

D'ANGELO FARMS FACT SHEET-FREQUENTLY ASKED QUESTIONS

1. Does the Borough have the option to purchase the D'Angelo's property?

The Borough was never offered the opportunity to acquire the property. The owners have apparently entered into a contract to sell the property to a private developer. A party that knowingly interferes in an existing contract can be held liable for damages, including punitive damages far in excess of the actual value of the contract, for such interference.

2. Does the Borough have the power to prevent the property from being converted from farm use to a development use?

There is not a simple answer to this question, but the short answer is No. The developer who is under contract to buy the property made a presentation to the Mayor and Council in November of 2013, and presented four potential development schemes for the property. Those were, a supermarket; a trucking warehouse; an office complex; and a 144 unit apartment complex consisting of five separate buildings. The Borough may decide how to rezone the property to control the development, but may not refuse to rezone it in order to frustrate development efforts. By rezoning the property, the Borough may exercise its zoning powers to regulate density, height, buffers, signage, landscaping, mandate impact studies and infrastructure expansion and otherwise control development of the property. If the rezoning is imposed by Court order, the Borough loses some or all of that power.

3. What is the Mount Laurel Doctrine and how is it regulated?

Every municipality in New Jersey has an obligation to provide affordable housing opportunities for individuals and families through what is known as inclusionary zoning. This doctrine was established in 1975 by the New Jersey Supreme Court in a lawsuit entitled Southern Burlington County NAACP v. Township of Mount Laurel, 67 N.J. 151(1975)(Mount Laurel Doctrine). The basic premise of the holding is that municipalities must exercise their zoning powers in a way that provides a realistic opportunity for those of lesser economic means to obtain housing in the municipalities. Zoning regulations that prohibit apartments, condominiums and attached townhomes are illegal under this doctrine. This holding was codified by statute in the Fair Housing Act of 1985, which established COAH (Council on Affordable Housing), under the Executive (Governor's Office) Branch of state government to regulate and enforce affordable housing requirements.

4. How is Dumont affected by the Mount Laurel Doctrine and COAH?

The Borough, like many other municipalities, has never had a certified affordable housing plan that was approved by COAH. Plans have been discussed and drafted

over the course of the past several decades, however, no plan has ever been certified, and thus, the Borough could be vulnerable to a 'builder's remedy' lawsuit. This is a suit, brought by a party with an interest in property, seeking to impose legal remedies upon a municipality to fulfill the affordable housing obligations imposed by COAH under the Mount Laurel Doctrine and Fair Housing Act.

5. What is Dumont doing to address this situation?

Dumont has done a commendable job over the years of providing affordable housing options of various kinds and so, until now, has never been the subject of any developer efforts to impose a builder's remedy. Dumont has very little publicly owned property that is not encumbered by Green Acres restrictions or other uses that prevent housing from being built. All of those options have been previously explored and ruled out. The only substantial, undeveloped lot remaining in town is the D'Angelo Farms property. To fulfill its affordable housing obligation, the Planning Board adopted, and the Borough ratified and filed a plan with COAH in late 2013, that anticipates rezoning the D'Angelo's property as an inclusionary housing zone, consistent with applicable law. This plan anticipates 12 units of housing per acre of property (there are approximately 6 acres on the west side of Washington Avenue and 1 acre on the east side), which includes 17 units of affordable housing scattered within the development. This plan, when implemented, is expected to fulfill Dumont's affordable housing obligation under all current regulations.

6. Why can't other options be used to fulfill Dumont's COAH requirements as a substitute for rezoning D'Angelo's as proposed?

This is a complicated question that also doesn't have a short answer, but the bottom line is that other options, such as financial incentives to employ a market to affordable designation for existing apartments is a limited program that will not fulfill Dumont's obligations and there is no guarantee that the maximum number of units (10) can even be secured to participate in the program. Even if they were secured, it would not put the Borough in a position to resist development of the D'Angelo's site.

7. Is COAH still a functioning agency of state government?

Yes, COAH, while less active than it has been previously, is still an agency of state government and its responsibilities and existence have been confirmed by the Courts as valid and can only be eliminated by an act of the Legislature. No such action is contemplated at this time. In fact, there have been several recent court rulings requiring COAH to implement new third round regulations within a short time frame to clarify municipalities' respective obligations to provide affordable housing. This is an ever changing area of law and government.

8. Can Dumont wait and see what is going to happen with the COAH court cases?

No, the developer who has contracted to purchase the D'Angelo's property has instituted a lawsuit against Dumont, alleging that Dumont has not provided realistic opportunities for affordable housing and seeking to impose a 40 unit per acre zoning requirement on the Borough, appointing a special master to supervise the implementation of the affordable housing program, and seeking legal fees and other costs incurred in connection with such a program. If the Borough does not follow up on its previously filed plan to get COAH certification, it could lose in the pending lawsuit.

9. What needs to be done to receive certification of the affordable housing plan and receive protection from the lawsuit?

The Borough must complete its application for certification by rezoning the D'Angelos property for the 12 unit per acre density, along with other requirements that will blunt the impact that such a development will have on the surrounding neighborhood. For example, a rezoning ordinance can require setbacks, buffers, height restrictions and other regulations that will minimize the impact on the neighborhood.

10. Can building start soon after the property is rezoned?

No. Any actual site plan would have to be submitted to the Planning or Zoning Board for review, consideration and ultimately, approval, consistent with the rezoning ordinance. The ordinance only guides the Board as to the regulations that the Borough has imposed on any site plan development, but the authority to approve any site plan or development proposal rests exclusively with the land use board.