



COAH's Third Round Methodology

Is Anybody Really Satisfied?

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In December of 2004, the New Jersey Council on Affordable Housing ("COAH") adopted regulations which govern municipalities' compliance with their "third round" (2004 – 2014) *Mount Laurel* obligations. Twenty-eight towns failed to meet the December 20, 2005, deadline for filing their third round affordable housing plans with the state, leaving them vulnerable to builder lawsuits that could force huge developments within their borders. Towns that filed plans detailing how they planned to meet their housing needs have been protected from builder lawsuits since the mid-1980s. However, despite the protection provided, some towns are finding that COAH's third round

rules are simply too onerous to comply with and are now forced to take on the risk of builder lawsuits. The municipalities are not the only ones having difficulty in dealing with COAH's third round methodology. It seems that various groups throughout New Jersey all have differing opinions on the subject.

BACKGROUND OF COAH

Concerned over a growing trend to exclude entire classes of people from home ownership, the NAACP and others challenged the zoning practices of Mount Laurel Township, NJ, which they contended were unfair. In a 1975 ruling, the New Jersey Supreme Court ruled that the Mount Laurel zoning ordinances were

discriminatory, and that every municipality in a growth area has a constitutional obligation to provide a realistic opportunity for a fair share of its region's needs for housing of low- and moderate income families. In 1983, the New Jersey Supreme Court ruled to reaffirm the need for a fair-share housing plan and put some teeth into the process of enforcing it. In 1985, New Jersey enacted the state Fair Housing Act, which created the 11-member COAH as the administrative alternative to implement the *Mount Laurel* decision. COAH's principal responsibility is to periodically calculate how much affordable housing is needed in New Jersey and then come up with a sound way of getting as much of the need built as possible. COAH does provide municipalities that choose to enter its process and obtain substantive certification of their fair share plans with an administrative shield from developer's lawsuits. Often such lawsuits result in the imposition of "builder's remedies," which allows a developer to exceed local density limits if it can show that the municipality has fallen short of its obligations and the proposed development sets aside at least 15 percent of the units for affordable housing.

New Jersey municipalities enter the COAH process voluntarily. They do so by filing a housing element (required by the Municipal Land Use Law as part of each municipality's master plan) and a fair share plan establishing a realistic opportunity for the provision of a predetermined number of units affordable to low and moderate income households. Within two years of such filing, municipalities must petition COAH for substantive certification (approval) of such plans if a municipality is to remain under COAH's jurisdiction. Petitioning assures continued protection from lawsuits while COAH conducts its review for certification. COAH

sometimes requests revisions and possibly mediates objections from interested parties before COAH grants or denies substantive certification. Certification is granted for a six-year period, and may be withdrawn if a municipality fails to assure the continuing realistic opportunity for its fair share housing obligation. Often municipalities can meet a portion of their fair share obligation through rehabilitation of existing units. To provide a realistic opportunity for the construction of new units, municipalities may zone specific sites for residential developments by the private sector. Developers must agree to build a fixed percentage of affordable units (usually 20 percent) of the total constructed on the site, to market to low and moderate income households and to maintain affordability for 30 years. Other methods for meeting the obligation include municipally sponsored construction, the purchase of existing units for sale or rent to eligible householders,

regional contribution agreements (RCAs), the creation of accessory apartments within existing structures, a write-down/buy-down program and the provision of alternative or congregate living arrangements, including group homes for the physically handicapped or developmentally disabled.

THIRD ROUND COAH RULES

COAH's proposed third round methodology covers the period from 1999 to 2014. The first round rules covered the period from 1987 through 1993, and the second round rules covered the period from 1994 through 1999. Under the first and second round rules, COAH implemented a "top-down" approach using estimates of statewide and regional obligations, and a formula that considered such factors as available land and real estate prices to generate each municipality's fair share, in the form of a specific number of units that had to be provided.

In contrast to the first and second round rules, the third round rules take a different, "bottom-up" approach to fair share determinations. Attempting to be more flexible, the proposed rules allow the municipalities themselves to determine, in large part, their own affordable housing obligations. A municipality's affordable housing obligation consists of a "rehabilitation share" (the number of substandard units that the municipality must rehabilitate, as identified by COAH) in addition to a "growth share," which is determined by the municipality's own development decisions. The growth share is based on actual residential and nonresidential development in the municipality, and therefore allows a municipality to determine its own growth share through its decisions on how much new development to allow. Under the third round, a municipality's growth share will be the sum of two figures, one based on residential growth,

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