



PROPOSED THIRD ROUND RULES

At its December 17, 2007 meeting, the Council on Affordable Housing (COAH) proposed the repeal and replacement of its third round methodology and rules (N.J.A.C. 5:94 and N.J.A.C. 5:95). The rule proposal follows the decision issued by the New Jersey Superior Court, Appellate Division on January 25, 2007, *In the Matter of the Adoption of N.J.A.C. 5:94 and 5:95 by the New Jersey Council on*

Affordable Housing (and related cases), 390 N.J. Super. 1 (App. Div. 2007), which affirmed in part, reversed in part, and remanded portions of the rules back to the Council for rulemaking.

The third round methodology continues the growth share approach to determine affordable housing obligations, in which affordable housing is provided in proportion to market rate growth that takes place in a municipality. Under the revised ratios released by the Council, one affordable unit must be provided among every five residential units and one affordable unit must be provided for every 16 new jobs, based on square footage of new nonresidential construction.

The following major changes are proposed:

- Continuation of the growth share approach, with affordable housing need measured as a percentage of residential and non-residential growth from 2004 to 2018.
- New affordable housing need for the state is 115,000 affordable units (an increase from 52,000 units in previous adoption).
- Household and employment projections have been generated by the consultants and serve as planning targets for municipalities. A municipality may seek an adjustment to the household and employment projections provided by the Council, based on an analysis of existing land capacity. The projections are incorporated for each municipality in the report "Allocating Growth to Municipalities" in Appendix F of the proposal.
- Development fees for new construction increase from 1% of equalized assessed value (EAV) for residential to 1 ½% of EAV and from 2% of EAV to 3% of EAV for non-residential development
- Establishes payment in lieu standards (cost of constructing an affordable unit) averaging \$161,000 per affordable unit
- Regional Contribution Agreement amounts increase from \$35,000 per unit to \$67,000 to \$80,000 per unit (by COAH region)
- Municipalities may continue to require payments in lieu of non-residential developers pending adoption of legislation establishing a statewide development fee bank
- Provides a compensatory benefit to developers for providing affordable housing of one market unit for every affordable unit constructed

- Expands compliance options for municipalities, including bonus credits for supportive and special needs housing, new credit for affordable housing in redevelopment areas, and optional plan phasing based on economic feasibility.
- Returns to the previous age-restricted cap of 25% of total obligation
- Proposed staggering schedule would require towns currently under COAH's jurisdiction to submit revised third round plans between September and December 2008, based on county.
- Regulations from N.J.A.C. 5:93 have been incorporated into N.J.A.C. 5:94, where the regulation is still relevant. Municipalities will now be able to reference one set of rules for addressing prior round and growth share obligations.

The proposal was published in the January 22, 2008 edition of the New Jersey Register and is available on COAH's website at www.nj.gov/dca/coah/dec07proposal.shtml.

Written public comments on the proposed rules can be submitted until March 22, 2008:

Electronically to: COAHmail@dca.state.nj.us

Or by mail (with disk in Word format) to:

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