

## **Summary of Status of Council on Affordable Housing (COAH) Rule Compliance**

### ***Overview of Council on Affordable Housing***

In 1985, the Legislature through the Fair Housing Act created the Council on Affordable Housing as a method of assisting and encouraging municipalities to permit and actually develop low and moderate income housing. It followed Supreme Court decisions resulting from the Burlington County NAACP vs. Township of Mount Laurel. Housing units dedicated for the benefit of low and moderate income residents began to be called "Mount Laurel units."

Over the years the Council has utilized various methods to allocate responsibility for provision of housing for these income groups. Most recently the Council developed a "growth share formula" (2004). This formula was based on the concept that requirements for housing should be based upon the probably and actual development and growth within a municipality.

COAH has been through various rounds and provided allocations over the years. In some cases municipalities carry over unsatisfied obligations to provide housing from Rounds 1 and 2. Round 3 is the current round and covers the years 2004 through 2018. The original regulations, first proposed by COAH about 4 years ago, were challenged by housing advocates. As the result of these challenges, the Courts found COAH's Round 3 regulations wanting and required the State of New Jersey to conduct a study to determine appropriate target levels for low and moderate income housing obligations. As the result of this study, conducted by researchers from Rutgers University and the University of Pennsylvania, COAH adopted new rules in June of this year and subsequently issued new rules that are currently under review.

On 10 March 2008, the League of Municipalities commented on the new regulations that were eventually adopted in June 2008:

These impacts are created by dramatically increasing the growth share obligations, making compliance mechanisms more restrictive, and increasing the cost of those compliance mechanisms without a commensurate funding source to cover the increase. In many municipalities, the projected obligation has quadrupled as a result of more aggressive ratios and development projections, resulting in a doubling of the statewide affordable housing need. Based upon the subsidy needed to create an affordable housing unit, as determined in the regulations, together with the statewide need established, the total cost of satisfying the proposed program is nearly \$19 billion. The financial obligation to satisfy the need is being placed solely on builders and municipal property taxpayers.

### **COAH Regulations**

COAH determined a statewide need for low and moderate income housing. They then determined the amount of open space that was available at the time of the study. Based on an undisclosed formula, COAH's researchers allocated housing obligations among

municipalities in the State utilizing a method called “growth share.” COAH described it on 1 October 2008 as follows:

Growth share is a way to measure a municipality's affordable housing needs based on actual growth that takes place. Under growth share, one unit among every five housing units created in a municipality must be affordable; one affordable housing unit must be provided for every 16 jobs created in a municipality, measured by new commercial development. A municipality zones to accommodate affordable housing among market rate development. But keep in mind that a municipality is only responsible for building affordable housing when they have built market rate housing and commercial development. If neither market rate units nor commercial development are built, affordable units do not have to be built, because no growth has taken place.

Commenting on the methodology, the League stated on 15 August 2008:

The citizens of our State deserve no less—particularly where, as here, the economic impacts are profound. In this regard, COAH's own regulations provide that the average costs needed to subsidize affordable units are \$161,000 per unit. Thus, an 115,000 unit statewide need represents a substantial economic burden even if municipalities could reduce the subsidy through reliance on less expensive compliance techniques. Moreover, the elimination of RCAs and the inefficiencies of inclusionary zoning—inefficiencies magnified by COAH regulations—have forced municipalities to dramatically increase their reliance on “municipally sponsored projects”. Therefore, as difficult as it was before for municipalities to secure adequate financing for municipally sponsored projects, it will be far more difficult now. Indeed, municipalities will have to dramatically increase their funding for municipally sponsored projects. Instead of providing any analysis of the obvious ramifications to its regulations, COAH asserts that the regulations will have “a positive economic impact on municipalities...” If COAH is to make such statements, it needs to provide the analysis that supports it.

COAH has not provided all the facts municipalities need to replicate the means by which COAH extrapolated their fair share responsibilities. When COAH first proposed the growth share approach in 2003 and 2004, it acknowledged that its fair share regulations in the first and second housing cycles were unintelligible to the public generally and that it needed to provide a readily understandable way for municipalities to ascertain their fair share responsibilities. Yet, when COAH proposed new regulations, it failed to provide the facts municipalities needed to determine their fair share obligations. COAH has now posted on its web site information it used to determine municipal fair shares. However, even after this posting, planners are reporting to us that they still cannot replicate how COAH determined the fair share of municipalities.

