



**State of New Jersey**  
**Council on Affordable Housing**  
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**CHRIS CHRISTIE**  
*Governor*

**KIM GUADAGNO**  
*Lt. Governor*

**LORI GRIFA**  
*Commissioner*

**SEAN THOMPSON**  
*Acting Executive Director*

**AGENDA**  
**NJ COUNCIL ON AFFORDABLE HOUSING**  
**10:00 A.M., WEDNESDAY, DECEMBER 8, 2010**  
**NJ COUNCIL ON AFFORDABLE HOUSING MEETING TO BE HELD AT:**  
**NJ HOUSING & MORTGAGE FINANCE AGENCY**  
**637 S. CLINTON AVENUE**  
**TRENTON, NJ 08650**  
**PUBLIC SESSION**  
*Formal Action to be Taken*

Public Session – 10:00 a.m.

Pledge of Allegiance

Sunshine Act Statement

Roll Call

Public Comment on Agenda Items

**\*Approval of Minutes: September 8, 2010 and September 23, 2010**

**\*Executive Session**

**I\*Motions on the Papers:**

- a. Motion to Stay the Processing of Third Round Petition Pending Approval of New Rules in Accordance with the Appellate Division of the Superior Court Decision – Bridgewater Township/Somerset County
- b. Motion to Delay Implementation of the Third Round Elements of its Approved Housing Element and Fair Share Plan – Village of South Orange Township/Essex County
- c. Motion for a Stay of Proceedings – Montgomery Township/Somerset County
- d. Motion to Stay Application for Substantive Certification Pending Amendment of Third Round Rules in Accordance with the Appellate Division of the Superior Court's October 8, 2010 Decision – Lafayette Township/Sussex County
- e. Motion for a Stay Permitting the Delay of Implementation of the Third Round Elements of its Approved Housing Element/Fair Share Plan – Middletown Township/Monmouth County
- f. Motion to Stay the Processing of Third Round Petition Pending Approval of New Rules in Accordance with the Appellate Division of the Superior Court Decision – Colts Neck Township/Monmouth County

**2 \*Waiver:**

Request to Expend RCA Administrative Funds in Excess of 20 Percent  
Mt. Holly Township/Burlington County

**3: \*Oral Argument:**

- a. Motion for a Contested Case Hearing - Rumson Borough/Monmouth County
- b. Motion for a Stay or in the Alternative for Extension under N.J.A.C. 5:96-14.3 and R. 2:97-7  
Manalapan Township/Monmouth County
- c. Motion by Linde North American, Inc. To Dismiss or for Accelerated Denial  
New Providence Borough/Union County

**4. \*Resolution Lifting Scarce Resource Restraint**

Winslow Township/Camden County

**5. \*Calendar of Meetings for 2011**

**Delegations of Authority:**

**Development Fee Ordinances**

Egg Harbor City/Atlantic County  
Harrington Park/Bergen County  
Wood-Ridge Borough/Bergen County  
Town of Kearny/ Hudson County  
Clinton Town/Hunterdon County  
Hampton Borough/Hunterdon County  
Neptune Township/Monmouth County

**Development Fee Ordinance Amendments**

Linwood City/Atlantic County  
Ho-Ho-Kus Borough/Bergen County  
Borough of Midland Park/ Bergen County  
Borough of Ramsey/ Bergen County  
Borough of Tenafly/ Bergen County  
Upper Saddle River Borough/Bergen County  
Glen Gardner Borough/Hunterdon County  
Alexandria Township/Hunterdon County  
Dover Towns/Morris County

East Hanover Township/Morris County

Wanaque Borough/Passaic County  
West Milford Borough/Passaic County  
Green Township/Sussex County  
Borough of Ringwood/Passaic County  
Township of Oxford/Warren County

**Municipal Housing Liaisons**

Oakland Borough/Bergen County  
Old Tappan Borough/Bergen County  
Palmyra Borough/Burlington County  
Maplewood Township/Essex County  
Swedesboro Borough/Gloucester County  
Woolwich Township/Gloucester County  
Clinton Township/Hunterdon County  
East Amwell Township/Hunterdon County  
Raritan Township/Hunterdon County  
West Amwell Township/Hunterdon County

Hopewell Township/Mercer County  
Plainsboro Township/Middlesex County  
Red Bank Borough/Monmouth County  
Spring Lake Borough/Monmouth County  
Long Hill Township/Morris County  
Jackson Township/Ocean County  
Far Hills Borough/Somerset County  
Knowlton Township/Warren County  
Oxford Township/Warren County  
Pohatcong Township/Warren County

**Spending Plans**

Fort Lee Borough/Bergen County  
Winslow Township/Camden County  
Aberdeen Township/Monmouth County

**Spending Plan Amendments**  
Allendale Borough / Bergen County  
Florence Township/Burlington County

- Other Business
- Public Participation

**\*COAH Action:**

Note: If an executive session is necessary, COAH will announce the approximate time after calling the meeting to order. If a party wishes to make a verbatim record or transcribe the public session, the party must request permission in writing to the Executive Director prior to that session.

# ORIGINAL

State of New Jersey  
Public Session

Council on Affordable Housing  
Transcript of Proceedings

Wednesday  
December 8, 2010

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1 STATE OF NEW JERSEY  
2 COUNCIL ON AFFORDABLE HOUSING  
3 PUBLIC SESSION  
4

5 -----  
6 Wednesday, December 8, 2010  
7 -----

8 **APPEARANCES:**

9 LORI GRIFA, Chairwoman  
10 JOHN WINTERSTELLA, Vice Chairman  
11 TIM DOHERTY  
12 MAYOR ALBERT S. ELLIS  
13 THEODORE KING, JR.  
14 MAYOR SUZANNE WALTERS  
15 GEORGE COHEN  
16 ANTHONY L. MARCHETTI

17 SEAN THOMPSON, Acting Executive Director  
18 GINA FISCHETTI, Chief Counsel

19 FAIR SHARE HOUSING CENTER  
20 510 Park Boulevard  
21 Cherry Hill, NJ 08002  
22 BY: KEVIN D. WALSH, ESQ.  
23 LAURA SMITH-DENKER, ESQ.  
24 Attorneys for Fair Share Housing Center  
25

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26  
27 TATE & TATE  
28 Certified Court Reporters  
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30 Medford, New Jersey 08055  
31 (856) 983-8484 - (800) 636-8283  
32 www.tate-tate.com

ORIGINAL

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1 APPEARANCES CONTINUED:

2

3 SURENIAN & ASSOCIATES, LLC  
4 707 Union Avenue  
5 Suite 301  
6 Brielle, New Jersey 08730  
7 BY: DONNA A. MCBARRON, ESQUIRE  
8 Attorneys for Borough of Rumson

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8 DAY PITNEY, LLP  
9 1 Jefferson Road  
10 Parsippany, New Jersey 07054  
11 BY: JEFFREY L. KANTOWITZ, ESQ.  
12 Attorneys for Triplet Square

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12 WEINER LESNIAK, LLP  
13 629 Parsippany Road  
14 Parsippany, New Jersey 07054  
15 BY: RONALD D. CUCCHIARO, ESQUIRE  
16 Attorneys for Manalapan Township

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1                   **MS. GRIFA:** We'll move on to public  
2 comment on agenda items. I have one person signed  
3 in.

4                   Mr. Walsh, would you like to address the  
5 Council?

6                   **MR. WALSH:** Yes, please.

7                   Good morning. Kevin Walsh for the Fair  
8 Share Housing Center. And this is the first  
9 opportunity to appear before COAH since the issuance  
10 of COAH -- the Appellate's Division's October 8th  
11 decision. And I think that there's several things  
12 to -- that I would hope COAH will address as part of  
13 its meeting today.

14                   And sometimes I know there's an executive  
15 director's report. I don't know if that's coming or  
16 not. Maybe it can be addressed in there.

17                   If not, I would ask the COAH board to  
18 provide some information about several issues that I  
19 think are pretty important to the integrity of your  
20 work and to the implementation of the Mount Laurel  
21 Doctrine here in New Jersey.

22                   One -- one -- three points that I -- that I  
23 really want to make and three general categories  
24 that I want to address. One is that there have been  
25 no meetings since October and so we've gone two

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1 months without this Council which works through the  
2 COAH board having an opportunity to address  
3 something that is as important as the Appellate  
4 Division's October 8th decision and it's -- it's the  
5 sort of thing that one would think would lead to  
6 more meetings, not to less, when a court invalidates  
7 your regulations and it's the sort of thing that the  
8 COAH staff in these times of uncertainty as a result  
9 of that decision should be looking for more guidance  
10 from this board, not less.

11 And so I will -- I'll go through the  
12 several -- the several questions I have and then  
13 hopefully you can address them at the end.

14 My first question is what's been going on  
15 for the past two months and why were the meetings  
16 cancelled? With -- under a tight time frame on the  
17 remand, I think that I as a public interest attorney  
18 and the public certainly at large, but especially  
19 the courts should -- should know the answer to that.

20 Secondly, who came up with the stay  
21 guidance that is -- was provided on COAH's website  
22 and issued? Without there being any meetings, who  
23 made those decisions? Was it you, Commissioner  
24 Grifa? Was it the executive director? Was it your  
25 attorneys? And was -- did I miss a meeting? I

1 don't think I did. Who -- who issued that guidance  
2 if -- which really has potentially a state --  
3 certainly a statewide impact, potentially impacting  
4 hundreds of municipalities, if this board didn't  
5 because that would normally when you have an  
6 independent board that is -- that is guided by the  
7 votes of its members, that is the sort of thing  
8 certainly under your bylaws that would be decisions  
9 that were made by you, not by anyone else.

10 And so my second question is who -- who  
11 issued that guidance and why wasn't it approved by  
12 the board because I don't -- I don't think it was.

