

SOMERSET COUNTY PLANNING BOARD

NJ Affordable Housing Reform Principles and Recommendations

5-18-10

The County Planning Board, in coordination with municipal officials and planners, support Governor Christie, New Jersey's Legislators and other State leaders in their efforts to improve the framework for addressing affordable housing obligations statewide pursuant to the New Jersey Supreme Court's Mount Laurel Decisions, and are very grateful for their hard work, expertise and commitment. The County Planning Board supports reforms that will increase the supply of housing affordable to low and moderate income households in a sustainable manner. Affordable housing solutions that are consistent with the principles of smart growth, enhance community character, respect environmental resources and consistent with the capacity of existing and planned infrastructure and public services – and that are not delayed by prolonged litigation are sought. The new affordable housing system must also be fair, simple and predictable, and most importantly, address the housing needs of the state's residents.

County and municipal elected officials and planners have reviewed the Governor's May 13, 2010 "Affordable Housing – Achievable Flexible Simple" Plan; the various bills that have been proposed which address reforms to the State's Affordable Housing System, including evolving S1, A2057, A2071; the NJ Housing Opportunities Task Force Findings and Recommendations; and the opinions of various individuals and organizations in an effort to identify the fundamental housing reform principles and solutions that are believed to offer the greatest potential for success in New Jersey.

Below are recommendations for consideration by the Governor, New Jersey's Legislators and leaders for inclusion in an Affordable Housing Reform Bill for the State:

Role of Municipalities: All municipalities should be required to adopt Housing Elements that include Affordable Housing Strategies, based on 6 and 12 year planning horizons, which are developed through an open participatory public process, and that are submitted to the State for certification. Affordable Housing Strategies should specify the implementation mechanisms to be used by the municipality and include options for addressing affordable housing requirements that match the municipality's unique affordable housing needs as well as unique community characteristics (land use, demographic and economic) and housing development preferences (scale, type, design and location). Municipal Housing Elements should be consistent with the Updated State Development and Redevelopment Plan in terms of balancing land use priorities and integrate the principles of sustainability and smart growth. Municipalities must remain free to select affordable housing options that are consistent with their vision and land use priorities, infrastructure and natural system capacity and fiscal resources.

The use of inclusionary zoning must be de-emphasized, while the use of various other creative, flexible and sustainable options, such as rehabilitation, municipal/non-profit sponsored 100% affordable housing projects, Section 8 Rental Vouchers, Buy-down of market rate units, ECHO and accessory units, trailer homes, conversion of large single family houses into 3 and four family housing and other mechanisms must be encouraged.

It is appropriate to require a 10% affordable housing set-aside for all new residential development, or in-lieu contribution toward municipal Housing Trust Funds for all projects greater than two units. There should be no differentiation in development fees for projects of two to ten units versus projects of eleven or more units. The ability to collect development fees is necessary so that municipalities can use housing trust funds to provide affordable housing types that match the character of the municipality and maximize opportunities to leverage resources and use partnerships to create affordable housing in an efficient and cost effective way.

But new development should not be the only mechanism for addressing affordable housing since new residential development may not occur in all municipalities- for example, built-out urbanized municipalities. In slow- and no-growth municipalities, other sources of funding to implement affordable housing rehabilitation programs and address group home needs other than relying primarily on development fees are required and should be provided through State and Federal programs. The State must identify permanent sources of funding to assist municipalities in addressing both present and prospective need.

There must be a rational nexus between the amount of the development fees and the cost of providing the affordable units. The “payment-in-lieu” system and fee structure must assure an equivalent number of affordable units can be provided elsewhere in the municipality through appropriate mechanisms, taking into consideration other funding available through the state or federal government. Municipalities should be able to utilize a more appropriate fee structure based on an analysis of local information and the cost of the strategies for addressing affordable housing need in their Housing Elements.

State requirements regarding unit type and mix should be less prescriptive as compared to COAH’s rules, so that the affordable units can better match demand. The Somerset County Coalition on Affordable Housing, which markets affordable units for various municipalities, reports that currently, larger, 3-bedroom units available to moderate income households are difficult to sell/lease and remain vacant for extended periods of time; whereas smaller units available to low-income households are sold/leased very quickly and remain in high demand.

