only properties with recorded square footage of more than 100 square feet and built in 2010 or later were analyzed. Using the median value per square foot of \$95, the estimated value of the additional retail space under the proposed zoning is \$9.5 million.

Next, ratables data from the State of New Jersey Department of Community Affairs (DCA) from 2015 and 2019 were analyzed to determine the total non-residential value by municipality, and thus by region. The annual observed change from 2015 through 2019 was multiplied by ten to indicate the incremental growth over the projected ten-year period by municipality and region.

It is important to note the use of equalized values in the valuation analysis. Each year, DCA assigns a state equalization ratio to each municipality, which equalizes valuations “to account for variations in municipal assessment.”⁹ Because each municipality's valuation is included in the total at the regional level for the employment growth factor calculation, equalized values are used for comparability. Using the average equalization ratio from 2015 through 2019 for Berkeley Heights Township of 0.5394, the total equalized value of the additional retail space is \$17.5 million.

Figure 2: Berkeley Heights Township's State Equalization Ratios, 2015-2019

Year	State Equalization Ratio
2015	0.5501
2016	0.5421
2017	0.5475
2018	0.5308
2019	0.5265
Average	0.5394

Source: DCA (2020)

Once the ten-year incremental change in value was estimated by region, each non-QUAM municipality's share of the overall regional growth was calculated. Using this method, Berkeley Heights Township had a 3.52% share of the growth in Region 2. When added to the incremental ten-year growth for Berkeley

⁹ Data and documentation for this program are made available by the State of New Jersey Department of Community Affairs (DCA) at: <https://www.state.nj.us/dca/divisions/dlgs/resources/property_tax.html#1>

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Heights and Region 2, the additional retail space increased the Township's share of regional growth from 3.52% to 3.77% (see Figure 3).

Figure 3: Berkeley Heights Township's Share of Regional Employment Growth Under Current and Proposed Zoning Designations (\$M)

Method	Municipal 10-year Growth	Regional 10-year Growth	Municipal Share of Regional Growth
Current Zoning	\$240.8	\$6,832.7	3.52%
Proposed Zoning	\$258.4	\$6,850.3	3.77%

Source: DCA (2020), ESI (2020)

By definition, for every 0.01 percentage point increase in employment share (as well as household income share or developable land share), there is an increase in municipal allocation of 0.0033 percentage points. In the event that the proposed zoning is adopted and the Township gains 100,000 additional square feet of retail space that would not otherwise have been built in the Township, the Township's increase in employment share from 3.52% to 3.77% (an increase of 0.25 percentage points) would increase its municipal allocation by 0.08 percentage points.

4. Implications for the 2025-2035 Affordable Housing Obligation

While this analysis can provide an estimate of the potential implications on the Township's obligations for future affordable housing rounds, it is impossible to know the precise methodology that will be used to calculate municipal allocation for regional Prospective Need in the next round of housing obligations. The next round could adopt methodologies that are different in approach, thus changing how municipal allocation is calculated. Since we do not know what form an alternative approach will take, if any, we calculate the illustrative impact on Berkeley Heights' Round 4 obligation assuming the use of the allocation methodology in the Jacobson Opinion.

The other variable is the amount of forecast growth. Affordable housing obligations historically have been based on expected growth in the Region. Accordingly, we show the impact using four different assumptions about regional Prospective Need.

1. Regional Prospective Need of 10,000 units, which is used for illustrative purposes.¹⁰
2. Regional Prospective Need of 12,353 units, which is based on ESI's submission during the Mercer County trial.
3. Regional Prospective Need of 13,317 units, which is based on the Jacobson Opinion methodology.
4. Regional Prospective Need of 28,269 units, which is based on the FSHC/Kinsey submission.

¹⁰ If regional Prospective Need is in fact 5,000 units and all other factors remain the same, then the additional obligation would shrink by 50%.

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According to the method in the Jacobson Opinion, if the Township were to adopt the zoning change to the Connell property, and the development were to proceed, there would be a 0.08 percentage point increase in municipal allocation for Berkeley Heights Township. This increase implies an additional Round 4 (2025-2035) obligation of 8 units if the regional Prospective Need were to be 10,000 units, more units under higher growth assumptions, and fewer units under lower growth assumptions (see Figure 4).¹¹

Figure 4: Berkeley Heights Additional Obligations by Methodology from Proposed Zoning Change

Growth Assumption	Regional Prospective Need	Additional Berkeley Heights Obligation
Illustrative 2025-2035 Regional Prospective Need	10,000	8
ESI submission in Mercer County Trial	12,353	10
Jacobson Opinion	13,317	11
FSHC / Kinsey submission in Mercer County Trial	28,269	23

¹¹ We note that actual growth in the 2010s has been significantly lower than the projections used in the Jacobson Opinion, in which the annual growth in households in New Jersey from 2015 to 2025 was projected to be nearly 18,000. Actual total household growth each year since 2015 has been less than 11,000. If this growth pattern persists, obligations for the 2025-2035 period will be significantly lower overall than for the current Round, and lower than the numbers presented in Figure 4, assuming the State or the Courts do not adopt a different method for calculating affordable housing obligations.