

PRESS RELEASE, July 16, 2008

Nineteen Municipalities Challenge COAH Regulations

Nineteen municipalities in the Counties of Somerset, Hunterdon, Warren, Morris, Essex and Monmouth, on July 15, 2008, joined together to appeal the regulations of the Council on Affordable Housing that were published on June 2, 2008. The municipalities include Clinton Township, Bedminster, Bernards Township, Bernardsville, Bethlehem, Bridgewater, Town of Clinton, Greenwich, Hanover Township, Millstone Township, Montgomery, Peapack-Gladstone, Readington Township, Roseland, Roxbury, Union Township, Warren Township, Watchung, and Wharton. The group has retained Stuart R. Koenig of Stickel, Koenig & Sullivan, an experienced affordable housing and municipal law attorney to represent the group. The issues raised in the appeal focus on the failure of the Agency to follow the court's directions when earlier regulations were partially set aside in 2007, violations of the Fair Housing Act, and other unreasonable and arbitrary adoptions.

All of these litigants have attempted to comply with their obligation to provide affordable housing. Their grievance, like those of many other municipalities across the State, is that the recently adopted COAH rules are onerous and not sustainable. COAH has arbitrarily established a need of 115,666 affordable units through 2018, up from 52,726 in 2004. At the same time, COAH has established that an average subsidy of \$161,000 is required to create an affordable unit, resulting in a program cost of \$18.6 Billion.

The regulations provide limited ways in which municipalities can comply with their obligation, and provide inadequate funding sources. A large part of the economic burden will be required to be paid by the property taxpayers of the State. The regulations require municipalities to provide an affordable unit for every four new residential units, each 5,714 square feet of office space, each 9,412 square feet of retail space, each 10,667 square feet of

warehouse space, and each 6,154 square feet for hospitals, nursing homes, and even jails. Recent legislation, which catered to certain special interests and is known as A-500, eliminates major compliance mechanisms such as regional contribution agreements, and the ability to impose some of the obligation on commercial developers. The new 2.5% development tax on commercial development, according to the DCA, will provide sufficient subsidy for only approximately 19,000 of the 46,000 affordable unit need anticipated to be generated by commercial development. It will leave a shortfall of approximately \$4.3 Billion. The legislation only increases that portion of the burden to be absorbed by the property taxpayer. COAH has also proposed new amendments to the regulations in an attempt to relieve home builders of their portion of the obligation below certain densities. The amendment will place further burden on property taxpayers.

Many municipalities are seeing their projected obligations quadruple as a result of faulty assumptions on growth rates and vacant land prepared by COAH consultants. Historic growth caused by compliance with prior affordable housing obligations is now serving to penalize municipalities which provided affordable housing developments. The allocation of growth to municipalities is flawed in that it improperly includes as vacant land areas such as front yards of schools, jug handles, embankments along highways, landscaped features in developments, and other areas where no development could occur. There was no consideration of available sewer, water, and other infrastructure to support the projected growth, and municipal land preservation and development which occurred subsequent to 2002 was not taken into account.

The burden being placed on the property taxpayer, and the economy of the State in general, is likely to make the State of New Jersey less affordable. It is also likely to cause job creation to slow as business seeks to locate to more favorable, less burdensome, jurisdictions.

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