It is unreasonable for the agency to adopt a regulatory scheme that cannot be re-created or explained by other experts in the field. It is incumbent for the agency to provide to local governments a clear explanation as to how this methodology was developed and utilized.

## ***Sussex Obligation and Performance***

Ken Nelson, P.P. is the professional planner for the Borough of Sussex. He is presently engaged in performing a reconnaissance review of the current conditions in the Borough in anticipation of the preparation of a new Master Plan. He is also working to satisfy the Borough's obligation to provide an affordable housing plan to COAH not later than 31 December 2008. Part of the work is to understand the status of the Borough relative to COAH requirements. His current assessment of the status of the Borough is as follows:

1. The Borough has no first and second round carry over obligation to provide low and moderate income housing units.
2. However, the borough does have an obligation to rehabilitate 35 housing units. To provide these the Borough was successful in acquiring a Small Cities Block Grant of \$200,000 to fund the rehabilitation of fifteen (15) housing units "occupied by low and moderate households in Sussex Borough in Sussex County." The term during which this project was to be pursued runs from 1 April 2008 through 30 September 2009.
3. To accomplish the objectives of the grant, the Borough has entered into a contract with a non-profit housing agency, NORWESCAP to carry out this work.
4. Prior to the adoption of the law that prohibits Regional Contribution Agreements (RCA), the Borough partnered with the Township of Green to provide eleven (11) housing units in exchange for the payment of \$35,000 per unit or \$385,000. According to the agreement of August 2006, the Borough shall provide affordable housing for low and moderate income residents of the region through the use of these funds and thereby meet a portion of the Borough's obligation. Payments were to be made to the Borough over a four (4) year period. Recently, COAH has determined that they never approved of the RCA and so has declared it null and void.
5. Under the third round rules, Sussex Borough was assigned a growth in jobs between 2004 and 2018 of 203. As of 20 October, this amount has now been revised to 145 added jobs. At one housing unit for every 16 jobs this will mean that the Borough will be responsible to assure the construction of about 9.06 additional affordable units of housing, should the growth occur.
6. According to the same analysis, the State had projected that 50 new market rate units would be constructed. As of 20 October this has been revised to 57 new market rate housing units to be constructed during this same period within the Borough. This would require the Borough to assure the construction of about 11 additional affordable housing units should the growth occur.
7. This then means that Sussex total obligation during the period of 2004 through 2018, or over the next 10 years, is
  - a. 35 carry over rehabilitation of affordable housing units of which 15 should be satisfied by the Small Cities Block Grant Program
  - b. 9 affordable housing units due to projected added housing development (residential growth share)
  - c. 11 affordable housing units due to projected added employment (non-residential growth share)
  - d. Total affordable housing unit obligation of 55 units, of which 15 should be offset with planned activity for a net obligation of 40 units.

## ***Wantage Obligation and Performance***

David Troast, P.P. serves as the professional planner for Wantage Township. As part of his duties as Township Planner, the Township has engaged him to prepare a housing element to the master plan which will include an affordable housing plan. In the event that COAH regains jurisdiction, the plan would then be submitted to COAH for their approval.

In 2005 Wantage completed the Housing Element of their master plan. On the eve of the submission of the affordable housing plan to COAH for approval, a developer, CJS, filed a builder's remedy appeal in Superior Court in December 2005. The Assignment Judge for the Morris-Sussex County Vicinage took jurisdiction of the matter and it has been under the Court's jurisdiction since then. The Court has not appointed a Master to oversee Wantage compliance. Wantage applied to the Court to permit the Township to go before COAH for an approval of its plan.

Wantage has been approving land development applications and pursuing the 2005 Housing Element since the CJS suit went before Superior Court. Recently the Township and the developer have reached an agreement that the Township will not stand in the way of the developer seeking required state and other approval to pursue the intended development. This action by the Township could result in a consent order being granted by the Court. This would then mean that the developer would withdraw the builders remedy suit. Until the Court makes a determination, it is not clear if the Wantage will be placed under COAH jurisdiction or remains with the Court.

The Township intends to consider a growth share ordinance at such time as jurisdiction passes to COAH.