13 I'd also note, and this has been the  
14 subject of correspondence that I've sent in that we  
15 object to the guidance for the reasons set forth in  
16 our correspondence because it's plainly inconsistent  
17 with the Appellate Division's remand instructions.  
18 And we are ten years into the third round and  
19 it's -- it says that municipalities right now can  
20 apply for a stay completely on their -- their third  
21 round obligations or actually they don't even have  
22 to.

23 COAH, someone, COAH staff presumably simply  
24 has issued the stay despite clear instructions from  
25 the Appellate Division to the contrary.



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1                   And finally, the third issue that I'd like  
2 to address is where do things stand with the remand?  
3 Has COAH started to come up with the methodology  
4 that to comply with the Appellate Division's remand  
5 instructions and to draft regulations that are going  
6 to be implemented to comply with the Appellate  
7 Division's instructions on -- to adopt a -- a  
8 methodology that complies with -- that is consistent  
9 with the second round methodology? Judge Skillman's  
10 decision clearly required that.

11                   We're closing in on the halfway point for  
12 the remand to be completed, we're almost at halfway.  
13 And so, again, the public at large and certainly me  
14 as an attorney that represents an organization that  
15 was a litigant and won several issues in the  
16 Appellate Division's October 8th decision, I would  
17 request that that information be provided.

18                   So the three questions, the three broad  
19 issues are why weren't there any meetings and who  
20 approved that? Who came up with the stays? And why  
21 wasn't it approved by the board? And then finally,  
22 where do things stand with the remand? What are the  
23 plans? Where are we headed? Thank you.

24                   **MS. GRIFA:** Well, Mr. Walsh, I'll  
25 speak for the Council.

1 First, by way of observation, I would  
2 suggest to you that if you're going to pose such  
3 questions and in earnestness expect answers, it  
4 would have been nice to have a copy of those  
5 questions in advance of you posing them.

6 Second, everything that has happened since  
7 September 23rd and everything that has not happened  
8 has been with the guidance of our counsel, the  
9 Attorney General.

10 With regard to any methodology or anything  
11 you might have found on the website, that has been  
12 developed with the guidance of the Attorney General.  
13 Although we might not have formal public meetings,  
14 members, subsets of this Council meet regularly for  
15 deliberative process and to give consideration for  
16 matters and other issues which are pending such that  
17 we can come up to a consensus and these meetings can  
18 be conducted in an orderly fashion and not be unduly  
19 burdensome to members of the public, such as  
20 yourself, staff or the Council members who appear  
21 here unpaid.

22 So to the extent that anything has  
23 happened, we have been guided by not only our  
24 counsel, but by our bylaws, and where appropriate,  
25 there has been a delegation of authority for our

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1 executive director to post things on the website.

2 And that's as much as I'm going to be able  
3 to answer to you today.

4 MR. WALSH: And so were decisions made  
5 at the task forces?

6 MS. GRIFA: Recommendations are made  
7 and then they come to this body for formal  
8 consideration and a vote.

9 MR. WALSH: And was there delegations  
10 of authority on the guidance that COAH posted?

11 MS. GRIFA: That I'm not going to be  
12 able to answer for you. Anything that we have done,  
13 we have done with the guidance and through our  
14 deliberative process with counsel.

15 MR. WALSH: Would it be possible to  
16 get a copy of that delegation if, in fact, you're  
17 relying on one because it goes to the heart of the  
18 issue that we're addressing.

19 MS. GRIFA: To the extent there was a  
20 delegation of authority, and it is -- and it is -- I  
21 don't know if it is or is not public record, you can  
22 get one.

23 MR. WALSH: Should be, certainly. But  
24 where do things stand, Commissioner, with the  
25 remand?

1                   **MS. GRIFA:** Well, sir, you know we  
2 have filed an application for a stay before the  
3 Appellate Division. I think you opposed it.

4                   **MR. WALSH:** True. But does that mean  
5 you haven't made any progress?

6                   **MS. GRIFA:** We have an application for  
7 a stay, sir.

8                   **MR. WALSH:** And so then we're to -- by  
9 your -- by omission I believe what you're saying is  
10 you've made no progress on complying otherwise with  
11 the Appellate Division's remand instructions?

12                   **MS. GRIFA:** You asked me a where  
13 question, Mr. Walsh, and I gave you an answer.

14                   **MR. WALSH:** I --

15                   **MS. GRIFA:** We stand -- we have a  
16 stay, we have an application for a stay pending, we  
17 have not received any information from the court,  
18 any decision on that application. Your office has  
19 opposed it, as have some other parties. We wait for  
20 additional information or guidance from the court.

21                   **MR. WALSH:** Okay. The final question,  
22 who approved the stay request? Because expressly  
23 under your bylaws, those decisions are supposed to  
24 be made by the COAH board.

25                   **MS. GRIFA:** The stay requests are on

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1 for consideration by this body today. There are  
2 nine of them.

3 MR. WALSH: My apology. I should have  
4 been clear.

5 Who approved the stay request to the  
6 Appellate Division, which is a legal decision that  
7 your bylaws say that guidance from your attorneys  
8 can be requested, decisions have to be made by the  
9 COAH board? And that would seem to be -- something  
10 as important as a stay of a decision that impacts  
11 the whole state would seem to be normally made by  
12 a -- an independent body that -- who -- on whose  
13 behalf the brief was filed and the motion was filed.

14 My question is who specifically approved  
15 that request because it -- it's -- the best I can  
16 tell, it's -- it's an invalid request unless this  
17 board has voted on it.

18 MR. COHEN: If I may --

19 MS. GRIFA: Yes, please, Mr. Cohen.

20 MR. COHEN: Through the chair, as Mr.  
21 Walsh is aware, that's a litigation decision that  
22 this board that -- through counsel makes all the  
23 time. It doesn't have to be voted on by the Council  
24 in order to determine whether to file an appeal,  
25 whether to file motions. Those are done all the

1 time. This was done pursuant to fulfilling the  
2 board's obligation on what it felt was the best way  
3 of complying with the court's order.

4 In this instance, they made a motion for a  
5 stay because, as you're aware, there are four  
6 petitions and now two cross petitions before the  
7 Supreme Court raising issues as well as -- and one  
8 of them is yours saying that the growth share  
9 methodology is a valid methodology. The court as  
10 you're aware from their opinion says growth shares  
11 are invalid based upon Mount Laurel II, but then the  
12 Supreme Court wants to give more guidance as to the  
13 mechanics.

14 As a result of that, the decision was made  
15 rather than have this board go ahead and go too far  
16 down the road with regulations, make the motion for  
17 the stay. If the court denies that stay, this board  
18 will have to respond appropriately. But right now,  
19 the motion for the stay was made as a litigation  
20 strategy in light of the petitions and cross  
21 petitions that were made.

22 **MR. WALSH:** And did a task force  
23 address that issue?

24 **MR. COHEN:** No task force met on that,  
25 no.

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1                   **MR. WALSH:** Thank you.

2                   **MS. GRIFA:** Nor is it necessary.

3                   That will close open public comment.

4                   At this time, we're going to go into an  
5 executive session whereas Chapter 231 of the public  
6 laws of 1975 N.J.S.A. 10:4-6, the Open Public  
7 Meetings Act, permits certain matters to be  
8 discussed in the meeting, which is not open to the  
9 public.

10                   Now, therefore, be it resolved by the  
11 Council on Affordable Housing that the Council on  
12 Affordable Housing hold a closed session in  
13 accordance with the provisions of the Open Public  
14 Meetings Act.

15                   The matters to be discussed at this closed  
16 session are as follows. Litigation, all the matters  
17 to be discussed at this closed session are matters  
18 which may be discussed in the absence of the public  
19 in accordance with the Open Public Meetings Act.  
20 Official action may be taken by the Council on some  
21 or all of the matters to be discussed at the closed  
22 session.

23                   It is expected that the closed meeting of  
24 the Council on the Affordable Housing -- on  
25 Affordable Housing immediately following the closed

1 session, the discussion conducted at the closed  
2 session will be disclosed to the public as fully as  
3 possible consistent with the proper conduct of the  
4 Council's business in accordance with the Open  
5 Public Meetings Act.

6 Can we have a motion on the resolution to  
7 go to executive session, please?

8 MR. ELLIS: So move.

9 MS. GRIFA: Second?

10 MS. WALTERS: Second.

11 MS. GRIFA: Roll call, please.

12 (Roll call taken.)

13 MS. GRIFA: With that ladies and  
14 gentleman, we'll -- I'd ask that all nonessential  
15 personnel and members of the public clear the room.  
16 We expect that the executive session will last 15  
17 minutes.

18 (Executive session held out of public  
19 hearing.)

20 MS. GRIFA: Thank you, ladies and  
21 gentlemen. We are resuming public session.

22 We will go to agenda item 1, which is  
23 motions on papers items A through F.

24 MS. FISCHETTI: Good morning. All of  
25 these agenda items are going to be addressed at the



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1 same time and all of you have one resolution to:  
2 address all of the summaries, but you have received  
3 individual summaries on each individual municipal  
4 motion for a stay.

5           On October 8th, 2010, the Appellate  
6 Division issued its decision in the appeals of  
7 COAH's revised third round rules at 5:96 and 5:97.  
8 In its decision, the court reversed or remanded  
9 portions of COAH's third round rules, including the  
10 use of gross share methodology for determining third  
11 round prospective affordable housing obligations.  
12 The court upheld COAH's termination of municipal  
13 present need and prior round affordable housing  
14 obligations in its revised third round rules.