Municipalities should work cooperatively with County Planning Boards to develop realistic projections that can be used as the basis of municipal Housing Elements and Affordable Housing Strategies. Municipalities should have the option to utilize vacant land, build-out and projection information available from County Planning Boards involved in the Wastewater Management Planning Process.

Municipalities should have the option of allowing their Municipal Housing Administrators to continue in their current role, or form shared service agreements for various aspects of administering affordable housing programs. Many have developed strong expertise and their in-depth knowledge of the local affordable housing stock and unique ability to monitor affordable in their municipalities must be recognized. The Somerset County Coalition on Affordable Housing represents another very successful alternative for municipalities that choose not to perform all administrative aspects “in-house” and serves as a model statewide.

Municipalities should be responsible for reporting their progress in implementing their Housing Elements to the State on an annual basis. Their annual affordable housing implementation reports should serve as the basis tracking statewide progress and to assure the affordable housing reforms are achieving their intended results.

Role of the State: A Housing Office within the State Planning Commission should be established which is delegated the authority to review Municipal Housing Elements and Affordable Housing Strategies, and grant certification. The certification process should comprise a quick and simple comparison of the Housing Element to the State Affordable Housing Standards. This process should not be linked to the Municipal Plan Endorsement Process since Plan Endorsement is too costly, time consuming and complex for many municipalities to engage in at this time. State certification is intended to protect municipal Housing Elements from challenges and minimize Court involvement. Court intervention should be the last resort since it is costly to municipalities and causes significant delays.

By placing this responsibility under the oversight of the State Planning Commission, consistency with the State Plan can be achieved and affordable housing goals can be balanced with the goals of creating sustainable communities, protecting the environment and revitalizing the economy. However, it is important that the primary role and responsibilities of coordinating state agency land use regulations and assuring the implementation of smart growth and sustainability principles at the municipal and regional level are not undermined by this work. This Office must be allocated appropriate fiscal and staff resources to perform this task. Its success will be enhanced by elevating the SPC and relocating it to the Department of State. The staff of the new State Housing Office must possess appropriate qualifications and expertise. Organizational changes to the State Planning Commission are warranted so that this function can be carried out in a cost effective and timely manner. The composition of the State Planning Commission should also be refined to include additional municipal and county representation, which will enhance the Commission's ability to provide leadership and guidance to municipalities.

Standards, definitions, methods and procedures for developing Housing Elements and Affordable Housing Strategies should be established by the State. A Housing Element template, standards and basic plan development criteria must be provided. It is essential that flexibility be provided to municipalities so that their choices for addressing their affordable housing requirements are not only consistent with the State Plan's smart growth and sustainability principles – but support the community's land use priorities and vision.

Short and long-term (6 and 12 year) residential growth projections should form the basis of Municipal Housing Elements. Municipalities should have the option of utilizing State Plan projections, projections derived from County Master Plans or Wastewater Management Plans or projections that are developed by the municipality in accordance with standards and methods established by the State. The State Development and Redevelopment Plan update schedule should coincide with the six-year municipal master plan re-examination schedule specified by MLUL.

The State should maintain an inventory of affordable housing and track affordable housing progress statewide over time, which can serve as the basis for future improvements to the State's

affordable housing system. A simple, concise, standardized website-based reporting system should be provided by the State for use by Municipalities in fulfilling their annual reporting requirements that serves as the inventory database. Annual municipal affordable housing implementation reports should be made available to the public via by posting on the State Affordable Housing Office Website.

The State must address coordination of municipal Housing Elements and Affordable Housing Strategies with the requirements of Regional Planning Agencies such as the Highlands Council.

Role of Counties: County Planning Boards should assist municipalities in the development of Housing Elements by providing build-out analyses and projections associated with the County Master Plans and Wastewater Management Plans to municipalities that request this information.

County Planning Boards that are also engaged in the Wastewater Management Planning Process can assist in verifying that existing and planned regional infrastructure and utility systems are adequate for accommodating planned growth and development at the local level.

County Planning Boards can also compile and disseminate other appropriate information through workshops and other venues that can help municipalities prepare their Affordable Housing Strategies.

