

## Somerset County Planning Board

### SUMMARY OF MAJOR PROPOSED AMENDMENTS SUBSTANTIVE RULES OF THE NJ COUNCIL ON AFFORDABLE HOUSING FOR THE PERIOD BEGINNING JUNE 2, 2008

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**Public Comment Period Deadline – August 15, 2008**

*(Please note, further amendments to the COAH Rules may occur in the future in response to recently adopted A-500: State Affordable Housing Reform Bill. Some of the proposed amendments included below are affected.)*

5:97-1 Definitions Clarifications and additions to several definitions were made, including:

- “Durational adjustment” expanded so that it can be applied to both prior round and growth share obligation.
- The “1,000-unit limitation” (cap) was amended to apply to both the prior round and projected growth share obligation.

5:97- 2.2 (e): Adds a requirement that municipalities to submit an implementation schedule that sets forth a timetable for providing affordable units within the period of substantive certification, and for the submittal of all information and documentation required for each implementation mechanism. The proposed rule amendment states that, “the implementation schedule shall consider the economic viability of the proposed mechanism, including the availability of public subsidies, development fees and other sources of financing.

5:97-2.5 (a): When measuring actual residential growth share obligation, the proposed change would allow graduate students housing owned and/or operated by an institution of higher education to be excluded. The revised rule would also allow market rate rental units associated with a density bonus where the affordable units addressing growth share are also rental to be excluded.

5:97-2.5 (b): In determining actual non-residential growth share, the revised rules would allow jobs lost due to demolition based on square footage in non-residential buildings to be subtracted from total jobs, provided the space was occupied at least one year prior to demolition. Jobs associated with the relocation of a hospital or nursing home from another municipality within the same housing region may also be subtracted. However, additional jobs resulting from the expansion of a hospital or nursing home may not be deducted from growth share.

5:97-3 Content of a Fair Share Plan: The revision to this section specifies the implementation schedule must set forth a detailed timetable that demonstrates a “realistic opportunity” as defined under N.J.A.C. 5:97-1.4 and give consideration to the economic viability of the mechanisms. The requirement that documentation for the extension of expiring controls be submitted at the time of petition and subject to an implementation schedule has also been added.

5:97-3.4: The revision would allow credits associated with rental units in excess of the prior round rental obligation to be applied toward the third round obligation provided certain conditions are met.

5:97-3.5: Credits for affordable rental units associated with prior round obligations that have not been constructed would also be allowed if a firm commitment for construction is provided.

5:97-3.7: In the case of rental housing, the revised rule would allow only very low income rental units in excess of 10% of the total number of affordable units to be eligible for a bonus of 2 units of credit for each unit created toward the growth share obligation. Bonuses associated with growth share very low income units not constructed may be granted provided evidence of a firm commitment to construct the units is provided.

5:97-3.13: Sites subject to durational adjustments due to lack of sewer and water availability would now be considered to meet the site suitability criteria according the revised rule.

5:97- 3.16: The revised rule encourages municipalities to work with regional planning commissions and authorities to address affordable housing obligations on a regional level.

5:97-3.17: New “Compliance Bonuses” are included in the revised rules, comprised of two units of credit for each affordable unit in a development that received preliminary or final approval, or was the subject of an executed redevelopment agreement between 12-20-04 and 7-2-08 when included as a growth share mechanism in a third round petition submitted to COAH prior to January 25, 2007, the affordable units are to be built on-site, and all other requirements have been met pursuant to 5:96-4

5:97-3.18: A new “Smart Growth Bonus” of 1.33 credits for each affordable unit built or approved after June 6, 1999 in a Transit Oriented Development in a Planning Area 1, 2 or a designated center when a minimum of 20 percent of the total units are affordable; the affordable units are provided on-site; at least 50% of the affordable units are for families; and zoning criteria pursuant to 5:94-6.4 are met in included in the revised rules.

5:97-3.19: A new “Redevelopment Bonus” of 1.33 units of credit for each affordable housing unit created or approved after June 6, 1999 that is included in a designated redevelopment area has been added to the revised rules. In general, a minimum set-aside of 15 percent applies.