15           In accordance with the court's decision,  
16 COAH will refrain from further review of the growth  
17 share obligations of any municipal third round  
18 plans. The court did not issue a blanket stay of  
19 proceedings before COAH or the court and instead,  
20 left it to COAH, or in the case of a court town, the  
21 court, to determine whether to issue a stay of  
22 proceedings reviewing a municipality's affordable  
23 housing plan. The court stated that a municipality  
24 or interested party may apply to COAH or the  
25 appropriate court for a stay of proceedings and such

1 application should be decided in light of the status  
2 of the individual municipality's compliance with its  
3 affordable housing obligations and all other  
4 relevant circumstances. As a result, COAH will  
5 determine, on a case-by-case basis, by way of a  
6 motion for a stay submitted by the municipality,  
7 whether to proceed with a review of portions of  
8 affordable housing plans addressing present need and  
9 prior round affordable housing obligations and  
10 objections to those portions of municipal housing  
11 plans.

12 COAH received motions requesting a stay of  
13 proceedings concerning only the prospective need of  
14 third round obligation from the following towns:  
15 Montgomery Township in Somerset County, Bridgewater  
16 Township in Somerset, Lafayette Township in Sussex  
17 County and Colts Neck Township in Monmouth County.  
18 COAH also received motions requesting a stay of COAH  
19 proceedings from South Orange Village Township in  
20 Essex and Middletown Township in Monmouth County,  
21 both of whom have already received third round  
22 certification from this Council.

23 COAH staff has reviewed the status and  
24 compliance of the municipalities and -- just  
25 stated -- and in regard to their present need will

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1 we have obligations and their prior obligations.  
2 All of the towns moving for a stay are currently in  
3 compliance with their prior round and present need  
4 obligations. These obligations continue for all of  
5 the municipalities seeking a stay of their  
6 prospective growth share obligations.

7 A task force met on November 1st, 2010 to  
8 discuss this matter and the task force recommends  
9 that in light of the Appellate Division decision,  
10 COAH refrain from further review of the third round  
11 prospective growth share obligations and pending  
12 needs for third round plans because there are new  
13 standards to guide COAH due to the court's  
14 invalidation of the growth share portion of the  
15 third round regulations.

16 Municipalities that have received third  
17 round certification or have petitioned COAH continue  
18 to be under the jurisdiction of COAH. The task  
19 force recommends a finding that these individual  
20 motions for a stay of COAH proceedings be granted  
21 based on the facts presented by COAH staff. In  
22 addition, the task force recommends that COAH  
23 proceedings involving only the third round  
24 prospective obligation be granted in light of the  
25 Appellate Division's invalidation of the growth

1 share methodology for all municipalities under  
2 COAH's jurisdiction. The task force recommends that  
3 COAH encourage municipalities to continue their  
4 pursuit of building affordable housing opportunities  
5 and that COAH staff be available to assist  
6 municipalities with the implementation of affordable  
7 housing mechanisms, including expending monies for  
8 municipal housing, affordable housing trust fund  
9 accounts and for affordable housing activities.

10 Finally, the task force recommends that  
11 COAH staff make itself available to work with  
12 municipalities to plan for and provide additional  
13 affordable housing opportunities for future  
14 prospective affordable housing needs and that the  
15 Council's staff will provide any assistance or  
16 facilitation to municipalities towards providing  
17 affordable housing, including conducting  
18 implementation wherever possible.

19 MS. GRIFA: Any questions or comments?

20 MR. ELLIS: Just one. I believe Gina  
21 mentioned November 1st. It was December 1st --

22 MS. FISCHETTI: Oh, excuse me.  
23 December 1st, yes.

24 MR. ELLIS: -- for the task force.

25 MS. GRIFA: On these eight, we'll

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1 reserve on these eight motions -- six motions.

2 Any substantive questions or comments with  
3 regard to these six motions for stay?

4 There being none, may I have a motion on  
5 the stay applications A through F, one resolution,  
6 but they're all --

7 MR. WINTERSTELLA: So move.

8 MS. GRIFA: Second, please?

9 MR. ELLIS: Second.

10 MS. GRIFA: Roll call.

11 (Roll call taken.)

12 MS. GRIFA: We're going to go back on  
13 the record. We're going to move to the oral  
14 argument portion of the agenda.

15 I'm going to remind you, we have a lot of  
16 good lawyers here today. I want to remind you, I  
17 know that your clients are not paying you by the  
18 word. We're going to give each side of these  
19 motions five minutes.

20 Okay. And so with that, we'll go to agenda  
21 item 3 oral argument. First motion is listed at A,  
22 a motion for a contested case hearing involving  
23 Rumson Borough, Monmouth County.

24 Mr. Walsh, is it your motion?

25 MR. WALSH: Yes. Thanks, Miss

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1                   **MR. TOMPSON:** Yes. And we also have a  
2 meeting date for the year 2011, wow, so these are  
3 the meeting dates for next year's board meetings and  
4 there was -- just for notification purposes I  
5 understand.

6                   **MS. GRIFIA:** Yes.

7                   **MR. THOMPSON:** I don't think there's  
8 any Council action.

9                   **MS. GRIFA:** Right. We'll be posting  
10 those dates on the website.

11                   Any other business from any member of  
12 the -- member of the Council? Apparently not.

13                   Public participation.

14                   Mr. Walsh, please be brief.

15                   **MR. WALSH:** I will. Thanks,  
16 Commissioner.

17                   Kevin Walsh appearing for the Fair Share  
18 Housing Center.

19                   I understand the Council went into  
20 executive session and the language that's required  
21 to be read statutorily on that as you may recall  
22 says that matters will be disclosed when it's  
23 appropriate and that the matter involved litigation  
24 and I think I'd request that Council indicate what  
25 litigation it was and whether any decisions were

1 made, you know, because matters can be discussed,  
2 decisions cannot be made during that and so I would  
3 just ask specifically whether any decisions were  
4 made and I ask that specifically in connection with  
5 the remand proceedings or any other matters that --  
6 that were the subject of any decisions or, you know,  
7 to the extent you can do so consistent with the law  
8 disclose what was discussed during that session.  
9 Thank you.

10 **MS. GRIFA:** Thank you.

11 Well, the only decisions that were made  
12 were the decision to go into executive session and  
13 the decision to return to public session. And, of  
14 course, during that executive session, we consulted  
15 with our counsel with regard to pending legal  
16 matters.

17 **MR. WALSH:** Could you indicate which  
18 they are? I guess it's --

19 **MS. GRIFA:** The stay and the petitions  
20 and the cross petitions.

21 **MR. WALSH:** Thank you.

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C E R T I F I C A T E

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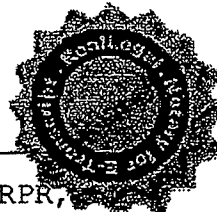
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I, ELLEN V. LETCHFORD, a Certified  
Shorthand Reporter and Notary Public of the State of  
New Jersey, do hereby certify that the foregoing is  
a true and accurate transcript of the stenographic  
notes of testimony taken by me at the time, place  
and on the date hereinbefore set forth.

I do further certify that I am neither a  
relative nor employee nor attorney nor counsel of  
any of the parties to this action, and that I am  
neither a relative nor employee of such attorney or  
counsel and that I am not financially interested in  
this action.

*Ellen V. Letchford*



ELLEN V. LETCHFORD, CCR, RPR,

Certificate No. 30XI00081100

Date: December 9, 2010



A-5382-07T3

FILED  
APPELLATE DIVISION  
January 18, 2011  
*AWA*  
CLERK

ORDER ON MOTION  
-----

IN RE ADOPTION OF REVISED THIRD ROUND REGULATIONS BY THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING NJAC 5:96 & 5:97 (NJ LEAGUE OF MUNICIPALITIES)	SUPERIOR COURT OF NEW JERSEY APPELLATE DIVISION DOCKET NO. A-005382-07T3 MOTION NO. M-002337-10 BEFORE PART A JUDGE(S): JOSE L. FUENTES MARIE P. SIMONELLI STEPHEN SKILLMAN
--	--

MOTION FILED: 12/22/2010	BY: FAIR SHARE HOUSING
ANSWER(S) 01/10/2011	BY: KINGS ROW HOMES
FILED: 01/10/2011	COAH

SUBMITTED TO COURT: January 13, 2011

ORDER  
-----

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS,  
ON THIS 14th day of January, 2011, HEREBY ORDERED AS FOLLOWS:

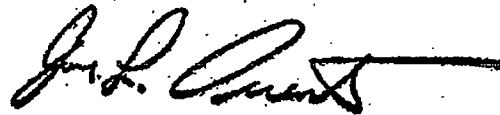
MOTION BY INTERVENOR

MOTION TO APPOINT SPECIAL MASTER  
OR IN THE ALTERNATIVE REQUIRE BI-  
WEEKLY REPORTING

GRANTED IN PART AND OTHER

SUPPLEMENTAL:  
SEE ATTACHED

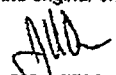
FOR THE COURT:



JOSE L. FUENTES, J.A.D.

UNKNOWN STATEWIDE  
ORDER - REGULAR MOTION KMC

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



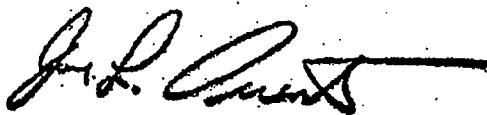
CLERK OF THE APPELLATE DIVISION

Ra000025

ORDER ON MOTION

RE: IN RE ADOPTION OF REVISED THIRD ROUND REGULATIONS BY THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING N.J.A.C. 5:96 & 5:97 (NJ LEAGUE OF MUNICIPALITIES)

The mere pendency of a motion for stay to the Supreme Court does not provide justification for COAH's failure to comply with this court's order of October 8, 2010 requiring COAH to adopt revised third round regulations within five months. Therefore, COAH is directed to immediately comply with that order. In addition, the court grants the part of Fair Share's motion that seeks an order requiring COAH to submit bi-weekly reports regarding its compliance with the October 8, 2010 order. This report shall be submitted in the form of an affidavit or certification by the Chair of COAH. The first such report shall be filed no later than January 28, 2011, with copies to be sent directly to the chambers of the judges hearing this appeal and service to be made upon all parties to the appeal. The court defers consideration of any other relief, including appointment of a master or other relief in aid of litigant's rights, pending receipt of that first report.



