

FOX ROTHSCHILD LLP

Formed in the Commonwealth of Pennsylvania
Princeton Pike Corporate Center
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648-2311
(609) 896-3600

By: Henry L. Kent-Smith, Esq.
Attorneys for Proposed *Amici Curiae*:
Housing and Community Development
Network of New Jersey,
Corporation for Supportive Housing,
Mercer Alliance to End Homelessness

IN RE A PLAN FOR THE ABOLITION
OF THE COUNCIL ON AFFORDABLE
HOUSING AND PROVIDING FOR THE
TRANSFER OF THE FUNCTIONS,
POWERS, AND DUTIES OF THE
COUNCIL ON AFFORDABLE HOUSING TO
THE DEPARTMENT OF COMMUNITY
AFFAIRS.

DOCKET NO. A-6301-10T4

CIVIL ACTION

On Appeal from the Department
of Community Affairs

**NOTICE OF MOTION FOR LEAVE TO
APPEAR AND PARTICIPATE IN
APPEAL AS *AMICI CURIAE***

TO: CLERK OF THE APPELLATE DIVISION
Joseph Orlando, Clerk
Superior Court of New Jersey, Appellate Division
Hughes Justice Complex
25 Market Street
Trenton, New Jersey 08625

George Cohen, Esq., DAG
Office of the Attorney General
Division of Law & Public Safety
RJ Hughes Justice Complex
25 Market Street
Trenton, NJ 08625

Adam M. Gordon, Esq.
Fair Share Housing Center
510 Park Boulevard
Cherry Hill, New Jersey 08002

PLEASE TAKE NOTICE that the proposed *Amici Curiae*, Housing and Community Development Network of New Jersey, Corporation for Supportive Housing, Mercer Alliance to End Homelessness, by and through through undersigned counsel, hereby moves this Court for leave to appear and participate in the within appeal as *amici curiae*.

PLEASE TAKE FURTHER NOTICE that the proposed *Amici Curiae* also requests leave of this Court to file the Brief attached as Exhibit A to this Notice of Motion pursuant to Rule 1:13-9(c).

PLEASE TAKE FURTHER NOTICE that the proposed *Amici Curiae* also requests leave of this Court to participate in the oral argument before it on this appeal.

PLEASE TAKE FURTHER NOTICE that, in support of the within Motion, the proposed *Amici Curiae* shall rely upon the Brief submitted herewith.

FOX ROTHSCHILD LLP

Attorneys for Housing and Community
Development Network of New Jersey,
Corporation for Supportive Housing,
Mercer Alliance to End Homelessness

By: 

HENRY L. KENT-SMITH, ESQ.

Dated: January 9, 2012

EXHIBIT A

IN RE A PLAN FOR THE ABOLITION
OF THE COUNCIL ON AFFORDABLE
HOUSING AND PROVIDING FOR THE
TRANSFER OF THE FUNCTIONS,
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DOCKET NO. A-6301-10

CIVIL ACTION

On Appeal from the Department
of Community Affairs

BRIEF AND APPENDIX OF PROPOSED AMICI CURIAE

**HOUSING AND COMMUNITY DEVELOPMENT NETWORK OF NEW JERSEY,
CORPORATION FOR SUPPORTIVE HOUSING, AND MERCER ALLIANCE TO END
HOMELESSNESS**

FOX ROTHSCHILD LLP

Formed in the Commonwealth of Pennsylvania
PRINCETON PIKE CORPORATE CENTER
997 LENOX DRIVE, BUILDING 3
LAWRENCEVILLE, NJ 08648-2311
(609) 896-3600

Attorneys for Housing and Community Development Network of New
Jersey, Corporation for Supportive Housing, Mercer Alliance to
End Homelessness

Of Counsel and On the Brief:
HENRY L. KENT-SMITH, ESQ.

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PRELIMINARY STATEMENT

The Housing and Community Development Network of New Jersey ("Network"); the Corporation for Supportive Housing ("CSH"); and the Mercer Alliance to End Homelessness (the "Alliance" and collectively with the Network and CSH, "Amici") appear in this matter as *Amici Curiae* to urge this Court to invalidate Governor Christie's Reorganization Plan 01-2011, which effectively eliminates the Council on Affordable Housing ("COAH") by merging all powers, duties, and obligations of COAH into the Department of Community Affairs (the "DCA") through the Commissioner of the DCA.

The *Amici* urge this Court to invalidate the Reorganization Plan as it silences the voices of those groups most interested and affected by affordable housing policy in this State. Without the representation of the public interest, inclusive of low and moderate income households and the broader public interest on COAH, the Governor's Reorganization Plan effectively suppresses the voice of those most in need of a platform, including those suffering from disabilities and in need of accessible housing and the homeless.

The *Amici* will demonstrate to this Court that the public interest members on COAH serve a valuable function in balancing the perspective of the Council, in particular by fulfilling the Legislature's clear and unequivocal intent that COAH must serve

the interest of all persons of the State of New Jersey and not a select political class. Reorganization Plan 01-2011 transforms the multi-member COAH to a mere arm of the Governor's office, making it subject to the political whims of the Governor.

In addition, the Reorganization Plan usurps powers expressly vested with the Legislature and contravenes the clear language and intent of the Fair Housing Act. When creating COAH, the Legislature created an agency consisting of a variety of perspectives, so as to assure, to the extent practical, that COAH would fairly discharge the politically-charged issue of compliance with the Mt. Laurel constitutional obligation. Since 1986, COAH has been charged with the implementation and oversight of the constitutionally-mandated requirement of every municipality in this State when exercising the zoning power. It has done so by, in part, the participation and perspective provided by the public interest, supportive housing and affordable housing developer members of COAH.

Contrary to the position asserted by the Attorney General, Reorganization Plan 01-2011 violates the Fair Housing Act and improperly usurps the role of COAH in establishing affordable housing obligations through a multi-perspective forum. In addition, the Reorganization Plan eliminates COAH's oversight of disputes involving affordable housing plans, by eliminating COAH's role in mediation of affordable housing objections. Now,

the Commissioner becomes the exclusive arbiter of all disputes involving municipal housing plans.

Reorganization Plan 01-2011 posits absolute power with the Commissioner of the DCA to establish the Mt. Laurel obligation as to each municipality, the means for municipal compliance with this obligation, and the process by which municipalities are to confirm compliance with the Mt. Laurel obligation. There is no provision in the Reorganization Plan for the interplay of competing views and perspectives so essential when confronting such a politically charged issue. Instead, the Governor becomes the sole and absolute arbiter of affordable housing compliance. No interpretation of the Reorganization Act, N.J.S.A. 52:14C-1 et seq., or the Fair Housing Act can support this "reorganization." Reorganization Plan 01-2011 is nothing more than the Governor's thinly veiled attempt to destroy COAH, and circumvent the Mt. Laurel obligation by administrative fiat.

For these reasons, *Amici* urge this Court to invalidate Reorganization Plan 01-2011 and order the reconstitution and reinstatement of COAH as mandated by the Fair Housing Act, so as to continue to allow the voice of special needs households, low and moderate income persons and the homeless to be heard.

STATEMENT OF FACTS AND PROCEDURAL HISTORY¹

The facts and procedural history of this matter are largely undisputed, and therefore the *Amici* will not reiterate them here, but rather respectfully refer the Court to these sections in the briefs filed by the parties.

ARGUMENT

POINT I

THE FAIR HOUSING ACT MANDATES REPRESENTATION
OF THE INTERESTS OF LOW AND MODERATE INCOME
HOUSEHOLDS AND SPECIAL NEEDS PERSONS ON THE
COUNCIL ON AFFORDABLE HOUSING.

With the adoption of the Fair Housing Act, the State Legislature created an administrative agency that would serve as an alternative to the courts to administer and adjudicate issues related to municipal compliance with the Mt. Laurel constitutional obligation. The Fair Housing Act envisioned that the Council would provide for a variety of perspectives to address the implementation of the Mt. Laurel Doctrine:

The interest of all citizens including low and moderate income families in need of affordable housing and the needs of the workforce, would be best served by a comprehensive planning and implementation response to this constitutional obligation.

[N.J.S.A. 52:27D-302(c) (emphasis added).]

¹ These sections have been combined for the convenience of the Court and to avoid repetition.

In addressing the intent to create a balanced coalition of voices on COAH, the Legislature carefully crafted the membership of COAH to reflect the different competing perspectives associated with the contentious issue of affordable housing. Therefore, municipal interests, for-profit, non-profit and supportive housing builder interests and the public interest are all mandated members of the twelve member COAH board. N.J.S.A. 52:27D-305(a); see also ACa4.²

As originally adopted by the Legislature and presented to Governor Kean, the Fair Housing Act provided that the Council be constituted by four local officials, three representatives of the needs of low and moderate income housing, one being a builder of low and moderate income housing, and two representing the "public interest." (See Fair Share Housing Appendix A142-A143.) In conditionally vetoing the Fair Housing Act, Governor Kean requested that the Legislature increase representation of members representing the "public interest:"

The membership on the Council on Affordable Housing consists of four local officials (one of whom must be from an urban area and no more than one representing county interests), three representatives of households in need of low and moderate income housing (one of whom shall be a builder of low and moderate income housing) and two representing the public interest.

² ACa__ refers to the appendix of the *Amici Curiae*, which is attached hereto.

In order to have adequate representation of the public interest, I recommend that three members represent the public interest and two the needs of low and moderate income households. I also suggest that the executive director of the New Jersey Housing and Mortgage Finance Agency hold one of the positions in the latter category, due to the expertise of that Agency in low and moderate income housing finances and the numerous responsibilities the Agency is given in this bill.

[See Fair Share Housing Center at A144.]

Governor Kean's conditional veto effectively "rebalanced" COAH. L. 1985, c. 222, ¶ 5. Such interplay between the Legislature and Governor highlights the importance placed on balancing the composition of COAH.

In 1995, the Legislature "reinstated" the third member of COAH representing the interests of low and moderate income households. (ACa12; L. 1995, c. 83.) The 1995 amendment increased the number of representatives of the public interest on COAH from two to three, and added the Commissioner of the Department of Community Affairs, as an *ex officio* member of the Council. In addition, the 1996 amendment added a member representing non-profit builders of low and moderate income housing. Ibid. The 1995 amendment increased the total membership of the Council from 9 to 11 members in order to accommodate a greater voice for low and moderate income households and not-for-profit builders and developers. Ibid. By

including not-for-profit builder representation and increasing the public interest representation, the Legislature clearly established its intent that low and moderate income households, as the group most impacted by the decisions of the Council, have a fair representation on the Council.

Ten years later, the Legislature again modified composition of COAH in order to better accommodate disabled and low and moderate income households in need of supportive housing. By Public Law 2005, Chapter 350, the Legislature amended the Fair Housing Act to require accessibility to affordable housing units and barrier free construction of units. (ACa27; P.L. 2005, c. 350, ¶ 1.) In addition, Legislature increased the representation of the public interest, including those households in need of low and moderate income housing, from three to four members, "one of whom shall represent the interests of disabled persons and have expertise in construction accessible to disabled persons." (See ibid., L. 2005, c. 350, ¶ 1; codified as N.J.S.A. 52:27D-305(a).)

The Legislature's actions since the initial adoption of the Fair Housing Act signal a continuing concern for the composition of COAH by increasing the number of representatives of the public interest. In addition, the Legislature specifically mandated representation of builders who have expertise in addressing the needs of low and moderate income households who

require supportive, accessible housing units. These actions establish a clear intent by the Legislature that the duties performed by COAH be representative of and have input on behalf of those households most in need of affordable housing. This legislative intent is entirely consistent with the need to balance the competing interests surrounding the provision of affordable housing.

The Legislature's actions have been completely sabotaged and nullified by Governor Christie's Reorganization Plan 01-2011. No longer beholden to a council with a variety of perspectives, Governor Christie's Reorganization Plan vests unfettered discretion with the Commissioner of the DCA to provide affordable housing as he or she sees fit, in whatever form or amount that the Commissioner deems appropriate. This unfettered discretion, without being answerable to a council representative of the needs and interests of low and moderate income households, is in complete abrogation of the Legislature's intent, as exercised through the adoption of and amendments to the Fair Housing Act, and as such violates principles of the separation of powers. Gen. Assembly v. Byrne, 90 N.J. 376, 396 (1982).

The Governor's statement that the powers and duties of COAH will now be carried out by the Commissioner of the DCA simply ignores, and improperly usurps, the constitutional authority of

the Legislature. Reorganization Plan 01-2011 provides no check, no alternative viewpoint and no input for those organizations, such as the *amici*, as to the quantification of affordable housing need, how the affordable housing need is distributed, how municipalities will be allowed to comply with the stated obligation and how objections to municipal plans will be adjudicated.

In particular, the Fair Housing Act establishes a mediation process for the disposition of objections to affordable housing plans, a process that has benefited *amici* in the past. N.J.S.A. 52:27D-314; see also Certification of Diane Sterner at ¶ 6.³ The Fair Housing Act mandates that mediation be conducted by COAH, with COAH having the power, collectively and in consideration of a variety of perspectives, to determine whether factual disputes are to be referred to the Office of Administrative Law. N.J.S.A. 52:27D-314; Van Dalen v. Washington Twp., 232 N.J. Super. 205 (App. Div. 1989), *aff'd in part, reversed in part*, 120 N.J. 234 (1990). Ultimately, the Fair Housing Act mandates that COAH, as a collective entity, determine whether the municipal fair share plan provides a realistic opportunity for the provision of that municipality's fair share affordable housing obligation.

³ The Certification of Diane Sterner was filed with the Court with *Amici's* Motion for Leave to Participate as *Amici Curiae*.

N.J.S.A. 52:27D-313, 314; Hills Dev. Co. v. Bernards Twp., 103
N.J. 1 (1986).

The Attorney General's argument that Reorganization Plan 01-2011 does not offend the separation of powers by usurping the Legislature's clear intent to create a balance of viewpoints on the Council is misplaced and contradicted by the Act itself. The State's brief at pages 24 and 25 states:

By granting the Governor the authority to abolish agencies, the Legislature recognized that the Governor may terminate a statutorily-created entity if the Governor concludes that the relevant statutory provisions can be better implemented elsewhere in the Executive Branch. This is precisely the situation here. As set forth in the Reorganization Plan, Governor Christie concluded that the FHA could be implemented in a more efficient, less costly manner through the Commissioner. Reorganization Plan, General Statement of Purpose, ¶¶1 to 5. This in no way undermines the separation of powers between the Legislative and Executive Branches. The Governor simply utilized the authority the Legislature granted to him under the Reorganization Act.

[State Br. at 24-25.]

However, the Commissioner was not even a member of COAH until 1995. (ACa4; L. 1995, c. 83.) In adding the Commissioner, the Act expressly states that the Commissioner "shall serve as chairperson." Ibid. Thus, the Act expressly limits the Commissioner to participate on the Council solely as the Chair. Reorganization Plan 01-2011 now elevates the Chair to absolute

power and control over all functions, duties and obligations previously vested with the collective Council.

The Attorney General's argument that Reorganization Plan 01-2011 does not "attempt to confer any 'new or additional authority' upon the Commissioner" is equally misplaced and inaccurate. (State Br. at 14.) In fact, the Commissioner is now vested with the complete authority over municipal obligations and compliance, where the Fair Housing Act confers that authority on the Council *in its entirety, including the participation and perspective of the low and moderate income and special needs groups.* N.J.S.A. 52:27-305(a). Under the Fair Housing Act, the Commissioner was the chair and a single member on a twelve member board. Id. The Reorganization Plan elevates and expands the Commissioner's powers to the totality of all obligations, responsibilities and functions of the collective Council. This is precisely the expansion of power with the Commissioner and the Executive Branch that violates the permissible reorganization function, in violation of N.J.S.A. 52:14C-6(a).

It defies all principles of the separation of powers to allow the Governor, through the Reorganization Act, N.J.S.A. 52:14C-1 et seq., to unilaterally divest the representation of public interest advocates from the duties and function of COAH, when the Legislature expressly mandated that these voices be

present on COAH. The fact that this usurpation of authority under the guise of the Reorganization Act is "more efficient" is nothing more than the universal refrain of all who seek to unconstitutionally consolidate power in the name of efficiency. Such actions must not be condoned by the court, particularly where the weak and disenfranchised are left even more out in the cold.

POINT II

THE REPRESENTATION OF THE INTERESTS OF LOW AND MODERATE INCOME HOUSEHOLDS ON THE COUNCIL ON AFFORDABLE HOUSING HAS PROVIDED A VALUABLE VOICE, EVEN IN DISSENT, FROM ACTIONS OF THE COUNCIL

The Legislature's intent to create a council whose members represent the broad spectrum of interests associated with affordable housing provides a balance of competing interests that lies at the core of representative democracy. Frequently, this balance has led to consensus decisions that take into account all of the interests on COAH. In other instances, when confronted with controversial motions in which consensus cannot be reached, the broad range of interests allow for open debate and the expression of dissent from decisions.

One example is COAH's consideration of Marlboro Township's petition for substantive certification. In 2010, COAH considered a motion by several objectors seeking accelerated

denial of the Township's petition and dismissal of the Township from COAH jurisdiction. At the June 9, 2010 COAH Hearing on the Motion for accelerated denial, Council Member Doherty, as the representative of special needs housing developers, spoke forcefully as to COAH's frustration with the Township's prosecution of its petition:

COUNCILMAN DOHERTY: You know, I think we've heard from frustration and history here regardless of whether Marlboro is now all of a sudden got religion in the past few years with a new attorney and new efforts and all that stuff, that's nice but there is a time and place when it needs to stop and I would back up the motion to go to a task force only if this was the last time, this has to be - the line in the sand has to be drawn. There's a lot to evaluate on sites, I mean, some of the sites, the Amboy site, there's questions as to whether that's legitimate, can be legitimately used. There's a lot of information and I think John is willing and board members are willing to give it one last go and I think really need to make a statement that this is - the sand is gone in the hourglass and the decision has to be made.

[ACa91-2.]

Again at the July 15, 2010 COAH Hearing, when confronted with the Commissioner's decision to table the Motion for Accelerated Denial, Mr. Doherty again voiced his concerns:

COUNCILMAN DOHERTY: I really need to echo [Mr. Winterstella's] sentiments here. You know, our mission of this organization, COAH, and it's not a great job, but it is to oversee affordable housing. And there are many good towns that have come before us and complied with the rulings and restrictions and the guidelines. . . . However,

Marlboro has not shown to work in good faith. And if there is somebody from Marlboro here in administration, I'd like them to talk to these issues.

Examining the plan that we have, examining the alternatives and those things that are included in here, it leads us, leads myself not to believe that they are serious about compliance, and not to really obey the laws in the [FHA]. I don't believe - I mean this has been over a year's time, extension after extension, request for information, request for information, developer agreements that are not signed, resolutions that are not signed or fully passed. It does not, at least to me, present a town that wants to fully comply with the COAH mandates. And I would also have to agree with my colleague and vote against putting this resolution off today.

[ACa100-01.]

On September 8, 2011, COAH adopted a Resolution granting the objector's motion for accelerated denial of the Township's petition.

However, the Township filed a motion for a stay of the September 8th decision to dismiss the Township from COAH jurisdiction, and just two weeks later COAH voted to approve the requested stay. The discussion as to the Township's Stay motion is quite illustrative of the voices of the competing interests on the Council, and how these voices serve to provide balance to COAH. Once again, Member Doherty objected to the motion to grant a stay of COAH's September 8th Order dismissing Marlboro Township from COAH jurisdiction:

Mr. Doherty: I'm aghast. I'm aghast that this - that these circumstances that we are here again hearing a case of non-compliance. You know, this is why COAH is a mockery today. This is a great reason why we should close the door, shut the lights and say goodbye and save the taxpayers all the money and staff costs and everything else. If you're not going to stand by a decision that is based in fact and grounded, I don't know how we could ever again make a statement and a ruling that's going to hold some water. I think that we're looking at a very slippery slope here establishing a precedent so that, you know, anytime towns don't like whatever decision COAH makes, they can come back again and maybe get through the backdoor for a delay; delay; delay until the process changes. I just am very, very disheartened and disappointed that this Board would consider, would consider this kind of action in staying this - in staying this decision by COAH formerly. Really, I'm almost - I'm speechless. I think that, you know, we were set up in order to make sure that affordable housing had the opportunity to succeed knowing that there are forces in the community that would not be favorable upon - upon some affordable housing projects. And, gentlemen, if we do this, we're not - ladies and gentlemen, if we do this, we're not upholding our - our oath and the reason we're appointed to this Council, you know. Like I said, this is why people don't take COAH seriously. Either you're for something, or you're against, but you got to stand for something, otherwise you mean nothing.

[ACa152-53.]

A second example of the importance of diverse perspectives on COAH is found in the Council's debate of the proposed 2004 COAH regulations, N.J.A.C. 5:94-1 et seq. There were substantial

concerns voiced by three members of the Council that the 2004 Regulations were not appropriate or even constitutional. (ACa161-68.) Peter Reinhart, the for profit builders representative and Rose McConnell a former Somerset County Freeholder who served as a public interest representative, advocated that the rules needed revision to meet the purposes of the Fair Housing Act. Reverend James Duncan, a representative builder of low and moderate households, who also served on the NAACP of Cumberland County, voiced concerns that the proposed rules would actually "hurt people in his community." These members were prescient in their concerns, as the Appellate Division ultimately struck down these rules. In re Adoption of N.J.A.C. 5:94 and 5:95, 390 N.J. Super. 1 (App. Div. 2007).

COAH was created to implement the controversial constitutional requirement affecting municipal home rule and zoning powers. As such, the Legislature fully appreciated the need to balance the various competing interests in constituting the Council. The above excerpts of COAH deliberations demonstrate the vital importance of provide this multiplicity of views on COAH. Without this constituted membership, the unilateral actions by the Commissioner permitted under the Governor's Reorganization Plan 01-2011 will go unchallenged and unchecked.

CONCLUSION

For the reasons herein, *Amici* respectfully urge this Court to invalidate the Reorganization Plan as it silences the voices of those groups most interested and affected by affordable housing policy in this State.

Respectfully submitted,

FOX ROTHSCHILD LLP

Attorneys for Housing and Community
Development Network of New Jersey,
Corporation for Supportive Housing,
Mercer Alliance to End Homelessness

By: 

HENRY L. KENT-SMITH, ESQ.

Dated: January 9, 2012

APPENDIX

APPENDIX TABLE OF CONTENTS

Certification of Henry Kent-Smith.....ACal

FOX ROTHSCHILD LLP

Formed in the Commonwealth of Pennsylvania
Princeton Pike Corporate Center
997 Lenox Drive, Building 3
Lawrenceville, NJ 08648-2311
(609) 896-3600

Attorneys for Proposed *Amici Curiae*:
Housing and Community Development
Network of New Jersey,
Corporation for Supportive Housing,
Mercer Alliance to End Homelessness

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DOCKET NO. A-6301-10

CIVIL ACTION

On Appeal from the Department
of Community Affairs

CERTIFICATION OF HENRY L. KENT-SMITH

IN SUPPORT OF MOTION OF HOUSING AND COMMUNITY DEVELOPMENT
NETWORK OF NEW JERSEY, CORPORATION FOR SUPPORTIVE HOUSING, AND
MERCER ALLIANCE TO END HOMELESSNESS TO APPEAR AS *AMICI CURIAE*

I, Henry L. Kent-Smith, being of full age, hereby certify
as follows:

1. I am counsel for the Housing and Community
Development Network of New Jersey (the "Network"); Corporation
for Supportive Housing ("CSH") and Mercer Alliance to End
Homelessness ("Alliance") in the case captioned above. Proposed
Amici are a housing policy and advocacy organization with
"special interest, involvement or expertise" in this matter. R.
1:13-9(a).

2. In my capacity as counsel, I am familiar with the facts set forth herein and am authorized to give this Certification in support of proposed Amici's application to participate in this case.

3. Attached hereto as Exhibit A is a list of all present and former members of COAH that have served on the Council since 1986. Said list was compiled from the Manual of the Legislature of New Jersey, from 1987 to 2011. I have attached the relevant source pages from the 2004 and 2011 Legislative Manuals and ask the court to take judicial notice of the Legislative Manual as a recognized source for COAH membership.

4. Attached hereto as Exhibit B is the Legislative History of P.L. 1995, c. 83, an amendment to the Fair Housing Act that increased the membership of low and moderate income housing members on COAH from two to three members.

5. Attached hereto as Exhibit C is the Legislative History of P.L. 2005, c.350, an amendment to the Fair Housing Act that increased the membership of low and moderate income housing and special needs housing developers on COAH.

6. Attached hereto as Exhibit D is the transcript of the June 9, 2010 meeting of the New Jersey Council on Affordable Housing.

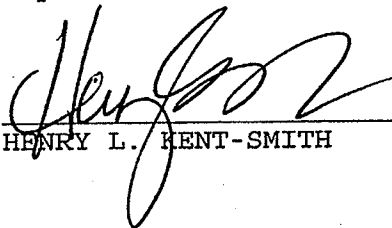
7. Attached hereto as Exhibit E is the transcript of the July 15, 2010 meeting of the New Jersey Council on Affordable Housing.

8. Attached hereto as Exhibit F is the transcript of the September 23, 2010 meeting of the New Jersey Council on Affordable Housing.

9. Attached hereto as Exhibit G is an article by Steve Chambers of the Newark Star-Ledger dated January 8, 2004 regarding actions taken by the Council on Affordable Housing including statements by various public interest members.

10. Attached hereto as Exhibit H is an article dated January 30, 2004 also by Steve Chambers of the Newark Star-Ledger describing certain actions taken by the Governor replacing certain members of the Council on Affordable Housing.

11. I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements are willfully false, I am subject to punishment.


HENRY L. KENT-SMITH

Dated: January 9, 2012

EXHIBIT A

	86	87	88	89	90	91	92	93	94	95	96	97	98	99	00	01	02	03	04	05	06	07	08	09	10	11	
Local Gov 1	Arthur Kondrup	VACANT	Robert Jackson	Vincent Ascolese	Paul Matarera	Mark Holmes																				VACANT	
Local Gov 2	Kenneth Gibson		Sharpe James	VACANT	Robert Luban																						
Local Gov 3	Charles Griffiths				Rose McConnell																						Suzanne Walters
Local Gov 4	Carol Rufener		Meg Worthington	VACANT	Gregory Muller	VACANT	John Winterstella	VACANT	John Winterstella																		Jose Torres
HMFA	James Logue		Kevin Quince	Chris Foglio	Tim Touhey	Deborah DeSantis	NO INFO	Sean Closkey	Marge Della Vecchia																		Joe Richman
DCA	n/a				Harriet Derman	Jane Kenny	NO INFO	Susan Bass Levin																			Joe Doria
Builders-for profit	Ara Hovnanian				Peter Reihhart																						Marc Fisch
Builders-non profit	n/a					Gerald Velasquez	NO INFO	James Dunkins																			VACANT
Public Interest 1	William Angus		Frank Willis	VACANT	Joan Blessing	VACANT	Rose McConnell	John Winterstella	Deborah DeSantis																		VACANT
Public Interest 2	Aldridge Cooper			Dianne Brake		Carol Wolfe																					Albert Ellis
Public Interest 3	Roderick MacDougall			Nancy Randall	VACANT	Barbara Wolfe	NO INFO	Ted King																			John Winterstella
Special needs	n/a																										Timothy Doherty

STATE OF NEW JERSEY

MANUAL

OF THE

Legislature of New Jersey

Two Hundred and Fourteenth Legislature
(Second Session)

2011



BY AUTHORITY OF THE LEGISLATURE

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MANUAL OF THE LEGISLATURE OF NEW JERSEY

Publishers

F.L. Lundy, 1872-1876
E.F. McCarthy, 1878
Thomas F. Fitzgerald and Louis C. Gosson, 1879-1885
Thomas F. Fitzgerald, 1886-1920
John P. Dullard, 1921-1952
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Executive Director—Gerry Scharfenberger, Ph.D., Middletown, \$95,000.

