

Council on Affordable Housing (COAH) and Denville Township

In 1975, the New Jersey Supreme Court handed down its first Mount Laurel decision. In that decision, the Court imposed an obligation on "developing municipalities", through their plans and development regulations, to provide an opportunity for the provision of a share of the regional housing need for families of low and moderate income, or "affordable housing" as it has become known. In 1983, the Court handed down a second decision, which has been referred to as Mount Laurel II. In that decision, the Court no longer limited the requirement to provide for affordable housing to developing municipalities, but related the obligation to the State Development Guide Plan, which delineated the State into various planning areas. The Township of Denville, like other municipalities in the State are required to provide and plan for the provision of affordable housing for the local community and a portion of the region's population.

In January, 1985, New Jersey adopted the Fair Housing Act. This act was the Legislature's response to the Supreme Court affordable housing decisions. The act established the Council on Affordable Housing (COAH), and assigned to COAH the responsibility for monitoring affordable housing activity throughout the State. Included among COAH's responsibilities are the establishment of housing regions, the determination of state and regional low and moderate income housing needs and the promulgation of guidelines and criteria for determination of municipal shares of the regional need for affordable housing. The act also strongly links municipal planning and zoning to the provision of affordable housing. Under the act, a municipal zoning ordinance is valid only if the municipality adopts a housing element as part of its master plan, and only if the zoning ordinance is substantially consistent with the housing element.

Subsequent to the adoption of the Fair Housing Act, COAH adopted procedural and substantive rules which set forth the requirements for municipalities under the Act. The rules determined the local and regional need for affordable housing units, and allocated a "fair share" of the regional need to each municipality in the region for the period of 1987 to 1993. In May, 1994, COAH amended its substantive rules and established revised affordable housing requirements for municipalities for the period of 1987 to 1999. COAH determined Denville's total affordable housing obligation to be 191 affordable housing units. To date, the Township has received credit for 378 units, thereby creating a surplus of 187 units going into the third round (*Denville Twp. 2006 Housing Plan*).

In December 2004, COAH once again amended its rules (Third Round), which adjusted the prior fair share obligations and promulgated a new methodology for determining a municipality's future obligation to plan for affordable housing. The new methodology determines the municipal obligation on the basis of development activity, or growth, in the municipality during the period from January 1, 2004 to December 31, 2013, as measured by certificates of occupancy issued. The rules require that municipalities provide a plan for one new affordable housing unit for every increase of 8 market-rate housing units and for every 25 jobs (as estimated using various use groups and employment/floor area ratios).

On January 25, 2007 however, the courts found that the methodology used was not valid and ordered COAH to come up with amended rules within 6 months. Subsequently, there have been further extensions of time granted by the courts and COAH is in the process of recalculating the methodology used as well as revised obligations to municipalities.

In December, 2007 , COAH released new draft third round rules which were ultimately adopted in May, 2008. Major provisions of the revised rules require that municipalities provide one affordable unit among every 5 residential units built, and one affordable unit for every 16 jobs generated. As part of the revision, COAH provided projected affordable housing numbers based on estimated growth. The rules require that municipalities have to plan for the construction of those units, but only are obligated to construct affordable units based on actual growth. Additional amendments included:

- Expanded compliance options for municipalities, including bonus credits for supportive and special needs housing, new credit for affordable housing in redevelopment areas, and optional plan phasing based on economic feasibility.
- Proposed staggering schedule would require towns currently under COAH's jurisdiction to submit revised third round plans between four and seven months after the effective date of the regulations, based on county.
- Continuation of the growth share approach, with affordable housing need measured as a percentage of residential and non-residential growth from 2004 to 2018.
- Provide density bonuses for developers of residential projects where development provides for either on-site affordable housing or payment-in-lieu contributions.

- Provide compensatory benefits (i.e. increased F.A.R., height, taxes, etc.) for developers of non-residential projects where development provides for either on-site affordable housing or payment-in-lieu contributions.
- New affordable housing need for the state is 115,000 affordable units (an increase from 52,000 units in previous adoption).
- Establishes a payment in lieu standard (cost of constructing an affordable unit) averaging \$161,000 per affordable unit (\$148,000 for Morris County region).
- Regional Contribution Agreement amounts increased from \$35,000 per unit to \$67,000 to \$80,000 per unit (by COAH region).
- Development fees for new construction increased from 1% of equalized assessed value (EAV) for residential to 1 ½% of EAV and from 2% of EAV to 3% of EAV for non-residential.