JOSE L. FUENTES, J.A.D.

ORDER ON MOTION WHEN CROSS MOTION FILED

A-5382-07T3

FILED  
APPELLATE DIVISION  
April 13, 2011



CLERK

IN RE ADOPTION OF REVISED THIRD  
ROUND REGULATIONS BY THE NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING  
NJAC 5:96 & 5:97  
(NJ LEAGUE OF MUNICIPALITIES)

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-005382-07T3  
MOTION NO. M-003132-10  
BEFORE PART A  
JUDGE(S): JOSE L. FUENTES  
MARIE P. SIMONELLI  
STEPHEN SKILLMAN

MOTION FILED: 01/28/2011  
ANSWER(S) FILED: 02/23/2011

BY: COAH  
BY: FAIR SHARE HOUSING

SUBMITTED TO COURT: February 28, 2011

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS, ON THIS  
12th day of April, 2011, HEREBY ORDERED AS FOLLOWS:

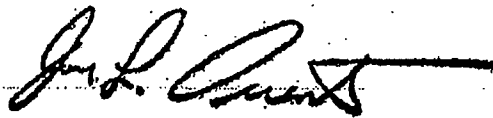
MOTION BY RESPONDENT

MOTION FOR RECONSIDERATION OF THE DENIED AND OTHER  
COURT'S JANUARY 14, 2011 ORDER

SUPPLEMENTAL:

On this court's motion, the implementation of our ruling In  
Re Adoption of Third Round Regulations, N.J.A.C. 5:96 and  
5:97 by the Council on Affordable Housing, 416 N.J. Super.  
462 (App. Div. 2010), is stayed pending the outcome of the  
Supreme Court's ruling.

FOR THE COURT:



JOSE L. FUENTES, J.A.D.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION

STATEWIDE  
ORDER - REGULAR MOTION  
KMC

Ra000027

SUPREME COURT OF NEW JERSEY  
M-643 September Term 2010  
067126

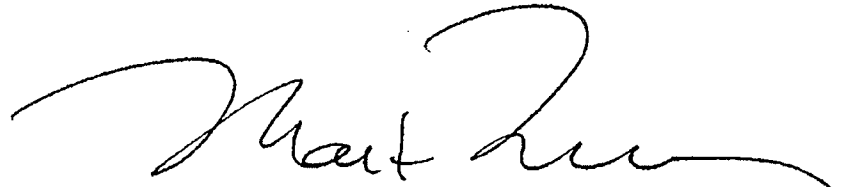
IN THE MATTER OF THE ADOPTION OF  
N.J.A.C. 5:96 AND 5:97 BY THE NEW  
JERSEY COUNCIL ON AFFORDABLE HOUSING

**FILED**  
O R D E R  
JAN 18 2011

  
CLERK

This matter having been duly presented to the Court, it is  
ORDERED that the motion of the Attorney General of New Jersey  
for a stay of the Appellate Division decision is granted pending  
further Order of the Court.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at  
Trenton, this 14th day of January, 2011.

  
CLERK OF THE SUPREME COURT



State of New Jersey  
COUNCIL ON AFFORDABLE HOUSING

101 SOUTH BROAD STREET  
PO Box 813  
TRENTON, NJ 08625-0813

(609) 292-3000  
(609) 633-6056 (FAX)

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

RICHARD E CONSTABLE, III  
*Commissioner*

SEAN THOMPSON  
*Acting Executive Director*

November 6, 2013

Laura Smith-Denker  
Fair Share Housing Center  
510 Park Blvd  
Cherry Hill NJ 08002

**RE: OPRA REQUEST # W81055**

Dear Ms. Smith-Denker:

The Council on Affordable Housing ("COAH") received your Open Public Records Act ("OPRA") request on October 25, 2013 for the following information:

Any agreement, scope of work, or contract with Rutgers University, Bloustein School of Planning and Public Policy or Robert W. Burchell, Ph.D. in response to the Supreme Court decision, *In re Adoption of N.J.A.C. 5:96 & 5:97*, \_\_\_\_ N.J. \_\_\_\_ (September 26, 2013).

The seven (7) business day deadline to respond to your request is November 6, 2013. COAH is not in possession of any of the above documents. OPRA request # **W81055** is closed.

If your request for access to a government record has been denied or unfiled within the seven (7) business days required by law, you have a right to challenge the decision by COAH to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail at [atgrc@dca.state.nj.us](mailto:atgrc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.



If you have any questions, please feel free to contact me at (609) 292-4317 or [maria.connolly@dca.state.nj.us](mailto:maria.connolly@dca.state.nj.us).

Sincerely,

*Maria Connolly*

Maria Connolly  
Records Custodian

cc: Gina Fischetti, Esq.



State of New Jersey  
COUNCIL ON AFFORDABLE HOUSING

101 SOUTH BROAD STREET  
PO Box 813  
TRENTON, NJ 08625-0813  
(609) 292-3000  
(609) 633-6056 (FAX)

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

RICHARD E CONSTABLE, III  
*Commissioner*

SEAN THOMPSON  
*Acting Executive Director*

November 8, 2013

Laura Smith-Denker  
Fair Share Housing Center  
510 Park Blvd  
Cherry Hill NJ 08002

**RE: OPRA REQUEST # W81124**

Dear Ms. Smith-Denker:

The Council on Affordable Housing ("COAH") received your Open Public Records Act ("OPRA") request on October 29, 2013 for the following information:

Any agreement, scope of work, or contract since 2010 concerning the calculation of state-wide and municipal fair share numbers.

The seven (7) business day deadline to respond to your request is November 6, 2013. COAH is not in possession of any of the above documents. OPRA request # **W81124** is closed.

If your request for access to a government record has been denied or unfilled within the seven (7) business days required by law, you have a right to challenge the decision by COAH to deny access. At your option, you may either institute a proceeding in the Superior Court of New Jersey or file a complaint with the Government Records Council ("GRC") by completing the Denial of Access Complaint Form. You may contact the GRC by toll-free telephone at 866-850-0511, by mail at P.O. Box 819, Trenton, NJ, 08625, by e-mail [atgrc@dca.state.nj.us](mailto:atgrc@dca.state.nj.us), or at their web site at [www.state.nj.us/grc](http://www.state.nj.us/grc). The Council can also answer other questions about the law. All questions regarding complaints filed in Superior Court should be directed to the Court Clerk in your County.



If you have any questions, please feel free to contact me at (609) 292-4317 or [maria.connolly@dca.state.nj.us](mailto:maria.connolly@dca.state.nj.us).

Sincerely,

*Maria Connolly*

Maria Connolly  
Records Custodian

cc: Gina Fischetti, Esq.





State of New Jersey  
COUNCIL ON AFFORDABLE HOUSING

101 SOUTH BROAD STREET  
PO BOX 813  
TRENTON, NJ 08625-0813

(609) 292-3000  
(609) 633-6056 (FAX)

CHRIS CHRISTIE  
*Governor*

KIM GUADAGNO  
*Lt. Governor*

RICHARD E CONSTABLE, III  
*Commissioner*

SEAN THOMPSON  
*Acting Executive Director*

SPECIAL MEETING

AGENDA

NJ COUNCIL ON AFFORDABLE HOUSING

9:30 A.M WEDNESDAY, MAY 1, 2013

NJ COUNCIL ON AFFORDABLE HOUSING MEETING TO BE HELD AT:

NJ HOUSING & MORTGAGE FINANCE AGENCY

637 S. CLINTON AVENUE

TRENTON, NJ 08650

PUBLIC SESSION

*Formal Action to Be Taken*

Public Session – 9:30 a.m.

Pledge of Allegiance

Sunshine Act Statement

Roll Call

**\*Nominate and Elect COAH Officers**

Board Secretary

Vice Chair

Second Vice Chair

**\* Approval of Resolution of Delegation of Authority**

**\*Approval of Minutes: March 22, 2011**

Public Comment on Agenda Items

**1. Adoption of 2012 and 2013 Regional Income Limits**

**2. Waiver of N.J.A.C. 5:80-26.5(c) and N.J.A.C. 5:80-26.5(e) of the Uniform Housing Affordability Controls.**

**3. Ratification and authorization of notification letter(s) to effectuate N.J.S.A. 52:27D-329.2 and N.J.S.A. 52:27D-329.3.**



#### **4. Delegations of Authority:**

##### **Bedroom Distribution Waivers**

Upper Saddle River Borough/ Bergen County  
Howell Township/ Monmouth County  
Spring Lake Borough/ Monmouth County

##### **Low/Mod Split Waiver**

Howell Township/ Monmouth County

##### **Development Fee Ordinances**

Buena Vista Township/Atlantic County  
Rochelle Park Township / Bergen County  
Mine Hill Township / Morris County  
Morristown Town/Morris County  
Hampton Township / Sussex County  
Belvidere Township / Warren County

##### **Development Fee Ordinance Amendments**

Hamilton Township/ Atlantic County  
Hammonton Town/Atlantic County  
Linwood City/Atlantic County  
Northvale Borough/Bergen County  
Burlington City/ Burlington County  
Burlington Township/ Burlington County  
Secaucus Town/Hudson County  
Tewksbury Township / Hunterdon County  
Chester Township / Morris County  
Morris Township/Morris County  
Sparta Township / Sussex County  
Fanwood Borough/Union County