MAIN STREET NEW JERSEY ADVISORY BOARD
(Chapters 238, Laws of 2001, and 284, Laws of 2005)

The board was established to provide guidance and advocacy in formulating policy and assisting in long-term planning under the "Main Street New Jersey" program to promote the historic and economic redevelopment of traditional business districts. The board consists of 16 voluntary members appointed by the Commissioner of Community Affairs for terms of three years and seven ex officio members representing state government agencies. The board has been inactive.

OTHER AGENCIES

Council on Affordable Housing

(NJS 52:27D-305)

101 S. Broad St., P.O. Box 813, Trenton 08625-0813
Tel. 609-292-3000; Fax 609-633-6056
Internet www.state.nj.us/dca/coah

The council administers obligations under the Fair Housing Act of 1985. Its budget appropriation for fiscal 2010-11 was \$2.4 million dedicated through the realty transfer tax.

Members—Commissioner of Community Affairs, chair; John Winterstella, vice chair, Manasquan, 2010; Theodore King, Jr., Fair Lawn, 2007 and Vacancy (public interest representatives); Suzanne M. Walters, Stone Harbor, 2014; Albert S. Ellis, Watchung, 2008, and two Vacancies (elected officials); Timothy J. Doherty, Lawrenceville, 2014 (disabled persons interests); Vacancy (for-profit builder); Vacancy (non-profit builder); Anthony L. Marchetta, executive director of the Housing and Mortgage Finance Agency, ex officio.

Terms are six years. Members, except the state members, are compensated at the rate of \$150 for each six-hour day or prorated portion thereof, more or less, for attendance at meetings and consultations. They are also entitled to reimbursement for expenses.

Executive Director—Sean Thompson (Acting), \$96,189.

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STATE OF NEW JERSEY

MANUAL

OF THE

Legislature of New Jersey

Two Hundred and Eleventh Legislature
(First Session)

2004



BY AUTHORITY OF THE LEGISLATURE

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Council On Affordable Housing

(NJSA 52:27D-305)

101 S. Broad St., P.O. Box 813, Trenton 08625-0813
Tel. 609-292-3000; Fax 609-633-6056
Internet: www.state.nj.us/dca/coah

The council is responsible for the administration of housing obligations under the Fair Housing Act of 1985. Its budget appropriation for fiscal 2003-04 was \$1.85 million.

Council members are:

Representing local government—Mayor Mark W. Holmes, Lawrence, 2004; Mayor Sandra L. Love, Laurel Springs, 2008; Mayor James M. Guida, Lyndhurst (confirmation pending), 2007.

Representing households in need of low and moderate income housing— Susan Bass Levin, Commissioner of Community Affairs, chairwoman, and C. Sean Closkey, executive director of the New Jersey Housing and Mortgage Finance Agency, ex officio.

Representing builders of low and moderate income housing—Marc Fisch, Livingston, Continental Properties, Woodbridge, 2008 (for-profit), and the Rev. James A. Dunkins, M. Ed., Millville, Cumberland County Federal Empowerment Zone, 2007 (nonprofit).

Representing the public interest—Carol A. Wolfe, Brick, 2004; John L. Winterstella, Manasquan, 2004; Theodore King, Jr., Fair Lawn, 2007.

Terms are six years. Members, except the state members, are compensated at the rate of \$150 for each six-hour day or prorated portion thereof, more or less, for attendance at meetings and consultations. They are also entitled to reimbursement for expenses.

Executive Director—Lucy Voorhoeve, Trenton, \$88,000.

New Jersey Housing and Mortgage Finance Agency

(NJSA 55-14K-4)

637 S. Clinton Ave., P.O. Box 18550, Trenton 08650
Tel. 609-278-7400; Fax 609-278-1754Consumer Line 1-800-NJ-HOUSE; Internet www.nj-hmfa.com

The agency (HMFA), established in 1983, creates and implements programs to advance the rehabilitation, construction and financing of affordable housing by providing low-interest construction and/or permanent loans for rental housing and construction loans for for-sale housing for low- and moderate-income residents. It also makes available below market-rate mortgages for first-time and urban home buyers. It is responsible for the distribution of the state's annual allocation of federal low-income housing tax credits to promote rental construction.

EXHIBIT B

52:27D-305

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(COAH -- membership)

NJSA: 52:27D-305

LAWS OF: 1995 **CHAPTER:** 83

BILL NO: A1482

SPONSOR(S): Kelly and DiGaetano

DATE INTRODUCED: March 7, 1994

COMMITTEE: **ASSEMBLY:** Housing
SENATE: Community Affairs

AMENDED DURING PASSAGE: Yes Amendments during passage
First reprint enacted denoted by asterisks

DATE OF PASSAGE: **ASSEMBLY:** November 14, 1994
SENATE: March 2, 1995

DATE OF APPROVAL: April 11, 1995

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: No

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

KBG:pp

[FIRST REPRINT]
ASSEMBLY, No. 1482
STATE OF NEW JERSEY

INTRODUCED MARCH 7, 1994

By Assemblymen KELLY and DiGAETANO

1 AN ACT concerning the composition and functions of the Council
2 on Affordable Housing and amending P.L.1985, c.222.

3
4 BE IT ENACTED by the Senate and General Assembly of the
5 State of New Jersey:

6 1. Section 5 of P.L.1985, c.222 (C.52:27D-305) is amended to
7 read as follows:

8 5. a. There is established in, but not of, the Department of
9 Community Affairs a Council on Affordable Housing to consist of
10 [nine] 11 members appointed by the Governor with the advice
11 and consent of the Senate, of whom four shall be elected officials
12 representing the interests of local government, at least one of
13 whom shall be representative of an urban municipality having a
14 population in excess of 40,000 persons and a population density in
15 excess of 3,000 persons per square mile, at least one of whom
16 shall be representative of a municipality having a population of
17 40,000 persons or less and a population density of 3,000 persons
18 per square mile or less, and no more than one of whom may be a
19 representative of the interests of county government; [two]
20 ¹[four] three¹ shall represent the interests of households in need
21 of low and moderate housing, one of whom shall represent the
22 interests of the ¹[for-profit] nonprofit¹ builders of low and
23 moderate income housing, and shall have an expertise in land use
24 practices and housing issues, ¹[one of whom shall represent
25 nonprofit sponsors of low and moderate income housing,]¹ one of
26 whom shall be the Commissioner of Community Affairs, ex
27 officio, ¹or his or her designee, who shall serve as chairperson¹
28 and one of whom shall be the executive director of the agency.
29 serving ex officio; one shall represent the interests of the
30 for-profit builders of market rate homes, and shall have an
31 expertise in land use practices and housing issues; and three shall
32 represent the public interest. Not more than [five] six of the
33 [nine] 11 shall be members of the same political party. The
34 membership shall be balanced to the greatest extent practicable
35 among the various housing regions of the State.

36 b. The members shall serve for terms of six years, except that
37 of the members first appointed, two shall serve for terms of four
38 years, three for terms of five years, and three for terms of six
39 years. All members shall serve until their respective successors
40 are appointed and shall have qualified. Notwithstanding the
41 above, a member appointed to represent the interests of local
42 government shall serve only such length of the term for which

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
¹ Assembly AHO committee amendments adopted June 9, 1994.

1 appointed as the member continues to hold elected local office,
2 except that the term of a member so appointed shall not become
3 vacant until 60 days after the member ceases to hold that elected
4 office. Vacancies shall be filled in the same manner as the
5 original appointments, but for the remainders of the unexpired
6 terms only.

7 c. The members, excluding the executive director of the
8 agency and the Commissioner of Community Affairs, shall be
9 compensated at the rate of \$150.00 for each six-hour day, or
10 prorated portion thereof for more or less than six hours, spent in
11 attendance at meetings and consultations and all members shall
12 be eligible for reimbursement for necessary expenses incurred in
13 connection with the discharge of their duties.

14 d. The Governor shall nominate the members within 30 days of
15 the effective date of this act and shall designate a member to
16 serve as chairman throughout the member's term of office and
17 until his successor shall have been appointed and qualified.

18 e. Any member may be removed from office for misconduct in
19 office, willful neglect of duty, or other conduct evidencing
20 unfitness for the office, or for incompetence. A proceeding for
21 removal may be instituted by the Attorney General in the
22 Superior Court. A member or employee of the council shall
23 automatically forfeit his office or employment upon conviction of
24 any crime. Any member or employee of the council shall be
25 subject to the duty to appear and testify and to removal from his
26 office or employment in accordance with the provisions of
27 P.L.1970, c.72 (C.2A:81-17.2a et seq.).

28 (cf: P.L.1989, c.199, s.1)

29 2. Section 12 of P.L.1985, c.222 (C.52:27D-312) is amended to
30 read as follows:

31 12. a. A municipality may propose the transfer of up to 50%
32 of its fair share to another municipality within its housing region
33 by means of a contractual agreement into which two
34 municipalities voluntarily enter. A municipality may also propose
35 a transfer by contracting with the agency or another
36 governmental entity designated by the council ¹in which case the
37 transfer may be either within the same housing region or, if a
38 suitable match cannot be found within the same housing region,
39 between municipalities in contiguous counties in adjoining housing
40 regions] if the council determines that the municipality has
41 exhausted all possibilities within its housing region¹. A
42 municipality proposing to transfer to another municipality,
43 whether directly or by means of a contract with the agency or
44 another governmental entity designated by the council, shall
45 provide the council with the housing element and statement
46 required under subsection c. of section 11 of [this act] P.L.1985,
47 c.222 (C.52:27D-311), and shall request the council to determine
48 a match with a municipality filing a statement of intent pursuant
49 to subsection e. of this section. Except as provided in subsection
50 b. of this section, the agreement may be entered into upon
51 obtaining substantive certification under section 14 of [this act]
52 P.L.1985, c.222 (C.52:27D-314), or anytime thereafter. The
53 regional contribution agreement entered into shall specify how
54 the housing shall be provided by the second municipality,

1 hereinafter the receiving municipality, and the amount of
2 contributions to be made by the first municipality, hereinafter
3 the sending municipality.

4 b. A municipality which is a defendant in an exclusionary
5 zoning suit and which has not obtained substantive certification
6 pursuant to this act may request the court to be permitted to
7 fulfill a portion of its fair share by entering into a regional
8 contribution agreement. If the court believes the request to be
9 reasonable, the court shall request the council to review the
10 proposed agreement and to determine a match with a receiving
11 municipality or municipalities pursuant to this section. The court
12 may establish time limitations for the council's review, and shall
13 retain jurisdiction over the matter during the period of council
14 review. If the court determines that the agreement provides a
15 realistic opportunity for the provision of low and moderate
16 income housing within the housing region, it shall provide the
17 sending municipality a credit against its fair share for housing to
18 be provided through the agreement in the manner provided in this
19 section.

20 The agreement shall be entered into prior to the entry of a
21 final judgment in the litigation. In cases in which a final
22 judgment was entered prior to the date this act takes effect and
23 in which an appeal is pending, a municipality may request
24 consideration of a regional contribution agreement; provided that
25 it is entered into within 120 days after this act takes effect. In a
26 case in which a final judgment has been entered, the court shall
27 consider whether or not the agreement constitutes an expeditious
28 means of providing part of the fair share.

29 c. Regional contribution agreements shall be approved by the
30 council, after review by the county planning board or agency of
31 the county in which the receiving municipality is located. The
32 council shall determine whether or not the agreement provides a
33 realistic opportunity for the provision of low and moderate
34 income housing within convenient access to employment
35 opportunities. The council shall refer the agreement to the
36 county planning board or agency which shall review whether or
37 not the transfer agreement is in accordance with sound,
38 comprehensive regional planning. In its review, the county
39 planning board or agency shall consider the master plan and
40 zoning ordinance of the sending and receiving municipalities, its
41 own county master plan, and the State development and
42 redevelopment plan. In the event that there is no county planning
43 board or agency in the county in which the receiving municipality
44 is located, the council shall also determine whether or not the
45 agreement is in accordance with sound, comprehensive regional
46 planning. After it has been determined that the agreement
47 provides a realistic opportunity for low and moderate income
48 housing within convenient access to employment opportunities,
49 and that the agreement is consistent with sound, comprehensive
50 regional planning, the council shall approve the regional
51 contribution agreement by resolution. All determinations of a
52 county planning board or agency shall be in writing and shall be
53 made within such time limits as the council may prescribe,
54 beyond which the council shall make those determinations and no

1 fee shall be paid to the county planning board or agency pursuant
2 to this subsection.

3 d. In approving a regional contribution agreement, the council
4 shall set forth in its resolution a schedule of the contributions to
5 be appropriated annually by the sending municipality. A copy of
6 the adopted resolution shall be filed promptly with the Director
7 of the Division of Local Government Services in the Department
8 of Community Affairs, and the director shall thereafter not
9 approve an annual budget of a sending municipality if it does not
10 include appropriations necessary to meet the terms of the
11 resolution. Amounts appropriated by a sending municipality for a
12 regional contribution agreement pursuant to this section are
13 exempt from the limitations or increases in final appropriations
14 imposed under P.L.1976, c.68 (C.40A:4-45.1 et seq.).

15 e. The council shall maintain current lists of municipalities
16 which have stated an intent to enter into regional contribution
17 agreements as receiving municipalities, and shall establish
18 procedures for filing statements of intent with the council. No
19 receiving municipality shall be required to accept a greater
20 number of low and moderate income units through an agreement
21 than it has expressed a willingness to accept in its statement, but
22 the number stated shall not be less than a reasonable minimum
23 number of units, not to exceed 100, as established by the council.
24 The council shall require a project plan from a receiving
25 municipality prior to the entering into of the agreement, and
26 shall submit the project plan to the agency for its review as to
27 the feasibility of the plan prior to the council's approval of the
28 agreement. The agency may recommend and the council may
29 approve as part of the project plan a provision that the time
30 limitations for contractual guarantees or resale controls for low
31 and moderate income units included in the project shall be less
32 than 30 years, if it is determined that modification is necessary
33 to assure the economic viability of the project.

34 f. The council shall establish guidelines for the duration and
35 amount of contributions in regional contribution agreements. In
36 doing so, the council shall give substantial consideration to the
37 average of: (1) the median amount required to rehabilitate a low
38 and moderate income unit up to code enforcement standards; (2)
39 the average internal subsidization required for a developer to
40 provide a low income housing unit in an inclusionary development;
41 (3) the average internal subsidization required for a developer to
42 provide a moderate income housing unit in an inclusionary
43 development. Contributions may be prorated in municipal
44 appropriations occurring over a period not to exceed six years and
45 may include an amount agreed upon to compensate or partially
46 compensate the receiving municipality for infrastructure or other
47 costs generated to the receiving municipality by the
48 development. Appropriations shall be made and paid directly to
49 the receiving municipality or municipalities or to the agency or
50 other governmental entity designated by the council, as the case
51 may be.

52 g. The council shall require receiving municipalities to file
53 annual reports with the agency setting forth the progress in
54 implementing a project funded under a regional contribution

1 agreement, and the agency shall provide the council with its
2 evaluation of each report. The council shall take such actions as
3 may be necessary to enforce a regional contribution agreement
4 with respect to the timely implementation of the project by the
5 receiving municipality. 1[From time to time the council shall
6 determine and promulgate minimum per-unit rates of
7 contribution, in accordance with prevailing economic, social and
8 technical conditions, that may be deemed practicable for the
9 provision, by new construction or rehabilitation, of affordable
10 housing in the several housing regions of the State. No regional
11 contribution proposal shall be considered for approval by the
12 council that does not provide for at least the minimum
13 contribution thus established; but the council shall not be obliged
14 to approve such a minimum contribution as meeting the
15 requirements of subsection c. of this section, but shall determine
16 in accordance with the actual circumstances of the proposal
17 whether it will enable the provision of low and moderate income
18 housing for the number of units proposed.]¹

19 (cf: P.L.1985, c.222, s.12)

20 3. Section 20 of P.L.1985, c.222 (C.52:27D-320) is amended to
21 read as follows:

22 20. The Neighborhood Preservation Program within the
23 Department of Community Affairs' Division of Housing and
24 Development, established pursuant to the Commissioner of the
25 Department of Community Affairs' authority under section 8 of
26 P.L.1975, c.248 (C.52:27D-149), shall establish a separate
27 Neighborhood Preservation Nonlapsing Revolving Fund for monies
28 appropriated by section 33 of this act.

29 a. The commissioner shall award grants or loans from this fund
30 [to] for housing projects and programs in municipalities whose
31 housing elements have received substantive certification from
32 the council, in municipalities receiving State aid pursuant to
33 P.L.1978, c.14 (C.52:27D-178 et seq.), [to] in municipalities
34 subject to builder's remedy as defined in section 28 of [this act]
35 P.L.1985, c.222 (C.52:27D-328) or [to] in receiving municipalities
36 in cases where the council has approved a regional contribution
37 agreement and a project plan developed by the receiving
38 municipality. Programs and projects in any municipality shall be
39 funded only after receipt by the commissioner of a written
40 statement in support of the program or project from the
41 municipal governing body. [The commissioner shall assure that a
42 substantial percentage of the loan or grant awards shall be made
43 to projects and programs in those municipalities receiving State
44 aid pursuant to P.L.1978, c.14 (C.52:27D-178 et seq.).]

45 b. The commissioner shall establish rules and regulations
46 governing the qualifications of applicants, the application
47 procedures, and the criteria for awarding grants and loans and the
48 standards for establishing the amount, terms and conditions of
49 each grant or loan.

50 c. During the first 12 months from the effective date of this
51 act and for any additional period which the council may approve,
52 the commissioner may assist affordable housing programs which
53 are not located in municipalities whose housing elements have
54 been granted substantive certification or which are not in

1 furtherance of a regional contribution agreement; provided that
2 the affordable housing program will meet all or part of a
3 municipal low and moderate income housing obligation.

4 d. Amounts deposited in the Neighborhood Preservation Fund
5 shall be targeted to regions based on the region's percentage of
6 the State's low and moderate income housing need as determined
7 by the council. Amounts in the fund shall be applied for the
8 following purposes in designated neighborhoods:

9 (1) Rehabilitation of substandard housing units occupied or to
10 be occupied by low and moderate income households;

11 (2) Creation of accessory apartments to be occupied by low
12 and moderate income households;

13 (3) Conversion of nonresidential space to residential purposes;
14 provided a substantial percentage of the resulting housing units
15 are to be occupied by low and moderate income households;

16 (4) Acquisition of real property, demolition and removal of
17 buildings, or construction of new housing that will be occupied by
18 low and moderate income households, or any combination thereof;

19 (5) Grants of assistance to eligible municipalities for costs of
20 necessary studies, surveys, plans and permits; engineering,
21 architectural and other technical services; costs of land
22 acquisition and any buildings thereon; and costs of site
23 preparation, demolition and infrastructure development for
24 projects undertaken pursuant to an approved regional contribution
25 agreement; (6) Assistance to a local housing authority, nonprofit
26 or limited dividend housing corporation or association for
27 rehabilitation or restoration of housing units which it administers
28 which: (a) are unusable or in a serious state of disrepair; (b) can
29 be restored in an economically feasible and sound manner; and (c)
30 can be retained in a safe, decent and sanitary manner, upon
31 completion of rehabilitation or restoration; and

32 (7) Other housing programs for low and moderate income
33 housing, including, without limitation, (a) infrastructure projects
34 directly facilitating the construction of low and moderate income
35 housing not to exceed a reasonable percentage of the
36 construction costs of the low and moderate income housing to be
37 provided and (b) alteration of dwelling units occupied or to be
38 occupied by households of low or moderate income and the
39 common areas of the premises in which they are located in order
40 to make them accessible to handicapped persons.

41 e. Any grant or loan agreement entered into pursuant to this
42 section shall incorporate contractual guarantees and procedures
43 by which the division will ensure that any unit of housing provided
44 for low and moderate income households shall continue to be
45 occupied by low and moderate income households for at least 20
46 years following the award of the loan or grant, except that the
47 division may approve a guarantee for a period of less than 20
48 years where necessary to ensure project feasibility.

49 (cf: P.L.1985, c.222, s.20)

50 4. This act shall take effect immediately.

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Changes COAH membership, changes rules governing regional
contribution agreements and use of Neighborhood Preservation
Fund.

1 shall be targeted to regions based on the region's percentage of
 2 the State's low and moderate income housing need as determined
 3 by the council. Amounts in the fund shall be applied for the
 4 following purposes in designated neighborhoods:

5 (1) Rehabilitation of substandard housing units occupied or to
 6 be occupied by low and moderate income households;

7 (2) Creation of accessory apartments to be occupied by low
 8 and moderate income households;

9 (3) Conversion of nonresidential space to residential purposes;
 10 provided a substantial percentage of the resulting housing units
 11 are to be occupied by low and moderate income households;

12 (4) Acquisition of real property, demolition and removal of
 13 buildings, or construction of new housing that will be occupied by
 14 low and moderate income households, or any combination thereof;

15 (5) Grants of assistance to eligible municipalities for costs of
 16 necessary studies, surveys, plans and permits; engineering,
 17 architectural and other technical services; costs of land
 18 acquisition and any buildings thereon; and costs of site
 19 preparation, demolition and infrastructure development for
 20 projects undertaken pursuant to an approved regional contribution
 21 agreement; (6) Assistance to a local housing authority, nonprofit
 22 or limited dividend housing corporation or association for
 23 rehabilitation or restoration of housing units which it administers
 24 which: (a) are unusable or in a serious state of disrepair; (b) can
 25 be restored in an economically feasible and sound manner; and (c)
 26 can be retained in a safe, decent and sanitary manner, upon
 27 completion of rehabilitation or restoration; and

28 (7) Other housing programs for low and moderate income
 29 housing, including, without limitation, (a) infrastructure projects
 30 directly facilitating the construction of low and moderate income
 31 housing not to exceed a reasonable percentage of the
 32 construction costs of the low and moderate income housing to be
 33 provided and (b) alteration of dwelling units occupied or to be
 34 occupied by households of low or moderate income and the
 35 common areas of the premises in which they are located in order
 36 to make them accessible to handicapped persons.

37 e. Any grant or loan agreement entered into pursuant to this
 38 section, shall incorporate contractual guarantees and procedures
 39 by which the division will ensure that any unit of housing provided
 40 for low and moderate income households shall continue to be
 41 occupied by low and moderate income households for at least 20
 42 years following the award of the loan or grant, except that the
 43 division may approve a guarantee for a period of less than 20
 44 years where necessary to ensure project feasibility.

45 (cf: P.L.1985, c.222, s.20)

46 4. This act shall take effect immediately.

47

48

49 *SEN. ...* STATEMENT

50

51 This bill amends and supplements the "Fair Housing Act,"
 52 P.L.1985, c.222 (C.52:27D-301 et al.), with the intention of
 53 facilitating the operation of that act, in the following ways:

54 (1) The membership of the Council on Affordable Housing

1 (COAH) is altered by (a) including the Commissioner of
2 Community Affairs as well as the executive director of the
3 Housing and Mortgage Finance Agency (HMFA) as ex-officio
4 members; (b) increasing from two to four the members
5 representative of the interests of households in need of low and
6 moderate income housing, while requiring that one of them
7 represent nonprofit housing sponsors and one represent for-profit
8 builders; (c) by adding a member representative of the for-profit
9 builders of market-rate homes and (d) reducing from three to
10 two the number of "public" members. The total number of
11 members is increased to 11.

12 (2) Municipalities wishing to enter into regional contribution
13 agreements (RCAs) could contract with the Housing and
14 Mortgage Finance Agency (HMFA) or another governmental
15 agency, designated by COAH, which would then act as an
16 intermediary to match potential sending and receiving
17 municipalities.

18 (3) When contribution agreements are made through
19 intermediation of the HMFA or COAH-designated entity, the
20 participating municipalities may be in adjoining housing regions if
21 they are also in contiguous counties. Under present law, such
22 agreements are permitted only between municipalities in the
23 same housing region.

24 (4) Section 20 of the Fair Housing Act is amended to make it
25 clear that the approval of the municipal governing body is
26 required before any project using Neighborhood Preservation
27 Balanced Housing funds (from the "Neighborhood Preservation
28 Nonlapsing Revolving Fund") can be built in a municipality; but
29 that the municipality itself need not be the direct recipient of
30 the funds.

31 (4) Section 20 is also amended so as to provide that projects in
32 "urban aid" municipalities, i.e., those receiving aid under
33 P.L.1978, c.14 (C.52:27D-178 et seq.), shall be eligible for
34 Balanced Housing funding, whether or not they have received
35 substantive certification from the Council for their housing
36 elements.

37 (5) Alteration projects for the purpose of making low and
38 moderate income housing units accessible to handicapped persons
39 are made eligible for funding under the Balanced Housing
40 program.

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46 Changes COAH membership, changes rules governing regional
47 contribution agreements and use of Neighborhood Preservation
Fund.

ASSEMBLY HOUSING COMMITTEE

STATEMENT TO

ASSEMBLY, No. 1482

with committee amendments

STATE OF NEW JERSEY

DATED: JUNE 9, 1994

The Assembly Housing Committee favorably reports Assembly Bill No. 1482, with committee amendments.

This bill amends and supplements the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.), with the intention of facilitating the operation of that act.

The membership of the Council on Affordable Housing (COAH) is altered (a) by including the Commissioner of Community Affairs, or his or her designee, as an ex-officio member and (b) by adding a member representative of the for-profit builders of market-rate homes. The board member currently representing the interests of builders of low and moderate income housing would be designated as representing nonprofit builders of such housing. The total number of members of the Council would be increased to eleven. The commissioner would serve as chairperson of the Council.

A municipality wishing to enter into a regional contribution agreement (RCA), but unable to locate any possibilities within its housing region, could contract with the Housing and Mortgage Finance Agency (HMFA) or another governmental agency, designated by COAH, which would then act as an intermediary to match potential sending and receiving municipalities.

Section 20 of the Fair Housing Act is amended to make it clear that the approval of the municipal governing body is required before any project using Neighborhood Preservation Balanced Housing funds (from the "Neighborhood Preservation Nonlapsing Revolving Fund") can be built in a municipality; also that the municipality itself need not be the direct recipient of the funds. Section 20 is further amended to provide that projects in "urban aid" municipalities, i.e., those receiving aid under P.L.1978, c.14 (C.52:27D-178 et seq.), shall be eligible for Balanced Housing funding, whether or not they have received substantive certification from the Council for their housing elements. In addition, alteration projects for the purpose of making low and moderate income housing units accessible to handicapped persons are made eligible for funding under the Balanced Housing program.

The committee amended the bill to include the Commissioner of Community Affairs as an ex-officio member of the Council and to serve as its chairperson. In addition, the amendments designate that the member representing builders of low and moderate income housing would represent nonprofit builders of such housing. An additional member was added representing the interests of for-profit builders of market-rate housing.

The committee deleted a provision which would have allowed RCA's between municipalities located in contiguous regions, and inserted a provision that requires the Council determine that a

municipality has exhausted all opportunities within its housing region prior to allowing a municipality to enter into an contract with another governmental entity regarding a regional contribution agreement. A requirement that the Council set minimum per-unit rates of contribution for the agreements was also deleted.

SENATE COMMUNITY AFFAIRS COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 1482

STATE OF NEW JERSEY

DATED: JANUARY 12, 1995

The Senate Community Affairs Committee reports favorably Assembly Bill No. 1482 (1R).

This bill would: increase the membership of the Council on Affordable Housing (COAH); authorize a municipality that has exhausted all possibilities of entering into a regional contribution agreement within its housing region to propose a transfer of its fair share obligation by contract with the Housing and Mortgage Finance Agency (HMFA) or other governmental entity designated by COAH; and specify that a housing project or program may be awarded grants or loans directly from the Neighborhood Preservation Nonlapsing Revolving Fund so long as the governing body of the municipality in which the project or program is located files a written statement in support of the project or program with the Commissioner of Community Affairs.