The third-round rules however, have been further amended based on revisions proposed on June 16, 2008 and adopted on September 22, 2008. Major rule changes include:

- Replacement of the staggered petition schedule with a new deadline for municipalities to submit affordable housing plans to COAH by December 31, 2008;
- Municipal level household and employment growth projections have been updated to reflect new DEP Water Quality Management rules, municipal zoning data for municipalities in the Highlands region, and actual growth through 2006 for each municipality;
- Vacant land analysis was revised to incorporate new DEP spatial data to expand the definition of C-1 streams, remove environmentally sensitive lands from current sewer service areas and recomputed the development capacity of lands supported by septic systems pursuant to the pending DEP Water Quality Management Act Rule (WQMR), and use recently released Highlands spatial and other data to recomputed the development capacity of lands in the Highlands Planning Area;
- Municipalities that approved affordable housing projects between December 20, 2004 and June 2, 2008 will receive a one-for-one bonus for each affordable housing unit approved;
- To promote development in smart growth and redevelopment areas, municipalities that include affordable housing units in smart growth areas near mass transit or those that include affordable housing units in redevelopment areas will receive a one-third bonus for every affordable unit approved;

- Established presumptive densities and affordable housing set-asides for inclusionary developments based on the State Development and Redevelopment Plan. Higher density standards are established in Planning Area 1, 2 and Centers and lower densities outside of these growth areas;
- Municipalities may subtract demolitions of occupied non-residential buildings from the calculation of net growth in the municipality;
- More flexibility has been added to the provision allowing credit for affordable housing in redevelopment areas.
- Number of jobs generated by warehouse construction was reduced from 1.5 to 1 job per 1,000 square feet.

The rules were subject to change once again based on Bill A500 which was passed in June, 2008 and effective July 17, 2008. This rule change had substantial impacts to provisions for affordable housing. Major rule changes include:

- Eliminated Regional Contribution Agreements (RCA's);
- Does not permit payments in lieu of constructing affordable units for non-residential developers;
- Reduces development fees for non-residential construction to 2.5%;
- Establishes statewide development fee bank for fees collected from non-residential developers in non-COAH participating towns;
- Permits regional planning for affordable housing if in Highlands Region.

The revised rules were further changed as a result of Executive Order #114, which was signed on September 5, 2008. Major provisions of this change include:

- Governor Corzine approves the Highlands Plan;
- Requires COAH and the Highlands Council to work with the NJDEP and the DCA to:
 - a. Review the third round growth projections for consistency with the Highlands Plan and develop projections consistent with Highlands
 - b. create realistic opportunities for municipalities to address the actual growth share obligation for the third round in the Highlands Region
 - c. Identify sites and opportunities for affordable housing in the Highlands region
 - d. Coordinate deadlines to comply with both Highlands Act and Fair Housing Act, including reasonable extensions of deadlines
- COAH and Highlands Council must reach a Memorandum of Understanding with regard to the above within 60 days (11/04/08).

On September 22, 2008, COAH also voted to propose an amendment to N.J.A.C. 5:97-2.5 regarding the exclusion of the demolition and replacement of owner-occupied residential structures from the growth share obligation.

SUMMARY OF DENVILLE TOWNSHIP'S THIRD ROUND COAH OBLIGATION – 1999-2018

COAH 3.0 rules – adopted December 2004:

- Obligation to provide one affordable unit for every 8 market rate residential units
- Obligation to provide one affordable unit for every 25 jobs generated
- Municipality could project growth and plan accordingly
- Only 3 municipalities were certified under these rules before they were invalidated by the Superior Court in January 2007

COAH 3.1 rules – adopted May 2, 2008

- Obligation to provide one affordable unit among every 5 residential units built
- Obligation to provide one affordable unit for every 16 jobs generated
- COAH projected numbers – have to plan for the construction of those units, but only obligated to construct affordable units based on actual growth
- Can adopt Development Fee Ordinance to collect fees on residential construction up to 2% of Equalized Assessed Valuation (EAV) (based on a sliding scale of value) and up to 3.0% EAV for non-residential development

Denville Township's projected numbers under the 3.1 rules:

1260 residential units constructed divided by 5 = 252

4017 new jobs created divided by 16 = 251

Total = 503 affordable units

COAH 3.2 rules – proposed and published June 16, 2008, final comments due August 15, 2008, expected to be adopted in September 2008

- Obligation to provide one affordable unit among every 5 residential units built
- Obligation to provide one affordable unit for every 16 jobs generated
- COAH projected numbers – have to plan for the construction of those units, but only obligated to construct affordable units based on actual growth
- Authorizes development fees on residential construction of 1.5% EAV and of 3.0% EAV for non-residential development.