##### **Spending Plans**

Brigantine City/Atlantic County  
Egg Harbor Township/ Atlantic County  
Galloway Township/Atlantic County  
Hammonton Town/Atlantic County  
Linwood City/Atlantic County  
Closter Borough/Bergen County  
Englewood Cliffs Borough/Bergen County  
Burlington City/Burlington County  
Moorestown Township/Burlington County  
Willingboro Township/ Burlington County  
Ocean City/ Cape May County  
Upper Township/Cape May County  
Vineland City/Cumberland County  
Livingston Township/Essex County  
Roseland Borough/Essex County  
Verona Township/Essex County  
Harrison Township/Gloucester County  
Swedesboro Borough/Gloucester County  
Jersey City/Hudson County (RCA recapture funds only)  
Union Township/Hunterdon County  
Princeton Borough/Mercer County  
Edison Township/Middlesex County  
Farmingdale Borough/Monmouth County  
Howell Township/Monmouth County

Rumson Borough/Monmouth County  
Montville Township/Morris County  
Mount Olive Township/Morris County  
Randolph Township/Morris County  
Barnegat Township/Ocean County  
Woodland Park Borough/Passaic County  
Pilesgrove Township/ Salem County  
Branchburg Township/ Somerset County  
Franklin Borough/ Sussex County  
Montague Township/ Sussex County  
Stillwater Township/ Sussex County  
Fanwood Borough/ Union County  
Allamuchy Township/Warren County  
Hackettstown Town/Warren County  
Hardwick Township/ Warren County  
Washington Township/ Warren County

**Spending Plan Amendments**

Linwood City/Atlantic County  
Edgewater Borough/Bergen County  
Tenafly Borough/Bergen County  
Florence Township/Burlington County  
Montclair Township/ Essex County  
Nutley Township/Essex County  
Bayonne City/Hudson County  
Frenchtown Borough/Hunterdon County  
West Windsor Township/Mercer County  
North Brunswick Township/ Middlesex County  
Rumson Borough/ Monmouth County  
Denville Township/ Morris County  
Mount Olive Township/Morris County  
Riverdale Borough/ Morris County  
Sparta Township/Sussex County  
Hardwick Township/Warren County

**Municipal Housing Liaisons**

Englewood City/Bergen County  
Northvale Borough/Bergen County  
Delanco Township/Burlington County  
Mount Laurel Township/Burlington County  
New Hanover Township/Burlington County  
Pemberton Township/Burlington County  
Springfield Township/Burlington County  
Somerdale Borough/Camden County  
Stratford Borough/Camden County  
Cape May City/Cape May County  
Cape May Point Borough/Cape May County  
Middle Township/Cape May County  
Upper Township/Cape May County  
Woodbine Borough/Cape May County

- Other Business
- Public Participation
- \*Executive Session

**\*COAH Action:**

Note: If an executive session is necessary, COAH will announce the approximate time after calling the meeting to order. If a party wishes to make a verbatim record or transcribe the public session, the party must request permission in writing to the Executive Director prior to that session.

2013-3

**Resolution Concerning Expenditure and Commitment of Municipal Affordable Housing  
Trust Funds in Accordance with N.J.S.A. 52:27D-329.2 and N.J.S.A. 52:27D-329.3  
COAH Resolution #2013-1**

WHEREAS, the New Jersey Legislature enacted the Fair Housing Act ("FHA"), *N.J.S.A. 52:27D-301 et seq.*, on July 2, 1985 to establish an administrative alternative to exclusionary zoning litigation; and

WHEREAS, the New Jersey Supreme Court, in *Holmdel Builders Association v. Holmdel Township*, 121 N.J. 550 (1990), determined that mandatory development fees are both statutorily and constitutionally permissible; and

WHEREAS, in recognition of the Council on Affordable Housing's (COAH or Council) wide powers and broad jurisdiction to resolve lower-income housing problems, the Court in *Holmdel Builder's Association* directed COAH to promulgate development fee rules specifying, among other things, the standards for imposition and collection of these development fees by municipalities; and

WHEREAS, on January 21, 1992, the Council's regulations concerning the establishment, administration, and enforcement of the expenditure of affordable housing development fees by municipalities became effective and these regulations have remained in effect, with amendments, since then; and

WHEREAS, these regulations require COAH's approval of all development fee ordinances and require municipalities to deposit duly collected development fees and payments-in-lieu in a separate municipal affordable housing trust fund account; and

WHEREAS, prior to July 17, 2008, the FHA did not mandate the expenditure or commitment of development fees and payments-in-lieu collected by municipalities; and

WHEREAS, on July 17, 2008, the Legislature amended the FHA by enacting L. 2008, Chapter 46 ("Chapter 46"); and

WHEREAS, while *N.J.A.C. 5:97:8.10(a)*8 previously required a municipality to spend the moneys in its affordable housing trust fund within four years of COAH's approval of the municipal spending plan or in accordance with a COAH approved implementation schedule, Chapter 46 overrode that regulation by express statutory language that adopted a more stringent standard and removed COAH's ability to authorize a different schedule; and

WHEREAS, in order to establish more accountability of funds being collected for affordable housing purposes and to assist in the prompt creation of affordable housing, Chapter 46, enacted in 2008, requires that a municipality must first obtain the council's approval of the expenditure before spending or committing to spend affordable housing development fees and, second, that all development fees and payments-in-lieu collected by a municipality shall be spent or committed for expenditure within four years from the date of collection; and

WHEREAS, *N.J.S.A. 52:27D-329.2*, enacted as part of Chapter 46 in 2008, requires COAH to direct that municipalities transfer to the New Jersey Affordable Housing Trust Fund any development fees or payments-in-lieu that have not been spent or committed for expenditure within four years of the date of their collection; and

WHEREAS, by order dated July 13, 2012, the New Jersey Superior Court, Appellate Division, ordered that before any transfer is effectuated, COAH must provide affected municipalities "with written notice describing the exact amount of funds intended for transfer and how such amount was calculated" and an opportunity "to contest before COAH the proposed transfer by demonstrating that funds targeted have been 'committed' to fund an affordable housing project by way of a legally enforceable agreement with a third party, or by such other means that show a firm and binding obligation to spend such funds in a manner consistent with the municipality's affordable housing obligations;" and

WHEREAS, on July 24, 2012, in furtherance of that statutory obligation and consistent with the Appellate Division's July 13, 2012 Order, COAH's Acting Executive Director sent a letter to municipalities with affordable housing trust funds; and,

WHEREAS, the Acting Executive Director's letter set forth, based upon records submitted by the municipality, the municipality's trust fund balance as of July 17, 2008, the

amount spent as of July 17, 2012, and the remaining balance, and described the exact amount of funds intended for transfer and how such amount was calculated absent a showing by the municipality that it had committed the funds; and

WHEREAS, the letter provided the municipality with an opportunity to submit documentation demonstrating commitment of municipal affordable housing trust funds for use towards an affordable housing project(s) by way of a legally enforceable agreement with a third party or by such other means that demonstrates a firm and binding obligation to spend such funds in a manner consistent with the municipality's respective affordable housing obligation; and

WHEREAS, the letter further advised the municipality of its statutory obligation under *N.J.S.A. 52:27D-329.2* and *-329.3* to spend or commit to expend collected moneys within four years of the date of collection and asked the municipality to remit to the New Jersey Affordable Housing Trust Fund any funds that it agreed that it was not statutorily authorized to retain pursuant to *N.J.S.A. 52:27D-329.2* and *-329.3*; and

WHEREAS, COAH has reviewed the July 24, 2012 letters that the Acting Executive Director sent in furtherance of the statutory directive that municipalities transfer any unspent balance at the end of the four-year period to the New Jersey Affordable Housing Trust Fund.

NOW THEREFORE BE IT RESOLVED that the Council hereby ratifies the Acting Executive Director's authority to administratively enforce the aforementioned statutory requirement and affirms and validates the actions taken by the Acting Executive Director and the Acting Executive Director's authority generally to send such letters and affirms and validates all letters sent to municipalities dated July 24, 2012 concerning the status of municipal affordable housing trust funds; and

BE IT FURTHER RESOLVED that the Council authorizes the Acting Executive Director to provide municipalities with a further opportunity to submit supplemental documentation demonstrating commitment of municipal affordable housing trust funds for use towards an affordable housing project(s) included in an approved spending plan, by way of a legally enforceable agreement with a third party or by such other means that demonstrates a firm

and binding obligation to spend such funds in a manner consistent with the municipality's respective affordable housing obligation; and

BE IT FURTHER RESOLVED that the Council authorizes the Acting Executive Director to advise municipalities that, in addition to submitting any further documentation, the municipalities should submit any argument in support of their contention that they have committed to expend trust fund moneys in accordance with the relevant statutory and regulatory provisions, including but not limited to *N.J.A.C. 5:97-6.1, et seq.*; and

BE IT FURTHER RESOLVED that a municipality that did not initially respond to COAH's July 24, 2012 letter, or that requested COAH return its response, shall submit all information demonstrating commitment to fund its affordable housing project(s) by way of a legally enforceable agreement with a third party or by such other means that show a firm and binding obligation to spend such funds in a manner consistent with its respective affordable housing obligation and in accordance with the relevant statutory and regulatory provisions, including but not limited to *N.J.A.C. 5:97-6.1, et seq.*; and

BE IT FURTHER RESOLVED that any municipal affordable housing trust fund moneys that were collected on or before July 17, 2008 that are not asserted by a municipality to have been spent or committed to be expended by July 17, 2012, shall be submitted to the Council by May 22, 2013 for the transfer of such funds by the Council to the New Jersey Affordable Housing Trust Fund; and

BE IT FURTHER RESOLVED that the Council authorizes the Acting Executive Director to advise municipalities, for funds collected between July 18, 2008 and March 31, 2009, based upon records submitted by the municipalities, of the exact amount of funds intended for transfer and how such amount was calculated (i.e., the municipality's trust fund balance as of March 31, 2009, the amount spent or committed for expenditure as of March 31, 2013 and within four years of the date of collection, and the remaining balance); and