Section 1 of the bill would alter the composition of the membership of COAH by increasing the number of members from nine to 11. Under the bill, the Commissioner of Community Affairs, or her designee, would serve ex officio as chairperson of COAH. The bill would also require that one of the members chosen to represent the interests of households in need of low and moderate housing be a representative of the nonprofit builders of low and moderate housing who has expertise in land use practices and housing issues. Additionally, the bill would require that an additional person who has expertise in land use practices and housing issues be chosen to represent the interests of the for-profit builders of market rate homes.

Current law requires that one member be chosen to represent the interests of the builders of low and moderate income housing.

Under section 2 of the bill, a municipality that has exhausted all possibilities of entering into a regional contribution agreement within its housing region would be authorized to propose a transfer of its fair share obligation by contract with the Housing and Mortgage Finance Agency (HMFA) or other governmental entity designated by COAH. The HMFA or other designated governmental entity would then act as an intermediary to match potential sending and receiving municipalities.

When contribution agreements are made through intermediation of the HMFA or COAH-designated entity, the participating municipalities may be located in different housing regions. Under present law, such agreements are permitted only between municipalities in the same housing region.

Section 3 of the bill would specify that a housing project or program may be awarded grants or loans directly from the Neighborhood Preservation Nonlapsing Revolving Fund so long as

the governing body of the municipality in which the project or program is located files a written statement in support of the project or program with the Commissioner of Community Affairs. Current law could be interpreted as requiring the commissioner to award grants or loans from the fund directly to qualifying municipalities.

This section would also provide that projects and programs in "urban aid" municipalities, i.e., those receiving aid under P.L.1978, c.14 (C.52:27D-178 et seq.), would be eligible for Balanced Housing funding, whether or not they have received substantive certification from the Council for their housing elements. Additionally, alteration projects for the purpose of making low and moderate income housing units accessible to handicapped persons would be made eligible for funding under the Balanced Housing program.

As reported by the committee, this bill is identical to Senate, No. 240 with committee amendments adopted January 12, 1995.

EXHIBIT C

52:27D-311a
LEGISLATIVE HISTORY CHECKLIST
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LAWS OF: 2005 **CHAPTER:** 350
NJSA: 52:27D-311a (Concerns accessibility of affordable housing units)
BILL NO: S2696/2725 (Substituted for A3892)
SPONSOR(S): Madden and others
DATE INTRODUCED: June 23, 2005
COMMITTEE: **ASSEMBLY:**

SENATE: Community and Urban Affairs

AMENDED DURING PASSAGE: Yes

DATE OF PASSAGE: **ASSEMBLY:** January 9, 2006

SENATE: January 9, 2006

DATE OF APPROVAL: January 12, 2006

FOLLOWING ARE ATTACHED IF AVAILABLE:

FINAL TEXT OF BILL (Senate Committee Substitute (1R) for S2696/2725 enacted)

S2696/2725

SPONSOR'S STATEMENT (S2696): (Begins on page 8 of original bill) Yes

SPONSOR'S STATEMENT (S2725): (Begins on page 8 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** No

SENATE: Yes

FLOOR AMENDMENT STATEMENT: Yes

LEGISLATIVE FISCAL ESTIMATE: No

A3892

SPONSOR'S STATEMENT: (Begins on page 8 of original bill) Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes 12-5-2005 (H& LG)
1-5-2006 (Approp)

SENATE: No

FLOOR AMENDMENT STATEMENT: No

LEGISLATIVE FISCAL ESTIMATE: No

VETO MESSAGE: No

GOVERNOR'S PRESS RELEASE ON SIGNING: No

FOLLOWING WERE PRINTED:

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REPORTS:	No
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NEWSPAPER ARTICLES:	No

IS 2/28/08

§§1, 6
C.52:27D-311a &
52:27D-311b
§5
C.52:27D-123.15
§7
Note to §§1-6

P.L. 2005, CHAPTER 350, *approved January 12, 2006*
Senate Committee Substitute (*First Reprint*) for
Senate, Nos. 2696 and 2725

1 AN ACT concerning accessibility of affordable housing units, amending
2 and supplementing P.L.1985, c. 222 (C.52:27D-301 et al.) and
3 supplementing P.L.1975, c. 217 (C.52:27D-119 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. (New section) Beginning upon the effective date of P.L. ,
9 c. (C.) (pending before the Legislature as this bill), any new
10 construction for which credit is sought against a fair share obligation
11 shall be adaptable in accordance with the provisions of section 5 of
12 P.L. , c. (C.)(pending before the Legislature as this bill).
13 For the purposes of P.L. , c. (C.)(pending before the
14 Legislature as this bill), "new construction" shall mean an entirely new
15 improvement not previously occupied or used for any purpose.
16

17 2. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
18 read as follows:

19 As used in this act:

20 a. "Council" means the Council on Affordable Housing established
21 in this act, which shall have primary jurisdiction for the administration
22 of housing obligations in accordance with sound regional planning
23 considerations in this State.

24 b. "Housing region" means a geographic area of not less than two
25 nor more than four contiguous, whole counties which exhibit
26 significant social, economic and income similarities, and which
27 constitute to the greatest extent practicable the primary metropolitan
28 statistical areas as last defined by the United States Census Bureau
29 prior to the effective date of this act.

30 c. "Low income housing" means housing affordable according to
31 federal Department of Housing and Urban Development or other
32 recognized standards for home ownership and rental costs and
33 occupied or reserved for occupancy by households with a gross
34 household income equal to 50% or less of the median gross household

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate floor amendments adopted January 5, 2006.

1 income for households of the same size within the housing region in
2 which the housing is located.

3 d. "Moderate income housing" means housing affordable
4 according to federal Department of Housing and Urban Development
5 or other recognized standards for home ownership and rental costs and
6 occupied or reserved for occupancy by households with a gross
7 household income equal to more than 50% but less than 80% of the
8 median gross household income for households of the same size within
9 the housing region in which the housing is located.

10 e. "Resolution of participation" means a resolution adopted by a
11 municipality in which the municipality chooses to prepare a fair share
12 plan and housing element in accordance with this act.

13 f. "Inclusionary development" means a residential housing
14 development in which a substantial percentage of the housing units are
15 provided for a reasonable income range of low and moderate income
16 households.

17 g. "Conversion" means the conversion of existing commercial,
18 industrial, or residential structures for low and moderate income
19 housing purposes where a substantial percentage of the housing units
20 are provided for a reasonable income range of low and moderate
21 income households.

22 h. "Development" means any development for which permission
23 may be required pursuant to the "Municipal Land Use Law," P.L.1975,
24 c.291 (C.40:55D-1 et seq.).

25 i. "Agency" means the New Jersey Mortgage and Housing Finance
26 Agency established by P.L.1983, c.530 (C.55:14K-1 et seq.).

27 j. "Prospective need" means a projection of housing needs based
28 on development and growth which is reasonably likely to occur in a
29 region or a municipality, as the case may be, as a result of actual
30 determination of public and private entities. In determining
31 prospective need, consideration shall be given to approvals of
32 development applications, real property transfers and economic
33 projections prepared by the State Planning Commission established by
34 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

35 k. "Disabled person" means a person with a physical disability,
36 infirmity, malformation or disfigurement which is caused by bodily
37 injury, birth defect, aging or illness including epilepsy and other
38 seizure disorders, and which shall include, but not be limited to, any
39 degree of paralysis, amputation, lack of physical coordination,
40 blindness or visual impediment, deafness or hearing impediment,
41 muteness or speech impediment or physical reliance on a service or
42 guide dog, wheelchair, or other remedial appliance or device.

43 l. "Adaptable" means constructed in compliance with the technical
44 design standards of the barrier free subcode adopted by the
45 Commissioner of Community Affairs pursuant to the "State Uniform
46 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and

1 in accordance with the provisions of section 5 of P.L. . . . c.
2 (C. . .) (pending before the Legislature as this bill).
3 (cf: P.L.1985, c.222, s.4)

4
5 3. Section 5 of P.L.1985, c.222 (C.52:27D-305) is amended to
6 read as follows:

7 5. a. There is established in, but not of, the Department of
8 Community Affairs a Council on Affordable Housing to consist of
9 ~~[11]~~ 12 members appointed by the Governor with the advice and
10 consent of the Senate, of whom four shall be elected officials
11 representing the interests of local government, at least one of whom
12 shall be representative of an urban municipality having a population in
13 excess of 40,000 persons and a population density in excess of 3,000
14 persons per square mile, at least one of whom shall be representative
15 of a municipality having a population of 40,000 persons or less and a
16 population density of 3,000 persons per square mile or less, and no
17 more than one of whom may be a representative of the interests of
18 county government; ~~[three]~~ four shall represent the interests of
19 households in need of low and moderate housing, one of whom shall
20 represent the interests of the nonprofit builders of low and moderate
21 income housing, and shall have an expertise in land use practices and
22 housing issues, one of whom shall be the Commissioner of Community
23 Affairs, ex officio, or his or her designee, who shall serve as
24 chairperson ~~[and]~~ , one of whom shall be the executive director of the
25 agency, serving ex officio; and one of whom shall represent the
26 interests of disabled persons and have expertise in construction
27 accessible to disabled persons; one shall represent the interests of the
28 for-profit builders of market rate homes, and shall have an expertise
29 in land use practices and housing issues; and three shall represent the
30 public interest. Not more than six of the ~~[11]~~ 12 shall be members of
31 the same political party. The membership shall be balanced to the
32 greatest extent practicable among the various housing regions of the
33 State.

34 b. The members shall serve for terms of six years, except that of
35 the members first appointed, two shall serve for terms of four years,
36 three for terms of five years, and three for terms of six years. All
37 ~~members~~ shall serve until their respective successors are appointed and
38 shall have qualified. Notwithstanding the above, a member appointed
39 to represent the interests of local government shall serve only such
40 length of the term for which appointed as the member continues to
41 hold elected local office, except that the term of a member so
42 appointed shall not become vacant until 60 days after the member
43 ceases to hold that elected office. Vacancies shall be filled in the same
44 manner as the original appointments, but for the remainders of the
45 unexpired terms only.

46 c. The members, excluding the executive director of the agency

1 and the Commissioner of Community Affairs, shall be compensated at
2 the rate of \$150.00 for each six-hour day, or prorated portion thereof
3 for more or less than six hours, spent in attendance at meetings and
4 consultations and all members shall be eligible for reimbursement for
5 necessary expenses incurred in connection with the discharge of their
6 duties.

7 d. The Governor shall nominate the members within 30 days of the
8 effective date of this act and shall designate a member to serve as
9 chairman throughout the member's term of office and until his
10 successor shall have been appointed and qualified. The member added
11 by P.L. , c. (C.) (pending before the Legislature as this bill)
12 shall be nominated within 30 days of the effective date of that act.

13 e. Any member may be removed from office for misconduct in
14 office, willful neglect of duty, or other conduct evidencing unfitness
15 for the office, or for incompetence. A proceeding for removal may be
16 instituted by the Attorney General in the Superior Court. A member
17 or employee of the council shall automatically forfeit his office or
18 employment upon conviction of any crime. Any member or employee
19 of the council shall be subject to the duty to appear and testify and to
20 removal from his office or employment in accordance with the
21 provisions of P.L.1970, c.72 (C.2A:81-17.2a et seq.).
22 (cf: P.L.1995, c.83, s.1)

23
24 4. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
25 read as follows:

26 7. It shall be the duty of the council, seven months after the
27 confirmation of the last member initially appointed to the council, or
28 January 1, 1986, whichever is earlier, and from time to time thereafter,
29 to:

- 30 a. Determine housing regions of the State;
- 31 b. Estimate the present and prospective need for low and
32 moderate income housing at the State and regional levels;
- 33 c. Adopt criteria and guidelines for:
- 34 (1) Municipal determination of its present and prospective fair
35 share of the housing need in a given region which shall be computed
36 for a 10-year period. Municipal fair share shall be determined after
37 crediting on a one-to-one basis each current unit of low and moderate
38 income housing of adequate standard, including any such housing
39 constructed or acquired as part of a housing program specifically
40 intended to provide housing for low and moderate income households.
41 Notwithstanding any other law to the contrary, a municipality shall be
42 entitled to a credit for a unit if it demonstrates that (a) the municipality
43 issued a certificate of occupancy for the unit, which was either newly
44 constructed or rehabilitated between April 1, 1980 and December 15,
45 1986; (b) a construction code official certifies, based upon a visual
46 exterior survey, that the unit is in compliance with pertinent

1 construction code standards with respect to structural elements,
2 roofing, siding, doors and windows; (c) the household occupying the
3 unit certifies in writing, under penalty of perjury, that it receives no
4 greater income than that established pursuant to section 4 of P.L.1985,
5 c.222 (C.52:27D-304) to qualify for moderate income housing; and (d)
6 the unit for which credit is sought is affordable to low and moderate
7 income households under the standards established by the council at
8 the time of filing of the petition for substantive certification. It shall
9 be sufficient if the certification required in subparagraph (c) is signed
10 by one member of the household. A certification submitted pursuant
11 to this paragraph shall be reviewable only by the council or its staff
12 and shall not be a public record;

13 *Nothing in P.L.1995, c.81 shall affect the validity of substantive*
14 *certification granted by the council prior to November 21, 1994, or to*
15 *a judgment of compliance entered by any court of competent*
16 *jurisdiction prior to that date. Additionally, any municipality that*
17 *received substantive certification or a judgment of compliance prior to*
18 *November 21, 1994 and filed a motion prior to November 21, 1994 to*
19 *amend substantive certification or a judgment of compliance for the*
20 *purpose of obtaining credits, shall be entitled to a determination of its*
21 *right to credits pursuant to the standards established by the Legislature*
22 *prior to P.L.1995, c.81. Any municipality that filed a motion prior to*
23 *November 21, 1994 for the purpose of obtaining credits, which motion*
24 *was supported by the results of a completed survey performed*
25 *pursuant to council rules, shall be entitled to a determination of its*
26 *right to credits pursuant to the standards established by the Legislature*
27 *prior to P.L.1995, c.81;*

28 (2) Municipal adjustment of the present and prospective fair share
29 based upon available vacant and developable land, infrastructure
30 considerations or environmental or historic preservation factors and
31 adjustments shall be made whenever:

32 (a) The preservation of historically or important architecture and
33 sites and their environs or environmentally sensitive lands may be
34 jeopardized,

35 (b) The established pattern of development in the community
36 would be drastically altered,

37 (c) Adequate land for recreational, conservation or agricultural
38 and farmland preservation purposes would not be provided,

39 (d) Adequate open space would not be provided,

40 (e) The pattern of development is contrary to the planning
41 designations in the State Development and Redevelopment Plan
42 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
43 (C.52:18A-196 et seq.),

44 (f) Vacant and developable land is not available in the
45 municipality, and

46 (g) Adequate public facilities and infrastructure capacities are not

1 available, or would result in costs prohibitive to the public if provided;
2 and

3 (3) (Deleted by amendment, P.L.1993, c.31).

4 d. Provide population and household projections for the State and
5 housing regions;

6 e. In its discretion, place a limit, based on a percentage of existing
7 housing stock in a municipality and any other criteria including
8 employment opportunities which the council deems appropriate, upon
9 the aggregate number of units which may be allocated to a
10 municipality as its fair share of the region's present and prospective
11 need for low and moderate income housing. No municipality shall be
12 required to address a fair share beyond 1,000 units within ten years
13 from the grant of substantive certification, unless it is demonstrated,
14 following objection by an interested party and an evidentiary hearing,
15 based upon the facts and circumstances of the affected municipality
16 that it is likely that the municipality through its zoning powers could
17 create a realistic opportunity for more than 1,000 low and moderate
18 income units within that ten-year period. For the purposes of this
19 section, the facts and circumstances which shall determine whether a
20 municipality's fair share shall exceed 1,000 units, as provided above,
21 shall be a finding that the municipality has issued more than 5,000
22 certificates of occupancy for residential units in the ten-year period
23 preceding the petition for substantive certification in connection with
24 which the objection was filed.

25 For the purpose of crediting low and moderate income housing
26 units in order to arrive at a determination of present and prospective
27 fair share, as set forth in paragraph (1) of subsection c. of this section,
28 housing units comprised in a community residence for the
29 developmentally disabled, as defined in section 2 of P.L.1977, c.448
30 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or
31 to be promulgated by the council, to the extent that the units are
32 affordable to persons of low and moderate income and are available to
33 the general public.

34 In carrying out the above duties, including, but not limited to,
35 present and prospective need estimations the council shall give
36 appropriate weight to pertinent research studies, government reports,
37 decisions of other branches of government, implementation of the
38 State Development and Redevelopment Plan prepared pursuant to
39 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and
40 public comment. To assist the council, the State Planning Commission
41 established under that act shall provide the council annually with
42 economic growth, development and decline projections for each
43 housing region for the next ten years. The council shall develop
44 procedures for periodically adjusting regional need based upon the low
45 and moderate income housing that is provided in the region through
46 any federal, State, municipal or private housing program.

1 No ¹[municipal]¹ housing [element shall be approved or
2 certification granted by the council unless the municipality has
3 complied with the requirements of section 5 of P.L. , c. (C.)
4 (pending before the Legislature as this bill)] unit subject to the
5 provisions of section 5 of P.L. , c. (C.) (pending before the
6 Legislature as this bill) and to the provisions of the barrier free
7 subcode adopted by the Commissioner of Community Affairs pursuant
8 to the "State Uniform Construction Code Act," P.L.1975, c.217
9 (C.52:27D-119 et seq.) shall be eligible for inclusion in the municipal
10 fair share plan certified by the council unless the unit complies with the
11 requirements set forth thereunder¹.
12 (cf: P.L. 2001, c.435, s.1)

13
14 5. (New section) a. Any new construction for which an
15 application for a construction permit has not been declared complete
16 by the enforcing agency before the effective date of P.L. , c.
17 (C.) (pending before the Legislature as this bill) and for which
18 credit is sought pursuant to P.L.1985, c. 222 (C.52:27D-301 et al.) on
19 or after the effective date of P.L. , c. (C.) (pending before the
20 Legislature as this bill) shall be adaptable; however, elevators shall not
21 be required in any building or within any dwelling unit for the purposes
22 of P.L. , c. (C.) (pending before the Legislature as this bill). In
23 buildings without elevator service, only ground floor dwelling units
24 shall be required to be constructed to conform with the technical
25 design standards of the barrier free subcode in order to be credited
26 pursuant to P.L.1985, c.222 (C.52:27D-301 et al.).

27 b. Notwithstanding the exemption for townhouse dwelling units
28 in the barrier free subcode, the first floor of all townhouse dwelling
29 units and of all other multifloor dwelling units for which credit is
30 sought pursuant to P.L.1985, c. 222 (C.52:27D-301 et al.) on or after
31 the effective date of P.L. , c. (C.) (pending before the
32 Legislature as this bill) and for which an application for a construction
33 permit has not been declared complete by the enforcing agency
34 pursuant to P.L. , c. (C.)(pending before the Legislature as this
35 bill), shall be subject to the technical design standards of the barrier
36 free subcode and shall include the following features:

- 37 (1) an ¹[accessible] adaptable¹ entrance to the dwelling unit;
38 (2) an adaptable full service bathroom on the first floor;
39 (3) an adaptable kitchen on the first floor;
40 (4) an accessible interior route of travel; and
41 (5) an adaptable room with a door or a casing where a door can
42 be installed which may be used as a bedroom on the first floor.

43 c. (1) Full compliance with the requirements of this section shall
44 not be required where an entity can demonstrate that it is site
45 impracticable to meet the requirements. Full compliance shall be
46 considered site impracticable only in those rare circumstances when

1 the unique characteristics of terrain prevent the incorporation of
2 accessibility features.

3 (2) If full compliance with this section would be site impracticable,
4 compliance with this section 'for any portion of the dwelling' shall be
5 required to the extent that it is not site impracticable. '[In that case,
6 any portion of the dwelling that can be made accessible shall be made
7 accessible to the extent that it is not site impracticable.]'

8 '[(3) If full compliance with this section concerning an accessible
9 entrance to a dwelling unit would be site impracticable, the unit shall
10 be constructed with an adaptable entrance.]'

11 d. In the case of a unit or units which are constructed with an
12 adaptable entrance pursuant to subsection c. of this section, upon the
13 request of a disabled person who is purchasing or will reside in the
14 dwelling unit, an accessible entrance shall be installed. Additionally,
15 the builder of the unit or units shall deposit sufficient funds to adapt
16 10 percent of the affordable units in the project which have not been
17 constructed with accessible entrances with the municipality in which
18 the units are located, for deposit into the municipal affordable housing
19 trust fund. These funds shall be available for the use of the
20 municipality for the purpose of making the adaptable entrance of any
21 such affordable unit accessible when requested to do so by a person
22 with a disability who occupies or intends to occupy the unit and
23 requires an accessible entrance.

24 For the purposes of this section:

25 "Adaptable," as used with regard to an entrance, means that the
26 plans for the unit include a feasible building plan to adapt the entrance
27 so as to make the unit accessible.

28 "Disabled person" means "disabled person" as defined in section 4
29 of P.L.1985, c.222 (C.52:27D-304).

30 "Ground floor" means the first floor with a dwelling unit or portion
31 of a dwelling unit, regardless of whether that floor is at grade. A
32 building may have more than one ground floor.

33 "Site impracticable" means having the characteristic of "site
34 impracticability" as set forth in 'section' 100.205 (a) of title 24, Code
35 of Federal Regulations.

36
37 6. (New section) The council may take such measures as are
38 necessary to assure compliance with the adaptability requirements
39 imposed pursuant to P.L. , c. (C.) (pending before the
40 Legislature as this bill), including the inspection of those units which
41 are newly constructed and receive housing credit as provided under
42 P.L. , c. (C.) (pending before the Legislature as this
43 bill) for adaptability, as part of the monitoring which occurs pursuant
44 to P.L.1985, c.222 (C.52:27D-301 et al.). If any units for which credit
45 was granted in accordance with the provisions of P.L. , c.
46 (C.) (pending before the Legislature as this bill) are found not

1 to conform to the requirements of P.L. , c. (C.) (pending
2 before the Legislature as this bill), the council may require the
3 municipality to amend its fair share plan within 90 days of receiving
4 notice from the council, to address its fair share obligation pursuant to
5 P.L.1985, c.222 (C.52:27D-301 et al.). In the event that the
6 municipality fails to amend its fair share plan within 90 days of
7 receiving such notice, the council may revoke substantive certification.

8

9 7. This act shall take effect on the first day of the ninth month
10 next following enactment, except that the commissioner may take such
11 immediate action as necessary in order to effectuate the provisions of
12 P.L. , c. (C.) (pending before the Legislature as this
13 bill).

14

15

16

17

18 Requires newly constructed affordable housing units to be adaptable
19 for use by elderly and disabled persons.

SENATE, No. 2696

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED JUNE 23, 2005

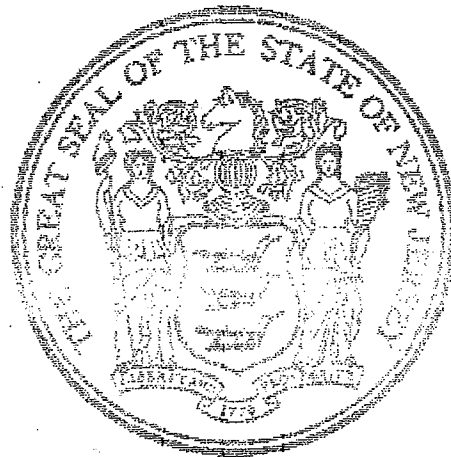
Sponsored by:
Senator **FRED MADDEN**
District 4 (Camden and Gloucester)
Senator **RONALD L. RICE**
District 28 (Essex)

SYNOPSIS

Requires new affordable housing units constructed be accessible for use by elderly and disabled persons.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/13/2005)

1 AN ACT concerning housing for elderly and disabled persons and
2 amending and supplementing P.L.1985, c.222 (C.52:27D-301 et
3 al.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
9 read as follows:

10 4. As used in this act:

11 a. "Council" means the Council on Affordable Housing established
12 in this act, which shall have primary jurisdiction for the administration
13 of housing obligations in accordance with sound regional planning
14 considerations in this State.

15 b. "Housing region" means a geographic area of not less than two
16 nor more than four contiguous, whole counties which exhibit
17 significant social, economic and income similarities, and which
18 constitute to the greatest extent practicable the primary metropolitan
19 statistical areas as last defined by the United States Census Bureau
20 prior to the effective date of this act.

21 c. "Low income housing" means housing affordable according to
22 federal Department of Housing and Urban Development or other
23 recognized standards for home ownership and rental costs and
24 occupied or reserved for occupancy by households with a gross
25 household income equal to 50% or less of the median gross household
26 income for households of the same size within the housing region in
27 which the housing is located.

28 d. "Moderate income housing" means housing affordable according
29 to federal Department of Housing and Urban Development or other
30 recognized standards for home ownership and rental costs and
31 occupied or reserved for occupancy by households with a gross
32 household income equal to more than 50% but less than 80% of the
33 median gross household income for households of the same size within
34 the housing region in which the housing is located.

35 e. "Resolution of participation" means a resolution adopted by a
36 municipality in which the municipality chooses to prepare a fair share
37 plan and housing element in accordance with this act.

38 f. "Inclusionary development" means a residential housing
39 development in which a substantial percentage of the housing units are
40 provided for a reasonable income range of low and moderate income
41 households.

42 g. "Conversion" means the conversion of existing commercial,
43 industrial, or residential structures for low and moderate income

EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not
enacted and intended to be omitted in the law.

Matter underlined thus is new matter.

1 housing purposes where a substantial percentage of the housing units
2 are provided for a reasonable income range of low and moderate
3 income households.

4 h. "Development" means any development for which permission
5 may be required pursuant to the "Municipal Land Use Law," P.L.1975,
6 c.291 (C.40:55D-1 et seq.).

7 i. "Agency" means the New Jersey Mortgage and Housing Finance
8 Agency established by P.L.1983, c. 30 (C.55:14K-1 et seq.).

9 j. "Prospective need" means a projection of housing needs based on
10 development and growth which is reasonably likely to occur in a
11 region or a municipality, as the case may be, as a result of actual
12 determination of public and private entities. In determining
13 prospective need, consideration shall be given to approvals of
14 development applications, real property transfers and economic
15 projections prepared by the State Planning Commission established by
16 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

17 k. "Disabled person" means a person with a physical disability
18 infirmity, malformation or disfigurement which is caused by bodily
19 injury, birth defect, aging or illness including epilepsy and other
20 seizure disorders, and which shall include, but not be limited to, any
21 degree of paralysis, amputation, lack of physical coordination,
22 blindness or visual impediment, deafness or hearing impediment,
23 muteness or speech impediment or physical reliance on a service or
24 guide dog, wheelchair, or other remedial appliance or device.

25 l. "Accessible" means a housing unit constructed in compliance
26 with the barrier free subcode adopted by the Commissioner of
27 Community Affairs pursuant to the "State Uniform Construction Code
28 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).
29 (cf. P.L.1985, c.222, s.4)

30
31 2. Section 5 of P.L.1985, c.222 (C.52:27D-305) is amended to
32 read as follows:

33 5. a. There is established in, but not of, the Department of
34 Community Affairs a Council on Affordable Housing to consist of 11
35 members appointed by the Governor with the advice and consent of
36 the Senate, of whom four shall be elected officials representing the
37 interests of local government, at least one of whom shall be
38 representative of an urban municipality having a population in excess
39 of 40,000 persons and a population density in excess of 3,000 persons
40 per square mile, at least one of whom shall be representative of a
41 municipality having a population of 40,000 persons or less and a
42 population density of 3,000 persons per square mile or less, and no
43 more than one of whom may be a representative of the interests of
44 county government; three shall represent the interests of households
45 in need of low and moderate housing, one of whom shall represent the
46 interests of the nonprofit builders of low and moderate income

1 housing, and shall have an expertise in land use practices and housing
2 issues, one of whom shall be the Commissioner of Community Affairs,
3 ex officio, or his or her designee, who shall serve as chairperson and
4 one of whom shall be the executive director of the agency, serving ex
5 officio; one shall represent the interests of the for-profit builders of
6 market rate homes, and shall have an expertise in land use practices
7 and housing issues; and three shall represent the public interest, one of
8 whom shall represent the interests of disabled persons and have
9 expertise in construction accessible to disabled persons. Not more
10 than six of the 11 shall be members of the same political party. The
11 membership shall be balanced to the greatest extent practicable among
12 the various housing regions of the State.

