



**BOROUGH OF
NEW PROVIDENCE**
SETTLED IN 1720

John A. Thoms, Mayor

Wendi B. Barry, Borough Clerk

Douglas R. Marvin, Administrator

March 14th, 2008

Ms. Lucy Voorhoeve
Executive Director, NJ Council on Affordable Housing
P.O. Box 813
Trenton, NJ 08625-0813

**Re: Borough of New Providence
Review Comments Proposed New COAH Rules**

Dear Ms. Voorhoeve:

Please be advised that the Borough of New Providence strongly opposes the adoption of the proposed revised Third Round Substantive and Procedural Rules in their current form. For the past 20 years, the Borough of New Providence has actively participated in the COAH process in pursuing affordable housing opportunities and has met or exceeded its obligations. The proposed new COAH rules, however, are fundamentally flawed and will have serious adverse implications for the Borough of New Providence including, but not limited to, a negative impact on the Borough's ongoing economic development efforts to retain and attract new non-residential rateables.

The new rules, if adopted in June 2008, would require the Borough of New Providence to: analyze these complex regulations; formulate long range plans and strategies to address growth projection that may radically transform the character of the community; prepare an amended Housing Element and Fair Share Plan; and hold public hearings in a time frame of approximately 90 days falling within the summer months, which, as you may or may not know, presents attendance challenges at the public meetings for both members of the board as well as the affected public. The time frame identified within the proposed rules does not enable the Borough to complete a responsible planning initiative in order to ensure the provision of affordable housing.

The Borough of New Providence offers the following comments regarding the proposed new COAH rules. We urge you to consider these comments and revise the proposed rules to establish more realistic planning targets and funding mechanisms, methodology and time frames to address the affordable housing needs of the community:

1. Under subsection N.J.A.C.5:94-3.2 (a), both the Department of Labor projections and the vacant land analysis performed by the National Center for Neighborhood and Brownfields Redevelopment (NCNBR) at Rutgers University for COAH, which form the basis of COAH's projections, do not adequately take into consideration infrastructure capacity. Specifically, sewer service availability and capacity do not appear to have been adequately considered and, therefore, render the growth projections inaccurate for municipalities that have significant sewer service limitations. COAH should adjust its projections to account for sewer service limitations or provide a means for municipalities to do so. In addition, the proposed rules do not reflect the existing or proposed New Jersey State Development and Redevelopment Plan map.
2. The Department of Labor projections do not take into consideration the State Development and Redevelopment Plan, or regulated environmental constraints or other limiting factors affecting future growth at the local level. The GIS spatial datasets and method used by the consultant in conducting the vacant land analysis are much more appropriate for regional and statewide analyses. Inaccuracies in the datasets and methods become much more apparent when applied at the local level.
3. Under subsection N.J.A.C.5:94-2.4, the prior round growth share ratios of 1 affordable unit for every 8 market rate units, and 1 affordable unit for every 25 new jobs realized, should remain unchanged for the third round. The proposed ratio of 1 affordable unit for every 4-market rate units constructed represents essentially a one hundred percent (100%) increase over the ratio that had been in effect for many years. The proposed ratio of 1 affordable unit for every 16 jobs realized represents a sixty four percent (64%) increase over the prior ratio. Under the prior ratios, even a small town like New Providence had the capacity to accommodate and has in fact provided substantial affordable housing projects within its own borders. New Jersey municipalities are struggling to find space to build accommodations for senior citizens, to preserve open space, to preserve environmentally sensitive lands, and to provide adequate recreational facilities. Prescribing such aggressive increases in the growth share ratios runs counter to these important values. Additionally, New Jersey municipalities are struggling to maintain commercial rateables, let alone attract new businesses. Increasing the job growth share ratio would only increase the disadvantages that New Jersey municipalities face when competing with other regions of the country to attract business.
4. Under subsection N.J.A.C.5:94-2.5 (b), COAH should permit municipalities to subtract residential and non-residential demolitions from their growth share projections in order to base the growth share upon net growth. For example, under the propose third round rules, if a Lowe's containing 95 jobs was demolished and replaced with a Home Depot containing 100 jobs, the proposed rules would require that a growth share be assessed based upon all 100 of the jobs included within the Home Depot, while the growth share should be based upon the net increase of five (5) jobs. In addition, greater differentiations between the ratios used for different types of

warehouse facilities are needed. Certain operations require more employees than others, and additional warehouse categories are needed to reflect this difference.

