

SOMERSET COUNTY PLANNING BOARD
AFFORDABLE HOUSING REFORM UPDATE
NOVEMBER 2010

Background: On October 8th, the Appellate Division invalidated substantial portions of COAH's third round rules. Most significantly, the Court ruled that the Growth Share approach for determining a municipality's prospective need as specified in the revised COAH Rules adopted in October 2008 is invalid. The Court also concluded that municipalities must specify the funding and time schedule through which municipally-sponsored affordable housing projects are to be provided, and that the presumptive densities and set-aside requirements with regard to inclusionary zoning do not provide sufficient incentives for developers. Rental bonus credits for undeveloped units and compliance bonuses were invalidated. Staff was unable to reach anyone at COAH for an update on the status of their work preparing new prospective need numbers consistent with Rounds 1 and 2 and required by the Court. It is unclear whether they will meet the five-month deadline for completing this work.

On October 18th, Proposed Bill A3447 sponsored by Assemblyman Jerry Green was introduced as a follow-up to Proposed Bill S1 and is a continuation of the legislative efforts to reform the State's affordable housing process and requirements. S1 was adopted by the Senate Committee on June 1, 2010 but was not voted out of Committee. Both of these bills benefited from the detailed analysis prepared by Marcia Karrow's Governor's Task Force Report which was released this past spring.

A hearing on A3447 at the Assembly Housing and Local Government Committee on November 8, 2010, and a number of revisions were made. Most significant to Counties is an amendment to include a significant role for County Planning Boards related to the review of local affordable housing plans. The specific amendments have not yet been made available.

Overview of Major A3447 Provisions: The initial Bill defines a compliance threshold, that, if met by a municipality, the municipality would not be subject to affordable housing zoning and other mandates. The compliance threshold will be met if 12 percent of a municipality's total current housing stock is comprised of qualified housing units or if 50% or more of the children enrolled in schools in the municipality were eligible for free or reduced price meals under the federal School Lunch Program.

Qualified units are housing units that are affordable to very low, low or moderate income households with affordability controls; mobile home units; public housing units; units whose deeds contain sale, resale or transfer price restrictions because the units were financed by federal Low Income Housing Tax Credits, received project-based assistance under the Federal HUD Section 8 program; received financing pursuant to a RCA – provided that any qualified units shall be adaptable.

One of the more controversial provisions, the Bill provides that a municipality may be deemed compliant if it adopts an ordinance providing that at least 20 percent of its developable property is zoned for housing affordable to households with 150% of the median gross household income

by household size. Zoning minimum presumptive densities are 4 units per acre for single family projects and 8 units per acre for attached townhouse and multifamily projects.

Another controversial provision is the continuation of the collection of non-residential development fees for deposit into Municipal Housing Trusts. The Bill provides that the payment can be made incrementally over a period of 5 years.

The Bill requires all compliant municipalities to submit documentation concerning existing qualified units, housing elements and applicable ordinances which will be posted on the DCA's website. Compliant municipalities will also be required to submit an analysis calculating the number of existing substandard units occupied by low and moderate income households and a plan for rehabilitating them within 10 years.

Compliant municipalities are permitted to adopt inclusionary zoning ordinances, establish affordable housing trust funds and corresponding fee ordinances.

In non-compliant municipalities, variances must be granted to developers proposing projects in which at least 10 percent of the units are affordable to low and moderate income households provided the project is not a substantial detriment to the public good and will not substantially impair the intent and purpose of the master plan and zoning ordinance.

The Bill specifies that all municipalities shall require no less than 10 percent of the residential units proposed as part of any new project resulting in 10 or more units to be reserved for low and moderate income households. The affordable units can be constructed off-site within the municipality or a development fee of two percent of the equalized assessed value of the development may be paid into the municipality's housing trust fund. (or 3% if non-compliant). Or, a developer can rehabilitate an equivalent number of income eligible units in the municipality.

For projects resulting in less than 10 units, the developer is required to pay a development fee of 1 and ½ percent equalized assessed value.

The Bill does not specify any affordable housing requirements associated with redevelopment areas adopted pursuant to the State Redevelopment and Housing Act.

Findings and Recommendations: Clearly, this is a time of significant uncertainty with regard to affordable housing policy and requirements in the State of New Jersey. County Planning staff concur with the recommendations of the distinguished panelists who spoke at the Session on COAH and Affordable Housing Reform at the November 5, 2010 NJAPA Conference. Ms. Marybeth Lonergran of Clarke Caton and Hintz who also serves as a Mt. Laurel Court Master, encouraged municipalities to continue to work on implementation of prior round obligations and rehabilitation share. She also felt there is little risk in also moving forward with supported housing and special needs housing projects. Other panelists recommended that municipalities examine their unique circumstances when deciding whether to request a stay, noting the Courts may be more likely to grant a stay if the municipality indicated it intends to move forward with implementation of the components of their fair share obligations that have been upheld by the courts.