Safe Harbor: A carefully structured system of affordable housing reforms by the State will reduce involvement by the Courts and challenges to municipal Housing Elements. However, State Planning Commission (SPC) oversight, including the SPC's State Housing Office's certification of Municipal Housing Elements will reduce Court involvement resulting from challenges by developers and other entities. Housing Elements will be simplified as a result of the reforms, and less cumbersome for the State to review and certify. Certification will also provide greater certainty and predictability for both the municipality and the development community. The burden on the Appellate Division and Courts would also be reduced if State certification of Housing Elements is part of the reform system.

Present Need and Prior Round Obligations:

“Present Need” should be defined as the amount of substandard housing (as defined by the US Census) occupied by low- and moderate-income households that is in need of rehabilitation. All municipalities should prepare an inventory of its existing affordable housing stock to determine which, if any, are sub-standard, and adopt a plan to rehabilitate that housing stock.

The reforms must be responsive to urban, suburban and rural affordable housing needs. Municipalities vary widely in their ability to accommodate new development, infill development and redevelopment, and likewise, their ability to collect development fees. As noted above, not all municipalities will experience growth and generate enough development fees to finance affordable housing rehabilitation, group homes or other projects. The State must assist in identifying and providing alternative funding sources to help slow-and no-growth municipalities implement rehabilitation programs and provide group homes.

It is important that the new model acknowledge the significant investments made, and accomplishments achieved by developing suburban municipalities who voluntarily participated in the COAH process or were under Court jurisdiction. These municipalities have made significant investments in 1) developing and adopting Affordable Housing Elements and Fair Share Plans (including hiring planning consultants and holding numerous public meetings and hearings); 2) administering affordable housing initiatives (including affirmative marketing, trust funds and affordability controls); 3) implementing affordable housing projects (including the donation of municipal lands for 100% affordable housing projects, forming partnerships with private and non-profit developers and rehabilitating affordable units); and 4) addressing COAH's annual monitoring and reporting requirements. These municipalities should have the option to complete the COAH Third Round Plan Certification Process, implement these plans and be afforded protection from Builder's Remedy challenges for the duration of the plan certification period. Municipalities that choose this route should not be subject to the requirements of the reformed affordable housing system until that time.

Prospective Need: The County Planning Board supports the recommendation that 10 percent of all future residential development be affordable to low-and moderate-income households. The Planning Board agrees that housing markets and land prices can adjust to reflect this requirement if applied uniformly statewide. This requirement will diminish the need for density bonuses or other builder incentives. Furthermore, the current higher set-aside requirements for inclusionary development represent a cost burden that is often subsidized by the market-rate units associated with inclusionary projects, driving up the cost of potential "workforce" housing. If the cost burden associated with internally subsidizing affordable units is reduced or eliminated, the creation of "naturally occurring" workforce housing (affordable to households earning 80 – 120 percent of median income) is more likely to occur, eliminating the need for a regulatory approach to addressing workforce housing needs.

The new model should also recognize that the rental and purchase prices for a large proportion of the housing stock in many urban and fully developed suburban municipalities are already affordable to low-and moderate-income households, and the proportion of low- and moderate-income households living there is significantly higher than many other communities within the housing region, although controls on affordability may be limited. Even though some of these municipalities may not have participated in COAH or Court-administered affordable housing programs, they still provide significant affordable housing opportunities consistent with the intent of the Fair Housing Act. Some rural municipalities are experiencing declines in population or are affected by significant environmental and infrastructure constraints, and can not rely on new development for addressing affordable housing needs. The County Planning Board recommends that urban areas (defined as municipalities with over 90% or more of their total land area developed or constrained from development) and rural municipalities experiencing no growth or declines, and that have significant environmental and infrastructure constraints should be excluded from Prospective Need requirements in order to foster economic revitalization, diverse and livable neighborhoods in urban areas, environmental and agricultural protection in rural areas and the fiscal integrity of all of these municipalities.

As noted above, municipalities that voluntarily choose to continue to implement COAH-certified Third Round Fair Share Plans and Housing Elements should be exempt from the 10% affordable housing set-aside requirement for the duration of their certified plans. After the Plan horizon year ends, the 10% set-aside for all new residential construction should apply to these municipalities as well, and their Housing Elements should be updated in accordance with the State's new affordable housing system. In addition, municipalities that have adopted and filed with COAH - Third Round Housing Elements and Fair Share Plans which are midstream in the COAH review process at the time the reformed affordable housing system becomes effective, should be permitted to voluntarily choose to have these plans reviewed and approved by the State Housing Office using COAH Criteria.