5. Under subsection N.J.A.C.5:94-2.4, if COAH determines to stand by its proposed increases in the growth share ratios, it would not be fair to subject municipalities to those third round ratios for the period from January 1, 2004 through the date of formal adoption of the proposed third round rules. If the proposed ratios of 1 affordable unit for every 4 market rate units constructed and 1 affordable unit for every 16 jobs realized are imposed upon municipalities for units constructed prior to the adoption of the proposed regulations, this requirement would punish municipalities for complying in good faith abiding with the prior regulations.
6. Under subsection N.J.A.C. 5:94-2.4(a) of the proposed rules, municipalities are only permitted to subtract affordable and market rate units (at a rate of up to four times the number of affordable units) constructed within residential and mixed-use inclusionary developments that are part of the **prior round plan** from the residential growth projection included within the growth share calculation.

Municipalities should be permitted to subtract from the residential growth projection both the affordable units and market rate units (at a rate of up to four times the number of affordable units) within the municipality's **prior round and third round** Fair Share Plans for all projects approved prior to the adoption of the proposed third round rules. The reason for this is that the affordable housing obligation for residential projects has increased from 11% (1 unit among 9) to 20% (1 unit among 5). This new requirement is proposed to be applied retroactively to the portion of the third round that dates back to January 1, 2004. Municipalities are unable to impose retroactive development fees or payments in lieu of constructing affordable housing on development built or approved during this time period.

Subtracting market rate units within an inclusionary development at a rate of up to four times the number of affordable units is based upon an affordable housing 20% set-aside. As the proposed growth share ratio of 1 unit among 5 corresponds to a 20% affordable housing set-aside (1 unit/5 units = 20% set-aside), municipalities should be able to subtract the market rate units at a rate of up to four times the number of affordable units in order to compensate for this portion of the impact of the proposed growth share regulations that are being retroactively imposed. Additionally, prohibiting the exclusion of these market rate units unfairly punishes municipalities for abiding by the regulations in effect at the time of approval.

7. Under subsection N.J.A.C. 5:94-2.4(a), under the proposed growth share methodology, development approved prior to 2004 and constructed after 2004 is included as part of the growth share obligation even though the growth share requirements did not exist at the time of the approval. Assessing a growth share on these types of developments unfairly imposes an affordable housing obligation on municipalities for a project approved at a time when it was not clear that the municipality should require affordable housing units or fees from the developer. A

prime example of this situation occurs when multiple developments are held up due to sewer or water service approvals. Lack of sewer and water approvals have delayed many projects that were originally on schedule to be constructed prior to 2004 into the post 2004 time period. This is just one of the many situations where municipalities are unfairly assessed a growth share obligation when they did not have the opportunity to comply with the regulations because the regulations did not exist at the time.

