

VACANT LAND ANALYSIS-VLA
("Lack of Land")

BOROUGH OF RUTHERFORD
BERGEN COUNTY
NEW JERSEY

Prepared by:

BENECKE ECONOMICS
Land use: Fred Suljic, P.P.
Statistics: Robert Benecke
Mapping analysis: Neglia Engineering Associates
Tom Salfaro, P.E.

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The Borough of Rutherford

1-Introduction-Statutory Foundation. The Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (FHA) requires municipalities endeavor to identify affordable housing opportunities in a municipality. The Municipal Land Use Law, N.J.S.A. 40:55D-28 (MLUL), stipulates that a Housing Element of the master plan be structured to achieve the objective of increasing access to affordable housing within the municipality.

The Borough of Rutherford, Bergen County (Borough) has earnestly undertaken its obligation to provide access to affordable housing. This obligation is codified in the revised general ordinances (RGO) of the Borough and detailed in the 2015 Borough of Rutherford Housing Element and Fair Share Plan (FSP), dated November 2, 2015. The FHA also provides a municipality located in the State of New Jersey with a procedure to adjust the calculation of its fair share housing obligation, if the municipality demonstrates that there is an insufficiency of vacant and developable land within the municipality, N.J.S.A. 52:27D-307(c)(2). The Borough of Rutherford has conducted a vacant land analysis (VLA), as set forth in this report, which demonstrates statutory entitlement to a vacant land adjustment through the 2015-2025 housing cycle. This time period includes the prospective need affordable housing calculation. The specific rule covering a lack of land adjustment is N.J.A.C. 5:93-4.2 Lack of Land (Lack of Land).¹

Attached is the existing land use map (N.J.A.C 5:93-4.2) showing the current zoning. The vacant sites map has been prepared with a delineation of wetlands and other environmental constraints (N.J.A.C. 5:93-4.2(e)). Historic sites are not specifically included in the vacant land analysis.²

The Fair Share Housing Center (FSHC) in their July 2015 report on municipal fair share housing obligations contends that Rutherford (located in COAH Region 1) is obligated to cause 413 affordable units to be built now through 2025. The foundation of this calculation is a FSHC calculated regional need of 58,138 affordable units, with Rutherford having an alleged allocation factor of .0094021 of this regional need. In other words, Rutherford would be responsible to fit .94% of the regional affordable housing need, or 413 affordable units, within its borders. We will show in this analysis, as a supplement to the November

¹ The rules (Rules) quoted in this report are the Department of Community Affairs, Council on Affordable Housing (COAH) regulations effective June 6, 1994. (26 N.J.R. 2300) These Rules are referred to as the Round Two (2) COAH Rules.

² The vacant land analysis was updated in May 2017 refining the parcel description(s) and adding the specific name of the property owner.

2015 Borough of Rutherford Fair Share Plan, that this is impossible due to a Lack of Land as defined in the Round Two COAH rules.

The following chart depicts the realistic development potential (RDP) and related number of affordable units, using 12 residential units per acre and an affordable housing set aside (inclusion) of 20%.

Figure 1. Summary of Rutherford RDP

Description	Location of Property	RDP	Affordable Units
Linque Properties-0.93 acres	Block 224, Lot 3.04	12 Units	3 Units
Agnew Place-3.9+acres	Portion of Blocks 76, 77, 78	120 Units (potential)	24 Units
Park Avenue- 0.70+ acres	Portion of Block 73, etc.	24-36 Units	5-8 Units
Kip Avenue-irregular .20	Block 74, Lots 16, 17, and 18	10 Units	2 Units
Total		166-178 Units	34-37 Units

2-The Borough of Rutherford (Borough) 2015 Fair Share Plan. On March 10, 2015, the New Jersey Supreme Court decided to authorize the trial courts to hear and decide actions, including determinations, regarding municipal compliance with their affordable housing obligations. The Borough filed the requisite declaratory judgement (DJ) action with the court and moved to prepare the housing element of the master plan and fair share plan as required by the Round Two Substantive Rules of the New Jersey Council on Affordable Housing (COAH).

