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December 5, 2008

Honorable Joseph J. Roberts, Jr.
Brooklawn Shopping Plaza, Rt. 130 South & Browning Rd.
Brooklawn, NJ 08030

Dear Speaker Roberts:

You have requested specific information concerning the methodology used by OLS in a letter to Brian Alpert of the Senate Republican Office, dated 11/14/08, that was released to the press. The letter was not a cost analysis of compliance with new regulations issued by the Council on Affordable Housing (COAH), but was a response to a specific question; whether the financial resources listed in the "Guide to Affordable Housing Resources in New Jersey," published by the Department of Community Affairs (DCA), "are available for use by municipalities in addressing their respective fair share affordable housing obligations as calculated by the Council on Affordable Housing." The letter was part of an ongoing exchange with a member of a partisan staff about affordable housing issues and the quantitative discussion was intended to be illustrative, not analytical. Therefore, contrary to characterizations in the press, *OLS was not asked to calculate the financial impact of COAH's revised third round regulations on municipalities, and did not do so in its letter to Mr. Alpert.* The letter was not written to provide information to the general public and to the extent that it invited misinterpretation, we are regretful.

Press accounts have mischaracterized the \$2 billion number mentioned in the letter as being OLS's estimate of the cost to municipalities of COAH's third round regulations. To the contrary, the \$2 billion figure was used solely to provide context for the estimated \$849 million of available resources for housing production as proposed by DCA. Certainly, the letter makes clear that inclusionary zoning and the granting of compensatory zoning benefits will remain the primary tools for a municipality to satisfy its affordable housing obligation.

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The reason that the letter continued after its conclusion on page 1 ("resources identified by the department will not be sufficient to fulfill the fair share housing obligations of many municipalities . . .") is that the initial question asked by Mr. Alpert seemed to assume that municipalities are required to expend money to meet their respective fair share affordable housing obligations calculated by COAH. Thus, the first part of the OLS letter reviewed COAH's statutory role in the calculation of housing obligations for municipalities and then cites to the provision of the law stating that municipalities specifically are *not* required to expend funds or raise revenues under the terms of the "Fair Housing Act."

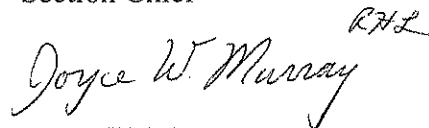
The letter stated that COAH is responsible for adopting criteria and guidelines for a municipality's determination "of its present and prospective fair share of the housing need in a given region which shall be computed for a 10-year period." (See page 2 of letter citing subsection c. of N.J.S.A.52:27D-307.) Each municipality's fair share number "should consist solely of each municipality's portion of the net regional affordable housing obligation need number," excluding "units produced by State or federal subsidies." (See page 3 of letter.) The letter specifically states that "the contribution of a municipality towards the production of affordable housing should be in the form of a zoning contribution, not a financial contribution" and cites N.J.S.A.52:27D-311, stating that *nothing* in the "Fair Housing Act" "shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing." (See page 3 of letter.)

While the letter was not an analysis, and as such did not have a methodology, we have addressed your specific questions in an attachment. Again, we regret that the purpose of our letter to Mr. Alpert has been misconstrued in the press. Please feel free to contact us if you have any further questions or concerns on this subject.

Sincerely,



Robert H. Levin, Esq.
Section Chief



Joyce W. Murray
Lead Counsel

c Attachment

ATTACHMENT – RESPONSES TO QUESTIONS

1. Does the analysis take into account that affordable housing will be financed through private, as well as public, funding?

Yes. While the letter was limited to the issue of whether the resources pointed out by DCA would be sufficient to meet the hypothetical costs of producing the total number of affordable housing units calculated as necessary by COAH and published on its website, the letter very clearly points out that private housing development plays a major role under the “Fair Housing Act.” On page 4 of the letter we stated, “In addition, we do not estimate the number of units which may be produced through inclusionary zoning techniques. We note that in municipalities which are growing and which contain ample vacant land, this technique could provide considerable financial resources towards affordable housing production.”

2. Does the analysis take into account that State law clearly states that municipalities need only zone for affordable housing and nothing requires them to raise or expend money to provide it?

