

Getting “In Sync” with the Council on Affordable Housing

Triad Associates

It is certainly no surprise to New Jersey residents and municipal officials that the State has some of the highest median housing values in the nation. Recent statistics place the 2007 mean value of a home at \$440,805. This figure is appreciably higher than the national average and can vary considerably from one corner of the State to the next.

Housing costs and subsequently, housing affordability in New Jersey have long been important issues. They began to merge in 1975 with the now famous Mount Laurel decision in which the State Supreme Court ruled that land use mechanisms which clearly exclude low and moderate income families from living in a municipality of their choosing were illegal. This decision was affirmed in a 1983 decision known as Mount Laurel II, which prompted the New Jersey Legislature to pass The Fair Housing Act of 1985. It was this act that led to the creation of the Council on Affordable Housing (COAH), and the implementation of administrative procedures that allowed the state's municipalities to address their fair share affordable housing obligations.

Over the course of more than twenty years, COAH has gone through two rounds of rules in an effort to address the needs and concerns of the public, municipal governments and the housing industry. The most recent rules were proposed by COAH in December 2007. These new “Third Round Rules” were published in the January 22, 2008 New Jersey Register and underwent public review and discussion at a recent series of meetings held throughout the State.

The new rules, as they are currently proposed, make a number of changes in the way that a community's affordable housing obligation is calculated. Principally, municipalities will be obligated to provide affordable housing commensurate with their rate of development from 2004 – 2018. The revised ratios released by COAH require that one (1) unit of affordable housing be provided along with every five (5) new residential units and that one (1) affordable unit be provided for every 16 new jobs based on an estimate of square footage for new, non-residential construction. In addition, the new rules provide for an increase in Regional Contribution Agreements (RCA's) from \$35,000 per unit to \$80,000 per unit.

Written public comment on the proposed COAH rules will be accepted through March 22, 2008. Comments can be submitted to COAH either electronically via COAHmail@dca.state.nj.us or by sending comments in word format on disc directly to the agency's Executive Director, Lucy Voorhoeve. To view the proposed Third Round Rules in their entirety, local officials can access the COAH website at www.state.nj.us/dca/coah.

Given these proposed changes, municipal officials may find themselves searching for ways to ensure that they comply with the new Round III Rules when they are adopted. At a minimum, there are a number of questions that local officials should be asking:

1. What is the current status of my municipality's certification with COAH?
2. What is the likely impact of the new rules on my municipal affordable housing obligation?
3. How can I bring my community into compliance?
4. What are the implications if my community decides not to comply?
5. When should I begin acting on this matter?

Current Status with COAH

Most municipal planning offices know whether their communities are in compliance with current COAH rules. To be compliant today, a municipality has to have a COAH-approved, fair share housing plan that meets the requirements of the Round II Rules. If local officials are unsure of this status, Round II certified communities are listed on the COAH website or they can call the COAH office to determine a municipality's current status. Moving forward, all communities will have to comply with Round III obligations.

Impact of the New Rules

The new rules are currently moving through the public comment and adoption stage, and they may yet be modified from their current form. Whether or not any modification occurs, new Round III Rules should be adopted by the summer. At that point municipal planners or housing consultants can assist municipalities in interpreting the new rules and assessing the calculations being made for municipal affordable housing obligations based on the proposed (or revised) growth share methodology.

Coming into Compliance

Meeting the fair share target of the new affordable housing rules will require an analysis of three components of a municipality's current housing status: A) The rehabilitation share, or the number of housing units that have been rehabilitated and that can be certified to meet the new, Round III number; B) The prior obligation of the municipality; and C) The obligation of the new growth share. Amending or preparing the municipal housing element and fair share plan to meet these new obligations will be a lengthy and complicated process.

The Implications of Not Complying

The implications of not complying with the Round III Rules or by not ensuring that a municipality is COAH Certified are numerous. Most commonly, a failure to become COAH certified has left many communities vulnerable to what is known as a "builder's remedy law suit" which imposes an affordable housing solution and construction density obligation on a municipality which the community may not find suitable. If a

municipality is not currently COAH certified, and/or municipal officials are not sure about whether to pursue certification under the new Round III Rules, discussions with the municipal planner and attorney are clearly necessary so that the implications of non-compliance are thoroughly weighed and evaluated.

Getting to Work on this Issue

Now is the time to get started! Even though the new rules will probably not be adopted for a few months, it will take your community some time to sort through your current COAH status, understand the calculations being made to generate the new affordable housing obligation and to get moving on a process to meet the new Round III regulations. Being informed and developing an internal strategy is the best way to ensure that a community's COAH obligation is being satisfied in a manner that coincides with a municipality's master plan. A community's ability to manage the process through municipal planning, rather than having the process manage the plan, is the best and most effective way of satisfying one's COAH obligation.

For specific questions about Round III Rules or a community's status with COAH, local officials are advised to contact the Council on Affordable Housing directly at:

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