



A L E R T

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OBJECTING TO COAH THIRD ROUND FAIR SHARE PLANS: *Is Your Municipality's Fair Share Plan Unfair To You?*

By December 31, 2008, nearly every municipality within the State of New Jersey was obligated to submit a Housing Element and Fair Share Plan that complied with the Council of Affordable Housing's ("COAH") revised Third Round Rules. In the rush to comply the COAH's submission deadline, many municipalities overlooked sites that are suitable for affordable housing or zoned sites for inclusionary developments that were unsuitable for affordable housing. In order to seek inclusion of these sites it is imperative that a timely objection to a municipality's Fair Share Plan be filed with COAH.

The ability to object to a municipality's Housing Element and Fair Share Plan arises when a Township petitions COAH for approval or "substantive certification" of its plan. A municipality may petition COAH for substantive certification within two years from the date of filing its Housing Element and Fair Share Plan, or it may petition for substantive certification simultaneously with its filing.

Once a Plan is filed, COAH has 45 days to review it and alert the municipality of any deficiencies. The municipality will then have 45 days to correct the Plan and resubmit it to COAH. If the municipality fails to respond in the allotted time, its Plan will be automatically rejected and COAH will no longer have jurisdiction over the municipality.

When the Plan is corrected, or if there no deficiencies to cure, COAH will advise the municipality that the Plan is complete. Within seven days of being informed that its submission is complete, a municipality must publish notice of its petition for substantive certification in a newspaper of general circulation within the municipality and county. The publishing of this notice triggers a 45 day period for any person to file objections to the municipality's proposed Housing Element and Fair Share Plan. Objections must be filed with COAH and the municipality and include, at a minimum:

1. A clear and complete statement as to each aspect of the municipality's Housing Element and Fair Share Plan to which an objection is made;
2. An explanation of the basis for each objection including, where appropriate, citations to expert reports, studies or other data relied upon to support each objection;
3. Copies of all referenced expert reports, studies or other data relied upon by the objector;
4. Proposed modifications, changes or other measures which the objector contends will resolve the objection and an explanation of how the objector's proposals are consistent with the Council's criteria and guidelines;
5. A statement documenting the objector's prior efforts at premediation, participation in conferences or public hearings and a summary of the results of any such efforts; and
6. Identification and a description of any site proposed by the objector, including a history of development applications (if any), for inclusion in the Housing Element and Fair Share Plan and a demonstration that the site is suitable in accordance with N.J.A.C. 5:97-3.13.



After an objection is filed, it will be reviewed by COAH's Executive Director to determine its completeness and validity. The Executive Director will notify the objectors who submitted complete and valid objections that they are permitted to participate in COAH's administrative process beginning with mediation. If the objections submitted are deemed to be incomplete or invalid, the objector will have 14 days to correct the deficiencies and resubmit the objections. If the objector fails to submit the revised objections within the 14 day time period, the Executive Director will consider the objections to be withdrawn.

A municipality is obligated to submit a written response to all items delineated in the objection to its plan within 20 days notice of the Executive Director's determination that the objectors' claims are complete and valid. Each objection and municipal response shall be reviewed and summarized in a premediation report that is issued by COAH's Executive Director.

Prior to the commencement of the mediation, the objectors and the municipality shall, in writing, designate their representatives, authorize the representatives to negotiate on their behalf, and also authorize one or more of the representatives to execute any written agreement reached during mediation on their behalf.

The scheduling of the mediation will be based on the relevancy of the objections. If the Council's Executive Director finds that the objections raised are not relevant to the compliance mechanisms included in the municipality's Fair Share Plan to address the municipal affordable housing obligation, mediation may be scheduled as quickly as practicable after the end of the 45-day objector period and prior to the issuance of the premediation report. However, if the Council's Executive Director finds that the objections raised are relevant to the compliance mechanisms included in the municipality's Fair Share Plan, the mediation shall be scheduled after the municipality has responded to the Premediation Report and as often thereafter as the mediator shall determine necessary.

If an amendment and/or revision to the municipality's Housing Element and Fair Share Plan is required as a result of mediation, the municipality shall submit a resolution from the governing body committing to amend and/or revise its Housing Element and Fair Share Plan within 60 days of the conclusion of mediation. Revisions to the originally filed municipal Housing Element and Fair Share Plan that are determined to be "substantial" in accordance with N.J.A.C. 5:96-3.4(a) shall require a repetition for substantive certification. If the revisions to the municipal Housing Element and Fair Share Plan are "not substantial" in accordance with N.J.A.C. 5:96-3.4(b), the municipality may request that the revision be done by motion pursuant to N.J.A.C. 5:96-13.

If the mediation proceedings fail to progress or mediation cannot resolve a dispute and the municipality's Fair Share Plan does not create a realistic opportunity for affordable housing and the objector's site is in conformance with N.J.A.C. 5:97-3.13, COAH may either direct the municipality to amend its Housing Element and Fair Share Plan to include the objector's site to address any shortfall noted in the premediation report provided, or deny substantive certification pursuant to N.J.A.C. 5:96-12.2. The length of time the municipality has been under the Council's jurisdiction and whether or not the municipality was previously granted substantive certification will be taken into consideration.

If the municipality fails to revise its Housing Element and Fair Share Plan as a result of mediation within 60 days from the conclusion of mediation, the Council shall dismiss the municipal submission by administrative order or deny it.

If you have a site that is appropriate for affordable housing, but was omitted from a Housing Element and Fair Share Plan, or is unsuitable but was proposed to be rezoned to require affordable housing please contact us immediately. We have been collecting Fair Share Plans from municipalities around the State and are ready to assist you with processing your objection.

To discuss objecting to a Fair Share Plan, or any other questions about this Real Estate/Transactional Law Alert, please contact Frank J. Petrino at 609.989.5029, or fpetrino@sternslaw.com or Todd D. Greene at 609.989.5023 or tgreene@sternslaw.com.