On November 12, 2015, the Rutherford Planning Board adopted the 2015 FSP after conducting a public hearing and receiving a presentation regarding the affordable housing requirements. The governing body, Borough Council, adopted a resolution endorsing the 2015 amendment to the master plan (Housing Element resulting from the Fair Share Plan).³

A significant portion of the Rutherford Planning Board public hearing and the FSP was devoted to the realistic development potential and the Lack of Land, or vacant land adjustment, to the municipal affordable housing obligation necessary to be provided to Rutherford.

The set of facts relating to land use and vacant land, “Lack of Land”, follow:

1-The Borough of Rutherford encompasses 1,822.18 acres.

a-571.88 acres, 31.4%, are within the zoning jurisdiction of the New Jersey Sports and Exposition Authority area (NJSEA, formerly the NJMC), this is the meadowlands area.

b-1,250.3, 68.6%, are situated outside the NJSEA area and are subject to local zoning control.

³ The Borough of Rutherford is organized under a Borough form of government and, as such, has a six-member council and a mayor who is the presiding officer and votes as part of the governing body in the event of a tie vote.

2-Attached as Exhibit 1 is the Borough of Rutherford Vacant Land Analysis-Raw Data, N.J.A.C 5:93-4.2 (a).⁴

This Exhibit indicates the parcel block and lot, property size, property owner and the reason for the vacancy/no development potential. This is a summary of the parcels comprising the undevelopable land.

To be clear: The vacant land adjustment being made is formally termed “Lack of Land”, pursuant to N.J.A.C. 5:93-4.2.

Figure 2. Vacant Land Summary Table.

Description	Number of Parcels	Land Area (Acres)
“Non-NJSEA” Properties	48	6.608
“NJSEA” Properties {N.J.S.A. 5:93-4.2 (d) 2. }	5	37.07
ENCAP (Landfill Parcels)	9	340.9
Park Parcels {N.J.S.A. 5:93-4.2 (d) 4.} ROSI ⁵	7	43.90
Total	69	428.478

Note: the net area of the EnCap properties is 280 acres. The remainder is built upon.

3-Methodology. At the November 11, 2015 Rutherford Planning Board hearing, maps of the Borough were presented as an exhibit {Exhibit 2 attached hereto}, showing the western portion of the Borough, and clearly indicating this portion of the Borough subject to local control is fully developed. This Exhibit also shows the NJSEA area which includes 280 acres of landfill/marshland. These are undevelopable parcels, especially for residential uses. One only needs to look at the EnCap debacle to obtain proof of this.

Of import: Realistic development potential is defined under N.J.A.C. 5:97-1.4 as “the portion of the prior round affordable housing obligation that can realistically be addressed with inclusionary development, as determined through a vacant land adjustment pursuant to N.J.A.C. 5:97-5.2”.

A vacant land adjustment, or Lack of Land analysis, indicates that only one parcel of land is considered suitable for development in the Borough. This is the .93-acre site on 49 Borough Street, Block 224, Lot 3.04, owned by Linque HC Partners, the owner/developer of the Highland Cross redevelopment project. This amount of land in this parcel approximates the amount of developable land estimated by Kinsey located outside the NJSEA (meadowlands area). The NJSEA adopted Highland Cross Redevelopment Plan, Block 219.04, Lots 1 and 3, the property owner, Linque Partners, is now proposing a warehouse/distribution facility at this site, with fifty affordable units to be built at the Block 224, Lot 3.04 property.

The property owner initially proposed a residential development at the Block 219.04 site, located in the meadowlands area. This site was determined to be unsuitable for residential use, hence, the warehouse

⁴ The Borough has also provided a zoning parcel map, a map of all vacant properties, and an aerial map.