BE IT FURTHER RESOLVED that, for funds collected between July 18, 2008 and March 31, 2009, a municipality shall submit a certification and information demonstrating that such municipality has spent or committed to expend the moneys to fund an affordable housing



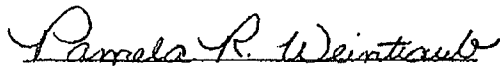
project(s) by way of a legally enforceable agreement with a third party or such other means that show a firm and binding obligation, within four years of the date of collection; and

BE IT FURTHER RESOLVED that, for funds collected between July 18, 2008 and March 31, 2009, the municipality shall also include documentation that demonstrates the commitments are consistent with its adopted housing element and fair share plan and approved spending plan and in accordance with the relevant statutory and regulatory provisions, including but not limited to *N.J.A.C. 5:97-6.1, et seq.*; and

BE IT FURTHER RESOLVED that any municipal affordable housing trust fund moneys that were collected between July 18, 2008 and March 31, 2009 that are not asserted by a municipality to have been spent or committed to be expended, shall be submitted to the Council by May 22, 2013 for the transfer of such funds by the Council to the New Jersey Affordable Housing Trust Fund; and

BE IT FURTHER RESOLVED, that consistent with his general supervisory and management responsibility over all the activities of the Council, the Acting Executive Director is hereby authorized to take all steps necessary to implement the directives of the Council as set forth in this resolution.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on May 1, 2013

  
Council on Affordable Housing

## ORDER ON EMERGENT APPLICATION

IN RE FAILURE OF COUNCIL ON  
AFFORDABLE HOUSING TO ADOPT  
TRUST FUND COMMITMENT  
REGULATIONS.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-5257-11  
MOTION NO. M-  
BEFORE PART:  
JUDGE(S): FUENTES  
GRALL  
MESSANO

## EMERGENT APPLICATION

FILED: 05/10/2013

BY: FAIR SHARE HOUSING

ANSWER(S) FILED:05/13/2013  
APPEARANCE ONLY:

BY:COUNCIL ON AFFORDABLE HOUSING

## ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS ON  
THIS 13TH DAY OF MAY, 2013, HEREBY ORDERED AS FOLLOWS:

EMERGENT APPLICATION  
FOR

STAY OF THE SEIZURE OF TRUST  
FUNDS ON OR AFTER MAY 22, 2013

GRANTED	DENIED	OTHER
<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>

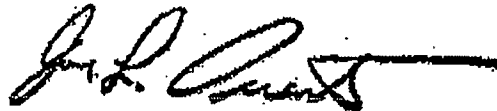
## SUPPLEMENTAL:

Fair Share Housing Center's application for emergent consideration is granted. The implementation of the resolution of 5/1/2013 adopted by the Council on Affordable Housing (COAH) establishing a process for seizing municipal trust funds pursuant to N.J.S.A. 52:27D-329.29(d) is stayed pending further order of this court.

Fair Share Housing shall file its brief by Tuesday, May 21, 2013 by 4 p.m. COAH shall file its brief by Thursday, May 30, 2013 by 4 p.m. No reply brief will be accepted.

Oral argument is scheduled in this matter for Wednesday June 5, 2013 at 2 p.m. in the Veteran's Courthouse, 50 W. Market Street, Room 1114, Newark.

FOR THE COURT:



JOSE L. FUENTES, P.J.A.D. Ra000042

**FILED**

MAY 28 2013

  
CLERK

SUPREME COURT OF NEW JERSEY  
M-1335 September Term 2012  
072652

IN RE FAILURE OF COUNCIL ON  
AFFORDABLE HOUSING TO ADOPT  
TRUST FUND COMMITMENT  
REGULATIONS

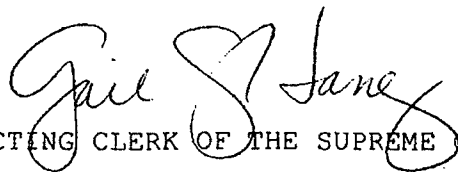
O R D E R

This matter having been duly presented to the Court on the motion by the New Jersey Council on Affordable Housing (COAH) to vacate the interim stay order entered by the Superior Court, Appellate Division (A-5257-11) on May 13, 2013, or alternatively for partial relief from the interim stay to permit COAH to resume its administrative process of gathering and evaluating municipalities' submissions on their expenditure of affordable housing trust funds and staying only the transfer of funds to the New Jersey Affordable Housing Trust Fund, and good cause appearing;

It is hereby ORDERED that COAH's alternative request for relief is granted, pending the Appellate Division's disposition of Fair Share Housing Center's motion for a stay, as follows: to the extent the interim stay enjoins COAH from gathering and evaluating municipalities' submissions, the stay is vacated; to the extent the interim stay enjoins the transfer of funds, it

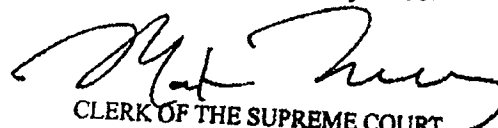
remains in effect.

WITNESS, the Honorable Stuart Rabner, Chief Justice, at  
Trenton, this 28th day of May, 2013.

  
ACTING CLERK OF THE SUPREME COURT

CHIEF JUSTICE RABNER, JUSTICES LAVECCHIA and ALBIN, and  
JUDGE RODRÍGUEZ (temporarily assigned) join in the Court's  
order. JUSTICES HOENS and PATTERSON vote to vacate the interim  
stay in its entirety. JUDGE CUFF (temporarily assigned) did not  
participate.

The foregoing is a true copy  
of the original on file in my office.

  
CLERK OF THE SUPREME COURT  
OF NEW JERSEY

STATE OF NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING  
PUBLIC SESSION

-----  
Wednesday, May 1, 2013  
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**APPEARANCES:**

RICHARD E. CONSTABLE, Chairman  
JOHN WINTERSTELLA, Vice Chairman  
TIM DOHERTY  
THEODORE KING, JR. (By telephone)  
ANTHONY L. MARCHETTA

SEAN THOMPSON, Acting Executive Director  
GINA FISCHETTI, Chief Counsel  
GERALDINE CALLAHAN, Deputy Attorney General  
ROBERT LOUGY, Assistant Attorney General

FAIR SHARE HOUSING CENTER  
510 Park Boulevard  
Cherry Hill, NJ 08002  
BY: KEVIN D. WALSH, ESQ.  
and ADAM M. GORDON, ESQ.  
Attorneys for Fair Share Housing Center

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1 here that did not relate to -- specifically to the  
2 litigation. They were not litigation decisions.

3 Rather it appears what occurred is that  
4 there were discussions about how this Council would  
5 proceed on the resolution it passed as to the trust  
6 funds and my question is did you discuss purely  
7 litigation issues or did you discuss issues that  
8 went beyond the purview of the litigation privilege  
9 for the Open Public Meetings Act?

10 **MR. CONSTABLE:** We comported ourselves  
11 commensurate with the law and that's all I have to  
12 say about that. If you have a problem, file a  
13 lawsuit. Okay?

14 Do you have anything else?

15 **MR. WALSH:** I would --

16 **MR. CONSTABLE:** The objection is  
17 noted.

18 Anything else?

19 **MR. WALSH:** When is the next meeting?

20 **MR. CONSTABLE:** We will let you know.  
21 You will get a minimal of two days notice or  
22 whatever the Open Public Records Act requires.

23 **MR. WALSH:** Could we schedule a  
24 meeting now just so we all know --

25 **MR. CONSTABLE:** No, we can't. When

1 you become the executive director of COAH, you can.

2 Okay?

3 Do you have anything else?

4 **MR. WALSH:** No, thanks. No, that's  
5 it.

6 **MR. CONSTABLE:** Thank you very much.  
7 The meeting is adjourned.

8 **MR. WALSH:** No, I think -- I think --  
9 there's still other people --

10 **MR. CONSTABLE:** There's other people?

11 **MR. WALSH:** There's other people that  
12 want to --

13 **MR. CONSTABLE:** Okay. Thank you, Mr.  
14 Walsh.

15 **MR. WALSH:** Thank you.

16 **MR. CONSTABLE:** You out there, please  
17 come up.

18 **MR. SURENIAN:** I just want to make two  
19 points. In the colloquy that took place before the  
20 break, Mr. Winterstella raised questions about  
21 what's the status of spending plans. I can tell you  
22 we have 11 spending plans that as we understand that  
23 staff has recommended approval for that are just  
24 sitting there. There's been substantial delays and  
25 processing of our application for approvals of

1 at 12:32 p.m.)