13 b. The members shall serve for terms of six years, except that of
14 the members first appointed, two shall serve for terms of four years,
15 three for terms of five years, and three for terms of six years. All
16 members shall serve until their respective successors are appointed and
17 shall have qualified. Notwithstanding the above, a member appointed
18 to represent the interests of local government shall serve only such
19 length of the term for which appointed as the member continues to
20 hold elected local office, except that the term of a member so
21 appointed shall not become vacant until 60 days after the member
22 ceases to hold that elected office. Vacancies shall be filled in the same
23 manner as the original appointments, but for the remainders of the
24 unexpired terms only.

25 c. The members, excluding the executive director of the agency and
26 the Commissioner of Community Affairs, shall be compensated at the
27 rate of \$150.00 for each six-hour day, or prorated portion thereof for
28 more or less than six hours, spent in attendance at meetings and
29 consultations and all members shall be eligible for reimbursement for
30 necessary expenses incurred in connection with the discharge of their
31 duties.

32 d. The Governor shall nominate the members within 30 days of the
33 effective date of this act and shall designate a member to serve as
34 chairman throughout the member's term of office and until his
35 successor shall have been appointed and qualified.

36 e. Any member may be removed from office for misconduct in
37 office, willful neglect of duty, or other conduct evidencing unfitness
38 for the office, or for incompetence. A proceeding for removal may be
39 instituted by the Attorney General in the Superior Court. A member
40 or employee of the council shall automatically forfeit his office or
41 employment upon conviction of any crime. Any member or employee
42 of the council shall be subject to the duty to appear and testify and to
43 removal from his office or employment in accordance with the
44 provisions of P.L.1970, c.72 (C.2A:81-17.2a et seq.).
45 (cf: P.L.1995, c.83, s.1)

1 3. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
2 read as follows:

3 7. It shall be the duty of the council, seven months after the
4 confirmation of the last member initially appointed to the council, or
5 January 1, 1986, whichever is earlier, and from time to time thereafter,
6 to:

7 a. Determine housing regions of the State;

8 b. Estimate the present and prospective need for low and moderate
9 income housing at the State and regional levels;

10 c. Adopt criteria and guidelines for:

11 (1) Municipal determination of its present and prospective fair
12 share of the housing need in a given region which shall be computed
13 for a 10-year period. Municipal fair share shall be determined after
14 crediting on a one-to-one basis each current unit of low and moderate
15 income housing of adequate standard, including any such housing
16 constructed or acquired as part of a housing program specifically
17 intended to provide housing for low and moderate income households.
18 Notwithstanding any other law to the contrary, a municipality shall be
19 entitled to a credit for a unit if it demonstrates that (a) the municipality
20 issued a certificate of occupancy for the unit, which was either newly
21 constructed or rehabilitated between April 1, 1980 and December 15,
22 1986; (b) a construction code official certifies, based upon a visual
23 exterior survey, that the unit is in compliance with pertinent
24 construction code standards with respect to structural elements,
25 roofing, siding, doors and windows; (c) the household occupying the
26 unit certifies in writing, under penalty of perjury, that it receives no
27 greater income than that established pursuant to section 4 of P.L.1985,
28 c.222 (C.52:27D-304) to qualify for moderate income housing; [and]
29 (d) the unit for which credit is sought is affordable to low and
30 moderate income households under the standards established by the
31 council at the time of filing of the petition for substantive certification;
32 and (e) the unit for which credit is sought, if newly constructed,
33 conforms to the barrier free subcode adopted by the Commissioner of
34 Community Affairs pursuant to the "State Uniform Construction Code
35 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) in the manner specified
36 in section 4 of P.L. . . c. (C.) (pending before the Legislature as
37 this bill). It shall be sufficient if the certification required in
38 subparagraph (c) is signed by one member of the household. A
39 certification submitted pursuant to this paragraph shall be reviewable
40 only by the council or its staff and shall not be a public record;

41 Nothing in P.L.1995, c.81 shall affect the validity of substantive
42 certification granted by the council prior to November 21, 1994, or to
43 a judgment of compliance entered by any court of competent
44 jurisdiction prior to that date. Additionally, any municipality that
45 received substantive certification or a judgment of compliance prior to
46 November 21, 1994 and filed a motion prior to November 21, 1994 to

1 amend substantive certification or a judgment of compliance for the
2 purpose of obtaining credits, shall be entitled to a determination of its
3 right to credits pursuant to the standards established by the Legislature
4 prior to P.L.1995, c.81. Any municipality that filed a motion prior to
5 November 21, 1994 for the purpose of obtaining credits, which motion
6 was supported by the results of a completed survey performed
7 pursuant to council rules, shall be entitled to a determination of its
8 right to credits pursuant to the standards established by the Legislature
9 prior to P.L.1995, c.81;

10 (2) Municipal adjustment of the present and prospective fair share
11 based upon available vacant and developable land, infrastructure
12 considerations or environmental or historic preservation factors and
13 adjustments shall be made whenever:

14 (a) The preservation of historically or important architecture and
15 sites and their environs or environmentally sensitive lands may be
16 jeopardized,

17 (b) The established pattern of development in the community
18 would be drastically altered,

19 (c) Adequate land for recreational, conservation or agricultural and
20 farmland preservation purposes would not be provided,

21 (d) Adequate open space would not be provided,

22 (e) The pattern of development is contrary to the planning
23 designations in the State Development and Redevelopment Plan
24 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
25 (C.52:18A-196 et seq.),

26 (f) Vacant and developable land is not available in the municipality,
27 and

28 (g) Adequate public facilities and infrastructure capacities are not
29 available, or would result in costs prohibitive to the public if provided;
30 and

31 (3) (Deleted by amendment, P.L.1993, c.31).

32 d. Provide population and household projections for the State and
33 housing regions;

34 e. In its discretion, place a limit, based on a percentage of existing
35 housing stock in a municipality and any other criteria including
36 employment opportunities which the council deems appropriate, upon
37 the aggregate number of units which may be allocated to a
38 municipality as its fair share of the region's present and prospective
39 need for low and moderate income housing. No municipality shall be
40 required to address a fair share beyond 1,000 units within ten years
41 from the grant of substantive certification, unless it is demonstrated,
42 following objection by an interested party and an evidentiary hearing,
43 based upon the facts and circumstances of the affected municipality
44 that it is likely that the municipality through its zoning powers could
45 create a realistic opportunity for more than 1,000 low and moderate
46 income units within that ten-year period. For the purposes of this

1 section, the facts and circumstances which shall determine whether a
2 municipality's fair share shall exceed 1,000 units, as provided above,
3 shall be a finding that the municipality has issued more than 5,000
4 certificates of occupancy for residential units in the ten-year period
5 preceding the petition for substantive certification in connection with
6 which the objection was filed.

7 For the purpose of crediting low and moderate income housing
8 units in order to arrive at a determination of present and prospective
9 fair share, as set forth in paragraph (1) of subsection c. of this section,
10 housing units comprised in a community residence for the
11 developmentally disabled, as defined in section 2 of P.L.1977, c.448
12 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or
13 to be promulgated by the council, to the extent that the units are
14 affordable to persons of low and moderate income and are available to
15 the general public.

16 In carrying out the above duties, including, but not limited to,
17 present and prospective need estimations the council shall give
18 appropriate weight to pertinent research studies, government reports,
19 decisions of other branches of government, implementation of the
20 State Development and Redevelopment Plan prepared pursuant to
21 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and
22 public comment. To assist the council, the State Planning Commission
23 established under that act shall provide the council annually with
24 economic growth, development and decline projections for each
25 housing region for the next ten years. The council shall develop
26 procedures for periodically adjusting regional need based upon the low
27 and moderate income housing that is provided in the region through
28 any federal, State, municipal or private housing program.

29 (cf: P.L.2001, c.435, s.1)

30

31 4. (New section) a. The council shall require that all newly
32 constructed housing in connection with a municipality's fair share
33 obligation is constructed in accordance with this section. That
34 housing, whether in the form of multi-family, single-family, townhouse
35 dwelling units or otherwise, shall be constructed to conform with the
36 barrier free subcode standards adopted by the Commissioner of
37 Community Affairs pursuant to the "State Uniform Construction Code
38 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

39 b. Notwithstanding the exemption for townhouse dwelling units in
40 the barrier free subcode, the first floor of all townhouse dwelling units
41 constructed on or after the effective date of P.L. , c. () (pending
42 before the Legislature as this bill) shall be subject to all of the
43 requirements of the barrier free subcode, and shall include the
44 following features:

- 45 (1) a barrier-free entry to the dwelling unit;
46 (2) an accessible full service bathroom on the first floor;

1 (3) an accessible kitchen on the first floor; and
2 (4) an accessible room which may be used as a bedroom on the
3 first floor.

4 c. No municipal housing element shall be approved or certification
5 granted by the council unless the municipality has complied with the
6 requirements of this section.

7 d. The requirements established by P.L. , c. (C.) (pending
8 before the Legislature as this bill) shall not apply to a project for which
9 an application for development has been deemed complete pursuant to
10 section 5 of P.L.1984, c.20 (C.40:55D-10.3) prior to the effective date
11 of P.L. , c. (C.) (pending before the Legislature as this bill).

12
13 5. This act shall take effect immediately.
14
15

16 STATEMENT
17

18 This bill amends the "Fair Housing Act," P.L.1985, c.222
19 (C.52:27D-301 et al.) to require that all affordable housing newly
20 constructed on or after the bill's effective date conforms with
21 standards that would make it "accessible" for use by physically
22 disabled persons. The requirements of the bill would not apply to a
23 project for which an application for development has been approved
24 pursuant to N.J.S.A.40:55D-10.3.

25 Under the bill, a "disabled person" is someone with a physical
26 disability, infirmity, malformation or disfigurement which is caused by
27 bodily injury, birth defect, aging or illness, including epilepsy and other
28 seizure disorders, and which may include, but is not limited to, any
29 degree of paralysis, amputation, lack of physical coordination,
30 blindness or visual impediment, deafness or hearing impediment,
31 muteness or speech impediment or physical reliance on a service or
32 guide dog, wheelchair, or other remedial appliance or device. The bill
33 defines "accessible" as a housing unit constructed in compliance with
34 the barrier free subcode adopted by the Commissioner of Community
35 Affairs.

36 The bill also requires that one of the public members appointed to
37 the Council on Affordable Housing represents the interests of disabled
38 persons and have expertise in construction accessible to disabled
39 persons.

SENATE, No. 2725

STATE OF NEW JERSEY

211th LEGISLATURE

INTRODUCED JUNE 27, 2005

Sponsored by:

Senator JOSEPH V. DORIA, JR.

District 31 (Hudson)

Senator PETER A. INVERSO

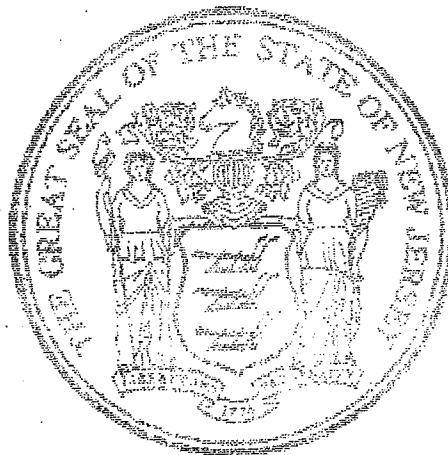
District 14 (Mercer and Middlesex)

SYNOPSIS

Requires new affordable housing units constructed be adaptable for use by elderly and disabled persons.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 9/27/2005)

1 AN ACT concerning housing for elderly and disabled persons,
2 amending P.L.1985, c.222 and supplementing P.L.1975, c.217
3 (C.52:27D-119 et seq.).
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:
7

8 1. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
9 read as follows:

10 4. As used in this act:

11 a. "Council" means the Council on Affordable Housing established
12 in this act, which shall have primary jurisdiction for the administration
13 of housing obligations in accordance with sound regional planning
14 considerations in this State.

15 b. "Housing region" means a geographic area of not less than two
16 nor more than four contiguous, whole counties which exhibit
17 significant social, economic and income similarities, and which
18 constitute to the greatest extent practicable the primary metropolitan
19 statistical areas as last defined by the United States Census Bureau
20 prior to the effective date of this act.

21 c. "Low income housing" means housing affordable according to
22 federal Department of Housing and Urban Development or other
23 recognized standards for home ownership and rental costs and
24 occupied or reserved for occupancy by households with a gross
25 household income equal to 50% or less of the median gross household
26 income for households of the same size within the housing region in
27 which the housing is located.

28 d. "Moderate income housing" means housing affordable according
29 to federal Department of Housing and Urban Development or other
30 recognized standards for home ownership and rental costs and
31 occupied or reserved for occupancy by households with a gross
32 household income equal to more than 50% but less than 80% of the
33 median gross household income for households of the same size within
34 the housing region in which the housing is located.

35 e. "Resolution of participation" means a resolution adopted by a
36 municipality in which the municipality chooses to prepare a fair share
37 plan and housing element in accordance with this act.

38 f. "Inclusionary development" means a residential housing
39 development in which a substantial percentage of the housing units are
40 provided for a reasonable income range of low and moderate income
41 households.

42 g. "Conversion" means the conversion of existing commercial,
43 industrial, or residential structures for low and moderate income

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not
enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 housing purposes where a substantial percentage of the housing units
2 are provided for a reasonable income range of low and moderate
3 income households.

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5 may be required pursuant to the "Municipal Land Use Law," P.L.1975,
6 c.291 (C.40:55D-1 et seq.).

7 i. "Agency" means the New Jersey Mortgage and Housing Finance
8 Agency established by P.L.1983, c. 30 (C.55:14K-1 et seq.).

9 j. "Prospective need" means a projection of housing needs based on
10 development and growth which is reasonably likely to occur in a
11 region or a municipality, as the case may be, as a result of actual
12 determination of public and private entities. In determining
13 prospective need, consideration shall be given to approvals of
14 development applications, real property transfers and economic
15 projections prepared by the State Planning Commission established by
16 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

17 k. "Disabled person" means a person with a physical disability,
18 infirmity, malformation or disfigurement which is caused by bodily
19 injury, birth defect, aging or illness including epilepsy and other
20 seizure disorders, and which shall include, but not be limited to, any
21 degree of paralysis, amputation, lack of physical coordination,
22 blindness or visual impediment, deafness or hearing impediment,
23 muteness or speech impediment or physical reliance on a service or
24 guide dog, wheelchair, or other remedial appliance or device.

25 l. "Adaptable" means constructed in compliance with the technical
26 design standards of the barrier free subcode adopted by the
27 Commissioner of Community Affairs pursuant to section 4 of
28 P.L. . . c. (C. . .) (pending before the Legislature as this bill)
29 and the "State Uniform Construction Code Act," P.L.1975, c.217
30 (C.52:27D-119 et seq.).

31 (cf: P.L.1985, c.222, s.4)

32

33 2. Section 5 of P.L.1985, c.222 (C.52:27D-305) is amended to
34 read as follows:

35 5. a. There is established in, but not of, the Department of
36 Community Affairs a Council on Affordable Housing to consist of 11
37 members appointed by the Governor with the advice and consent of
38 the Senate, of whom four shall be elected officials representing the
39 interests of local government, at least one of whom shall be
40 representative of an urban municipality having a population in excess
41 of 40,000 persons and a population density in excess of 3,000 persons
42 per square mile, at least one of whom shall be representative of a
43 municipality having a population of 40,000 persons or less and a
44 population density of 3,000 persons per square mile or less, and no
45 more than one of whom may be a representative of the interests of
46 county government; three shall represent the interests of households

1 in need of low and moderate housing, one of whom shall represent the
2 interests of the nonprofit builders of low and moderate income
3 housing, and shall have an expertise in land use practices and housing
4 issues, one of whom shall be the Commissioner of Community Affairs,
5 ex officio, or his or her designee, who shall serve as chairperson and
6 one of whom shall be the executive director of the agency, serving ex
7 officio; one shall represent the interests of the for-profit builders of
8 market rate homes, and shall have an expertise in land use practices
9 and housing issues; and three shall represent the public interest, one of
10 whom shall represent the interests of disabled persons and have
11 expertise in construction accessible to disabled persons. Not more
12 than six of the 11 shall be members of the same political party. The
13 membership shall be balanced to the greatest extent practicable among
14 the various housing regions of the State.

15 b. The members shall serve for terms of six years, except that of
16 the members first appointed, two shall serve for terms of four years,
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18 members shall serve until their respective successors are appointed and
19 shall have qualified. Notwithstanding the above, a member appointed
20 to represent the interests of local government shall serve only such
21 length of the term for which appointed as the member continues to
22 hold elected local office, except that the term of a member so
23 appointed shall not become vacant until 60 days after the member
24 ceases to hold that elected office. Vacancies shall be filled in the same
25 manner as the original appointments, but for the remainders of the
26 unexpired terms only.

27 c. The members, excluding the executive director of the agency and
28 the Commissioner of Community Affairs, shall be compensated at the
29 rate of \$150.00 for each six-hour day, or prorated portion thereof for
30 more or less than six hours, spent in attendance at meetings and
31 consultations and all members shall be eligible for reimbursement for
32 necessary expenses incurred in connection with the discharge of their
33 duties.

34 d. The Governor shall nominate the members within 30 days of the
35 effective date of this act and shall designate a member to serve as
36 chairman throughout the member's term of office and until his
37 successor shall have been appointed and qualified.

38 e. Any member may be removed from office for misconduct in
39 office, willful neglect of duty, or other conduct evidencing unfitness
40 for the office, or for incompetence. A proceeding for removal may be
41 instituted by the Attorney General in the Superior Court. A member
42 or employee of the council shall automatically forfeit his office or
43 employment upon conviction of any crime. Any member or employee
44 of the council shall be subject to the duty to appear and testify and to
45 removal from his office or employment in accordance with the
46 provisions of P.L.1970, c.72 (C.2A:81-17.2a et seq.).
47 (cf: P.L.1985, c.222, s.5)

1 3. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
2 read as follows:

3 7. It shall be the duty of the council, seven months after the
4 confirmation of the last member initially appointed to the council, or
5 January 1, 1986, whichever is earlier, and from time to time thereafter,
6 to:

- 7 a. Determine housing regions of the State;
- 8 b. Estimate the present and prospective need for low and moderate
9 income housing at the State and regional levels;
- 10 c. Adopt criteria and guidelines for:

11 (1) Municipal determination of its present and prospective fair
12 share of the housing need in a given region which shall be computed
13 for a 10-year period. Municipal fair share shall be determined after
14 crediting on a one-to-one basis each current unit of low and moderate
15 income housing of adequate standard, including any such housing
16 constructed or acquired as part of a housing program specifically
17 intended to provide housing for low and moderate income households.
18 Notwithstanding any other law to the contrary, a municipality shall be
19 entitled to a credit for a unit if it demonstrates that (a) the municipality
20 issued a certificate of occupancy for the unit, which was either newly
21 constructed or rehabilitated between April 1, 1980 and December 15,
22 1986; (b) a construction code official certifies, based upon a visual
23 exterior survey, that the unit is in compliance with pertinent
24 construction code standards with respect to structural elements,
25 roofing, siding, doors and windows; (c) the household occupying the
26 unit certifies in writing, under penalty of perjury, that it receives no
27 greater income than that established pursuant to section 4 of P.L.1985,
28 c.222 (C.52:27D-304) to qualify for moderate income housing; [and]
29 (d) the unit for which credit is sought is affordable to low and
30 moderate income households under the standards established by the
31 council at the time of filing of the petition for substantive certification;
32 and (e) the unit for which credit is sought, if newly constructed, is
33 adaptable. It shall be sufficient if the certification required in
34 subparagraph (c) is signed by one member of the household. A
35 certification submitted pursuant to this paragraph shall be reviewable
36 only by the council or its staff and shall not be a public record;

37 Nothing in P.L.1995, c.81 shall affect the validity of substantive
38 certification granted by the council prior to November 21, 1994, or to
39 a judgment of compliance entered by any court of competent
40 jurisdiction prior to that date. Additionally, any municipality that
41 received substantive certification or a judgment of compliance prior to
42 November 21, 1994 and filed a motion prior to November 21, 1994 to
43 amend substantive certification or a judgment of compliance for the
44 purpose of obtaining credits, shall be entitled to a determination of its
45 right to credits pursuant to the standards established by the Legislature
46 prior to P.L.1995, c.81. Any municipality that filed a motion prior to
47 November 21, 1994 for the purpose of obtaining credits, which motion

1 was supported by the results of a completed survey performed
2 pursuant to council rules, shall be entitled to a determination of its
3 right to credits pursuant to the standards established by the Legislature
4 prior to P.L.1995, c.81;

5 (2) Municipal adjustment of the present and prospective fair share
6 based upon available vacant and developable land, infrastructure
7 considerations or environmental or historic preservation factors and
8 adjustments shall be made whenever:

9 (a) The preservation of historically or important architecture and
10 sites and their environs or environmentally sensitive lands may be
11 jeopardized,

12 (b) The established pattern of development in the community
13 would be drastically altered,

14 (c) Adequate land for recreational, conservation or agricultural and
15 farmland preservation purposes would not be provided,

16 (d) Adequate open space would not be provided,

17 (e) The pattern of development is contrary to the planning
18 designations in the State Development and Redevelopment Plan
19 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
20 (C.52:18A-196 et seq.),

21 (f) Vacant and developable land is not available in the municipality,
22 and

23 (g) Adequate public facilities and infrastructure capacities are not
24 available, or would result in costs prohibitive to the public if provided;
25 and

26 (3) (Deleted by amendment, P.L.1993, c.31).

27 d. Provide population and household projections for the State and
28 housing regions;

29 e. In its discretion, place a limit, based on a percentage of existing
30 housing stock in a municipality and any other criteria including
31 employment opportunities which the council deems appropriate, upon
32 the aggregate number of units which may be allocated to a
33 municipality as its fair share of the region's present and prospective
34 need for low and moderate income housing. No municipality shall be
35 required to address a fair share beyond 1,000 units within ten years
36 from the grant of substantive certification, unless it is demonstrated,
37 following objection by an interested party and an evidentiary hearing,
38 based upon the facts and circumstances of the affected municipality
39 that it is likely that the municipality through its zoning powers could
40 create a realistic opportunity for more than 1,000 low and moderate
41 income units within that ten-year period. For the purposes of this
42 section, the facts and circumstances which shall determine whether a
43 municipality's fair share shall exceed 1,000 units, as provided above,
44 shall be a finding that the municipality has issued more than 5,000
45 certificates of occupancy for residential units in the ten-year period
46 preceding the petition for substantive certification in connection with
47 which the objection was filed.

1 For the purpose of crediting low and moderate income housing
2 units in order to arrive at a determination of present and prospective
3 fair share, as set forth in paragraph (1) of subsection c. of this section,
4 housing units comprised in a community residence for the
5 developmentally disabled, as defined in section 2 of P.L.1977, c.448
6 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or
7 to be promulgated by the council, to the extent that the units are
8 affordable to persons of low and moderate income and are available to
9 the general public.

10 No municipal housing element shall be approved or certification
11 granted by the council unless the municipality has complied with the
12 requirements of section.

13 In carrying out the above duties, including, but not limited to, present
14 and prospective need estimations the council shall give appropriate
15 weight to pertinent research studies, government reports, decisions of
16 other branches of government, implementation of the State
17 Development and Redevelopment Plan prepared pursuant to sections
18 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and public
19 comment. To assist the council, the State Planning Commission
20 established under that act shall provide the council annually with
21 economic growth, development and decline projections for each
22 housing region for the next ten years. The council shall develop
23 procedures for periodically adjusting regional need based upon the low
24 and moderate income housing that is provided in the region through
25 any federal, State, municipal or private housing program.
26 (cf: P.L.2001, c.435, s.1)

27
28 4. (New section) a. All newly constructed housing for which
29 credit is sought by a municipality seeking to fulfill its fair share
30 housing obligation pursuant to section 7 of P.L.1985, c.222
31 (C.52:27D-307) shall be adaptable; however, elevators shall not be
32 required in any building or within any dwelling unit for the purposes
33 of P.L. , c. (C.) (pending before the Legislature as this bill). In
34 buildings without elevator service, only ground floor dwelling units
35 shall be constructed to conform with the technical design standards of
36 the barrier free subcode. For the purpose of this section, "ground
37 floor" shall mean the first floor with a dwelling unit or portion of a
38 dwelling unit, regardless of whether that floor is at grade. A building
39 may have more than one ground floor.

40 b. Notwithstanding the exemption for townhouse dwelling units in
41 the barrier free subcode, the first floor of all townhouse dwelling units
42 and of all other multifloor dwelling units constructed on or after the
43 effective date of P.L. , c. (C.) (pending before the Legislature as
44 this bill) and for which credit is sought pursuant to section 7 of
45 P.L.1985, c.222 (C.52:27D-307) shall be subject to the technical
46 design standards of the barrier free subcode and shall include the
47 following features:

- 1 (1) a barrier-free entry to the dwelling unit;
- 2 (2) an adaptable full service bathroom on the first floor;
- 3 (3) an adaptable kitchen on the first floor; and
- 4 (4) an adaptable room which may be used as a bedroom on the first
- 5 floor.

6 c. The requirements established by P.L. , c. (C.) (pending
7 before the Legislature as this bill) shall not apply to a project for which
8 an application for development has been deemed complete pursuant to
9 section 5 of P.L.1984, c.20 (C.40:55D-10.3) prior to the effective date
10 of P.L. , c. (C.) (pending before the Legislature as this bill).

11

12 5. This act shall take effect immediately.

13

14

15

STATEMENT

16

17 This bill amends the "Fair Housing Act," P.L.1985, c.222
18 (C.52:27D-301 et al.) to require that all affordable housing newly
19 constructed on or after the bill's effective date conforms with
20 standards that would make it "adaptable" for use by physically disabled
21 persons. The requirements of the bill would not apply to a project for
22 which an application for development has been deemed complete
23 pursuant to N.J.S.A.40:55D-10.3 prior to the effective date of the bill.

24 The bill defines "adaptable" as constructed in compliance with the
25 technical design standards of the barrier free subcode adopted by the
26 Commissioner of Community Affairs pursuant to the "State Uniform
27 Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

28 The barrier free subcode has two types of standards, scoping
29 standards and technical standards. Scoping standards specify what
30 types of construction must be accessible and adaptable; the subcode's
31 exclusions of one-, two-, and three family construction and of
32 townhouse units are part of the scoping standards. The technical
33 standards discuss how to make things accessible or adaptable once
34 they are included within the scoping standards. It is the technical
35 standards to which affordable housing units credited by COAH shall
36 comply under the bill.

37 Notwithstanding this compliance with these technical standards,
38 however, the bill explicitly provides that elevators shall not be required
39 in any building or within any dwelling unit. Moreover, in buildings
40 without elevator service, only ground floor dwelling units must be
41 constructed to conform with the technical design standards of the
42 barrier free subcode. The bill defines "ground floor" as the first floor
43 with a dwelling unit or portion of a dwelling unit, regardless of
44 whether or not that floor is at grade. A building may have more than
45 on ground floor.