Denville Township's projected numbers under the 3.2 rules:

829 residential units constructed divided by 5	= 165.8
1976 new jobs created divided by 16	= 123.5
Total	= 289.3 round up to 290

affordable units

Bill A500 passed late June, 2008, effective July 17, 2008

- Eliminated Regional Contribution Agreements (RCA's),
- Does not permit payments in lieu of constructing affordable units for non-residential developers.
- Reduces development fees for non-residential construction to 2.5%
- Establishes statewide development fee bank for fees collected from non-residential developers in non-COAH participating towns.
- Permits regional planning for affordable housing if in Highlands Region
- May result in another set of rules being published (3.3 rules)

Executive Order #114, September 5, 2008

- Governor Corzine approved the Highlands Plan
- Requires COAH and the Highlands Council to work with the NJDEP and the DCA to:
 1. review the third round growth projections for consistency with the Highlands Plan and develop projections consistent with Highlands
 2. create realistic opportunities for municipalities to address the actual growth share obligation for the third round in the Highlands Region
 3. identify sites and opportunities for affordable housing in the Highlands region
 4. coordinate deadlines to comply with both Highlands Act and Fair Housing Act, including reasonable extensions of deadlines
- COAH and Highlands Council must reach a Memorandum of Understanding with regard to the above within 60 days.

Application of Current Third Round Rules to Denville Township:

Using the 3.2 rules' projections:

New Obligation is	290 new affordable units
Rehabilitation component is	31 units
Prior Round obligation is	<u>325 units</u>
Total obligation	646 units

Expected Credits for prior rounds:

RCA	136	
Denville Family Housing	57	
Cook's Pond Senior Housing	64	
Bonus credits for rentals	82	(25% of prior round obligation)
Bonus credits – age-restricted	13	(.33 unit for each unit in excess of the 25%)
Group Homes:	<u>4</u>	
	356	

Additional credits:

Cook's Pond	5	(units were not credited during second round)
Habitat for Humanity Homes	2	
Palmar subdivision's obligation	2	rentals not yet constructed
Bonus credits for Habitat and Palmar	4	
Group Homes	6	187 Morris (5); 56 Morris(5)–6 new
Group Homes bonus	1.5	
Morris County Housing Authority	6	(for sale units)
Possible add'l units at Palmar	<u>5</u>	

Total credits 387.5

Remaining obligation 227.5 new units plus 31 rehabilitations*

**Not more than 25% of the Township's obligation may be age-restricted (senior) housing.*

**At least 13% of all affordable housing must be reserved for very low income households. Any units in excess of the 13% are eligible for bonus credits.*

Methods To Address Obligation:

- Overlay Inclusionary Zoning in Residential Zones – proposed 3.2 rules establish a presumptive density for Planning Area 1 of 8 units/acre with a 25% set-aside for affordable housing. For Planning Area 2 the density is 6 units/acre with a 25% set-aside.
- Alternative to presumptive density is developer's incentives
- Rezone some industrial property to allow high density residential
- Work with non-profit organizations to build 100% affordable housing projects on either available vacant parcels or non-restricted parcels owned by Township

- Encourage development of supportive and special needs homes for the developmentally or mentally disabled. These units provide 1.25 units of credit with a bedroom being the applicable unit.
- Develop a rental housing project. 25% of the Township's obligation must be rental housing and 50% of that must be family housing. With the exception of the two Habitat for Humanity homes and the proposed Morris County Housing Authority units, all of the Township's affordable units are rental housing. Once the 25% threshold is reached, bonus credits are available.
- Accessory apartments, buy-down program, ECHO housing

Council on Affordable Housing (COAH) Scarce Resource Restraint to Highlands Municipalities

Please be advised that effective November 12, 2008, the issuance of building permits for non-residential construction and certain categories of residential development are restricted based on COAH's issuance of a Scarce Resource Order.

BE IT FURTHER RESOLVED, that the scope of this scarce resource restraint shall apply to any and all municipal actions associated with development approvals, water allocation and wastewater allocation but shall not apply to single-family or duplex units on existing lots, any residential development that includes at least a 20 percent set-aside on-site for affordable housing or any activity that is formally determined to be exempt from the Highlands Act or is formally granted a waiver under the Highlands Act or the RMP; and

BE IT FURTHER RESOLVED, that the scarce resource restraint hereby imposed shall remain in full force and effect in each of the above referenced municipalities until such time as the municipality receives substantive certification from COAH or demonstrates to COAH that appropriate measures have been taken to preserve scarce land, water, and sewer resources and that same have been dedicated on a priority basis for the production of affordable housing.