⁵ Recreational and Open Space Inventory.

project was proposed by the property owner to the NJSEA. Because of the initial residential proposed use, the property owner continued proposing a residential use at the Block 224 site. The 50 affordable residential units proposed by the property owner is based on the affordable obligation the property owner perceived to remain from their original, now withdrawn, 500 residential unit proposal together with the property owner's contention that 50 affordable units is the minimum number of affordable units which may be financed through the affordable housing tax credit program. This, of course is specious. The property owner should use the profit from the warehouse project to finance a reasonable affordable housing project. This proposition assumes that this site is suitable for residences, which is questionable.

It is important to emphasize that the Highland Cross property, Block 219.04, Lots 1 and 3 has 25.54 (+/-) acres. This would indicate a maximum build-out (RDP) of 307 units and between 46 and 62 affordable units. As to Block 224, Lot 3.04 this .93-acre site could accommodate 12 residential units of which three units would be affordable.

Our methodology includes presenting, at the November 2015 Planning Board hearing, the vacant land inventory map with the vacant parcels matching up with the attached, updated vacant land listing. Exhibit 1. This updated listing considers the development potential of existing lots. Further, we went beyond the tax assessors record to identify all known properties which may be subject to future development.

4-Prospective Need. Turning to the Kinsey and Hand report (Kinsey), dated July 15, 2015. This report is relied on by the FSHC and depicts the amount of housing "needed" in a municipality. Kinsey takes the computed regional prospective need (1999-2025) for Region 1, 58,138 of affordable units, and multiplies this by an average allocation factor. We surmise the calculation of the Region 1 affordable housing prospective need (the aforesaid 58,138 units) has been independently verified.

The allocation factors include:⁶

-Nonresidential rateables change (1990-2014). This calculation appears as the original "growth share" factor. This factor presupposes that an increase in non-residential property values should help determine a municipality's fair share. The reason for using the non-residential property value is found in the Appendix to the Round Two Rules. (26 N.J.R. 2346) "Non-residential property valuation is used as a replacement for actual employment in a municipality to avoid the zip code problem associated with the Covered Employment data.... It is assumed that

-Undeveloped Land. Kinsey suggests that Rutherford has 385 acres of "undeveloped" land. This is allegedly 50% of the NJSEA (meadowlands) land area within Rutherford. Kinsey adds to this number the developable area outside the NJSEA of Rutherford of 1.42 acres. As our evidence shows there is NO developable properties in the NJSEA area with the exception of the aforementioned Linque project. Although Kinsey believes, without foundation, 383.61 acres are "developable", or available to create affordable units.

⁶ The allocation factor is an average of non-residential rateables change, undeveloped land, and household income differences (using the difference between the median HH income for the region and the municipal HH median income). This should be a weighted average with the weight placed on undeveloped land. It is only common sense that construction is more of a function ("factor") of the amount of land available to actually construct affordable units.

-Household Income Differences. This is the calculated (“weighted”) income produced in the municipality compared to the region, using median income and number of households as its basis.⁷

When the allocation factor is recalculated, based on the Lack of Land, the Rutherford factor is reduced from .00904 to .00645. This reduces the Rutherford Regional Prospective Need to 374 units from 413, before additional adjustments, such as a vacant land adjustment.

Turning to nonresidential rateables adjustment, Kinsey pre-supposes using the aforementioned allocation factor Rule, which has a weak foundation, that an increase in nonresidential property values converts to an affordable housing obligation.