46 Under the bill, a "disabled person" is someone with a physical
47 disability, infirmity, malformation or disfigurement which is caused by

S2725 DORIA, INVERSO

9

1 bodily injury, birth defect, aging or illness, including epilepsy and other
2 seizure disorders, and which may include, but is not limited to, any
3 degree of paralysis, amputation, lack of physical coordination,
4 blindness or visual impediment, deafness or hearing impediment,
5 muteness or speech impediment or physical reliance on a service or
6 guide dog, wheelchair, or other remedial appliance or device. The bill
7 defines "adaptable" as a housing unit constructed in compliance with
8 the barrier free subcode adopted by the Commissioner of Community
9 Affairs.

10 The bill also requires that one of the public members appointed to
11 the Council on Affordable Housing represents the interests of disabled
12 persons and have expertise in construction accessible to disabled
13 persons.

SENATE COMMUNITY AND URBAN AFFAIRS COMMITTEE

STATEMENT TO

SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2696 and 2725

STATE OF NEW JERSEY

DATED: DECEMBER 15, 2005

The Senate Community and Urban Affairs Committee reports favorably a Senate Committee Substitute for Senate Bill No. 2696 and Senate Bill No. 2725.

This committee substitute would amend the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) to require that all affordable housing newly constructed on or after the bill's effective date conforms with standards that would make it "adaptable" for use by physically disabled persons. The requirements of the committee substitute would not apply to a project for which a construction permit has not been issued prior to the effective date of the bill.

The committee substitute defines "adaptable" as constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and with certain requirements of the committee substitute.

Although new residential construction that is not comprised of multiple dwellings currently is not required to comply with the barrier free subcode, the committee substitute would require all affordable housing units to meet certain accessibility standards.

Notwithstanding this compliance with these technical standards, however, the committee substitute explicitly provides that elevators shall not be required in any building or within any dwelling unit which fall under the substitute provisions bills. Moreover, in buildings without elevator service, only ground floor dwelling units must be constructed to conform with the technical design standards of the barrier free subcode. The committee substitute defines "ground floor" as the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether or not that floor is at grade. A building may have more than one ground floor.

Under the committee substitute, a "disabled person" is someone with a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, aging or illness, including epilepsy and other seizure disorders, and which may include, but is not limited to, any degree of paralysis, amputation, lack of

physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device. The committee substitute defines "adaptable" as a housing unit constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs.

The committee substitute would increase the membership of the Council on Affordable Housing from 11 to 12 members to accommodate an additional member who would represent the interests of disabled persons and have expertise in construction accessible to disabled persons.

The committee substitute deletes an inappropriate reference and replaces it with a new supplemental section that would achieve the same purpose.

The committee substitute would notwithstanding the exemption for townhouse dwelling units set forth in the barrier free subcode and subject the first floor of all townhouse dwelling units and of all other multifloor dwelling units for which credit is sought to the technical design standards of the barrier free subcode. The following features would be required:

- (1) an accessible entrance to the dwelling unit;
- (2) an adaptable full service bathroom on the first floor;
- (3) an adaptable kitchen on the first floor;
- (4) an accessible interior route of travel; and
- (5) an adaptable room with a door or a casing where a door can be installed which may be used as a bedroom on the first floor.

The committee substitute would except from full compliance with the above provisions a dwelling unit constructed by an entity that can demonstrate that it is site impracticable to meet the requirements. Full compliance will be considered site impracticable only in those rare circumstances when the unique characteristics of terrain prevent the incorporation of accessibility features.

Additionally, if full compliance would be site impracticable, compliance with these requirements would be required to the extent that it is not site impracticable. In that case, any portion of the dwelling that can be made accessible would be made accessible to the extent that it is not site impracticable.

Finally, the committee substitute specifies that if providing an accessible entrance to a dwelling unit would be site impracticable, the unit must be constructed with an adaptable entrance. In the case of a unit or units which are constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance would be installed. The builder of the unit or units would be required to deposit sufficient funds to adapt 10 percent of the affordable units in the project which have not been constructed with accessible entrances with the municipality in which the units are located, for deposit into the municipal affordable

housing trust fund. These funds shall be available for the use of the municipality for the purposes of providing accessible entrances under this committee substitute.

The committee substitute would allow COAH to take such measures as are necessary to assure compliance with the adaptability requirements imposed under this committee substitute, including the inspection of those units which are newly constructed and receive housing credit as provided under this committee substitute for adaptability, as part of the monitoring which occurs pursuant to the Fair Housing Act.

STATEMENT TO
SENATE COMMITTEE SUBSTITUTE FOR
SENATE, Nos. 2696 and 2725

with Senate Floor Amendments
(Proposed By Senator MADDEN)

ADOPTED: JANUARY 5, 2006

These amendments would require the entrance to a dwelling unit to be adaptable rather than accessible in order to be consistent with the language of the rest of the bill. The bill also deletes inconsistent language regarding accessibility, as opposed to adaptability, of a building entrance.

These amendments resolve a sequencing issue involving the requirement that a housing element shall not be approved or certification granted unless the municipality has complied with the bill's provisions. In reality, adaptable construction would not be demonstrated until further along in the approval process and so requiring compliance at the housing element approval stage is premature. Accordingly, the amendments would require compliance by a municipality with the filing of the fair share plan.

Finally, the amendments clarify a confusing reference to accessibility in language addressing site impracticability, providing that any portion of the dwelling that cannot comply shall be made to comply to the extent that it is not site impracticable.

ASSEMBLY, No. 3892

STATE OF NEW JERSEY
211th LEGISLATURE

INTRODUCED MARCH 1, 2005

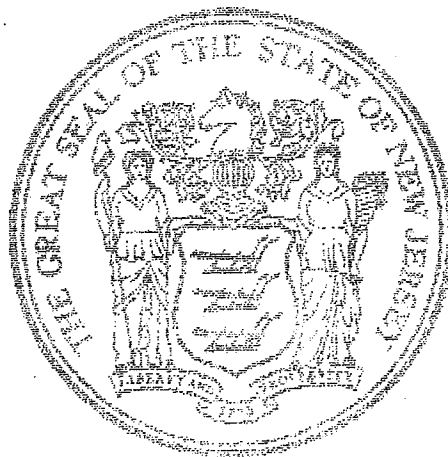
Sponsored by:
Assemblyman **JOHN F. MCKEON**
District 27 (Essex)
Assemblywoman **BONNIE WATSON COLEMAN**
District 15 (Mercer)

SYNOPSIS

Requires new affordable housing units constructed be accessible for use by elderly and disabled persons.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/6/2005)

1 AN ACT concerning housing for elderly and disabled persons and
2 amending and supplementing P.L.1985, c.222 (C.52:27D-301 et
3 al.).

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 4 of P.L.1985, c.222 (C.52:27D-304) is amended to
9 read as follows:

10 4. As used in this act:

11 a. "Council" means the Council on Affordable Housing established
12 in this act, which shall have primary jurisdiction for the administration
13 of housing obligations in accordance with sound regional planning
14 considerations in this State.

15 b. "Housing region" means a geographic area of not less than two
16 nor more than four contiguous, whole counties which exhibit
17 significant social, economic and income similarities, and which
18 constitute to the greatest extent practicable the primary metropolitan
19 statistical areas as last defined by the United States Census Bureau
20 prior to the effective date of this act.

21 c. "Low income housing" means housing affordable according to
22 federal Department of Housing and Urban Development or other
23 recognized standards for home ownership and rental costs and
24 occupied or reserved for occupancy by households with a gross
25 household income equal to 50% or less of the median gross household
26 income for households of the same size within the housing region in
27 which the housing is located.

28 d. "Moderate income housing" means housing affordable according
29 to federal Department of Housing and Urban Development or other
30 recognized standards for home ownership and rental costs and
31 occupied or reserved for occupancy by households with a gross
32 household income equal to more than 50% but less than 80% of the
33 median gross household income for households of the same size within
34 the housing region in which the housing is located.

35 e. "Resolution of participation" means a resolution adopted by a
36 municipality in which the municipality chooses to prepare a fair share
37 plan and housing element in accordance with this act.

38 f. "Inclusionary development" means a residential housing
39 development in which a substantial percentage of the housing units are
40 provided for a reasonable income range of low and moderate income
41 households.

42 g. "Conversion" means the conversion of existing commercial,
43 industrial, or residential structures for low and moderate income

**EXPLANATION - Matter enclosed in bold-faced brackets [thus] in the above bill is not
enacted and is intended to be omitted in the law.**

Matter underlined thus is new matter.

1 housing purposes where a substantial percentage of the housing units
2 are provided for a reasonable income range of low and moderate
3 income households.

4 h. "Development" means any development for which permission
5 may be required pursuant to the "Municipal Land Use Law," P.L.1975,
6 c.291 (C.40:55D-1 et seq.).

7 i. "Agency" means the New Jersey Mortgage and Housing Finance
8 Agency established by P.L.1983, c. 30 (C.55:14K-1 et seq.).

9 j. "Prospective need" means a projection of housing needs based
10 on development and growth which is reasonably likely to occur in a
11 region or a municipality, as the case may be, as a result of actual
12 determination of public and private entities. In determining
13 prospective need, consideration shall be given to approvals of
14 development applications, real property transfers and economic
15 projections prepared by the State Planning Commission established by
16 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.).

17 k. "Disabled person" means a person with a physical disability,
18 infirmity, malformation or disfigurement which is caused by bodily
19 injury, birth defect, aging or illness including epilepsy and other
20 seizure disorders, and which shall include, but not be limited to, any
21 degree of paralysis, amputation, lack of physical coordination,
22 blindness or visual impediment, deafness or hearing impediment,
23 muteness or speech impediment or physical reliance on a service or
24 guide dog, wheelchair, or other remedial appliance or device.

25 l. "Accessible" means a housing unit constructed in compliance
26 with the barrier free subcode adopted by the Commissioner of
27 Community Affairs pursuant to the "State Uniform Construction Code
28 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

29 (cf: P.L.1985, c.222, s.4)

30
31 2. Section 5 of P.L.1985, c.222 (C.52:27D-305) is amended to
32 read as follows:

33 5. a. There is established in, but not of, the Department of
34 Community Affairs a Council on Affordable Housing to consist of 11
35 members appointed by the Governor with the advice and consent of
36 the Senate, of whom four shall be elected officials representing the
37 interests of local government, at least one of whom shall be
38 representative of an urban municipality having a population in excess
39 of 40,000 persons and a population density in excess of 3,000 persons
40 per square mile, at least one of whom shall be representative of a
41 municipality having a population of 40,000 persons or less and a
42 population density of 3,000 persons per square mile or less, and no
43 more than one of whom may be a representative of the interests of
44 county government; three shall represent the interests of households
45 in need of low and moderate housing, one of whom shall represent the
46 interests of the nonprofit builders of low and moderate income

1 housing, and shall have an expertise in land use practices and housing
2 issues, one of whom shall be the Commissioner of Community Affairs,
3 ex officio, or his or her designee, who shall serve as chairperson and
4 one of whom shall be the executive director of the agency, serving ex
5 officio; one shall represent the interests of the for-profit builders of
6 market rate homes, and shall have an expertise in land use practices
7 and housing issues; and three shall represent the public interest, one of
8 whom shall represent the interests of disabled persons and have
9 expertise in construction accessible to disabled persons. Not more
10 than six of the 11 shall be members of the same political party. The
11 membership shall be balanced to the greatest extent practicable among
12 the various housing regions of the State.

13 b. The members shall serve for terms of six years, except that of
14 the members first appointed, two shall serve for terms of four years,
15 three for terms of five years, and three for terms of six years. All
16 members shall serve until their respective successors are appointed and
17 shall have qualified. Notwithstanding the above, a member appointed
18 to represent the interests of local government shall serve only such
19 length of the term for which appointed as the member continues to
20 hold elected local office, except that the term of a member so
21 appointed shall not become vacant until 60 days after the member
22 ceases to hold that elected office. Vacancies shall be filled in the same
23 manner as the original appointments, but for the remainders of the
24 unexpired terms only.

25 c. The members, excluding the executive director of the agency and
26 the Commissioner of Community Affairs, shall be compensated at the
27 rate of \$150.00 for each six-hour day, or prorated portion thereof for
28 more or less than six hours, spent in attendance at meetings and
29 consultations and all members shall be eligible for reimbursement for
30 necessary expenses incurred in connection with the discharge of their
31 duties.

32 d. The Governor shall nominate the members within 30 days of the
33 effective date of this act and shall designate a member to serve as
34 chairman throughout the member's term of office and until his
35 successor shall have been appointed and qualified.

36 e. Any member may be removed from office for misconduct in
37 office, willful neglect of duty, or other conduct evidencing unfitness
38 for the office, or for incompetence. A proceeding for removal may be
39 instituted by the Attorney General in the Superior Court. A member
40 or employee of the council shall automatically forfeit his office or
41 employment upon conviction of any crime. Any member or employee
42 of the council shall be subject to the duty to appear and testify and to
43 removal from his office or employment in accordance with the
44 provisions of P.L.1970, c.72 (C.2A:81-17.2a et seq.).

45 (cf: P.L.1985, c.222, s.5)

1 3. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
2 read as follows:

3 7. It shall be the duty of the council, seven months after the
4 confirmation of the last member initially appointed to the council, or
5 January 1, 1986, whichever is earlier, and from time to time thereafter,
6 to:

7 a. Determine housing regions of the State;
8 b. Estimate the present and prospective need for low and moderate
9 income housing at the State and regional levels;

10 c. Adopt criteria and guidelines for:

11 (1) Municipal determination of its present and prospective fair
12 share of the housing need in a given region which shall be computed
13 for a 10-year period. Municipal fair share shall be determined after
14 crediting on a one-to-one basis each current unit of low and moderate
15 income housing of adequate standard, including any such housing
16 constructed or acquired as part of a housing program specifically
17 intended to provide housing for low and moderate income households.
18 Notwithstanding any other law to the contrary, a municipality shall be
19 entitled to a credit for a unit if it demonstrates that (a) the municipality
20 issued a certificate of occupancy for the unit, which was either newly
21 constructed or rehabilitated between April 1, 1980 and December 15,
22 1986; (b) a construction code official certifies, based upon a visual
23 exterior survey, that the unit is in compliance with pertinent
24 construction code standards with respect to structural elements,
25 roofing, siding, doors and windows; (c) the household occupying the
26 unit certifies in writing, under penalty of perjury, that it receives no
27 greater income than that established pursuant to section 4 of P.L.1985,
28 c.222 (C.52:27D-304) to qualify for moderate income housing; [and]
29 (d) the unit for which credit is sought is affordable to low and
30 moderate income households under the standards established by the
31 council at the time of filing of the petition for substantive certification;
32 and (e) the unit for which credit is sought, if newly constructed,
33 conforms to the barrier free subcode adopted by the Commissioner of
34 Community Affairs pursuant to the "State Uniform Construction Code
35 Act," P.L.1975, c.217 (C.52:27D-119 et seq.) in the manner specified
36 in section 4 of P.L. , c. (C.) (pending before the Legislature as
37 this bill). It shall be sufficient if the certification required in
38 subparagraph (c) is signed by one member of the household. A
39 certification submitted pursuant to this paragraph shall be reviewable
40 only by the council or its staff and shall not be a public record;

41 Nothing in P.L.1995, c.81 shall affect the validity of substantive
42 certification granted by the council prior to November 21, 1994, or to
43 a judgment of compliance entered by any court of competent
44 jurisdiction prior to that date. Additionally, any municipality that
45 received substantive certification or a judgment of compliance prior to
46 November 21, 1994 and filed a motion prior to November 21, 1994 to

1 amend substantive certification or a judgment of compliance for the
2 purpose of obtaining credits, shall be entitled to a determination of its
3 right to credits pursuant to the standards established by the Legislature
4 prior to P.L.1995, c.81. Any municipality that filed a motion prior to
5 November 21, 1994 for the purpose of obtaining credits, which motion
6 was supported by the results of a completed survey performed
7 pursuant to council rules, shall be entitled to a determination of its
8 right to credits pursuant to the standards established by the Legislature
9 prior to P.L.1995, c.81;

10 (2) Municipal adjustment of the present and prospective fair share
11 based upon available vacant and developable land, infrastructure
12 considerations or environmental or historic preservation factors and
13 adjustments shall be made whenever:

14 (a) The preservation of historically or important architecture and
15 sites and their environs or environmentally sensitive lands may be
16 jeopardized,

17 (b) The established pattern of development in the community
18 would be drastically altered,

19 (c) Adequate land for recreational, conservation or agricultural and
20 farmland preservation purposes would not be provided,

21 (d) Adequate open space would not be provided,

22 (e) The pattern of development is contrary to the planning
23 designations in the State Development and Redevelopment Plan
24 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
25 (C.52:18A-196 et seq.),

26 (f) Vacant and developable land is not available in the municipality,
27 and

28 (g) Adequate public facilities and infrastructure capacities are not
29 available, or would result in costs prohibitive to the public if provided;
30 and

31 (3) (Deleted by amendment, P.L.1993, c.31).

32 d. Provide population and household projections for the State and
33 housing regions;

34 e. In its discretion, place a limit, based on a percentage of existing
35 housing stock in a municipality and any other criteria including
36 employment opportunities which the council deems appropriate, upon
37 the aggregate number of units which may be allocated to a
38 municipality as its fair share of the region's present and prospective
39 need for low and moderate income housing. No municipality shall be
40 required to address a fair share beyond 1,000 units within ten years
41 from the grant of substantive certification, unless it is demonstrated,
42 following objection by an interested party and an evidentiary hearing,
43 based upon the facts and circumstances of the affected municipality
44 that it is likely that the municipality through its zoning powers could
45 create a realistic opportunity for more than 1,000 low and moderate
46 income units within that ten-year period. For the purposes of this

1 section, the facts and circumstances which shall determine whether a
2 municipality's fair share shall exceed 1,000 units, as provided above,
3 shall be a finding that the municipality has issued more than 5,000
4 certificates of occupancy for residential units in the ten-year period
5 preceding the petition for substantive certification in connection with
6 which the objection was filed.

7 For the purpose of crediting low and moderate income housing
8 units in order to arrive at a determination of present and prospective
9 fair share, as set forth in paragraph (1) of subsection c. of this section,
10 housing units comprised in a community residence for the
11 developmentally disabled, as defined in section 2 of P.L.1977, c.448
12 (C.30:11B-2), shall be fully credited pursuant to rules promulgated or
13 to be promulgated by the council, to the extent that the units are
14 affordable to persons of low and moderate income and are available to
15 the general public.

16 In carrying out the above duties, including, but not limited to,
17 present and prospective need estimations the council shall give
18 appropriate weight to pertinent research studies, government reports,
19 decisions of other branches of government, implementation of the
20 State Development and Redevelopment Plan prepared pursuant to
21 sections 1 through 12 of P.L.1985, c.398 (C.52:18A-196 et seq.) and
22 public comment. To assist the council, the State Planning Commission
23 established under that act shall provide the council annually with
24 economic growth, development and decline projections for each
25 housing region for the next ten years. The council shall develop
26 procedures for periodically adjusting regional need based upon the low
27 and moderate income housing that is provided in the region through
28 any federal, State, municipal or private housing program.
29 (cf: P.L.2001, c.435, s.1)

30
31 4. (New section) a. The council shall require that all newly
32 constructed housing in connection with a municipality's fair share
33 obligation is constructed in accordance with this section. That
34 housing, whether in the form of multi-family, single-family, townhouse
35 dwelling units or otherwise, shall be constructed to conform with the
36 barrier free subcode standards adopted by the Commissioner of
37 Community Affairs pursuant to the "State Uniform Construction Code
38 Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

39 b. Notwithstanding the exemption for townhouse dwelling units in
40 the barrier free subcode, the first floor of all townhouse dwelling units
41 constructed on or after the effective date of P.L. , c. (C.) (pending
42 before the Legislature as this bill) shall be subject to all of the
43 requirements of the barrier free subcode, and shall include the
44 following features:

- 45 (1) a barrier-free entry to the dwelling unit;
46 (2) an accessible full service bathroom on the first floor;

1 (3) an accessible kitchen on the first floor; and
2 (4) an accessible room which may be used as a bedroom on the
3 first floor.

4 c. No municipal housing element shall be approved or certification
5 granted by the council unless the municipality has complied with the
6 requirements of this section.

7 d. The requirements established by P.L. , c. (C.) (pending
8 before the Legislature as this bill) shall not apply to a project for which
9 an application for development has been deemed complete pursuant to
10 section 5 of P.L.1984, c.20 (C.40:55D-10.3) prior to the effective date
11 of P.L. , c. (C.) (pending before the Legislature as this bill).

12

13 5. This act shall take effect immediately.

14

15

16

STATEMENT

17

18 This bill amends the "Fair Housing Act," P.L.1985, c.222
19 (C.52:27D-301 et al.) to require that all affordable housing newly
20 constructed on or after the bill's effective date conforms with
21 standards that would make it "accessible" for use by physically
22 disabled persons. The requirements of the bill would not apply to a
23 project for which an application for development has been approved
24 pursuant to N.J.S.A.40:55D-10.3.

25 Under the bill, a "disabled person" is someone with a physical
26 disability, infirmity, malformation or disfigurement which is caused by
27 bodily injury, birth defect, aging or illness, including epilepsy and other
28 seizure disorders, and which may include, but is not limited to, any
29 degree of paralysis, amputation, lack of physical coordination,
30 blindness or visual impediment, deafness or hearing impediment,
31 muteness or speech impediment or physical reliance on a service or
32 guide dog, wheelchair, or other remedial appliance or device. The bill
33 defines "accessible" as a housing unit constructed in compliance with
34 the barrier free subcode adopted by the Commissioner of Community
35 Affairs.

36 The bill also requires that one of the public members appointed to
37 the Council on Affordable Housing represents the interests of disabled
38 persons and have expertise in construction accessible to disabled
39 persons.

ASSEMBLY HOUSING AND LOCAL GOVERNMENT
COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3892

STATE OF NEW JERSEY

DATED: DECEMBER 5, 2005

The Assembly Housing and Local Government Committee reports favorably Assembly Committee Substitute for Assembly Bill No. 3892.

This committee substitute amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) to require that all affordable housing newly constructed on or after the bill's effective date conforms with standards that would make it "adaptable" for use by physically disabled persons. The requirements of the bill would not apply to a project for which an application for development has been deemed complete pursuant to N.J.S.A.40:55D-10.3 prior to the effective date of the bill.

The bill defines "adaptable" as constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.).

The barrier free subcode has two types of standards, scoping standards and technical standards. Scoping standards specify the scope of the regulation; that is, what types of construction must be accessible and adaptable. The subcode currently excludes one-, two-, and three family construction and townhouse units from compliance with its provisions. The technical standards are the requirements which must be met to make the construction included within the scope of the regulations accessible or adaptable. Affordable housing units credited by COAH must comply with the technical standards under the bill.

Notwithstanding this compliance with these technical standards, however, the bill explicitly provides that elevators shall not be required in any building or within any dwelling unit for the purposes of the bill. Moreover, in buildings without elevator service, only ground floor dwelling units must be constructed to conform with the technical design standards of the barrier free subcode. The bill defines "ground floor" as the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether or not that floor is at grade. A building may have more than one ground floor. Notwithstanding the exemption for townhouse dwelling units in the barrier free subcode, the first floor

of all townhouse dwelling units and of all other multifloor dwelling units constructed on or after the effective date of the bill and for which credit is sought pursuant to the "Fair Housing Act," P.L. 1985, c.222 (C.52:27D-301 et al.) will be subject to the technical design standards of the barrier free subcode and shall include the following features:

- (1) a barrier-free entry to the dwelling unit;
- (2) an adaptable full service bathroom on the first floor;
- (3) an adaptable kitchen on the first floor; and
- (4) an adaptable room which may be used as a bedroom on the first floor.

Under the bill, a "disabled person" is someone with a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, aging or illness, including epilepsy and other seizure disorders, and which may include, but is not limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device. The bill defines "adaptable" as a housing unit constructed in compliance with the barrier free subcode adopted by the Commissioner of Community Affairs.

The bill also requires that one of the public members appointed to the Council on Affordable Housing represents the interests of disabled persons and have expertise in construction accessible to disabled persons.

This committee substitute is identical to Senate, No. 2725 with technical corrections.

ASSEMBLY APPROPRIATIONS COMMITTEE

STATEMENT TO

ASSEMBLY COMMITTEE SUBSTITUTE FOR

ASSEMBLY COMMITTEE SUBSTITUTE FOR
ASSEMBLY, No. 3892

STATE OF NEW JERSEY

DATED: JANUARY 5, 2006

The Assembly Appropriations Committee reports favorably an Assembly Committee Substitute for Assembly Bill No. 3892 (ACS).

This Assembly Committee Substitute for Assembly Bill No. 3892 (ACS) amends the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et al.) to require that all affordable housing units newly constructed on or after the substitute's effective date conform with standards that would make them "adaptable" for use by physically disabled persons. The requirements of the substitute would not apply to any affected housing project for which a construction permit application has not been declared complete by the enforcing agency prior to the effective date of the bill.

The substitute provides that no housing unit governed by the provisions of the substitute and subject to the barrier free subcode shall be eligible for inclusion in the municipal fair share plan certified by the council unless the unit complies with the provisions of the bill. The substitute grants the council the necessary powers to assure compliance, including the requirement that a noncompliant municipality amend its fair share plan or risk losing substantive certification.

The substitute defines "adaptable" as constructed in compliance with the technical design standards of the barrier free subcode adopted by the Commissioner of Community Affairs pursuant to the "State Uniform Construction Code Act," P.L.1975, c.217 (C.52:27D-119 et seq.) and with certain requirements of the substitute.

The substitute requires all affordable housing units to meet certain accessibility standards; notwithstanding this compliance requirement, however, the substitute explicitly provides that elevators shall not be required in any building or within any dwelling unit governed by the bill's provisions. In buildings without elevator service, only ground floor dwelling units must be adaptable. The substitute defines "ground floor" as the first floor with a dwelling unit or portion of a dwelling unit, regardless of whether or not that floor is at grade. A building

may have more than one ground floor.

Under the substitute, a "disabled person" is someone with a physical disability, infirmity, malformation or disfigurement which is caused by bodily injury, birth defect, aging or illness, including epilepsy and other seizure disorders, and which may include, but is not limited to, any degree of paralysis, amputation, lack of physical coordination, blindness or visual impediment, deafness or hearing impediment, muteness or speech impediment or physical reliance on a service or guide dog, wheelchair, or other remedial appliance or device.

The substitute increases the membership of the Council on Affordable Housing from 11 to 12 members to accommodate an additional member who would represent the interests of disabled persons and have expertise in construction accessible to disabled persons.

The substitute provides that notwithstanding the exemption for townhouse dwelling units set forth in the barrier free subcode, the first floor of all townhouse dwelling units and of all other multifloor dwelling units for which credit is sought will be subject to the technical design standards of the barrier free subcode. The following features will be required:

- (1) an adaptable entrance to the dwelling unit;
- (2) an adaptable full service bathroom on the first floor;
- (3) an adaptable kitchen on the first floor;
- (4) an accessible interior route of travel; and
- (5) an adaptable room with a door or a casing where a door can be installed which may be used as a bedroom on the first floor.

The substitute excepts from full compliance with the above provisions a dwelling unit constructed by an entity that can demonstrate that it is site impracticable to meet the requirements. Full compliance shall be considered site-impracticable only in those rare circumstances where the unique characteristics of terrain prevent the incorporation of accessibility features.

Additionally, if full compliance would be site impracticable, compliance with these requirements for any portion of the dwelling will be required to the extent that it is not site impracticable.

In the case of a unit or units which are constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance will be installed. The builder of the unit or units is required to deposit sufficient funds to adapt 10 percent of the affordable units in the project which have not been constructed with accessible entrances with the municipality in which the units are located, for deposit into the municipal affordable housing trust fund. These funds shall be available for the use of the municipality for the purposes of providing accessible entrances under the provisions of this substitute.

FISCAL IMPACT:

This bill was not certified as requiring a fiscal note.