5:97-3.20: A new “bonus cap” provision has been added such that only one type of bonus for each unit can be received; and the total number of bonuses for the growth share obligation cannot exceed 25% of the projected growth share obligation.

5:97-4.3: The revised rules indicate affordable units funded through the Low-Income Housing Tax Credit Program or Balanced Housing Program from 12-15-86 – June 6, 1999 and not included in a Housing Element and Fair Share Plan shall not be eligible for credits.

5:97-4.5: The revised rule allows rehabilitation credits for units rehabilitated between 12-20-04 and 6-2-08 if criteria in 5:97-6.2 are met.

5:97-5 Proposed changes to the Vacant Land Adjustment Requirements are as follows:

- A municipality that is requesting a vacant land adjustment for the first time or whose vacant land adjustment was not granted as part of a second round substantive certification, shall apply its eligible credits pursuant to 5:97-4 for units that are constructed or have received preliminary or final approvals prior to 6-6-1999 toward its unmet need at the time of petition prior to applying credits toward its RDP or growth share obligation. Units that are constructed or have received preliminary or final approvals after 6-6-1999 may be applied to the RDP or unmet need, provided the unit was not a mechanism previously included in the plan to address unmet need. Municipalities may apply credits for units constructed or received preliminary or final

approvals after 6-6-1999 to the growth share obligation provided credits have first been applied to the RDP.

- The inventory of vacant parcels must also specify the Planning Area applicable to each parcel, and if it is in a sewer service area.
- In addition to the character of the surrounding area, COAH must also give consideration to the need to provide affordable housing in establishing densities for parcels remaining in the vacant land inventory. (The minimum presumptive density shall be 6 units per acre, and maximum set aside of 20% for inclusionary development).
- Although municipalities may request a durational adjustment for its prior round or projected growth share obligation for lack of adequate sewer or water capacity, no durational adjustment shall be provided for actual growth share obligation.
- Sites that cannot accommodate 1 unit can be excluded from the vacant land inventory. However, a growth share obligation shall still accrue to any excluded parcels if market rate growth occurs on them.
- COAH shall utilize zoning to determine if parcels in the inventory are residential or non-residential.

#### 5:97-5.4: Durational Adjustments

- The proposed changes would allow municipalities to request durational adjustments for projected growth share obligation as well as prior round obligation.
- The proposed rule specifies that municipalities must plan for the projected growth share obligation by zoning the site to accommodate affordable housing despite the fact that capacity constraints exist.

#### 5:97-5.6: Adjustment of household and employment growth projections

The proposed amendments indicate that COAH “shall generally utilize the municipality’s zoning to determine whether to assign the residential or non-residential density to each site remaining in the inventory. The amendments also provide variable presumptive densities based on location in Urban Centers and Planning Areas which are to be assigned to remaining vacant lands based on the vacant land inventory as follows:

- Urban Centers: 22 units per acre for residential sites and 220 jobs per acre for non-residential sites
- PA1: 8 units per acre for residential sites and 80 jobs per acre for non-residential sites
- PA 2 and centers: 6 units per acre for residential sites and 60 jobs per acre for non-residential sites
- Lands within Sewer Service Areas (SSAs) but located outside of PAs 1 and 2: 4 units per acre for residential sites and 40 jobs per acre for non-residential sites
- Lands outside of SSAs in Pas 3, 4 and 5: density shall be based on DEP 2.0 mg/l nitrate standard.

5:97-5.8: The proposed amendment specifies that municipalities are not required to plan for a projected growth share obligation beyond 1,000 units within 10 years unless it is likely that the municipality through its zoning powers could create a realistic opportunity for more than 1,000 units within the 10-year timeframe.

- A municipality that seeks a 1,000 unit limitation must first subtract from its projected growth share obligation all credits and associated bonuses that are proposed to address the growth share obligation to determine if the municipality is eligible. It may then submit a Housing Element and

Fair Share Plan that provides for a realistic opportunity for affordable housing to address the 1,000 unit projected growth share obligation.

