

NJ AFFORDABLE HOUSING REFORM UPDATE

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Appellate Court: In December 2009, the Appellate Division of the Superior Court began to hear arguments from the various parties challenging components of COAH's Third Round Rules. Whether or not the Court strikes down the growth share formula, and any remedy the Court may prescribe will have significant impacts on any affordable housing reform efforts.

DCA Transition Report: The Governor released the "Final Report of the Transition Team Subcommittee on the Department of Community Affairs and its Agencies and Affiliates", dated January 5, 2010 which includes the following affordable housing reforms:

- Eliminate the obligation to retroactively satisfy perceived prior need
- Eliminate the growth share methodology for calculating need
- Expand the definition of affordable housing to include non-deed restricted properties that are government subsidized and that have a rational basis for being treated as affordable
- Allow municipalities greater flexibility in satisfying need through an emphasis on rehabilitation of existing housing or allowing the renewed use of RCAs
- Insure municipalities are not obligated to spend their own resources to satisfy need
- Restrain the role of the agency to a municipal assistance program rather than a policy-making enterprise.

Proposed Bill S-1: Senator Lesniak introduced S-1 on January 19, 2010, which makes significant changes to the Fair Housing Act and State Planning Act, and abolishes the Council on Affordable Housing. Hearings on the bill by the Senate Economic Growth Committee were held on February 1st and February 8th. The County Planning Board prepared comments in coordination with the municipalities, which were submitted to the bill's sponsors on February 16th. An identical bill (A2057) has been submitted to the Assembly Housing Committee. A substantially revised version of the S1 was adopted by the Senate Committee on March 15th. The Bill was amended again during the Senate Voting Session held on 3-22-10. The major provisions of **March 22nd version** are as follows:

- Specifies that only municipalities that do not have a reasonable variety of housing are required to comply with State zoning mandates that are intended to maximize the opportunity for affordable housing.
- Abolishes the Council on Affordable Housing (COAH) and transfers its revised responsibilities and appropriations to the State Planning Commission (SPC)
- Changes the schedule for updating the State Plan from 3 to 6 years and sets forth the responsibilities of the SPC
- Updates the Legislative findings section, eliminates statewide calculation of affordable housing need and allows for the temporary use of RCAs through 12-31-11.
- Incorporates the definition of "Inclusionary Municipality", which means a municipality deemed to have provided a variety and choice of housing as evidenced by the quantity of price restricted units or amount of other low- or moderate-income units. 7.5% of a municipality's housing stock must be price restricted, **or** 33% of a municipality's housing stock must be single family attached (townhouses, condominiums, mobile homes or other multiple dwellings) except for "luxury units" **or** a municipality adopts an ordinance that reserves 20% of its vacant developable land with access to sanitary sewers for residential development. Municipalities with Third Round certification are also considered "inclusionary". "Price restricted units" are defined as residential units that are deed restricted for occupancy by residents of low- or moderate-income; units subject to covenants established for units financed by Federal Low Income Housing Tax Credits and the Neighborhood

Revitalization Tax Credit Act; rehabilitated units subject to price controls created through RCAs or Community Development Block Grant Program, units operated by a Public Housing Authority; and units constructed, rehabilitated or receiving project-based assistance under the program authorized pursuant to Section 8 of the US Housing Act of 1937.

- Establishes a prioritized “register of housing projects”
- Requires all new affordable housing for which credits are sought to be “adaptable” (in compliance with the barrier free sub-code)
- Appropriates \$15 million to the “NJ Affordable Housing Trust Fund” for use by municipalities for affordable housing rehabilitation and construction.
- Recognizes the need for a specific state program to fund housing rehabilitation, and to provide funding to municipalities for the creation of new affordable housing
- Reduces affordable housing set-aside from 20 to 10% in state-funded projects
- Reduces affordable housing set-asides in publically funded projects from 20% to 10%.
- Establishes a Senior Deputy Commissioner for Housing” within DCA for overseeing all DCA Housing Programs
- Gives the SPC the duty of assisting developing municipalities in meeting their housing obligations by determining housing regions, promulgating guidelines and criteria for preparing housing elements, make “inclusionary municipality determinations”, establish model affordability control mechanisms, and establish affirmative marketing requirements.
- Requires municipalities to apply to the SPC for “inclusionary municipality” determination within 30 days of the effective date of the bill, requires the application include an analysis of the municipality’s housing stock, and allows municipalities to reapply at any time during the 6-year planning cycle
- Municipalities not classified as inclusionary are subject to potential variance requests. Requests that include affordable housing will be determined to have met the positive criteria for a variance, i.e. such use will be considered “inherently beneficial”. This does not mean the municipality is required to grant the variance. The applicant must still meet the negative criteria test of a variance, i.e. prove to the satisfaction of the Board that the variance can be granted without substantial detriment to the public good.
- Municipalities may impose and collect payments in lieu of construction into Housing Trust Fund
- Special needs housing is given “double weight” in the municipal housing stock analysis
- The SPC has 90 days to complete its review of an inclusionary municipality application and render a determination
- Requires that new residential development of more than 5 units set-aside 20% for occupancy by low- and moderate-income households provided the project remains economically viable; and for any new project comprised of less than 5 units that does not include single family homes, a trust fund contribution will be required.
- Provides flexibility to developers and municipalities by allowing a variety of mechanisms for satisfying set-aside requirements
- Allows municipalities to provide preference for occupancy of set-aside units by households with at least one member who works or lives in the municipality
- Requires the SPC to conduct a study of available surplus state property in non-inclusionary municipalities, and report the number of units these lands can accommodate to the Legislature within six months
- Provide that a municipality shall not alter the zoning of any site that is reserved for a development containing affordable housing as a result of a judgment, court order, or settlement in exclusionary zoning litigation.