EXHIBIT D

COAH
ORIGINAL

Fax:609-633-6056

Aug 6 2010 11:13am P002

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NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
9:30 AM WEDNESDAY, JUNE 9TH, 2010
NJ COUNCIL ON AFFORDABLE HOUSING MEETING TO BE HELD AT
NJ HOUSING AND MORTGAGE FINANCE AGENCY
637 SOUTH CLINTON AVENUE
TRENTON, NEW JERSEY 08650

IN RE: MARLBORO TOWNSHIP/MONMOUTH COUNTY

COUNCIL PRESENT: LORI GRIFFA, Chairwoman
MARGE DELLAVECCHIA
SUSANNE WALTERS
JOHN L. WINTERSTELLA
TIMOTHY DOHERTY
ALBERT ELLIS
THEODORE E. KING

ALSO PRESENT: RENEE REISS, Council Secretary
GERRI CALLAHAN, DAG
GEORGE COHEN, DAG
SEAN THOMPSON, Acting Director

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Suite 1200
Philadelphia, PA 19103
(215) 928-9760
133H Gaither Drive
Mt. Laurel, NJ 08054
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Council on Affordable Housing - In Re: Marlboro Township

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1 CHAIRWOMAN GRIFA: Move to agenda two, we
2 only have two oral arguments, a motion for extension
3 of time to re-petition, Marlboro Monmouth County.

4 MS. CONNOLLY: Good morning. We have two
5 motions with regard to Marlboro Township this morning.
6 On April 29th, Ken Biedzynski on behalf of Marlboro
7 Township filed a motion requesting an extension to
8 repetition to file an Amended Housing Element and Fair
9 Share Plan. A number of parties have briefs in
10 opposition to the motion. American Properties, White
11 Entities, Fair Share Housing Center and Property owner
12 of Stattel Farm are all here for oral arguments. And
13 then the second -- maybe, we'll do the first motion
14 first and then we'll do the second motion. So the
15 parties are here for oral argument so Marlboro
16 Township will come up first.

17 CHAIRWOMAN GRIFA: Okay, just for the
18 record, for those parties that will represent Marlboro
19 and the adverse parties on that motion you have five
20 minutes to make your presentation. We will keep time,
21 I will interrupt you. Thank you very much.

22 MR. BIEDZYNSKI: Madam Chair, it might make
23 sense that if I could recommend to you -- I know a
24 number of my colleagues are going to speak against or
25 in favor of the motion, it might make sense if

Council on Affordable Housing - In Re: Marlboro Township

3

1 Marlboro speaks last and since I can respond to them
2 if that's permissible?

3 CHAIRWOMAN GRIFA: I'm sorry, it's your
4 motion, sir, so we're going to invite you to go first.

5 MR. BIEDZYNSKI: Fine, fair enough. I'm
6 also then going to address the motion to dismiss at
7 this time or no?

8 CHAIRWOMAN GRIFA: Since we're going to
9 give you a -- since Maria has separated them we'll
10 give you time to address the first motion which is
11 your motion to extend the time to repetition. So I
12 assume that these are coming to us as sort of
13 cross-motions, you move to extend, they move to
14 dismiss, correct?

15 MR. BIEDZYNSKI: That's correct.

16 CHAIRWOMAN GRIFA: Alright. You'll be able
17 to get -- you'll get the ability to rebut their motion
18 to dismiss after they make their oral argument on
19 that.

20 MR. BIEDZYNSKI: That's fine. Obviously as
21 Maria indicated I represent Marlboro Township and
22 Marlboro is presently before COAH. I have indeed
23 filed a motion on behalf of my client to extend the
24 time to repetition. I think the motion speaks for
25 itself. However, I think to make it somewhat easier

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Council on Affordable Housing - In Re: Marlboro Township

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1 for the Board, I will indicate that I've spoken to my
2 client and that Marlboro is prepared to have its
3 repetition before -- or this New Fair Share Plan, I
4 should say -- before our planning board on July 13th,
5 which I believe it is a Tuesday. And it will be
6 before our township council for presumably adoption on
7 July 15th. I've already seen a draft version of the
8 plan, we've been working on that. So I guess that's
9 all I would have to say at this time with respect to
10 our motion to extend the time to repetition and give
11 you some parameters to work with.

12 Certainty we have comments with respect to
13 the motion to dismiss, I think as it relates solely to
14 the concept of extending the time to repetition, to
15 give you something to work with and give you
16 parameters and those are the parameters that Marlboro
17 is proposing to operate under and I've discussed this
18 with my client.

19 CHAIRWOMAN GRIFA: Thank you. Response to
20 the motion by Marlboro? State your appearance for the
21 record please, five minutes.

22 MR. SHIMANOWITZ: I'll be much less than
23 five. My name is Ronald Shimanowitz, I'm from law
24 firm of Hutt and Shimanowitz. I'm here on behalf of
25 Objector American Properties at Marlboro, LLC, we

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Council on Affordable Housing - In Re: Marlboro Township

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1 oppose the motion for an extension. Just very, very
2 briefly Marlboro has put forth in their papers several
3 reasons in support of the motion for extension. The
4 first being that the COAH needs to decide a waiver
5 motion for allowing monies to be spent from the
6 Affordable Housing Trust Fund. The motion has been
7 denied, that reason is now moot. There are other
8 reasons set forth regarding the new site Marlboro
9 wishes to put in their plan which is the Ambloy Road
10 site including obtaining an appraisal, analyzing the
11 sites, and getting control of the site. Marlboro's
12 own papers state that they knew of the site sometime
13 in October, November of '09, it has been six or seven
14 months since Marlboro knew that they were going to
15 substitute this site to now have the Township stand
16 before you and say, we'll be to the planning boards
17 and to the council sometime in July. That is an
18 awfully long extension when they could have been doing
19 this all along. And perhaps the most compelling
20 reason for denying the extension is all the reasons
21 that we gave in support of motion our motion for a
22 accelerated denial which you will hear next. Thank
23 you.

24 MR. KENT-SMITH: Members of the Board, my
25 name is Henry Kent-Smith, I represent the White

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Council on Affordable Housing - In Re: Marlboro Township

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1 Entities from the firm Fox Rothschild. The White
2 Entities has been attempting to develop a first round
3 1985 settlement site and in 2010, 25 years later,
4 we're still not able to build. In a nutshell this
5 town has multiple opportunities to file complaint
6 plans. I just asked the council to consider one
7 thing, you granted substantive certification to 63
8 municipalities for the compliant third round plans
9 already, and here for the fifth attempt at a
10 compliance second round plan we have Marlboro
11 Township. The precedent established by this council
12 for years is that there are only limited opportunities
13 for municipality and good faith to submit a compliant
14 plan. I submit to the council that five times is more
15 than enough, four times is more than enough.
16 Typically, the council only allows three bites at the
17 apple, in this instance there is no justification
18 whatsoever to grant any further extension. Thank you.

19 MR. ACCISANO: Thank you, Commissioner
20 Grifa and Members of the Council. My name is Frank
21 Accisano, I have offices is 80 West Main Street in
22 Freehold. I represent the Stattel Family that owns
23 the property which Mr. Shimanowitz's client has been
24 interested in developing. I'm relying on the
25 arguments advanced by counsel as to item 2A on the

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Council on Affordable Housing - In Re: Marlboro Township

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1 agenda and I will have oral argument on 2B. I just
2 wanted to note my appearance at this time.

3 CHAIRWOMAN GRIFA: Thank you.

4 MR. BROTMAN: Brian Brotman from Fair Share
5 Housing Center, we're joining in with the arguments
6 that you've already heard opposing the extension and
7 at this time we'd also like to rely on the arguments
8 we've already submitted in our brief. Thank you.

9 CHAIRWOMAN GRIFA: Maria, fellow council
10 members with your permission I'd like to go right to
11 the motion to dismiss before we go to any questions on
12 that. Is that alright?

13 MEMBER WINTERSTELLA: Okay.

14 CHAIRWOMAN GRIFA: Thank you.

15 MS. CONNOLLY: So the second motion was
16 filed by Ron Shimanowitz on behalf of American
17 Properties, they are seeking a denial of Marlboro's
18 pending petition for substantive certification. So
19 Ron will come up again on behalf of American
20 Properties and the other parties also filed briefs in
21 support and Marlboro Township filed in opposition to
22 the motion. Thank you.

23 MR. SHIMANOWITZ: Thank you. This motion
24 as stated is for an accelerated denial. The council
25 has before it fairly substantial briefs from both

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1 sides and I will not belabor those briefs. There are
2 some things I would like to highlight though. The
3 Township in responding to the motion would
4 characterize their actions as the typical experience
5 in COAH a site that has been substituted so they said
6 they need a little more time to work with us. That is
7 far from what has happened in the Marlboro experience.
8 Marlboro has been before COAH and has really done
9 nothing but experience delay after delay and has put
10 before the council extension request after extension
11 request, many of which have been granted by COAH. The
12 bottom line is that COAH gave them an extension to
13 April 30th of this year to file a repetition. And
14 with all the paper you have in front of you and all
15 the arguments that you're going to hear the bottom
16 line is that repetition was not filed by the deadline
17 and that is an important thing to keep in mind.

18 There are some specific items I'd like to
19 address in Marlboro's paper, Marlboro takes the
20 position that, you know, that mediation has worked and
21 everything is sort of okay. The part of that argument
22 is that during this mediation this new site, this
23 Marlboro Road site, was presented to the town and the
24 town now wishes to use it. Well, as I stated in the
25 earlier motion mediation was conducted in late -- mid

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Council on Affordable Housing - In Re: Marlboro Township

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1 to late 2009 Marlboro was presented with this new site
2 in October/November 2009 and certainly has had plenty
3 of time to repetition if it wanted to substitute that
4 site.

5 Additionally, Marlboro is attempting to
6 take credit for some affordable housing advances that
7 they've make since the Bluh and Batelli site that is
8 moving along now. Remember the Bluh and Batelli site
9 was removed by Marlboro from the plan and it was COAH
10 who told Marlboro to put the site back in. The same
11 thing is true of the Entron Site which Marlboro is now
12 trying to take some credit for having moved along the
13 Entron site that went back into plan because of
14 litigation? There's a pattern of behavior here and
15 it's time for COAH to say basically enough is enough.

16 And perhaps the most telling of all is
17 something that Kenneth Smith stated, that you really
18 don't need a lot of paper to meet the analysis. This
19 town received a judgment reposed in 1985, they have
20 been before COAH for 15 years, 15 years and there has
21 been no substantive certification for their second
22 round, or their third round, I think that fact in
23 itself speaks for itself. The other towns have gotten
24 it done, they have made the hard decisions, lived with
25 those decisions and gone forward, Marlboro has chosen

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1 not to. Even as recently as the last COAH deadline of
2 April 30th, 2009, Marlboro has asked for extensions of
3 more than 180 days, I mean, what does that tell you
4 about what they really intend to do in this process?

5 The other thing that was in the papers was
6 a lot of argument about the additional documentation
7 required in the June premeditation report and -- I'm
8 sorry, yes, the premeditation report, that's now moot.
9 Once Marlboro decided that they're going to
10 repetition, once they found this new site, the COAH
11 rules say you must repetition. So the idea of, you
12 know, they were working on additional information
13 that's one thing but the important thing is that they
14 knew they had to repetition, they knew that by their
15 own admission back in October/November and we're six
16 and seven months from that period of time.

17 CHAIRWOMAN GRIFA: Thank you very much.

18 MR. ACCISANO: Thank you again,
19 Commissioner and Members of the Council. Again, Frank
20 Accisano on behalf of the Stattel family. The
21 standard that Mr. Shimanowitz has cited in this brief
22 that is appropriate to accelerate denial where a
23 municipality has not participated in the manner that
24 is designed to expeditiously advance for the
25 substantive certification process and is in effect

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Council on Affordable Housing - In Re: Marlboro Township

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1 undermining the goals of the Fair Housing Act. I
2 really don't know how much more I have to say, it's 25
3 years since 1985 and nothing has happened. Mention
4 has been made by other municipalities and several of
5 those I represent who have petitioned the COAH and
6 received substantive certification and actually
7 provided affordable housing in accordance with the
8 law. How much they feel, I know how they the feel
9 when they consider Marlboro's position. Their
10 question universally is why did we do that, why didn't
11 we sit back like Marlboro and avoid the political
12 bullets and the flack for this last 25 years.

13 Secondly, the unintended consequence, I'm
14 sure, of Marlboro's actions over these last 25 years
15 is to make the council look foolish. How much can you
16 stand, how much can you put off telling Marlboro that
17 it has to perform and letting it go without
18 performing? They've played this shell game, my
19 client's site was part of 2005 fair share submission
20 and on behalf of that site let me just mention to you
21 that if that had been implemented, if Marlboro had
22 followed through in 2005 and 2006 and followed through
23 on the agreement that we had reached with them that
24 the affordable housing in Marlboro on that site today.

25 So to make a long story short if you want

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Council on Affordable Housing - In Re: Marlboro Township

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1 to get affordable housing in Marlboro grant the motion
2 to accelerated denial, expose them to the builder's
3 remedy and it will happen giving them extensions. I
4 don't think it's going to provide you with anything
5 more than delay. Thank you very much.

6 CHAIRWOMAN GRIFA: Mr. Kent-Smith.

7 MR. SMITH: Thank you, Henry Kent-Smith,
8 Fox Rothschild, I represent the Whites entities. Two
9 things just to remind the Council. First the petition
10 that is currently pending upon this council is filed
11 under protest so what does that tell this council of
12 the township's intentions here. Secondly, as I
13 provided this council with an exhausted summary of
14 this council's own precedents and acting to the COAH
15 it has taken for years and years, well established
16 that this council does not tolerate the kind of
17 shenanigans that Marlboro is proposing here. This
18 council has always been firm in establishing deadlines
19 and if they're not, this council has not hesitated to
20 dismiss the municipalities from the council's
21 jurisdiction. The established precedent supports any
22 action that this council has taken and you can rest
23 assured the appellant's division's decision in
24 Fairlawn that whatever action you take will be upheld
25 by the court, that in terms of taking the action of

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1 denying the accelerated denial of substantive
2 certification that will be upheld. The development of
3 affordable housing is a constitutional obligation
4 every municipality has. And I just echo the comments
5 of the prior speakers that there are 63 towns, mine is
6 Plainsboro Township that have gone through the
7 process, we did the political hard work, we built
8 houses. How are we going to go back to our voters of
9 Plainsboro and say folks we just wasted your money.
10 Because he feels that if we did what Marlboro Township
11 did no housing would have been built and we would have
12 saved your tax dollars, instead we did the right
13 thing, it was tough but it was the right thing to do.

14 We have pending now actions in Superior
15 Court that will allow for the immediate construction
16 of the 1985 consent order site and the other site
17 controlled by the Whites entities. And we are
18 confident that the dismissal of the present petition
19 will result in prompt and immediate construction of
20 affordable housing. Thank you very much.

21 MR. BIEDZYNSKI: I guess that leaves me.
22 I'm now going to address the motion to dismiss which
23 is effectively going to seek to remove Marlboro from
24 your jurisdiction. I'm not here not here to discuss
25 1985 and I'm not here to discuss prior plans and

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Council on Affordable Housing - In Re: Marlboro Township

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1 petitions. To the best of my knowledge since I've
2 been representing this town this is the first time
3 this town has ever taken the effort to repetition, not
4 file a new petition, but to repetition and during the
5 time it's before COAH.

6 I've indicated to you before a few moments
7 ago that we have a realistic deadline which I put on
8 the record right in front of the court reporter which
9 I brought here. I do not want to go over, certainly
10 as the other attorneys did not, the papers that have
11 been filed. However, I do want to highlight and bring
12 some new things to your attention. I understand the
13 frustration of the objectors and I understand their
14 positions, I understand that the notion that Marlboro
15 was aware of this property during mediation. I think
16 that everyone understands legally towns have
17 discretion to decide how to revise their plans. Your
18 case law has recognized that the plans do get revised
19 and this site did come through us during mediation.

20 Also, the notion that Marlboro has done
21 nothing since the fall of 2009 is not correct. If you
22 will remember the key distinction we did file a motion
23 for a waiver in January of this year, that motion has
24 been before this council for sometime and it was just
25 recently denied and the message to Marlboro was to

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Council on Affordable Housing - In Re: Marlboro Township

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1 repetition. So I didn't run to the appellant division
2 and then run to someone else, I'm back here to tell
3 you I'm re-petitioning. We tried to file the motion
4 not to remove a developer. I can't speak for prior
5 administrations. We did it to change sites to what we
6 thought would be a better site so I cannot address
7 what has happened in the past with developers being
8 removed from the plan.

9 And your case law does discuss those
10 situations, that is the proverbial shell game, don't
11 be fooled, that's not happening here. Towns have
12 re-petitioned and towns have changed sites and I'm
13 suggesting we're doing nothing out of the ordinary or
14 at least that your case law does not recognize.

15 Now, I want to very, very briefly move on
16 to something new. There has been some discussion here
17 that now Marlboro is attempting to take credit for
18 things that we shouldn't take credit for, well, guess
19 what? We were land based and told we shut out Bluh
20 and Batelli which I will tell you is the most
21 contentious litigation this township ever faced. That
22 project received its preliminary approvals. I will
23 also tell you that Entron which was in litigation
24 right before I was retained and before this new
25 administration came in was in litigation, that

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1 litigation resolved. And I want to read into the
2 record a letter which hasn't been presented to Ms.
3 Connolly which is dated June 4th which is sent from
4 Ron Blumstein who is the general house counsel for
5 Kapland Companies to the township. And it is just to
6 familiarize everyone. Right now the township is
7 negotiating a redevelopment agreement, we're ready for
8 redevelopment, we have already brought that before our
9 council, pay attention to this letter it was --

10 CHAIRWOMAN GRIFA: Two minutes, sir.

11 MR. SHIMANOWITZ: I understand. It is my
12 pleasure meeting with you and your colleague to
13 attempt to review the above records to the
14 redevelopment agreement. As we anticipated and
15 because the township and Kapland have worked together
16 with respect with the redevelopment planned that have
17 been recently and formally adopted by the township
18 counsel there's not much left for to us work out in
19 the context of a redevelopment agreement. We will be
20 providing you with a certain proposed exhibits
21 relating to the project schedule and project cost as
22 well as the other items we've discussed at the
23 meeting. In view of the substantial progress I
24 certainly do not anticipate any difficulties
25 completing the form of a redevelopment agreement

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1 within the next week or two. My point is that these
2 two properties were brought to you by the objectors as
3 where Marlboro had stone walled these two sites and
4 developers. It's not the case, we are working with
5 Ingerman, we've been working actively with Ingerman to
6 move forward with this new site. Now, I will say and
7 I know you're going to limit my time --

8 CHAIRWOMAN GRIFA: I am.

9 MR. SHIMANOWITZ: There are a number of
10 cases that were cited by Mr. Smith in his opposition
11 to the motion or I should say in his support of the
12 motion to dismiss, we disagree with the readings of
13 those cases. I have a brief I can either submit now
14 or I can read -- I would not read into the record, I
15 would summarize it but the problem is Marlboro is not
16 given a chance to apply, we were given specific
17 instruction and no reply briefs would be accepted.

18 CHAIRWOMAN GRIFA: And we'll stand on that.

19 MR. BIEDZYNSKI: I would just state for
20 the record --

21 CHAIRWOMAN GRIFA: The App. Division
22 doesn't take reply briefs either --

23 MR. BIEDZYNSKI: I understand that. But I
24 would just state for the record that the case law
25 cited by the White's objectors we do not agree with.

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1 These were cases where due to my limited time, for
2 example The Little Silver Case in fact was not -- does
3 stand to the authority to remove Marlboro from your
4 jurisdiction. If you recall in The Little Silver Case
5 the town before it was ultimately dismissed that we
6 did advise COAH that it was going to be a
7 re-petitioned and the matter was actually adjourned.

8 CHAIRWOMAN GRIFA: Thank you, sir, your
9 time as expired.

10 MR. BIEDZYNSKI: Thank you.

11 CHAIRWOMAN GRIFA: Any questions or
12 comments with regard to the motion, or the extension
13 of time, or the motion to dismiss?

14 COUNCILMAN WINTERSTELLA: This has been
15 very frustrating to the commissioners and as I think
16 you may know, as a council member sitting here I have
17 to recognize the history of the events that have been
18 discussed and it's very difficult to sit back here and
19 watch this continue. I think, you know, refer it to
20 the task force and for the recommendations for the
21 next meeting. As I say, I speak only for myself
22 obviously, but this is -- Marlboro has been
23 frustrating, I'll put it that way.

24 COUNCILMAN DOHERTY: You know, I think
25 we've heard from frustration and history here

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1 regardless of whether Marlboro is now all of a sudden
2 got religion in the past few years with a new attorney
3 and new efforts and all that stuff, that's nice but
4 there is a time and place when it needs to stop and I
5 would back up the motion to go to a task force only if
6 this was the last time, this has to be -- the line in
7 the sand has to be drawn. There's a lot to evaluate
8 on sites, I mean, some of the sites, the Amboy site,
9 there's questions as to whether that's legitimate, can
10 be legitimately used. There's a lot of information
11 and I think John is willing and board members are
12 willing to give it one last go and I think really need
13 to make a statement that this is -- the sand is gone
14 in the hourglass and the decision has to be made.

15 CHAIRWOMAN GRIFA: I just want to put a few
16 facts onto the record before we resolve this today.

17 Marlboro's initial petition was filed on
18 December 30th, 2008, COAH issued a report in regard to
19 that petition on July 12th, 2009 the deadline was
20 given to Marlboro to provide information on August
21 14th, 2009. The request for the extension was made by
22 the Marlboro was 101 day request for extension, the
23 deadline was December 23rd, 2009, the second extension
24 was requested 67 days to January 29th, 2010. A third
25 extension was requested and granted for an additional

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1 45 days 'til March 15th, 2010. A fourth extension for
2 45 days was requested and granted 'til April 30th,
3 2010. And something in a matter of default, they
4 received the benefit of additional 39 on official
5 extension to today's date July 9th, 2010(sic) and
6 we're here again 297 days after the initial request
7 for extension and the deadlines were given last year.

8 Noting that there's an indication there
9 will be Planning Board and Town Council action next
10 month is all well and good. I would also note for the
11 record as a matter of fact that Marlboro has given the
12 largest affordable housing trust fund in the State of
13 New Jersey in the amount of \$14 million. So I will
14 join with the my fellow council members in referring
15 this to a task force and given the complexity of both
16 the motion and the cross-motion and I would ask for a
17 motion to send it to the task force at this time.

18 COUNCILMAN WINTERSTELLA: So moved.

19 COUNCILWOMAN DELLAVECCHIA: Second.

20 CHAIRWOMAN GRIFA: Roll call?

21 MS. REISS: Dellavecchia?

22 COUNCILWOMAN DELLAVECCHIA: Here.

23 MS. REISS: Mr. Doherty?

24 COUNCILMAN DOHERTY: Yes.

25 MS. REISS: Mr. Ellis?

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Council on Affordable Housing - In Re: Marlboro Township

1 COUNCILMAN ELLIS: Yes.

2 MS. REISS: Mr. King?

3 COUNCILMAN KING: Yes.

4 MS. REISS: Ms. Walters?

5 COUNCILWOMAN WALTERS: Yes.

6 MS. REISS: Mr. Winterstella?

7 COUNCILMAN WINTERSTELLA: Yes.

8 MS. REISS: And Ms. Grifa?

9 CHAIRWOMAN GRIFA: Yes.

10 - - -

11 (Whereupon, the hearing concluded at
12 approximately 10:25 a.m.)

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EXHIBIT E

 ORIGINAL

NEW JERSEY COUNCIL ON
AFFORDABLE HOUSING

HEARING TRANSCRIPT

July 15, 2010

1 MS. GRIFA: A number of you
2 are here on Marlboro, which is, I
3 believe, agenda item No. 4. I thank you
4 for coming and expressing an interest in
5 participation by signing in to be heard
6 on the motion before the panel.

7 I want to ask my fellow
8 Council members to consider adjourning
9 this motion for 30 days. And I'll state
10 my reason for the request as follows: I
11 wear a number of different hats,
12 including the Chair of this panel. But I
13 have been integrally involved with the
14 passage of the State budget. And in
15 particular, I was the only witness called
16 by the State Assembly to address the new
17 fee-cap waiver that has been enacted into
18 law as of Monday. Following my
19 participation of those events I left the
20 state for a ten-day vacation and only
21 returned on Monday.

22 And in all due candor, given
23 the gravity of the issues in that motion,
24 I would ask the indulgence of my fellow

1 Council members to adjourn this for
2 30 days so I will have an opportunity to
3 confer in more detail with counsel and
4 assess the serious nature of the matter
5 at a subsequent meeting of the Council.

6 That being said, would
7 anybody like to be heard with respect to
8 my request?

9 MR. WINTERSTELLAR: First, I
10 want to understand, Madam Chairman, are
11 you asking for a motion to table or a
12 motion to adjourn?

13 MS. GRIFA: I'm not sure
14 that there's necessarily a distinction.

15 MR. WINTERSTELLAR: In my
16 opinion there is. Normally, a motion to
17 table would be a motion to table either
18 indefinitely or definitely to a definite
19 date.

20 A motion to adjourn is
21 normally an adjournment for an unlimited
22 time span.

23 MS. GRIFA: Well, only
24 because after 22 years of legal practice

1 it's impossible to take my lawyer hat
2 off, in my parlance an adjournment is
3 usually for a date certain. So I would
4 ask that this be adjourned to the next
5 board meeting.

6 MR. WINTERSTELLAR: Okay. I
7 did want to understand that.

8 And I might just also state
9 for the record, Madam Chairman, I
10 originally was told earlier today that
11 this was going to be taken off the agenda
12 and I was very upset because I believe
13 something can only be removed from the
14 agenda through action of this Council.
15 I'm glad to see that it is going to be
16 voted on.

17 I will vote against it,
18 however. I feel that Marlboro has been
19 given more than enough time to resolve
20 their problem with us. They have been
21 given ample opportunity to submit
22 information and they have not done it. I
23 think at this point in time to give them
24 another extension, which in effect is

1 what we're doing by adjourning the
2 motion, only compliments them on what
3 they haven't done.

4 It seems to be very unfair
5 that this board -- I understand some of
6 the ramifications of the action if we
7 take action on the resolution. No. 4 and
8 4A and 4B are quite severe on Marlboro
9 and I can understand your willingness to
10 study the situation further,
11 commissioner. And I realize that you
12 weren't able to do that under the time
13 schedule that you had.

14 However, I just -- in my
15 heart I have to feel that, you know, I
16 have a responsibility to feel, in a way,
17 that I should act. And in that case I'm
18 going to vote against this resolution to
19 table. And I just -- I don't think
20 they've earned it and I don't think they
21 deserve it. Thank you.

22 MS. GRIFA: Does anyone else
23 wish to be heard?

24 MR. DOHERTY: I really need

1 to echo John's sentiments here. If, you
2 know, our mission of this organization of
3 COAH -- it's not a great job but it is to
4 oversee affordable housing. And there
5 are many good towns that have come before
6 us and complied with the drawings and
7 restrictions and the guidelines. And I
8 certainly do know the political
9 environment that's out there and what the
10 future may or may not hold.

11 However, Marlboro has not
12 shown to work in good faith. And if
13 there is somebody from Marlboro in
14 administration, I'd like to hear them and
15 talk.

16 Examining the plans that we
17 have and examining the alternatives and
18 those things that are included in here,
19 it leads us, leads myself, not to believe
20 they're serious about compliance and not
21 to really obey the laws in the Fair
22 Housing Act.

23 I don't believe -- I mean
24 this has been over a years' time,

1 extension after extension, request for
2 information after request for
3 information, developer agreements that
4 are not signed, resolutions that are not
5 signed or fully passed. It does not, at
6 least to me, present a town that wants to
7 fully comply with the COAH mandates.