The appropriateness of the 10 percent affordable housing set-aside should be demonstrated through analyses conducted by the State to assure that it so that it holds up in Court. Municipalities should be free to negotiate higher set-asides with developers in order to leverage private and public sector resources to create affordable housing and mixed use projects that meet municipal needs and fit the community's character - without exceeding infrastructure capacity or compromising environmental resources.

Very-Low Income Housing: Very low-income housing is very difficult to achieve without deep subsidies and significant developer incentives. However, State and Federal funding sources for affordable housing have been dramatically reduced. Yet, the Somerset County Coalition on Affordable Housing has demonstrated that housing affordable to very low income households comprises the greatest proportion of unmet need. In recognition of the significant amount of unspent affordable housing fees collected during prior COAH rounds, which remain in municipal Trust Funds, the use of these funds should be dedicated toward making existing and planned affordable units available to very-low income households. Restrictions on the use of trust funds for providing very low income housing should not apply to developer fees collected in-lieu of construction after affordable housing reforms are adopted. Instead, municipalities should be required to prioritize the use of development fees on rehabilitation of affordable housing and the creation of supported living - group homes for persons with special needs.

Affordability Controls: Municipalities should be given the option to voluntarily use various price controls including deed restrictions, covenants, rent control and other mechanisms to preserve the supply of affordable housing. Their decision should be based on an analysis of the local housing market and local economic conditions. It is recognized that price controls can, in some municipalities, deter households whose incomes have risen to exceed income eligibility criteria from keeping deed restricted units, since they stand to earn a greater return upon resale if they invest in market rate units that are not subject to price controls, especially as the housing market rebounds from the Great Recession.

RCAs: The County supports permanently reinstating the use of RCAs for affordable housing rehabilitation, provided the RCA funds are used strictly for this purpose, and the units are located in areas that have appropriate access to jobs and transportation. However, municipalities experiencing employment growth in excess of the average for its housing region or with Jobs:Housing ratios of 2.0 or greater should be prohibited from serving as RCA "sending" municipalities. The proportion of sending municipality's affordable housing obligations that can

be transferred should be reduced from 50% to 20% in order to prevent the income gaps among municipalities and the concentration of poverty in cities and inner-ring suburbs from worsening. The SPC must establish effective monitoring processes to assure RCA funds are spent appropriately. Sharing of credits toward meeting affordable housing obligations of both the sending and receiving municipality is needed to recognize the community services, infrastructure and utility capacity that must be provided by the receiving municipality to sustain the long-term needs of residents associated with affordable housing created.

Housing Regions: The basis for defining housing regions is linked to whether or not RCAs will remain an option for addressing affordable housing requirements. If RCAs are not permitted, housing regions can be comprised of the State's 21 counties, which will allow for greater county and local plan coordination and build upon the local and county planning partnerships and shared service initiatives already underway.

If RCAs are permitted, municipalities, (not necessarily entire counties) should be grouped into housing regions based on updated analyses of the relationship between housing and job markets, commuting patterns and economic and demographic characteristics.

Occupancy Preferences: Some types of affordable housing that are created without the use of federal funds are not subject to federal affirmative marketing requirements. Municipalities should not be precluded from giving income eligible residents and local employees a "first option" to buy or rent affordable units to which affirmative marketing restrictions do not apply. However, it is essential "first option" programs be structured to assure units are occupied as soon as possible (i.e. if units are not sold or rented within a reasonable time period, they must be made available to all income eligible households) in order to assure the fiscal viability of the project and meet the intent of the Fair Housing Act.

Affordable Housing Construction Standards: It is appropriate that all new affordable units comply with the barrier free sub-code.

Special Needs Housing: the shortage of affordable housing for seniors and persons with disabilities in need of supportive living arrangements and other groups with unique affordable housing requirements has reached a crisis level Statewide. This housing type should be addressed in all municipal Affordable Housing Strategies with the goal of reducing the huge waiting lists for affordable supported housing throughout the State. The prioritization of the use of development fees collected in lieu of construction should for the creation of supported group home facilities is supported. State funding and other incentives such as bonus credits should be provided for supported group home facilities. Municipalities should be permitted to use affordable group homes created prior to 1980 toward meeting their affordable housing obligations.