5-Reasonable Development Potential (RDP). Using the Round Two Rules Rutherford would be obligated to develop 374 affordable units. However, using the Kinsey numbers less than one (1) acre of developable property remains in Rutherford and, as the vacant land map shows, these properties are disparate irregular parcels. To address the imbalance between the affordable housing “need” and the Lack of Land, the Rutherford 2015 FSP and the zoning ordinance indicates that the Borough will advocate for the NJSEA to uphold its affordable housing obligation when approving residential projects in Rutherford.⁸

In addition, **the Borough will continue to abide by and enforce the provisions of its zoning ordinance, § 51-59 “Affordable Housing Requirements, which requires a 20% affordable housing set aside** for all non-redevelopment residential projects, having the creation of three or more units, built outside of the NJSEA (NJMC) area. The priority is for such affordable units to be constructed as part of the proposed project.

Redevelopment-realistic repurposing opportunities arise from a reasonable expectation of inclusionary development due to sites being declared to be in need of redevelopment, pursuant to the Local Redevelopment and Housing Law N.J.S.A. 40A:12A-1 et seq. One locally zoned property (outside of the meadowlands) is the Agnew Place redevelopment area. A triangular shaped property having up to four acres of developable mixed-use development potential. The property is located at Block 76, Lot 32 Block 77, Lots 5, 6, 15, & 16 (including Lot 18), Block 78, Lots 1,1.02, 2 (including Lots 3, 4, 10, 11, 12, 13 and part of 20), 5 (including Lot 6), 7 (including Lots 8 & 9), 14, 16 (including Lots 15 and 17), and 18 (including Lot 19). One potential scenario is to have up to 30 residential units an acre permitted in the redevelopment area, if the property is appropriately accumulated. This development could potentially generate 120 residential units which could in-turn generate up to twenty-four affordable housing units.

There is a potential redevelopment opportunity at 106 Park Place. This .70 (+/-) site is now included in the RDP. (See Figure 1.)

⁷ We verified that the Kinsey household income numbers and number of households.

⁸ It must be noted that if any further residential building should occur in the meadowlands then the 20% affordable housing requirement plus an infrastructure contribution must be paid to the Borough.

7-Technical Procedure When “Need” Exceeds Realistic Development Potential. Similarly, as this VLA proves, virtually no land exists in Rutherford to build affordable housing.

N.J.A.C. 5:93-4.2 (g), Lack of Land, addresses the issue in the event the realistic development potential is “less than the municipal calculated need, minus credits”.

The Rule provide that in this event the pertinent municipality is required to provide zoning for apartments, authorize an affordable housing overlay zone, and impose development fees. The Borough of Rutherford has done this through adoption of its Borough-wide affordable housing zoning ordinance. This ordinance requires a twenty percent (20%) set aside for affordable units whenever a residential project is built.

The Rules also provide guidance at Appendix A- “Prior-Cycle Vacant Land Adjustment Communities”, 26 N.J.R. 2351. Here the Rules provide that the need for affordable housing is “retained in the system as a goal for future affordable housing efforts as development and redevelopment occurs”. This means that this piece of the regional affordable housing requirement is left unmet and not distributed to other municipalities or regions.

Rutherford has less than 1 acre (.93) of vacant, developable land on which 374 affordable units must fit, according to Kinsey. We posit that the realistic development potential in Rutherford is limited to the properties shown in Figure 1. This is 5.5 acres of space (vacant land). Remember, Kinsey admits to only 1.5 acres. Using a density of twelve units per acre plus redevelopment potential, the Borough’s gross realistic development potential is 34-37 affordable residential units. This is the unmet need, together with any arising, future redevelopment prospects. The property owner and the Borough both believe Highland Cross should be a non-residential project.

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This result leaves the Rutherford governing body with the following alternative regarding affordable housing:

Have the court appointed special master together with the FSHC agree with the position outlined in this report. Specifically, 34-37 affordable units is Rutherford’s “obligation” and proceed from there to a settlement. The Borough’s strategy would be to use the tools of redevelopment and its existing zoning (affordable housing requirements) to meet this unmet need (realistic development potential). The unmet need which would carry forward into a subsequent round of affordable housing efforts. However, the Regional Unmet Need may go unmet. This is a subject which needs to be studied.

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