8 And I would also have to
9 agree with my colleague and vote against
10 putting this resolution off today.

11 MS. GRIFA: Just, if I could
12 for the record, our bylaws, the Council's
13 bylaws, invest in the executive director
14 the authority to manage our agenda. And
15 with all due respect to Mr. Thompson, I
16 made this request of him yesterday. So I
17 believe the agenda was put together while
18 I was, in fact, on vacation. And
19 properly so. And there's no one here to
20 blame for this but me. This is
21 completely my request. It is,
22 admittedly, an eleventh-hour request.

23 I appreciate what you
24 gentleman are saying. I have said out

1 loud in this proceeding, and will say
2 again, that some of the factual evidence
3 that has been presented to us, both
4 formally and in motions and cross
5 motions, is deeply concerning. These
6 being the obligations that are to be
7 borne by Marlboro with regard to this
8 issue.

9 I don't want to spend too
10 much time dissecting the differentiation
11 between tabling and adjourning. I'm
12 merely asking that this be postponed
13 until the next regularly scheduled board
14 meeting. I understand that -- so I
15 guess, what I would do is I would make an
16 oral motion on motion No. 4 to table it
17 or adjourn it until the next board
18 meeting.

19 And I would ask for a second
20 on that motion.

21 MR. WINTERSTELLAR: I'll
22 second that motion.

23 MS. GRIFA: Thank you, sir.

24 May we have a role call on

1 that, please?

2 SPEAKER: Mr. Doherty?

3 MR. DOHERTY: No.

4 SPEAKER: Mr. Ellis?

5 MR. ELLIS: Yes.

6 SPEAKER: Ms. Walters?

7 MS. WALTERS: Yes.

8 SPEAKER: Mr. Winterstellar?

9 MR. WINTERSTELLAR: No.

10 SPEAKER: Ms. Grifa?

11 MS. GRIFA: Yes.

12 Mr. Biedzynski?

13 MR. BIEDZYNSKI: Yes.

14 MS. GRIFA: Actually, I was
15 treating them as one in the same.

16 Do we need to revote that,
17 4A and 4B?

18 MR. BIEDZYNSKI: I assumed
19 it was both motions.

20 MS. GRIFA: Mr. Biedzynski,
21 in our last meeting as part of
22 oral argument, or the applications
23 that were made in connection with
24 these motions, you indicated that

1 Marlboro had some activity that
2 was scheduled for this week. And
3 so I'm going to return to the
4 formal agenda but I would ask that
5 you address this Council and
6 report on what has happened. I
7 believe you had events scheduled
8 for the 13th and 15th. Do I have
9 that right?

10 MR. BIEDZYNSKI: Yes. It
11 will take just 30 seconds, if I
12 could.

13 I provided Maria Connolly
14 the matter -- our Fair Share Plan
15 was, in fact, filed with the
16 township on July 1st. I provided
17 a copy to Maria. It was adopted
18 by our planning board on Tuesday,
19 July 13th. And in a matter of
20 hours before our town council to
21 be endorsed tonight, or presumably
22 to be endorsed.

23 MS. GRIFA: I would ask that
24 you communicate that, the result

1 of the meeting's activities, to
2 Mr. Thompson tomorrow morning,
3 please.

4 MR. BIEDZYNSKI: Sure.

5 MR. DOHERTY: Can I just ask
6 of you?

7 MR. BIEDZYNSKI: Sure.

8 MR. DOHERTY: Will there
9 also be a disclaimer stating that
10 it reserves the right to make
11 further changes to the plan prior
12 to filing with COAH? Will that
13 statement be a part of the
14 approval?

15 MR. BIEDZYNSKI: Honestly, I
16 don't have a way of knowing that.
17 If the plan is endorsed tonight, I
18 will tell you there were no
19 changes made before the planning
20 board. They didn't make any
21 changes. So if there's to be a
22 change made to the plans, I don't
23 have a way of knowing that.

24 MR. DOHERTY: The township

1 submitted a letter with a
2 disclaimer stating that there's a
3 right to make further changes to
4 the plan prior to filing with
5 COAH.

6 MR. BIEDZYNSKI: There were
7 no changes -- again, there were no
8 changes made with the planning
9 board. I don't have a way of
10 anticipating whether there will be
11 changes made to that. I don't
12 know if there will be.

13 I will be glad to report to
14 you if there are, though.

15 MR. DOHERTY: Okay.
16 Because, you know, if you have a
17 plan and then you don't have a
18 plan, then you have a plan and you
19 don't have a plan, you really
20 don't have a plan.

21 MR. BIEDZYNSKI:
22 Mr. Doherty, I can assure you we
23 intend to submit a plan and we do
24 have a plan. It's rather thick

1 and comprehensive and we will be
2 hearing, and hopefully endorsing,
3 in a matter of hours.

4 MR. DOHERTY: Okay.

5 MR. BIEDZYNSKI:

6 Madam Chairman, if my motions are
7 not to be heard, then may I leave?

8 MS. GRIFA: I would just ask
9 if there's any other member of the
10 Council that would like to inquire
11 of Marlboro's counsel while
12 they're here? Apparently not.
13 Then I will be willing to excuse
14 you, sir.

15 MR. BIEDZYNSKI: I will
16 communicate with Mr. Thompson.

17 MS. GRIFA: Thank you. I
18 have three individuals who have
19 waited patiently and have appeared
20 here with respect to the Marlboro
21 motion, which are agenda item
22 No. 4.

23 I know at least two of these
24 attorneys and I want to give them

1 my personal apology for not giving
2 them any notice that the motion
3 will not be heard. This probably
4 has been an inconvenience to you
5 and your client.

6 Mr. Kent-Smith, if you would
7 like to be heard, I will entertain
8 you now.

9 MR. KENT-SMITH: Very
10 briefly, the concern that I have
11 regarding the adjournment is the
12 very fact that this game is being
13 played by Marlboro. Sure enough
14 they're going to have a Fair Share
15 Plan adopted two months after the
16 motion papers were completed when
17 this motion originally came before
18 argument. So these types of
19 considerations are the very kind
20 of delay that has led to no
21 affordable housing being built.

22 We appreciate your comments
23 and we ask that the Council act at
24 its August meeting.

1 MS. GRIFA: Thank you, sir.
2 Mr. Shimanowitz. I owe you an
3 apology too.

4 MR. SHIMANOWITZ: To be very
5 brief, I reiterate Mr. Kent's
6 remarks. Our greatest concern
7 here is that the motion was filed
8 on May 3rd due to a missed
9 deadline of April 30th. We have
10 now gone through oral argument,
11 we've gone through a task force.
12 We are now adjourning again, with
13 all due respect, to the
14 commissioner's schedule. We do
15 understand that.

16 But we're playing the delay
17 game here. And our concern is
18 that that delay is not going to be
19 utilized by Marlboro to sort of
20 clean up its act. That was the
21 purpose of the motion and we
22 simply ask you to keep that in
23 mind. This delay of months should
24 not give Marlboro a back to work

1 to correct its misdoings. Thank
2 you.

3 MS. GRIFA: Mr. Accusiano.

4 MR. ACCUSIANO: Yes. I'll
5 show you what brief really is.

6 On behalf of the Marlboro
7 claim, when is the August meeting?

8 MS. GRIFA: August 11th

9 MR. ACCUSIANO: Thank you
10 very much. I'll just repeat what
11 Mr. Shimanowitz and Mr. Kent-Smith
12 have said with regard to the
13 motion and we look forward to your
14 decision then. Hopefully it will
15 be corrected. Thank you very
16 much.

17 MS. GRIFA: Thank you, sir.

18

19 (Hearing concluded.)

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CERTIFICATE

I HEREBY CERTIFY that the
tape transcription was transcribed by me
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NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

* * * *

Thursday, September 23, 2010
Trenton, New Jersey

* * * *

BOARD MEMBERS PRESENT:

- CHARLES RICHMAN, Chairman
- TIMOTHY DOHERTY, Commissioner
- ALBERT S. ELLIS, Commissioner
- THEODORE E. KING, JUNIOR, Commissioner
- ANTHONY MARCHETTA, Commissioner
- SUZANNE WALTERS, Commissioner
- JOHN L. WINTERSTELLA, Commissioner

- PRESENT:
- SEAN THOMPSON, Acting Director
 - GERRI CALLAHAN, Deputy Attorney General
 - GEORGE COHEN, Deputy Attorney General
 - RENÉE REISS, Council Secretary
 - PAUL SCHLAFLIN, Resident of Marlboro
 - LOUIS, RAINONE, Esquire
 - HENRY L. KENT-SMITH, Esquire
 - JONATHAN BURNHAM, Esquire
 - KEVIN WALSH, Esquire
- HELD AT: 101 South Broad Street
Trenton, New Jersey

REPORTED BY:

Renée Helmar, Shorthand Reporter
* * * *

CLASS ACT COURT REPORTING AGENCY
Registered Professional Reporters

1420 Walnut Street	133 Gaither Drive
Suite 1200	Suite H
Philadelphia, PA 19103	Mt. Laurel, NJ 08054

1 (Whereupon, the proceedings
2 began at approximately 1:50
3 p.m.)

4 MR. CHAIRMAN: Good afternoon, everyone.
5 May we begin with the Pledge of Allegiance.

6 (The Pledge of Allegiance was
7 recited.)

8 MR. CHAIRMAN: This is to advise the
9 general public and to instruct that it be
10 recorded in the minutes in compliance with
11 Chapter 231 of the Public Laws of 1975,
12 entitled, "Open Public Meetings Act of New
13 Jersey Council on Affordable Housing," and
14 delivered to the Office of the Secretary of
15 State and caused to be posted on the bulletin
16 board located outside of the Secretary of
17 State's Office at the State House in Trenton,
18 mailed to The Newark Star-Ledger, The Camden
19 Courier Post, The Asbury Park Press and The
20 Times, notice setting forth the time, date and
21 location of this meeting..

22 Members of the press will be permitted to
23 take photographs at today's meeting so long as
24 it is not distracting or disruptive.

25 Any member of the public who wishes to

1 address the Council will be given the
2 opportunity to do so before the Council
3 adjourns for the day.

4 May I have roll call.

5 MS. REISS: Mr. Richman?

6 MR. CHAIRMAN: Here.

7 MS. REISS: Mr. Doherty?

8 MR. DOHERTY: Here.

9 MS. REISS: Mr. Ellis?

10 MR. ELLIS: Here.

11 MS. REISS: Mr. King?

12 MR. KING: Here.

13 MS. REISS: Mr. Marchetta?

14 MR. MARCHETTA: Here.

15 MS. REISS: Ms. Walters?

16 MS. WALTERS: Here.

17 MS. REISS: Mr. Winterstella?

18 MR. WINTERSTELLA: Here.

19 MR. CHAIRMAN: Quorum present, as is our
20 practice, we have public comment period for
21 items on the agenda.

22 One individual so far has signed up,

23 Mr. Paul Schlaflin.

24 MR. SCHLAFLIN: My name is Paul Schlaflin;

25 I'm here from Marlboro. I would like to speak

1 to you about the affordable housing issue in
2 Marlboro from a very unique perspective.

3 I live in one of Marlboro's few affordable
4 housing communities.

5 In fact, I am the president of the
6 Homeowners' Association. I have experience
7 with three administrations regarding affordable
8 housing.

9 In the late '90s, when my community's
10 lease was coming up for renewal, I realized
11 that the people in charge of my community
12 weren't doing their due diligence and I got
13 involved.

14 And I first started dealing with Matt
15 Scannapieco's administration, who I refer to as
16 Matt Scam The People, because he certainly did.

17 And during his 12 years of corrupted
18 administration, thousands upon thousands upon
19 thousands of homes were built in Marlboro.
20 There was no affordable housing plan; there was
21 no provision for affordable housing; no
22 affordable housing was built, yet they were
23 under the supervision of COAH.

24 Matt Scannapieco sat in offices and lied
25 to me about what he was going to do for my

1 community. He did nothing. What he almost did
2 was take the land out from under us.

3 At some point, all the adjacent land was
4 rezoned for mobile home community, and Anthony
5 Scalero was the contract purchaser for all that
6 land.

7 Fortunately, we never saw a plan come to
8 fruition there, the corruption broke in
9 Marlboro, the arrests were made and we got a
10 bright, shiny new mayor.

11 Unfortunately, he was more concerned with
12 being a crime fighter than a mayor.

13 So, for his four years, it was four years
14 of buffoonery, and no plan was ever certified
15 here.

16 He wanted to do something easy, so he
17 would jump from one builder and say, here's our
18 plan; no good. Another builder, here's our
19 plan; no good. Another one, here's our plan.
20 And at the end of the day all he accomplished
21 was bringing more objectors in and getting more
22 builders involved.

23 There is a builder now involved in this,
24 American Properties. All they did was submit a
25 very loose conception for a piece of property

1 in town, and suddenly they're entitled to build
2 and destroy our town. I don't think so.

3 But I went through 12 years of absolute
4 corruption with thousands and thousands of
5 homes were built and no affordable housing was
6 dealt with and COAH was there. And then there
7 was four years of buffoonery.

8 And not only was there no affordable
9 housing produced, but that mayor tried to
10 remove us also from our land, not for
11 corruption, but out of a sense of elitism.

12 And many of the faces that I see here
13 today, I see when I was coming out here seven
14 years ago and six years ago and telling you
15 what was going on and nothing happened. And
16 COAH was there the whole while and nothing
17 happened.

18 Now, the John Hornik administration comes
19 in, and for the very first time there is a hand
20 extending back to the one that I extended to
21 the two previous administrations.

22 And we sat down and over two years time we
23 hammered out a wonderful lease for the people
24 of my community. It gives them some long-term
25 security, it brought the rent up to where it

1 was palatable to the other residents in the
2 town. Good things were happening.

3 This administration went out and they
4 started to look and they started to purchase
5 properties for a hundred percent affordable
6 units.

7 This is following, again, 12 years of
8 corruption and thousands and thousands of homes
9 with nothing being done and COAH looking the
10 other way. And four years of buffoonery with
11 nothing getting done and COAH looked the other
12 way.

13 And now we hear an administration that's
14 doing everything they should, and in the middle
15 of them trying to do the right thing, COAH
16 shuts down because a group that is so concerned
17 for people getting affordable housing
18 challenged the rules and put everything on hold
19 and, again, no affordable housing was built.

20 And then the governor shut COAH down for a
21 period of time and threatened to disband them.
22 And nothing gets built and nothing gets done,
23 and yet my town kept moving ahead with
24 ordinances and trying to do the right thing.

25 So, my question to you is, after 12 years

1 of corruption and thousands and thousands of
2 homes with no affordability, and you did
3 nothing. And four years of buffoonery, there
4 is no affordable housing and you did nothing.
5 Why, dear God, have you chosen now to throw my
6 town out of the program when they're moving in
7 the right direction?

8 Now, I understand that you're in a bad
9 position because you have to look at Marlboro
10 for 25 years. And for 25 years Marlboro
11 doesn't have a very good history. I've lived
12 through it. I know it. I understand that they
13 don't have a good history.

14 You have an objector here, Mr. Weitz, he's
15 been dragged through the mud for 20 years. I
16 understand something has to be done to
17 facilitate Mr. Weitz's construction, but
18 American Properties has no claim on my town.
19 Kaplan Industry has no claim on my town. And,
20 please, don't throw my town to these wolves.
21 Let my town back in, they're doing the right
22 thing.

23 If you could have looked at just the last
24 two and a half years, you could not have
25 possibly made this decision, because in the

1 past two and a half years my town has been
2 moving forward on affordable housing.

3 And I'm not an attorney, I am a resident
4 of the town. I love my town, and I happen to
5 be a member of an affordable housing community
6 that has insight into the past and has insight
7 to what's going on today that you're just not
8 going to hear anywhere else.

9 I really hope that you listen, because
10 what you're doing to Marlboro now is wrong and
11 it is not going to create affordable housing.
12 Getting us back into the program and letting us
13 move forward is going to produce that.

14 So, if the goal of this agency is to
15 create affordable housing, this agency has but
16 only one choice, and that is to allow my town
17 back into the program.

18 Thank you for your time.

19 MR. CHAIRMAN: Thank you for your
20 comments.

21 Any other members of the public wish to
22 address the Board prior to oral arguments?

23 (No response.)

24 MR. CHAIRMAN: Then we'll proceed with the
25 item on the agenda, Motion: Oral Argument;

1 Motion For a Stay Pending Appeal of the Effect
2 of COAH's September 10th -- September 8th, 2010
3 Decision Dismissing Marlboro Township's
4 Petition of Substantive Certification.

5 Counsel for Marlboro, we have your papers
6 as we have the Reply Briefs from the parties.

7 So, I'm going to ask you to be limited to
8 three minutes, and I would ask, if you can, to
9 concentrate on the issues in addition to what
10 are already in your papers.

11 MR. RAINONE: I will do that. And I
12 thought about what I needed to say here today,
13 and thank you for giving me only three minutes,
14 because if you gave me more than that I would
15 talk for a long time.

16 And I don't think it is necessary for me
17 to come and talk about what the legal standards
18 are to grant the Motion for a Stay, I don't
19 think that's what's important. I think what's
20 important is the fact that Marlboro filed this
21 Motion for a Stay because it's -- it's another
22 demonstration by the town, by the Hornik
23 administration that they want to be here, that
24 they want to participate in the COAH process.

25 And Mr. Schlaflin, who comes to all of our

1 council meetings, is a -- is a passionate
2 advocate for affordable housing. And part of
3 what I'm here to tell you ties into what he
4 told you, which is, his development is a good
5 example, it was a political football for many
6 years.

7 The Hornik administration, however, got
8 the negotiations done, got the ordinance
9 adopted, and I'm proud that we signed the lease
10 now so that this -- all of the units in this
11 development, the 25 units, are now restricted
12 affordable housing units for the next 30 years.

13 We -- we know we needed to get that done;
14 we did it. And it's one of the things that we
15 continue to do even though this process -- even
16 though we were summarily dismissed to hear from
17 COAH, we kept moving on.

18 The Entron Development, all of the
19 legislation is done.

20 That agreement was signed September 10th.
21 That is -- that is 50 more units.

22 The Marlboro Motor Lodge site and the
23 Amboy Road site, we've passed the ordinances
24 authorizing those -- those purchases.

25 We have a contract that's in attorney

1 review on the motor lodge site, and we have
2 appraisers out appraising the Amboy Road site
3 so that we can enter into contract there.
4 We've been negotiating with -- with that
5 property owner.

6 So -- so, even your -- even your decision,
7 which was harsh and -- and maybe -- and some of
8 it deservedly so, not for what the Hornik
9 administration did, but for history, even your
10 decisions, you know, until recently there
11 hasn't been a lot of progress, but -- but there
12 has been a lot of progress recently, and the
13 Hornik administration is committed to doing
14 that going forward.

15 Now, why did we come back to you today?

16 Well, because -- since your decision we've
17 had three Builder's Remedy Suits filed. We
18 may, in fact, have more Builder's Remedy Suits,
19 and we'll have no choice but to go to court and
20 fight them. And -- and I've had the experience
21 of doing that and being here, and my experience
22 is -- is, that anybody who's really interested
23 in the process moving forward doesn't think
24 that being in court is a good idea, because
25 that's really what will delay it.

1 If you Stay your decision, we'll be back
2 here.

3 We will -- we will -- we'll respond and
4 work with COAH as if that decision wasn't
5 there. You can condition the Stay however you
6 would like.

7 My impression would be that we would
8 immediately meet with Staff and say, okay, what
9 do we need to -- what do we need to do to get
10 our petition complete? What do we need to do
11 to move forward?

12 We'll give -- what I told you about today,
13 we'll give you the proof of those things. If
14 there's more information, we'll give you that
15 information.

16 But only if we're here can we continue
17 that progress, because we're going to -- this
18 process is going to backslide.

19 And I'm not here to play a blame game as
20 to how it is that we got here, but we're here,
21 we're committed to going forward.

22 And I would suggest that if it wasn't for
23 those -- those years that Mr. Schlaflin talked
24 about prior to the Hornik administration, the
25 manner in which this has proceeded over the

1 course of the 18 months wouldn't seem so
2 egregious, it would seem like a municipality
3 trying to move forward.

4 We have to play catch up, and we have to
5 do that.

6 And I won't kid you by telling you that
7 all of the public rhetoric about -- about this
8 agency and about affordable housing over the
9 last year makes it very difficult for
10 municipalities to move forward, because people
11 don't understand why every meeting we have
12 something on about affordable housing, and we
13 do, because that process is moving forward.

14 We have people stand up all the time and
15 say, why are you doing this? This process
16 stopped a long time ago. Not as far as we're
17 concerned. We continue to pass ordinances,
18 negotiate redevelopment agreements and
19 negotiate lease agreements to get deed
20 restrictions to buy property, because we need
21 to move forward.

22 So -- so, I'm here today, first, to thank
23 you for holding this special meeting for this
24 purpose. I do appreciate it. I know that
25 you're all busy, and Mr. Richman's comment,

1 that I know that you're not highly paid for
2 being here.

3 But we certainly appreciate it. We
4 appreciate the Staff's work with us. We'd like
5 to get back -- we'd like to get back to the
6 table.

7 I'm here today as the township attorney,
8 not because I want to supercede Mr. Biedzynski,
9 who's done yeomen work here, but as a town
10 attorney myself, Ed Boccher, my partner, who we
11 all know very well, are going to take a more of
12 a hand in this because we're allocating
13 whatever resources the municipality has to
14 getting this job done, the job to getting our
15 plan approved, get affordable housing built.
16 And we think being here is the only way we can
17 realistically do that.

18 And, once again, thank you for hearing me
19 today.

20 MR. CHAIRMAN: Sir, did you identify
21 yourself for the court reporter?

22 MR. RAINONE: I did. I'm sorry. Louis
23 Rainone from Decotiis, FitzPatrick and Cole.

24 MR. CHAIRMAN: Yes.

25 MR. WINTERSTELLA: Yeah. I have a

1 question. I don't know if the Stay is going to
2 be approved or not today, but if it is
3 approved, it's my understanding that Marlboro
4 would still be within any COAH rules --

5 MR. RAINONE: Correct.

6 MR. WINTERSTELLA: -- as far as --
7 particularly in the area of the expenditure of
8 development fee money --

9 MR. RAINONE: Correct.

10 MR. WINTERSTELLA: -- is that your
11 understanding?

12 MR. RAINONE: That's my understanding.

13 As far as I'm concerned, if you grant the
14 Stay it, kind of, resets the clock back to
15 where it is that we were dismissed. We'll
16 discuss with Staff exactly what that means.

17 But as far as I'm concerned, we're back in
18 the process. And we'll -- we'll participate
19 however it is that you would like us to
20 participate.

21 MR. WINTERSTELLA: For the record, I would
22 like to say, I get paid a lot less than Mr.
23 Richman for being here.

24 MR. DOHERTY: I would just like to
25 question, if I may?

1 MR. RAINONE: Sure.

2 MR. DOHERTY: I'm at a loss for words,
3 sir. I mean, the evidence and the actions of
4 Marlboro, you lied, the promises that you're
5 coming here before us to make, you haven't put
6 forth a plan. You got to put forth a genuine
7 plan. You haven't -- I mean, there is so many
8 things missing and so many holes in Marlboro's
9 responses to action.

10 Now you come to us only because we voted
11 you out of Substantive Certification.

12 I mean, it's very hard for me to believe
13 that you and I both want affordable housing,
14 and that your mayor, who says, and I quote in a
15 newspaper article with the Asbury Park Press,
16 "'The Christy administration, as far as I'm
17 concerned, has turned its back on Marlboro
18 residents, even after calling for the same
19 agency to be dissolved,' Hornik said. 'With
20 the numbers COAH and developers were forcing
21 down Marlboro's throats, we may do better in
22 court.'"

23 The mayor said he's prepared to fight.
24 The township has \$13 million in a trust fund
25 supported by developer fees, that may be used

1 for any expenses associated with affordable
2 housing, including litigation.

3 That doesn't sound to me like Marlboro
4 wants to cooperate with COAH.

5 MR. RAINONE: Well, I don't know whether
6 or not it necessarily moves the ball forward
7 here, in all due respect, to read people's
8 quotes from the newspaper.

9 And the reason is, because there is a lot
10 of things said about this process by mayors and
11 by people in the administration that don't
12 necessarily reflect what the end of this
13 process is actually going to be.

14 And I think what the mayor was saying
15 there, that if we have to go to court, we'll
16 fight for the right plan in court if we can't
17 be in COAH.

18 What I --

19 MR. DOHERTY: You can't -- you can't use
20 affordable housing trust fund to do that.

21 MR. RAINONE: Of course not.

22 So -- but we can use it -- we can try to
23 use that money to further affordable housing,
24 which is what I think the mayor --

25 MR. DOHERTY: That's correct.

1 MR. RAINONE: -- meant to say.

2 I didn't come here promising -- telling
3 you that I was going to promise anything. I
4 gave you a list of things that we already done,
5 some of which was information that your
6 Decision said we haven't supplied you yet.
7 What's the status of the Entron development?

8 Well, I have the Entron Redevelopment
9 Agreement. It is signed, sealed, delivered.
10 It's got a time frame on the back of it as to
11 when the applications are going to be filed.
12 It provides 50 affordable housing units.

13 Mr. Schlaflin is here, I've got the lease
14 for his community, it's 25 affordable housing
15 units.

16 That was something that they -- that the
17 Staff asked for.

18 So, what I'm telling you is, that the
19 things that you say we haven't given you, we
20 continue to produce even though we are where we
21 are. But we want to be here. If we didn't
22 want to be here, if -- I would just be in
23 court.

24 MR. DOHERTY: Well --

25 MR. RAINONE: It is simple -- it is

1 simple -- I can't prove it any other way by --
2 other than, why would I come here if I didn't
3 want to be part of the process?

4 MR. DOHERTY: Well, there is obviously
5 very good reasons why you would come here and
6 present what you're presenting today, is to
7 prolong the process and further delay any
8 results that would happen.

9 You know, affordable housing will happen
10 with Builder's Remedy and lawsuits that occur.
11 And sometimes good housing does come of it. It
12 may not be exactly what the town wants, but we
13 move from A to B. Right now you're not moving
14 from A to B. Not in my eyes.

15 MR. RAINONE: All I can say is, in the
16 short term, my experience has been starting
17 from square one with Builder's Remedy suits in
18 September 2010. The process will be much more
19 delayed than it would be if we stayed here with
20 all of the history that we have with COAH and
21 their Staff, get this plan straightened out in
22 the next 60 days, or however many days, so that
23 you have a completed plan for you and go
24 through this review process.

25 I just think we can agree to disagree

1 about that, but I think that, you know, going
2 through the process of waiting for all of the
3 shoes to drop on the Builder's Remedy suits,
4 and then a judge in Monmouth County deciding
5 who the special master is going to be and us
6 going through, by the way, a mediation process
7 that will mirror what your process would have
8 been, except it will start six months later
9 than it would if our application was complete
10 here.

11 MR. DOHERTY: But maybe it will be
12 genuine. Maybe it will be something that is
13 sincere. Maybe it will be something that the
14 town will really follow through on.

15 I mean, those are all questions of
16 judgment.

17 MR. RAINONE: They are, and I appreciate
18 it. And I think it is a little bit of a new
19 day in Marlboro.

20 And I think that Mayor Hornik's
21 frustration as expressed in that quote, not
22 withstanding, I think there has been some
23 progress made, certainly over the course of
24 this year, that we would like to continue on.

25 MR. CHAIRMAN: Mr. Marchetta.

1 MR. MARCHETTA: Do you have an idea of the
2 time frame as to when they would be putting
3 forth with a plan that could meet this
4 certification process?

5 MR. RAINONE: My -- my -- my suggestion to
6 Mr. Biedzynski today when we were talking is,
7 that I would like to sit with Staff as quickly
8 as we can and -- and find what information they
9 need to get it -- if it were up to me, I would
10 like the plan to be deemed complete so that we
11 could get to the mediation process as quickly
12 as possible, because that's going to drive a
13 lot of what happens with the plan.