Yes, with regard to any requirement for the expenditure of funds by a municipality, however, the letter did not discuss what efforts would be sufficient to meet the criteria of the council. The letter states on page 2:

The “Fair Housing Act” contains other supportive language which also emphasizes the point that the contribution of a municipality towards the production of affordable housing should be in the form of a zoning contribution, not a financial contribution. See subsection d. of N.J.S.A.52:27D-311, which states clearly “[n]othing in P.L.1985, c.222 (C.52:27D-301 et al.) shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.”

3. Does the analysis take into account the vacant land adjustment process, which was codified in A-500?

No. The vacant land adjustment process technically is not a method of municipal compliance, but is a statutory requirement for COAH to adjust a participating municipality’s fair share housing obligation based on a demonstration by the municipality that certain parcels of land are not available for affordable housing development. While this process, if utilized by a municipality, may potentially lower its fair share housing allocation, it may also result in increased densities being assigned by COAH to those parcels remaining in the municipal vacant land inventory.

4. Does the analysis take into account the myriad of methods available to municipalities to meet their obligations, including extension of affordability controls,

conversions of nonresidential space to residential, accessory apartments and group homes, all of which are considerably less expensive than the cost of constructing a new unit?

No. OLS was not asked to review all methods by which a municipality may comply with the "Fair Housing Act," and did not do so. We stated on page 2:

COAH's regulations permit a municipality a variety of ways to address the fair share housing allocation.

It would not be possible to estimate the individual municipal costs of producing affordable housing under all of the methods available. Again, we emphasize that OLS was not asked to provide an accurate cost estimate of producing affordable housing under the council's rules and we regret that the letter has been represented in that regard. We provided an analysis of whether the resources specifically pointed out by the DCA in its subsidy guide are (1) available for this use and (2) sufficient to address the total numbers of published fair share housing obligations, using rough cost estimates tied to the regulations of the council which are relevant to a particular category of affordable housing. This was delineated in the letter as follows:

Rehabilitation share -	\$ 10,000 per unit cost required.
Market to affordable -	\$ 25,000 average cost rental or for sale
Units of new construction	\$161,095 average subsidy

5. Aside from including it in the margin of error, does the analysis take into account the variety of bonus credits that are available to towns that produce certain types of affordable housing, including supportive and special needs housing, rental housing, and housing located in redevelopment areas?

The letter does not discuss bonus credits at length and the fact that we were not estimating the amount of housing units which might be eligible for bonus credits was clearly stated. On page 4 of the letter we disclosed, "Our calculations do not take into account that some units will receive double or extra crediting; therefore a margin of error on these costs could be assumed of up to approximately 25 percent." A fair reading of the quoted sentence indicates that bonus credits are a significant factor in satisfaction of housing need, the quantity of which OLS could not accurately determine. The 25 percent margin of error was mentioned as a necessary means to enable an estimation of the number of housing units which could be assumed eligible for bonus credits (that is, one-fourth of the total number of housing units in the fair share obligation). This is likely a very generous assumption, for bonus credits are reserved for very limited types of housing such as rental, supportive and special needs, and it is highly unlikely that every municipality could meet up to 25 percent of its fair share housing obligation with these special types of housing.

6. Does the analysis take into account that municipalities have accrued \$215 million in their municipal housing trust funds and that A-500 requires towns to commit this surplus to the production of affordable housing within four years?

Yes, to the extent that the DCA guide references them. We state on page 2:

Development fee trust funds received through local development fee ordinances are municipality specific and difficult to quantify.

7. Does the analysis take into account that the COAH process is voluntary and that municipalities that choose not to participate are not required to comply with COAH's obligations?

No, OLS was neither asked to analyze the cost of compliance with the "Fair Housing Act," nor to analyze the consequences of non-compliance.

8. Does the analysis take into account that revenue from the new 2.5% fee on nonresidential construction can be used to leverage additional federal revenue, including Federal Low Income Tax Credits?

Yes, to the extent that DCA estimated these resources in its guide, they were accounted for.

9. Was the analysis reviewed by the Legislative Budget and Finance Officer for accuracy?

No, the letter was not a fiscal note, a fiscal estimate, or an attempt to calculate the cost to municipalities of COAH's third round regulations. The purpose of the letter was to determine whether certain financial resources listed by DCA would be available to municipalities to meet their affordable housing obligations. The letter states, "we conclude that the resources identified by the department will not be sufficient to fulfill the fair share housing obligations of many municipalities as estimated in accordance with the requirements set forth in the rules of the Council on Affordable Housing (COAH)."