5:97-6.2 Rehabilitation: In lieu of using the estimate of deficient units occupied by low and moderate income households provided by COAH in Appendix B, the municipality may perform a survey of its housing stock in accordance with COAH standards. COAH shall modify the rehabilitation share if warranted based on a review of the survey results.

- The proposed amendment allows a municipality receiving State Aide to seek a waiver from addressing its entire rehabilitation component in one ten-year period of substantive certification. The municipality must demonstrate that it cannot rehabilitate the entire rehabilitation component within 10 years and/or that an extraordinary hardship exists.

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5:97-6.4: In lieu of the bonus credit of one additional market rate unit for every affordable unit provided through inclusionary zoning, new minimum presumptive density criteria specific to inclusionary zones based on Planning Area designations and sewer service areas are provided in the proposed rules as follows:

- **PA 1** – residential development minimum density of 8 units per acre, and maximum affordable housing set-aside of 25%
- **PA 2 and Designated Centers** – residential development minimum density of 6 units per acre and maximum set-aside of 25%
- **Existing and Proposed Sewer Service Areas outside of PA 1 and 2** – residential development minimum density of 4 units per acre and maximum set-aside of 25%
- **Existing and Proposed Sewer Service Areas outside of PA 3, 4 and 5-** residential development minimum density increase of 40% over the existing zoning and maximum set-aside of 20%
- **Urban Centers** – residential development minimum density of 22 units per acre and maximum set-aside of 20%.

The proposed rule amendment requires at least one additional incentive be provided. Relaxed bulk standards to reflect decreased lot size; attached single family housing; clustering; lot-size averaging and increased building heights are permitted. Additional incentives to subsidize very low income units are permitted. The amended rule revises the conditions that must be met regarding the rental option:

- Zoning must permit a minimum of 12 units per acre and a maximum set-aside of 20 %. At least 10% of the rental units must be affordable to households earning 30% or less than median income.
- In Urban Centers and Workforce Housing Census Tracts, zoning must permit a minimum of 25 units per acre and a maximum set-aside of 15% in a mixed income development.
- In non-residential districts, affordable housing may be provided on or off site, and may include a payment in lieu, or payment of a development fee.
- Inclusionary Zoning in mixed use districts must permit both residential density increases and non-residential floor area increases.
- The proposed amendment recognizes vested rights exist for developments that received preliminary or final approval between December 20, 2004 and June 2, 2008 under the prior December 20, 2004 regulations.
- Inclusionary zoning ordinances require the affordable units to utilize the same heating source as the market rate units therein.

5:97-6.6: With regard to affordable units proposed within a redevelopment area, the proposed rule amendment requires that the site be designated as an area in need of redevelopment; the municipality

to adopt a redevelopment plan; and issue a request for proposals for a designated redeveloper. The municipality or developer no longer has to control the site. The phased submission of documentation has been refined. Low and moderate income households that have been displaced due to the redevelopment project may be provided preference over other applications.

5:97-6.7: The proposed rule amendment refines the minimum documentation required to be submitted for municipal-sponsored projects to include evidence of adequate and stable funding.

5:97-6.10: The proposed amendment clarifies and refines the provisions that apply to permanent supportive housing and the documentation that must be provided.

5:97-6.13: The amendments allow partnerships to be formed not just among municipalities, but also with planning and redevelopment authorities, non-profit organizations and/or other regional planning commissions to build affordable units. No more than 50% of a municipal affordable housing obligation can be constructed in another municipality.

5:97-8.1: The rule amendment clarifies that developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees unless the developer seeks a substantial change in the approval. The fee collected shall be based on the percentage that applies on the date that the building permits were issued.

5:97-8.7: The proposed rule amendment allows the municipality to use Housing Trust Funds to defray the cost of structured parking associated with affordable units in an inclusionary development on a pro-rata basis.

Written Comments on the proposed amendments must be submitted by **August 15, 2008** to:

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