14 And I know that there is the issue with
15 regards to the -- to the State Planning
16 Commission numbers and, you know, we would have
17 to, if the desire is that we come back with --
18 using COAH's numbers instead of those numbers,
19 we'll have to do that. And we'll get the plan
20 done as quickly as -- as practically possible.

21 And the reason for that is, I have to get
22 the Planning Board to vote on it; I have to get
23 the council to vote on it, and I can't publicly
24 advertise and get that done the day after
25 tomorrow.

1 So, we would -- we'd get back here as
2 quickly as -- as, you know, Staff can give us
3 our marching orders.

4 MR. MARCHETTA: Are we talking about
5 weeks, or months?

6 MR. RAINONE: Oh, no. Absolutely. Right.
7 Absolutely.

8 MR. MARCHETTA: Mr. Thompson, what do you
9 have most outstanding at this point?

10 MR. THOMPSON: I think the decision really
11 points out what was outstanding, I think, they
12 -- was the Entron agreement. But it really
13 goes to the projection, I think, at this point
14 --

15 MR. RAINONE: Correct. True.

16 MR. THOMPSON: -- the fair share that's
17 being addressed.

18 MR. RAINONE: Right.

19 MR. MARCHETTA: And that, in your mind,
20 could be worked out in the next week or month?

21 MR. THOMPSON: I believe so.

22 MR. MARCHETTA: Thank you.

23 MR. CHAIRMAN: Any other questions or
24 comments? I was going to say of the witness.

25 (No response.)

1 MR. CHAIRMAN: Thank you.

2 MR. RAINONE: Thank you.

3 MR. KENT-SMITH: Henry Kent-Smith, firm of
4 Fox Rothschild, on behalf of Weitz Entities.

5 Mr. Chairman, I will be very brief.

6 MR. CHAIRMAN: Thank you.

7 MR. KENT-SMITH: The very fact that I'm
8 hearing what I'm hearing today is disgusting.
9 It's disgusting.

10 Your mediator and my client and this town
11 mediated an agreement for a site that was in
12 the 1985 plan; 1985.

13 This town denied my site plan. This town
14 has continually held my client, Weitz Entities,
15 hostage.

16 So, begging your mediator, begging my
17 client to meet with this town at their request
18 to sit in the mediation session and end the
19 mediation session with a deal. We had an
20 agreement. We got a deal. We worked it out on
21 September 10th, 2009.

22 The agreement was never signed. It was
23 reneged by the Hornik administration. It was
24 reneged by the very people who are sitting,
25 telling you now that, oh, we'll do it right

1 this time after 6 tries and 15 years plus. Oh,
2 we're the good guys.

3 These people dragged my client down to
4 Marlboro Township at the request of your
5 mediator to conduct the mediation session. We
6 had a deal. We signed it up. We signed the
7 agreement, they didn't.

8 Why? Politics. Pure and simple.

9 For some reason they don't like my client.
10 We will not participate in a COAH
11 mediation process if we don't know that in the
12 end of the process we can get an agreement.

13 If I -- how am I going to explain to my
14 client, yeah, we had a deal. We went through
15 the process. We had an agreement, and now
16 we're going to do this again.

17 I'm sorry. I am a bit upset because of
18 what we went through. And to think that I have
19 to subject my client to that, yet, again. I
20 don't know if I could do such a thing. I don't
21 know if my client would do such a thing.

22 And as for all of this, oh, yeah, we're
23 going to prepare a new plan. They knew what
24 the regulations are. Your regulations are
25 crystal clear. There's no doubt about what

1 your regulations say.

2 And to say, oh, yeah. Okay. Well, yeah,
3 you're only 256 units short because you didn't
4 follow our regulations on the fifth Fair Share
5 Plan that you're preparing, presenting to this
6 Council.

7 It's just -- it simply is not possible for
8 me to be able to go back to my client and say,
9 oh, well, guess what; we got to go through this
10 COAH process, yet, again, for a site that was
11 agreed to in 1985, and a second site that was
12 agreed to as part of this town's plan since
13 1995. And of all of the sites, for some
14 reason, ours aren't built.

15 And it's because, every time we try to do
16 something, this town pulls the rug out, denies
17 the site plan application, changes the rules,
18 wants to modify. Let's change this; let's do
19 that.

20 The time has come for this Council to
21 simply say, enough.

22 I was involved in the Hillsborough matter.
23 This Council, in its wisdom said to
24 Hillsborough, you're not abiding by your plan,
25 we're going to revoke your Substantive

1 Certification.

2 And to this day, housing has been built.
3 Hillsborough went through the court system, it
4 wasn't that much of a delay, we got our
5 Builder's Remedy and everybody moved on.

6 That's the process that is the norm,
7 unless the township shows in good faith that it
8 intends to abide by this Council's rules,
9 regulations and its directives.

10 And this township has shown, over 15
11 years, it is simply incapable of doing that.

12 You made the right decision on,
13 ironically, September 10th, a year after our
14 mediation session of 2010.

15 There is absolutely no reason to Stay.

16 And I appreciate not issuing a Stay,
17 because I certainly don't want to pick up the
18 phone and call my client and say, guess what;
19 we have to go through this process now for the
20 sixth time.

21 Thank you.

22 MR. DOHERTY: I have a question.

23 MR. CHAIRMAN: Yes.

24 MR. DOHERTY: Sir, could you give me an
25 idea how much your client has spent in this

1 process so far?

2 MR. KENT-SMITH: Over a million dollars.

3 MR. DOHERTY: Over a million dollars?

4 MR. KENT-SMITH: Yes. Because we had to
5 design projects. We actually had a fully
6 designed site plan that we went to the Planning
7 Board in 2004. And that application, even
8 though it was completely compliant, was denied.

9 So we had to go to court to reverse the
10 denial, and then we had a settlement agreement.

11 And then the settlement agreement got
12 modified. And then the settlement agreement
13 got modified again, and not because anything
14 that we wanted other than, this is what the
15 town wants us to do. We're trying to play
16 ball.

17 So, yes. We spent over a million dollars.

18 MR. DOHERTY: Thank you.

19 MR. CHAIRMAN: Thank you, sir.

20 No other questions?

21 MR. BURNHAM: Good afternoon, ladies and
22 gentlemen; Jonathan Burnham from the Law Firm
23 of Hutt and Shimanowitz on behalf of American
24 Properties of Matawan.

25 I'd just like to take a few minutes, the

1 township claims that they have to fight these
2 Builder's Remedy suits. Why? Why not build
3 the affordable housing, let these projects go
4 forward? Why do they need to fight us?

5 American Properties, much like the Weitz
6 Entities, and despite what Mr. Schlaflin
7 thinks, has a fully engineered plan. Just
8 spent over a quarter of a million dollars just
9 on engineering and environment issues based on
10 the promises that the town made.

11 The town comes to you now and says that
12 they have a signed, sealed agreement with the
13 Entron Entity.

14 Well, we had a signed, sealed agreement
15 with the Weitz Entity. Had a signed, sealed
16 agreement with the Kaplans. They had a signed,
17 sealed agreement with American Properties. All
18 those have gone by the wayside.

19 What assurance do we have now that this
20 Entron agreement will also go forward?

21 The township says that they will come to
22 you in a matter of months, weeks, with a new
23 plan.

24 They had a deadline of April 30th, to come
25 to you with a plan, and they came to you with a

1 plan that didn't even abide by COAH's
2 regulations after 15 years.

3 What makes the council think that in
4 another two months they're going to come with a
5 plan?

6 Now, all of a sudden they will abide by
7 COAH'S regulations. It will be fully compliant
8 and it will be able to get them Substantive
9 Certification. There is no assurance that that
10 will happen. And based on their history,
11 there's little chance that it would happen.

12 And I think that the comments about the
13 Hornik administration are relied by the Hornik
14 administration itself, when the only log on to
15 Marlboro Township's Web site, click on the
16 color link and you can watch the video, and
17 Mayor Hornik, you can read all of Mayor
18 Hornik's statements where it is clear that he
19 rejects everything that this Council does, and
20 he has no respect for the Council or the
21 Council's regulations, and the township has no
22 intention of ever complying with COAH's
23 regulations.

24 Thank you.

25 MR. WALSH: Good afternoon; Kevin Walsh

1 from the Fair Share Housing Center.

2 We filed some papers in opposition to the
3 motion for Stay, and will rely on them. I just
4 would like to make a few brief points in
5 summary -- to summarize our points that we made
6 in our letter.

7 The standards for granting a Stay is
8 recognized by this Council require COAH to
9 consider likelihood of success on the merits.

10 I'm not sure how you could possibly find,
11 that on appeal, Marlboro is likely to prevail
12 after COAH has found in a finding that is
13 entitled to difference, that Marlboro proceeded
14 in bad faith.

15 Those same sorts of findings is what COAH
16 found when it found it kicked Fairlawn out of
17 its process, and those very sorts of findings
18 and similar facts, perhaps not even quite as
19 egregious here, were upheld by the Appellate
20 Division.

21 So, I don't understand how one could
22 reasonably argue that there is a likelihood of
23 success on the merits.

24 Second, the issue of what's in the public
25 interest, again, the history here of, I

1 believe, in the first plan Marlboro filed
2 included a regional contribution agreement
3 despite the fact that they were clearly
4 abolished prior to Marlboro filing its plan.

5 I'm not completely familiar with the
6 matter, but I also understand that it filed a
7 plan recently that included a gap of 256 units.

8 And, although there is some suggestion
9 that, that is something that the town would now
10 commit to closing, it's not -- certainly not
11 been in any of the papers that I have seen and
12 any of the papers that I have read online that
13 Marlboro has accepted that.

14 And presumably they are still going to
15 maintain their -- their -- it doesn't even
16 sound like they conceded today that they're
17 going to set aside their Legal Arguments about
18 that or that they're going to submit a plan
19 clearly to meet that. They still think that
20 there is some wiggle room there.

21 And, so, how that, with going back to the
22 standards for a Stay, how that complies with
23 what's in the public interest when all of that
24 possibility is still there when the same thing
25 is motivating it, and especially after a

1 finding of bad faith. I don't see how one can
2 make that claim.

3 Finally, let me just say that this, what
4 you do here today, will have implications for
5 affordable housing extending well beyond
6 Marlboro.

7 One of the things that you can do is, you
8 can kick municipalities out of the process.
9 That is a deterrent.

10 If, after Marlboro has done what it's
11 done, municipalities can't get thrown out
12 anymore because of whatever reason, you may as
13 well stand up on the top of the DCA building
14 and proclaim that you can do municipalities
15 whatever you want and there will be no
16 consequences.

17 And if that is the case, then I believe
18 what we're supposed to be here for, trying to
19 get affordable housing for one of the most
20 expensive states in the nation, we've lost our
21 course. The agency has lost its course,
22 because there has to be consequences for what
23 Marlboro has done.

24 Thank you.

25 MR. CHAIRMAN: Thank you.

1 Anyone else wish to be heard?

2 (No response.)

3 MR. CHAIRMAN: I think given that one
4 house of the legislature has enacted to change
5 their nolo process, that there is this appeal,
6 Marlboro has filed an appeal of the September
7 8th, decision.

8 There are three Builder's Remedy lawsuits
9 that have been filed in the interim period that
10 we ought to try and maintain the status quo and
11 let the Appellate Division deal with this.

12 I think there is ample reason to provide
13 that fairness and equity in allowing the courts
14 to deal with this.

15 So, I would ask someone make a motion to
16 grant Marlboro's Motion to Stay the Council,
17 September 8th, 2010, decision ending a decision
18 and make a decision with the Appellate
19 Division.

20 MR. DOHERTY: Mr. Chairman, can we comment
21 first?

22 MR. CHAIRMAN: Let me have a motion --

23 MR. DOHERTY: Okay.

24 MR. CHAIRMAN: -- and a second and then
25 we'll open it up for comments.

1 MR. ELLIS: I'll move that.

2 MR. CHAIRMAN: Thank you.

3 Do I have a second?

4 MR. MARCHETTA: I'll second.

5 MR. CHAIRMAN: Thank you very much.

6 MR. DOHERTY: I'm aghast. I'm aghast that

7 this -- that these circumstances that we are
8 here again hearing a case of non-compliance.

9 You know, this is why COAH is a mockery
10 today. This is a great reason why we should
11 close the door, shut the lights and say goodbye
12 and save the taxpayers all the money and staff
13 costs and everything else.

14 If you're not going to stand by a decision
15 that is based in fact and grounded, I don't
16 know how we could ever again make a statement
17 and a ruling that's going to hold some water.

18 I think that we're looking at a very
19 slippery slope here establishing a precedent so
20 that, you know, anytime towns don't like
21 whatever decision COAH makes, they can come
22 back again and maybe get through the backdoor
23 for a delay; delay; delay until the process
24 changes.

25 I just am very, very disheartened and

1 disappointed that this Board would consider,
2 would consider this kind of action in Staying
3 this -- in Staying this decision by COAH
4 formerly.

5 Really, I'm almost -- I'm speechless.

6 I think that, you know, we were set up in
7 order to make sure that affordable housing had
8 the opportunity to succeed knowing that there
9 are forces in the community that would not be
10 favorable upon -- upon some affordable housing
11 projects.

12 And, gentlemen, if we do this, we're not
13 -- ladies and gentlemen, if we do this, we're
14 not upholding our -- our oath and the reason
15 we're appointed to this Council, you know.

16 Like I said, this is why people don't take
17 COAH seriously. Either you're for something,
18 or you're against, but you got to stand for
19 something, otherwise you mean nothing.

20 MR. CHAIRMAN: I think that you were far
21 from speechless.

22 MR. WINTERSTELLA: I would just comment,
23 that I believe the Staff did their job here. I
24 believe the Council did its job.

25 Marlboro was given ample opportunity to

1 perform. They did not.

2 Simply said, if this motion passes, it's a
3 slap in the face, in my opinion, to every mayor
4 and every council and every municipality in
5 this state that has gone to the trouble to meet
6 the rules and perfect affordable housing.

7 This is a very difficult time for COAH, I
8 believe, because what we may do here today is
9 going to have a very major impact on affordable
10 housing and COAH in this state.

11 MR. CHAIRMAN: Again, my rationale is,
12 this will give the courts the opportunity to
13 sort it out while maintaining the playing field
14 as it was. I think that is important.

15 I think having the Appellate Division
16 giving them an opportunity to decide is what is
17 relevant today.

18 We are Staying the decision. That's the
19 simple act that I've asked the Board to take.

20 MR. MARCHETTA: I just want clarification.
21 The Stay is until the Appellate Division -- do
22 we have a time frame on what that might be?

23 MR. DOHERTY: So, it could be months, it
24 could be weeks, months until the court decides.

25 So, no affordable housing in effect will

1 go forward --

2 MR. CHAIRMAN: I don't think --

3 MR. DOHERTY: -- in Marlboro Township.

4 MR. CHAIRMAN: I don't think we can
5 crystal ball how quickly the court may act.
6 I'm just saying what the litigants may seek in
7 terms of Marlboro Township.

8 MR. DOHERTY: Let me ask, is this the
9 first time COAH has ever done -- taken action
10 like this where we voted to take a town out of
11 compliance and now we go against our own --

12 MR. CHAIRMAN: No. We're not -- we're
13 voting to Stay that decision to allow the
14 courts to render a decision. We're not --

15 MR. DOHERTY: Just asking.

16 MR. CHAIRMAN: That's the motion that has
17 been made. It's not unusual for a body to
18 allow, in a contentious type atmosphere and
19 contentious type issue, to allow the litigants
20 to go to the courts and seek remedies.

21 MR. DOHERTY: And that can't be done
22 without this Stay?

23 MR. CHAIRMAN: Well, I think the Stay, as
24 I suggested, will keep the playing field as it
25 was at the time of Council's decision.

1 MS. WALTERS: While we're waiting for the
2 court's decision, Marlboro would move forward
3 with Staff --

4 MR. CHAIRMAN: Marlboro -- Marlboro is
5 going to have to do what Marlboro sees fit.

6 MR. ELLIS: Well, I'm hopeful that the
7 borough attorneys and the statements are -- are
8 sincere and they will do that.

9 And I do know, speaking for a relationship
10 with Staff, that they are ready, willing and
11 able to do it.

12 And, mayor, I would think that would
13 happen -- that should happen, in my judgment,
14 and by not milking this resolution, I think
15 that, that is my understanding.

16 MR. CHAIRMAN: Any other comments?

17 (No response.)

18 MR. CHAIRMAN: May I have a roll call.
19 Vote yes is to grant the motion.

20 MS. REISS: Mr. Doherty?

21 MR. DOHERTY: No.

22 MS. REISS: Mr. Ellis?

23 MR. ELLIS: Yes.

24 MS. REISS: Mr. King?

25 MR. KING: Yes.

1 MS. REISS: Mr. Marchetta?

2 MR. MARCHETTA: Yes.

3 MS. REISS: Ms. Walters?

4 MS. WALTERS: Yes.

5 MS. REISS: Mr. Winterstella?

6 MR. WINTERSTELLA: No.

7 MS. REISS: Mr. Richman?

8 MR. CHAIRMAN: Yes.

9 MS. REISS: The Stay is granted.

10 MR. CHAIRMAN: Thank you.

11 Is there any other business of Members of
12 the Council that wish to bring before the
13 Council today?

14 (No response.)

15 MR. CHAIRMAN: Any member of the public?

16 (No response.)

17 MR. CHAIRMAN: Then may I have a motion --

18 MR. WINTERSTELLA: Move to adjourn.

19 MR. CHAIRMAN: Second?

20 MS. WALTERS: Second.

21 MR. CHAIRMAN: Those in favor, aye.

22 (Whereupon, there was a
23 collective response in the
24 affirmative.)

25 MR. CHAIRMAN: Thank you for your time

1 today.

2 (Whereupon, the proceeding was
3 adjourned at approximately 2:32
4 p.m.)

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I, RENÉE HELMAR, a Shorthand Reporter, and Notary Public, certify that the foregoing is a true and accurate transcript of the proceedings which were held at the time, place and on the date herein before set forth.

I further certify that I am neither attorney, nor counsel for, nor related to or employed by, any of the parties to the action in which these proceedings were taken, and further that I am not a relative or employee of any attorney or counsel employed in this action, nor am I financially interested in this case.

Renée Helmar
Shorthand Reporter

EXHIBIT G

1/8/04 Star-Ledger (Newark N.J.) 15
2004 WLNR 18034351

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January 8, 2004

Section: NEW JERSEY

Dissent is building over housing reforms 3 on panel voice concerns on changes

STEVE CHAMBERS

For months, housing advocates, builders and anti-sprawl advocates have been criticizing affordable-housing reforms proposed by the administration of Gov. James E. McGreevey.

Yesterday, three members of the Council on Affordable Housing - the 11-member body that proposed the reforms - echoed those concerns publicly, raising questions about whether the proposal will have to be changed.

Critics of the reforms applauded the development, characterizing the comments as the first visible signs that the effort is floundering.

"I think it's a strong signal that the regulations may well be dead, certainly that they are unconstitutional," said Kevin Walsh, a housing advocate from Camden County. "The question is whether they can muster the votes."

But Charles Richmond, the state official who chaired the meeting, said too much was being read into the dissent.

Three council members "raised several issues that they expect the council to debate," said Richmond, assistant Community Affairs commissioner. "That is the reality of where it is. No one should draw, and I don't believe anyone on the council did draw, any final conclusions one way or another."

The criticism came on the heels of a relentless drubbing the reforms took at a series of public hearings held the week of Thanksgiving.

The much-maligned council - blamed by some for fueling sprawl and others for not getting enough affordable housing built - is attempting to radically change the status quo.

In the past, towns were assigned the number of housing units they were supposed to approve for the poor. The new system, called growth share, would require them to approve one affordable unit for every 10 units of market-rate housing approved. If towns slowed growth, their obligation would be less.

William Dressel, executive director of the state League of Municipalities, said the reforms would bring sanity to the process.

He said the comments yesterday were inappropriate, premature and shouldn't influence a good effort.

"If these members want to vote against the proposal and submit a minority report, they can do that," he said. "But at this crucial period, when the council is trying to respond to public comments, it's inappropriate. It's a disservice to the deliberative committee process."

Because the November hearings were held in different parts of the state simultaneously, COAH members are reading reams of transcripts to find out what the public said. It was during a discussion of the transcripts at a public meeting in Trenton that the board members' comments were made.

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Two COAH members, Peter Reinhart, who works for the state's largest residential builder, and Rose McConnell

, a former Somerset County freeholder, suggested the rules need serious revision. A third, the Rev. James Duncan, an official of the NAACP in Cumberland County, said the rules appear to hurt people in his community.

Critics have fumed about one provision, which would allow towns to fulfill half their obligation with senior citizen housing and the other half through Regional Contribution Agreements, which allow towns to pay cities to build their affordable units.

"The disincentives for housing for (poor) families with children are serious issues that require rethinking," Reinhart said at the meeting.

Reinhart, who is a lawyer, also said the proposed regulations may be unconstitutional. Since 1975, the state Supreme Court has said every town has an obligation to open its doors to a "fair share" of housing for the poor.

Intense legal battles between builders and towns led, in 1985, to the legislative compromise that created COAH.

In a speech to lawyers in December, retired state Supreme Court Justice Gary Stein called the reforms an effort to turn back the clock and hinted they might not pass legal muster.

But Richmond, backed up at the meeting by Deputy Attorney General George Cohen, said the regulations had been reviewed by five lawyers in the Attorney General's Office.

"We would not have gone through this effort had we doubted the constitutionality of the rules," he said.

Critics have faulted the rules on a number of fronts, arguing they will result in less affordable housing being built and do nothing to rein in sprawl.

Since the first of three so-called Mount Laurel rulings, in 1975, builders have used the courts to force approvals of large-scale developments that include a small number of affordable units.

Jeff Tittel, director of the state Sierra Club chapter, has argued along with other sprawl watchdogs that more needs to be done to discourage building in the wrong places. The proposed rules, for example, would require towns to build one affordable unit for every 30 jobs created - much too small a number to discourage office parks on the suburban fringes, he said.

But Tittel said yesterday that the COAH members missed their best opportunity to change the reforms when they voted to introduce them in August. Once the rules were published in the New Jersey Register, he noted, the council can vote to reject them - meaning they would then have to start over from scratch - but can't revise them.

"The time to act was in August," he said. "They should have voted no when we asked them to."

Steve Chambers covers land-use issues. He can be reached at schambers@starledger.com or (973) 392-1674.

--- INDEX REFERENCES ---

NEWS SUBJECT: (Judicial (1JU36); Legal (1LE33); Social Issues (1SO05); Socio Economic Groups (1SO18))

INDUSTRY: (Housing (1HO38); Urban Housing Policy (1UR02); Real Estate (1RE57))

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REGION: (USA (1US73); Americas (1AM92); New Jersey (1NE70); North America (1NO39))

Language: EN

OTHER INDEXING: (COAH; MOUNT LAUREL; NAACP; REGIONAL CONTRIBUTION AGREEMENTS;
STATE LEAGUE OF MUNICIPALITIES; STATE SIERRA CLUB; STATE SUPREME COURT; STATE
SUPREME COURT JUSTICE GARY STEIN) (Charles Richmond; George Cohen; James Duncan; James E.
McGreevey; Jeff Tittel; Kevin Walsh; Peter Reinhart; Reinhart; Richmond; Rose McConnell; Steve
Chambers; Tittel; William Dressel)

EDITION: FINAL

Word Count: 1073
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EXHIBIT H

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January 30, 2004

Section: NEW JERSEY

Some ask whether duo's removal from housing board was political

STEVE CHAMBERS

Three weeks after publicly raising questions about a proposed affordable housing reform, two members of the Council on Affordable Housing are being replaced.

Activists accused Community Affairs Commissioner Susan Bass Levin of squelching debate in the shakeup and stacking the deck against housing advocates, church leaders and others who oppose the new regulations.

A spokeswoman for Levin, who has oversight of the 11-member COAH, denied that is the case, noting that the terms of both long-time members being replaced had expired.

"This is not any dramatic shakeup," said spokeswoman Kara Wood. "This is the normal course of the governor appointing people when their terms expire."

"Governor McGreevey thanks the council members for their dedicated service and looks forward to working with the council at providing affordable housing across the state," added Ellen Melody, an administration spokeswoman.

In addition to replacing builder Peter Reinhart, who was first appointed in 1993, and former Somerset County Freeholder Rose McConnell, named in 1994, the governor kept former Manasquan Mayor John Winterstella on the board.

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Winterstella, who spoke favorably of the reforms at the Jan. 7 meeting, lost election in November and could no longer hold one of four slots designated for elected officials. He was shifted to one of three public-member slots, replacing McConnell.

Reinhart is being replaced by Mark Fisch, a builder from Livingston, and Winterstella's spot will be filled by Lyndhurst Mayor James M. Guida. McGreevey also nominated Gloucester Township Mayor Sandra Love to replace Union County Freeholder Lewis Mingo, who resigned Jan. 12.

The nominations still must be approved by the state Senate Judiciary Committee.

The state League of Municipalities has been the most ardent supporter of the reforms, saying they will bring sanity to a process that has favored builders and fueled sprawl.

"Good," said William Dressel, the league's executive director, when told that Reinhart and McConnell were being replaced. He had criticized their earlier comments as premature and inappropriate.

Bass Levin has argued that the reforms - a growth-share formula that requires towns to approve one unit of affordable housing for every 10 market-rate houses it approves - will get more affordable housing built.

The current system assigned towns a specified number of affordable units, and the courts have favored developers when they sued to build in towns that had failed to meet their obligations.

Opponents of the reforms argue they will get less affordable housing built and further segregation by favoring programs that get units built in cities.

Those opponents were buoyed Jan. 7 when Reinhart, McConnell and another commissioner, the Rev. James Duncan of Cumberland County, criticized the reforms at a public meeting. Reinhart, a lawyer, said he didn't think the proposed regulations were constitutional.

"Peter Reinhart's term was up more than a year ago," said Paul Chrystie of the Coalition for Affordable Housing and the Environment. "He wasn't removed from the board until he spoke out. It doesn't take a rocket scientist to figure out what happened."

In a telephone interview, Reinhart said he hoped that the COAH would address the serious affordable housing crisis in New Jersey. He said he felt that issue was being overshadowed by other important issues, like environmental protection and sprawl.

Reinhart said he was uncertain if he was being axed for voicing those concerns.

"I would hope the administration is not trying to discourage private-sector people from speaking out on topics for fear of losing their position," he said. "I can't say they are trying to do that."

McConnell, whose term expired two weeks ago, said she was disappointed to be replaced at such a critical time in the COAH's history. She suspects it had something to do with her criticism.

"Naturally I wonder," she said. "I've been noted for speaking my mind, but if I can't endorse a proposal, I will comment on it and make suggestions."

Steve Chambers covers land use issues. He can be reached at schambers@starledger.com or (973) 392-1674.

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INDUSTRY: (Housing
(1HO38
); Urban Housing Policy
(1UR02
); Real Estate
(1RE57
))

Language: EN

OTHER INDEXING: (AFFORDABLE HOUSING
; COAH
; ENVIRONMENT
; GLOUCESTER TOWNSHIP
; LYNDHURST
; MANASQUAN
; MCCONNELL
; REV
; SENATE JUDICIARY COMMITTEE
; SOMERSET COUNTY FREEHOLDER ROSE MCCONNELL
; STATE LEAGUE OF MUNICIPALITIES; UNION COUNTY FREEHOLDER LEWIS
MINGO) (Activists; Bass Levin; Ellen Melody; James Duncan; James M. Guida; John
Winterstella; Kara Wood; Levin; Mark Fisch; McGreevey; Naturally; Paul Chrystie;

Peter Reinhart; Reinhart; Sandra Love; Steve Chambers; Susan Bass Levin; William Dressel; Winterstella)

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