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*Ellen V. Swartz*



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## Rule Publication Schedule

### 2013 New Jersey Register Publication Schedule

Publication Day*	Proposal Deadline (Noon)	Adoption Deadline (Noon)	30-Day/60-Day Comment Periods End	
January 7, 2013	December 5 (Wednesday)	December 12 (Wednesday)	February 6/March 8	
January 22 (Tuesday)	December 19 (Wednesday)	December 27 (Thursday)	February 21/March 23	
February 4	January 3 (Thursday)	January 10 (Thursday)	March 6/April 5	
February 19 (Tuesday)	January 17(Thursday)	January 25 (Friday)	March 21/April 20	
March 4	January 31(Thursday)	February 7 (Thursday)	April 3/May 3	
March 18	February 14 (Thursday)	February 22 (Friday)	April 17/May 17	
April 1	February 28 (Thursday)	March 7 (Thursday)	May 1/May 31	
April 15	March 14(Thursday)	March 21 (Thursday)	May 15/June 14	
May 6	April 5 (Friday)	April 12 (Friday)	June 5/July 5	
May 20	April 19 (Friday)	April 26 (Friday)	June 19/July 19	
June 3	May 2 (Thursday)	May 9 (Thursday)	July 3/August 2	
June 17	May 16 (Thursday)	May 23 (Thursday)	July 17/August 16	
July 1	May 31 (Friday)	June 7 (Friday)	July 31/ August 30	
July 15	June 13 (Thursday)	June 20 (Thursday)	August 14/ September 13	
August 5	July 5 (Friday)	July 12 (Friday)	September 4/ October 4	
August 19	July 19 (Friday)	July 26 (Friday)	September 18/ October 18	
September 3 (Tuesday)	August 2 (Friday)	August 9 (Friday)	October 3/ November 2	
September 16	August 15 (Thursday)	August 22 (Thursday)	October 16/ November 15	
October 7	September 6 (Friday)	September 13 (Friday)	November 6/ December 6	
October 21	September 19 (Thursday)	September 26 (Thursday)	November 20/ December 20	Ra000049

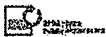
November 4	October 3 (Thursday)	October 10 (Thursday)	December 4/ January 3
November 18	October 16 (Wednesday)	October 23 (Wednesday)	December 18/ January 17
December 2	October 30 (Wednesday)	November 7 (Thursday)	January 1/ January 31
December 16	November 14 (Thursday)	November 21 (Thursday)	January 15/ February 14
January 6, 2014 (Tuesday)	December 4 (Wednesday)	December 11 (Wednesday)	February 5/March 7
January 21 (Tuesday)	December 18 (Wednesday)	December 26 (Thursday)	February 20/ March 22
February 3	January 2 (Thursday)	January 9 (Thursday)	March 5/April 4
February 18 (Tuesday)	January 16 (Thursday)	January 24 (Friday)	March 20/April 19

**2014 New Jersey Register Publication Schedule**

Publication Day*	Proposal Deadline (Noon)	Adoption Deadline (Noon)	30-Day/60-Day Comment Periods End
January 6, 2014	December 4 Wednesday)	December 11 (Wednesday)	February 5/March 7
January 21 (Tuesday)	December 18 (Wednesday)	December 26 (Thursday)	February 20/March 22
February 3	January 2 (Thursday)	January 9 (Thursday)	March 5/April 4
February 18 (Tuesday)	January 16 (Thursday)	January 24 (Friday)	March 20/April 19
March 3	January 30 (Thursday)	February 6 (Thursday)	April 2/May 2
March 17	February 13 (Thursday)	February 21 (Friday)	April 16/May 16
April 7	March 7 (Friday)	March 14 (Friday)	May 7/June 6
April 21	March 20 (Thursday)	March 27 (Thursday)	May 21/June 20
May 5	April 3 (Thursday)	April 10 (Thursday)	June 4/July 4
May 19	April 17 (Thursday)	April 25 (Friday)	June 18/July 18
June 2	May 1 (Thursday)	May 8 (Thursday)	July 2/August 1
June 16	May 15 (Thursday)	May 22 (Thursday)	July 16/August 15
July 7	June 5 (Thursday)	June 12 (Thursday)	August 6/ September 5
July 21	June 19 (Thursday)	June 26 (Thursday)	August 20/ September 19
August 4	July 3 (Thursday)	July 11 (Friday)	September 3/ October 3

August 18	July 18 (Friday)	July 25 (Friday)	September 17/ October 17
September 2 (Tuesday)	August 1 (Friday)	August 8 (Friday)	October 2/ November 1
September 15	August 14 (Thursday)	August 21 (Thursday)	October 15/ November 14
October 6	September 5 (Friday)	September 12 (Friday)	November 5/ December 5
October 20	September 18 (Thursday)	September 25 (Thursday)	November 19/ December 19
November 3	October 2 (Thursday)	October 9 (Thursday)	December 3/ January 2
November 17	October 15 (Wednesday)	October 22 (Wednesday)	December 17/ January 16
December 1	October 29 (Wednesday)	November 6 (Thursday)	December 31/ January 30
December 15	November 12 (Wednesday)	November 19 (Wednesday)	January 14/ February 13
January 5 , 2015	December 3 (Wednesday)	December 10 (Wednesday)	February 4/March 6
January 20 (Tuesday)	December 17 (Wednesday)	December 24 (Thursday)	February 19/ March 21
February 2	December 31 (Wednesday)	January 8 (Thursday)	March 4/April 3
February 17 (Tuesday)	January 15 (Thursday)	January 23 (Friday)	March 19/April 18

*\*MONDAY, unless otherwise indicated.*



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 Office of Administrative Law

**FAIR SHARE HOUSING CENTER**

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Attorneys for Appellant

By: Peter J. O'Connor, Esq.  
Kevin D. Walsh, Esq.  
Adam M. Gordon, Esq.  
Laura Smith-Denker, Esq.

<p><b>IN THE MATTER OF THE ADOPTION OF N.J.A.C. 5:96 AND 5:97 BY THE NEW JERSEY COUNCIL ON AFFORDABLE HOUSING</b></p>	<p>SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION</p> <p><b>DOCKET NOS. A-5382-07T3, A-5404- 07T3, A-5423-07T3, A-5424-07T3, A-5429- 07T3, A-5451-07T3, A-5455-07T3, A-5458- 07T3, A-5460-07T3, A-5461-07T3, A-5590- 07T3, A-5752-07T3, A-5756-07T3, A-5757- 07T3, A-5758-07T3, A-5760-07T3, A-5761- 07T3, A-5763-07T3, A-5765-07T3, A-5767- 07T3, A-5871-07T3, A-5920-07T3</b></p> <p>CIVIL ACTION</p> <p><b>CERTIFICATION OF DAVID N. KINSEY, PhD, FAICP, PP</b></p>
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1. On October 8, 2010, the Appellate Division, in a decision that was affirmed by the New Jersey Supreme Court on September 26, 2013, directed the New Jersey Council on Affordable Housing ("COAH")

"... to adopt new third round rules that use a methodology for determining prospective need similar to the methodologies used in the first and second rounds. This determination should be made on the basis of the most up-to-date available data. The remand shall be completed within five

months.”<sup>1 2</sup>

2. This Certification presents my expert opinion on what steps must be taken to comply with the Appellate Division’s decision as affirmed by the Supreme Court.
3. I am a Fellow of the American Institute of Certified Planners (FAICP), a licensed Professional Planner in New Jersey, and an urban, regional, and environmental planner with the planning consulting firm of Kinsey & Hand of Princeton, New Jersey. My practice focuses on affordable housing planning and has included 14 assignments as a Court-appointed Special Master in Mount Laurel exclusionary zoning litigation since 1985. I have prepared COAH-certified municipal housing elements and fair share plans and plan amendments, and have advised municipalities throughout the process of obtaining COAH substantive certification. I have also advised public interest and builder plaintiffs and intervenors in Mount Laurel litigation and objectors in proceedings before COAH. I am fully familiar with COAH rules, policy, proposals, and practice on affordable housing since 1985. I have more than 35 years of experience in affordable housing planning and implementation of the Mount Laurel doctrine throughout New Jersey, beginning with my service in the New Jersey Department of Environmental Protection (“DEP”) in the 1970s. I also have personal experience with State agency rule-making requirements and timetables under the Administrative Procedures Act from my service as Director, Division of Coastal Resources in DEP in the late 1970s and early 1980s. I have also have been teaching graduate courses in affordable housing, land use policy and planning in the United States, and other planning-public policy topics as a Visiting Lecturer in Public and International Affairs at Princeton University since 1998. I have an A.B. in Government-

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<sup>1</sup> 416 N.J. Super. 462 (App. Div. 2010).

<sup>2</sup> In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 215 N.J. 578 (2013).

Architecture from Dartmouth College and a Master of Public Affairs and Urban Planning and Ph.D. degrees from Princeton University.

4. Fair Share Housing Center has retained me for planning advice on compliance with the Appellate Division's October 8, 2010 order and the Mount Laurel doctrine.
5. In brief, in this Certification I make several findings. Specifically, COAH should be able to comply promptly with the Appellate Division's order. In my opinion, a post-1999 prospective need fair share methodology similar to COAH's First and Second Round methodologies can easily be articulated, and the necessary data can be obtained and processed within the 30 day timetable referenced by counsel to COAH in oral argument before the Supreme Court. The methodology is logical and straightforward, and articulated and explained below in ¶¶10-35. The necessary data is readily available, also as explained below in ¶¶10-35. The data can be readily processed to identify regional and municipal-level prospective need, as directed by the Appellate Division.

#### **COAH FIRST ROUND AND SECOND ROUND PROSPECTIVE NEED METHODOLOGIES**

6. "Prospective Need" is a projection of low and moderate income housing needs for a defined period in the future. It is one component of the fair share housing obligations calculated and allocated by COAH to municipalities under the 1985 Fair Housing Act<sup>3</sup> to implement the Mount Laurel doctrine.<sup>4</sup> COAH first developed, proposed, revised, adopted, and implemented its fair share housing methodology for the First Round (1987-1993) in 1986; the regulations and methodological appendix were published at N.J.A.C. 5:92-2 through -5 and Appendix A. For its Second Round (1993-1999), COAH maintained the basic structure of the methodology, and adopted and implemented the

<sup>3</sup> N.J.S.A. 52:27D-301 et seq.

<sup>4</sup> So. Burlington Cty. N.A.A.C.P., et al. v. Mount Laurel Tp., et al., 67 N.J. 151 (1975) (Mount Laurel I), So. Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp. 92 N.J. 158, 198, 208-209, 214-215 (1983) (Mount Laurel II), and subsequent decisions, including Toll Bros. v. West Windsor Township et al., 173 N.J. 502 (2002).

updated methodology, with some minor refinements, in 1994; the regulations and methodological appendix were published at N.J.A.C. 5:93-2 and Appendix A.