According to his most recent analysis of the 3<sup>rd</sup> Round rules, Mr. Troast comes to the following conclusions:

1. Wantage Township's projected affordable housing obligation:
  - a. Carryover from Rounds #1 and #2 – 35 affordable housing units (Appendix F)
  - b. Residential growth share obligation 187.6 affordable housing units derived from a projected construction of 938 units between 2004 and 2018 with the requirement to build 1 unit of affordable housing for every 5 units of market rate housing. While the new regulation would permit Wantage to reduce their third round obligation by the number of units constructed to satisfy round 1 and 2 carryover obligations, this is not used for the purposes of this analysis.
  - c. Non-residential growth share obligation of 31.19 affordable housings units derived from a projection of 499 new jobs for which one housing unit must be supplied for every 16 jobs.
  - d. This then means that Wantage total obligation during the period of 2004 through 2018, or over the next 10 years, is
    - i. 35 carry over affordable housing units
    - ii. 187.6 affordable housing units due to projected added housing development (residential growth share)
    - iii. 31.19 affordable housing units due to projected added employment (non-residential growth share)
    - iv. Total affordable housing unit obligation of 253.79 units.
2. Wantage Township has satisfied some of these requirements as the result of units already approved and/or constructed:
  - a. Carryover from Rounds #1 and #2 – 35 affordable housing units
  - b. Actual residential obligation of 67.5 affordable housing units due to actual development between January 2004 and June 2008.
  - c. Actual non-residential growth obligation of 9.22 affordable housing units for the same period
3. Actual satisfaction of the total obligation of 111.72 affordable housing units for the period of January 2004 through June 2008. This means that in the remaining 10 years under this round the Township must produce only 142 more units.

Mr. Troast concludes that “The projected number is what Wantage needs to plan for and the actual growth is what Wantage needs to implement through agreements and approvals. Based on my initial calculation [the township] will meet the obligation with some to spare.” By this he means that the Township is well on its way to satisfying the imposed obligation and should do so within the imposed timeframes, subject to the growth occurring as projected.

## **Perspective of COAH**

There are a couple of issues of interest to the Council on Affordable Housing.

### **Jurisdiction**

The municipalities as separate entities are currently under the jurisdiction of different parties. Wantage remains under the jurisdiction of the Courts as the result of the “builders remedy” law suit brought by the developer, CJS. Sussex Borough is under the jurisdiction of COAH and is required to provide the agency with an affordable housing plan by 31 December 2008 or be faced with the possibility of a “builders remedy” lawsuit.

Under a consolidation in which the municipalities would become a single corporate entity, it would depend on the conditions at the time of the consolidation. Even though it is reported that the Township and the developer have reached an agreement regarding the lawsuit and will settle, the Courts could maintain jurisdiction. If the Courts continued to maintain jurisdiction over Wantage, it is unlikely that the Courts would transfer jurisdiction of the consolidated municipality to COAH. For some time the new municipality might be under dual jurisdiction of both the Courts for the inherited obligations of the Township and be under COAH for the maintenance of the affordable housing plan under which the Borough would operate.

### **Obligations of a Consolidated Municipality**

COAH has only had one experience with managing affordable housing obligations for a consolidated municipality. When Parrahy and Hardwick Townships in Warren County merged during the last decade, COAH was responsible for adjusting the obligations for the two municipalities. In that case however, it was not a merger of equals but effectively absorption of one municipality by the other. Effectively Hardwick modified its boundaries to include Parrahy and retained the name Hardwick. In this case, COAH simply added the obligations of the two municipalities together to form the new obligation for Hardwick Township.

According to the Supervising Planner at COAH for this region, Sean Thompson, at this point in time he would see the same thing happening if Sussex and Wantage were to consolidate. The obligations of each would be added together to form the obligation of the newly consolidated municipality. COAH’s chief counsel, Melissa Orsen, Esquire, concurs.

## **Conclusion**

If a consolidation were to take place, the new consolidated municipality would have the following obligations:

- Total Residential and Non-Residential Growth Share:  $35 + 197 + 42 = 274$  affordable housing units plus 35 rehabilitation units, composed of the following:
  - 35 carry over rehabilitation of affordable housing units of which 15 should be satisfied by the Small Cities Block Grant Program (from Sussex Borough)
  - Wantage carryover from Rounds #1 and #2 – 35 affordable housing units
  - Residential Growth Share:
    - 9 affordable housing units (Sussex) plus 188 (Wantage) for a total of 197 affordable housing units.
  - Non-Residential Growth Share:
    - 11 affordable housing units (Sussex) plus 31 (Wantage) for a total of 42 affordable housing units

## **Acknowledgement**

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- David Troast, Planner for Wantage Township
- Melissa Orsen, Chief Counsel to the Council on Affordable Housing
- Sean Thompson, Supervising Planner for COAH
- Cathy Gleason, Sussex Borough Clerk
- James Doherty, Wantage Township Administrator / Clerk