- Municipalities that have not been deemed inclusionary are required to approve variances for projects that include affordable housing
- Permanently repeals non-residential development fees for affordable housing, but allows payment in lieu of construction for affordable housing set-asides associated with residential projects
- Allows payment in-lieu of construction for residential projects and provides guidelines for administering trust funds
- Waives unmet COAH housing obligations
- Prohibits exclusionary zoning actions for 120 days following the adoption of the bill.
- Establishes guidelines for the review and approval of variance requests involving affordable housing development projects

The County Planning Board Staff's general observation regarding the amended bill is that it moves substantially in the direction recommended in the County's February 16th recommendations. Staff still supports the permanent reinstatement of RCAs for rehabilitation only, provided the sending municipalities are not experiencing significant employment gains. Furthermore, municipalities that have participated in the COAH process and as a result, exceed the 7.5% deed restricted unit requirement should be able to use these as credits toward future affordable housing obligations. It is also recommended that the provision that allows a municipality to be deemed inclusionary if 33% of a municipality's housing stock is comprised of single family attached housing - be more clearly defined based on value/rental costs of these units.

NJ Housing Opportunities Taskforce: On February 10, 2010, Governor Christie signed Executive Order 12 which established a 5-member Taskforce led by Former Senator Marcia Karrow. The Taskforce was charged with reviewing the effectiveness of the Fair Housing Act and COAH Rules, and to provide a report to the Governor by May 10th that includes recommendations on determining municipal affordable housing obligations; modifications to the housing regions of the state; incorporation of the concept of "workforce" housing; identification of mechanisms for supporting housing rehabilitation; and addresses cost saving measures for developers. County Planning staff participated in a Taskforce meeting on March 10th at which staff recommendations that build upon the February 16, 2010 S1 review comments developed in cooperation with the Somerset County municipalities were presented.

The Taskforce Report was released to the public on March 23, 2010. It presents a new model for determining municipal affordable housing obligations, which is based on the following 4 criteria: "it must be sustainable, fair, simple and predictable". The key provisions of this model are described below:

Present Need: The Taskforce differs from S1 with regard to how present affordable housing need should be determined – recommending present need be comprised of substandard housing occupied by low- and moderate-income households that is in need of rehabilitation, rather than the "inclusionary municipality" criteria recommended in S1.

Prospective Need: Prospective need is to be addressed by requiring 10% of all future residential development to be affordable to low-and moderate-income households, comparable to the approach recommended by S1. However, the Taskforce recommends projections developed by the State Planning Commission serve as the basis for planning affordable housing, and as an alternative, gives municipalities the option of using either a different authoritative source or their own vacant land analysis to demonstrate future growth. S1 eliminates the use of projections as the basis for planning how prospective need will be addressed.

Urban Areas: Urban areas are exempt from addressing Prospective Need requirements under the Taskforce proposal, unlike S1 which treats urban and non-urban areas uniformly.

Affordable Housing Element: The adoption of Affordable Housing Elements as part of municipal master plans by all municipalities is required. These elements define how municipal affordable housing obligations are to be satisfied, and must demonstrate that a variety of housing options are provided. The Taskforce emphasizes the need for flexibility so that strategies match community character and demographics. S1 also calls for the use of municipal Master Plan - Housing Elements that follow standards to be established by the SPC.

The County Planning Board: Counties are given the responsibility to review municipal affordable housing elements for compliance and the task of holding hearings on municipal Affordable Housing Elements and render a decision via resolution. In comparison, S1 gives responsibility for making “inclusionary municipality determinations” based on analyses of municipal housing inventories to the SPC.

Safe Harbor: The final Affordable Housing Element and adopted resolution would then be filed with the SPC, who will issue a letter of certification of compliance to the municipality. The office of the Attorney General would be charged with defending the municipality against future challenges to the plan.

Procedural Mechanisms: The Housing Mortgage Finance Agency (HMFA) would be responsible for administering municipal plans, including deed restrictions, income qualification and other procedures. HMFA would track municipal progress and maintain an online inventory of affordable housing. S1 distributes these responsibilities between the municipalities and the SPC.

Funding: Impact fees on residential development are identified as a short term solution, but the need for a long-term solution that does not rely on developer fees is recognized. S1 requires contributions in-lieu of development for projects less than 5 units in size and the appropriation of \$15 million to the Affordable Housing Trust Fund for funding affordable housing rehabilitation and construction.

In addition, the Taskforce supports the use of RCAs, does not support the collection of development fees from non-residential development. The Taskforce does require the provision of workforce housing, supports ‘double counting’ of supported affordable housing for persons with special needs. A series of short term interim regulatory corrections are included in the report. The Governor’s position on the Taskforce Recommendations is not known at this time.

The Taskforce outlines a series of “Short-Term Regulatory Corrections” that can be used to amend the existing COAH regulations as a short term solution, while the Legislature works on longer term solutions.