8. Under subsection N.J.A.C. 5:94-2.3(a)7, COAH requires that municipalities conduct an inventory of all vacant non-residential space prior to the date of petition so that in the future municipalities can adjust their growth share for newly occupied properties (See N.J.A.C. 5:94-2.5(b)1.ii) or additional vacancies (See N.J.A.C. 5:94-2.5(b)2.iv). This type of assessment would require a physical survey and inspection of all non-residential real estate in the municipality, therefore imposing a substantial additional cost and burden for the municipalities to track over the years.
9. Under subsection N.J.A.C.5:94-8.7, the regulations are not clear why municipalities cannot use in lieu affordable housing fees to fund RCA's. If this option were to be prohibited, a major source of funding for RCA's would be eliminated. COAH should provide a detailed rationale for this requirement.
10. Under subsection N.J.A.C. 5:94-7.1, the proposed increase in the cost of one (1) RCA unit from a minimum of \$35,000 to \$67,000 or more per unit has made RCA units prohibitively expensive and effectively removed them as a viable affordable housing option. COAH should provide documentation of the actual average cost of constructing an affordable housing unit through an RCA agreement as part of a rehabilitation program. COAH should also provide documentation of the actual average cost of constructing an affordable housing unit through an RCA agreement as part of a new construction program. The proposed regulations should distinguish between rehabilitation and new construction programs for RCA units by providing two different RCA costs based upon actual historic cost data.
11. Under subsection N.J.A.C.5:95-16.2, COAH is anticipated to adopt the new 3rd round rules by June 2, 2008. The deadlines for filing a petition for substantive certification range from September 30 through December 31, 2008. Therefore, COAH expects municipalities to prepare a Housing Element and Fair Share Plan, include adequate public participation, adopt the Plan at the Planning Board, endorse the Plan at the governing body and submit the plan to COAH within 4-6 months, depending upon the housing region. As the preparation of a well thought out Housing Plan Element and Fair Share typically takes a minimum of 5-7 months, and the public participation and municipal approval process takes an additional 1-2 months, the petition deadlines set forth within the proposed regulations are unrealistic and would unnecessarily rush a process that should be undertaken very carefully. COAH should provide at least nine (9) months from the date of adoption of the proposed rules for municipalities to prepare and submit petitions for substantive certification.

12. Included in Appendix D, the proposed rules have increased the multiplier for storage uses (warehouses, lumberyards, etc.) from 0.2 jobs per 1,000 square feet up to 1.5 jobs per 1,000 square feet, which represents a 7.5 fold increase. The new multiplier of 1.5 is only slightly lower than the multipliers set forth for mercantile uses (multiplier of 1.7), including retail uses, and assembly uses (multiplier of 1.6), including theaters and TV studios. Typical warehouse uses require significantly fewer employees than the uses listed within the mercantile and assembly (A1 and A3) use groups. Therefore, it appears that the proposed multiplier of 1.5 jobs per 1,000 square feet for warehouse/storage uses is too high. COAH should provide documentation to justify this increase. Additionally, as certain types of warehouse operations are more job-intensive than others, COAH should provide different multipliers for different types of warehouse facilities.
13. Post 1986 Credits, credits should be received for each bed instead of bedroom created in supportive, special needs and or alternative living facilities, as the facility licenses, as issued by the State, are based upon the number of beds, not the number of bedrooms.
14. Under subsection N.J.A.C.5:94-4.2(a)2. (of December 20, 2004 Substantive Rule) Comment, COAH's proposed Revised Third Round Rules fail to address the unfairness of the situation in which municipalities that petitioned for Substantive Certification in December 2005 – and submitted Draft “Growth Share Ordinances” (with “payment in lieu of construction” provisions) – had been prohibited from adopting those proposed Growth Share Ordinances by the provisions of COAH's 2004 Third Round Rules. Where development has subsequently occurred, municipalities have incurred unfunded affordable housing obligations due to the provisions of the previous COAH Third Round rules that had required prior COAH approval before the local adoption of Growth Share Ordinances and PILOC formulas. These municipalities have incurred affordable housing obligations and have lost the opportunity to either require the construction of inclusionary affordable housing or to collect PILOC fees. The provisions of the proposed new revised rules – which increase affordable housing obligations – will compound the unfairness of this situation, in which municipalities were effectively prohibited from adopting Growth Share Ordinances prior to COAH's grant of substantive certification.

Respectfully Submitted,

John Thoms, Mayor
Borough of New Providence