Exemptions to the Highlands Scarce Resource Restraint:

1. Projects consisting of a 20% (or greater) affordable housing set-aside;
2. Construction of single or two family homes on existing lots;
3. Issuance of a building permit where the project has already received all necessary permits and approvals at the municipal and state level as of November 12, 2008, or where a project has received municipal approvals and does not require state permits;
4. Projects that have been formally granted a waiver under the Highlands Act or the RMP;
5. Projects that have been formally deemed exempt by the Highlands Council or NJDEP;

6. Reconstruction of buildings within 125% of the footprint that existed as of 11/12/08;
7. Improvements to single or two-family homes in existence as of 11/12/08, including but not limited to an addition, garage, shed, driveway, porch, deck, patio, swimming pool or septic system;
8. Improvements to non-residential structures used as a place of worship, school or hospital in existence as of 11/12/08, including but not limited to new structures, an addition to an existing building or structure, or a sanitary facility;
9. Woodland and Forest management plans: An activity conducted in accordance with an approved woodland management plan; or an approved wetland mitigation bank;
10. Construction or extension of trails with non-impervious surfaces on publically owned lands or on privately owned lands where there is a conservation or recreational use easement;
11. Repair of transportation or infrastructure systems, including the routine maintenance and operation, rehabilitation, preservation, reconstruction, or repair of transportation or infrastructure systems by a State or local government entity provided the activity is consistent with the goals of the Highlands Act;
12. Transportation safety projects, including bicycle and pedestrian facilities by a State or local government entity provided the activity is consistent with the goals of the Highlands Act;
13. Public utility lines, rights of way or systems, including the routine maintenance and operations, rehabilitation, preservation, reconstruction, repair or upgrade of public utility lines, rights of way or systems by a public utility, provided the activity is consistent with the goals and purposes of the Highlands Act;
14. Reactivation of rail lines and rail beds existing as of November 12, 2008;
15. Construction of a public infrastructure project prior to November 12, 2008 or a capital improvement project approved by public referendum prior to November 12, 2008;
16. Mining, quarrying, or production of ready mix concrete, bituminous concrete, or Class B recycling materials occurring on a site existing on November 12, 2008;
17. Remediation of any contaminated site pursuant to P.L.1993, c.139 (C.58:10B-1 et seq.);
18. Any lands of a federal military installation existing as of November 12, 2008;
19. Cell phone antennae on existing structures;
20. Non-residential development applications seeking to re-occupy existing non-residential spaces;
21. Issuance of a certificate of occupancy for a preexisting structure;
22. Extensions of any prior approvals, where there is no change in the terms of the approval, or where the change is covered by the exemptions listed here;
23. Changes of occupancy;
24. Interior or exterior renovations;
25. Demolition of non residential structures;
26. Requests for interpretations;
27. Permits for signage;
28. Applications for site improvements that are not related to new construction or development, including retaining walls, HVAC work and handicapped access;
29. Appeals of decisions by the Administrative Officer;

30. Applications for subdivisions not related to new construction or development (e.g., lot line adjustments, consolidations);
31. Applications for development required by an Order of the Fire Marshal, Construction Official, or Code Enforcement Officer to address conditions cited pursuant to the Uniform Fire Code, the Uniform Construction Code, or the adopted Property Maintenance Code, or other standards, for remediation of conditions affecting public health, public or occupant safety, structural safety, or accessibility hazards;
32. Construction of accessory structures only;
33. Lot line adjustments where no new building envelope is created;
34. Development proposals that involve properties less than 0.10 acres in area;
35. Subdivisions necessary to settle the estate of a decedent;
36. Applications to the Zoning Board of Adjustment for 'a' and 'b' variances under N.J.S.A. 40:55D-70.

Applicants seeking a waiver of COAH's scarce resource restraint should follow COAH's waiver process set forth at N.J.A.C. 5:96- 15. Waivers should be submitted to COAH in the form of a motion pursuant to N.J.A.C. 5:96- 13, and should be submitted to the entire COAH service list. Any application covered in the list above does not need to obtain a waiver from the scarce resource restraint, and its municipal approval does not have to be conditioned upon the receipt of a waiver from COAH:

Applications to the Zoning Board of Adjustment for 'c' and 'd' variances under N.J.S.A. 40:55D-70 shall be reviewed by the Executive Director of COAH who shall determine whether the application needs to be processed as a waiver.