7. Under the COAH First and Second Round methodologies, municipal prospective need is determined in two phases. First, regional prospective need is calculated. Second, each region's prospective need is allocated to the municipalities within each region. The entire process can be broken down into 19 discrete steps. I will now define each of these steps and discuss the availability of the "most up-to-date available data" for each step in this process, pointing out what needs to be done to comply with the Appellate Division's remand to COAH as affirmed by the Supreme Court.
8. I follow closely and almost mechanically the COAH First and Second Round methodologies. I have not proposed refinements, simplifications, or revisions, or made any policy judgments, except for the weighting of undeveloped land in the Highlands Region for calculating the land allocation factor (see Step 12 in ¶22), as the Highlands Water Protection and Planning Act was enacted a decade after COAH adopted its Second Round methodology.<sup>5</sup>
9. To prepare this Certification, I have reviewed COAH's First and Second Round fair share housing methodologies and data sources, as well COAH's partially invalidated Third Round methodologies<sup>6</sup> and the updated data they employed. I have also reviewed and benefited from the post-1999 prospective need methodology developed by Art Bernard, PP, of Art Bernard and Associates, L.L.C. of Lambertville, N.J.,<sup>7</sup> which tracks very closely the methodology and data the Supreme Court directed COAH to use in the remand.

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<sup>5</sup> L. 2004, c. 120, N.J.S.A. 13:20-1 et seq.

<sup>6</sup> N.J.A.C. 5:94 Appendix A and N.J.A.C. 5:97 Appendix A.

<sup>7</sup> A former Deputy Director and Executive Director of COAH, Bernard has an intimate knowledge of COAH's fair share obligation methodology and the data needed to perform the methodology's calculations. Bernard was the principal COAH staff member responsible for COAH's Second Round methodology adopted in 1994.

## FIRST PHASE: CALCULATING REGIONAL PROSPECTIVE NEED

10. Step 1: Identify "housing regions" – COAH has already completed the first step in its methodology by using journey-to-work data to determine groupings of two to four counties into "housing regions." COAH last grouped the state's counties into six housing regions in 1994 (see N.J.A.C. 5:93 Appendix A). COAH reaffirmed these housing regions at N.J.A.C. 5:94 Appendix A in 2004 and N.J.A.C. 5:97 Appendix A in 2008. For example, COAH has determined that Hunterdon, Middlesex, and Somerset Counties constitute a housing region. No change, or additional or new data is needed.
11. Step 2: Determine the population projection period – To project the future need for housing, an important starting point is projecting the future population, which requires deciding on a population projection period. COAH's Second Round ended June 30, 1999. The Fair Housing Act, as amended in 2008, requires a ten-year substantive certification period, which implies a population projection period extending ten years from the present, i.e., from of July 1, 1999 to June 30, 2023 (24 years). No data is required.
12. Step 3: Project population increase 1999-2023 - The New Jersey Department of Labor and Workforce Development ("NJDLWD") regularly prepares, updates, and publishes population projections for the state and its counties. NJDLWD has projected the state's population by county for 2010-2030 by five-year intervals, as of July 1 for each projection period, using its "preferred" Economic-Demographic Model.<sup>8</sup> NJDLWD has also projected populations by age cohorts (five year increments) by county.<sup>9</sup> The projected population as of July 1, 2023 and the projected 1999-2023 population increase may be calculated by extrapolation. Population projections by county are then aggregated into

<sup>8</sup> [http://lwd.dol.state.nj.us/labor/lpa/dmograph/lfproj/lfproj\\_index.html](http://lwd.dol.state.nj.us/labor/lpa/dmograph/lfproj/lfproj_index.html)

<sup>9</sup> The standard age cohorts used by the Census and NJDLWD are: under 5 years, 5 to 9 years, 10 to 14 years, 15 to 19 years, 20 to 24 years, 25 to 34 years, 35 to 39 years, 40 to 44 years, 45 to 49 years, 50 to 54 years, 55 to 59 years, 60 to 64 years, 65 to 69 years, 70 to 74 years, 75 to 79 years, 80 to 84 years, and 85 years and older.



regional population projections for the six housing regions determined by COAH. The needed data is readily available. For example, the 2010 Census reported a total population for New Jersey of 8,791,894 and NJDLWD projected a total 2025 population for the state of 9,446,800.

13. Step 4: Identify and remove “group quarters” residents from projections of the total population – By Census definition, residents of group quarters, such as group homes, juvenile institutions, prisons, and college dormitories, are not part of a household and do not live in housing units. Therefore, the next step in projecting the future need for housing is to identify the population living in group quarters, both in 1999 and projected for 2023, and then remove the projected additional group home residents from the total projected population by region. The Census counts the population living in group quarters by county and age group through its American Community Survey (ACS) Public Use Microdata Sample (PUMS) data available for Public Use Microdata Areas (PUMAs).<sup>10</sup> For example, 0.0212% of New Jersey’s 2010 population, i.e., 186,876 people, lived in group quarters. Projecting the group quarters population in 2023 requires making assumptions on the percentage of the state’s population by county by age groups that will living in group quarters by 2023, based on observed trends and assumptions. The needed data is readily available from the Census and its American Community Survey.<sup>11</sup>
14. Step 5: Project headship rates for 1999-2023 - The headship rate is the propensity of the population to form a household, which is used to project households, who live in housing units. In its Second Round methodology, COAH compared 1980 and 1990 headship rates and assumed that headship rates would increase during 1993-1999 at one-half the

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<sup>10</sup> [http://www.census.gov/acs/www/data\\_documentation/public\\_use\\_microdata\\_sample/](http://www.census.gov/acs/www/data_documentation/public_use_microdata_sample/) ;  
<http://dataferrett.census.gov/> ; and [http://www.census.gov/acs/www/data\\_documentation/about\\_pums/](http://www.census.gov/acs/www/data_documentation/about_pums/)

<sup>11</sup> U.S. Census Bureau, American Fact Finder website: <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

rate of change observed during 1980-1990. During 1990-2000, the headship rate in New Jersey actually declined. The 1990-2000 trends in headship rate change by age group by county, or housing region, can readily be used to project headship rates for 2023.<sup>12</sup> The data needed to calculate headship rates, i.e., the number of households and the total non-group quarters population, are readily available from the 1990 and 2000 U.S. Census and may be easily used to calculate headship rates by age group by county.<sup>13</sup>

15. Step 6: Project the increase in households 1999-2023 – The projected increase in non-group quarters population during 1999-2023, from Step 4, multiplied by the headship rates for 2023, from Step 5, yields the projected increase in households by county during 1999-2023.
16. Step 7: Determine the projected increase in low and moderate income households 1999-2023 - COAH determined in 2004 that 40.3% of New Jersey households qualified, on the basis of income, as low and moderate income households and assumed that the same percentage would apply to projected households.<sup>14</sup> This percentage can be easily applied to projected new households by county for 2023, from Step 6, and then aggregated by housing region to calculate the projected additional low and moderate income households, by age cohort, anticipated to be formed during 1999-2023 in each housing region.
17. Step 8: Pool and reallocate projected growth in low and moderate income households below age 65 - This reallocation, from the COAH Second Round methodology, pools on a statewide basis and then assigns the working age (<65 years) component of projected

<sup>12</sup> COAH published 1999 headship rates by age group by housing region in 2004, at N.J.A.C. 5:94 Appendix A.

<sup>13</sup> [http://factfinder.census.gov/servlet/DatasetMainPageServlet?\\_program=DEC&\\_submenuId=&\\_lang=en&\\_ts=](http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=DEC&_submenuId=&_lang=en&_ts=)

and [http://factfinder.census.gov/servlet/DatasetMainPageServlet?\\_program=DEC&\\_tabId=DEC2&\\_submenuId=datasets\\_1&\\_lang=en&\\_ts=312388489998](http://factfinder.census.gov/servlet/DatasetMainPageServlet?_program=DEC&_tabId=DEC2&_submenuId=datasets_1&_lang=en&_ts=312388489998)

<sup>14</sup> N.J.A.C. 5:94 Appendix A and 36 N.J.R. 3798, New Jersey Register, August 16, 2004. COAH was not as transparent and did not disclose in either its First Round or its Second Round the percentage of households it deemed qualified as low and moderate income households. Consequently, this 40.3% determination from COAH's first iteration in 2004 of its Third Round methodology is the "most up-to-date available data."

low and moderate income household growth to regions where jobs previously increased. The reallocation factor is based on the proportional regional shares of nonresidential ratable growth. This reallocation factor is calculated and also used later, in the allocation phase of the fair share methodology, explained as Step 11 in ¶21 of this Certification. Step 6 provides the data on regional low and moderate income household growth to be pooled.

18. Step 9: Determine regional prospective need – By definition, under the COAH fair share methodology the projected increase in regional low and moderate income households, pooled and reallocated by two age groups in Step 8, equals the gross regional prospective need for low and moderate income housing. Step 8 provides the data for this determination.

#### **SECOND PHASE: ALLOCATING MUNICIPAL PROSPECTIVE NEED**

19. In the second phase, under both the First Round and Second Round methodologies, regional prospective need is allocated fairly and on a regional basis to each housing region's municipalities after first exempting certain mostly urban or densely populated municipalities. The methodology uses three allocation factors, described as measures of "responsibility," based on the labor force, existing in or attracted to each municipality, that needs housing, and measures of "capacity," based on the physical capacity of the municipality's land and the fiscal capacity of its households to absorb low and moderate income housing based on their household incomes. The three factors are: (a) change in equalized nonresidential valuation (ratables) over the previous decade, as a proxy for changes in the labor force, (b) undeveloped land, and (c) differences in household income. For each allocation factor, the methodology calculates the total regional value of each factor and each municipality's fraction, or share, of the regional total of the factor.

All three factors are then weighted equally (averaged) in allocating regional prospective need among each region's municipalities. The data needed to allocate fairly post-1999 regional prospective need using the Second Round methodology are readily available, as detailed below.

20. Step 10 - Exempt selected Urban (Municipal) Aid municipalities from housing need allocations – The COAH First Round and Second Round methodologies exempted certain Urban (Municipal) Aid municipalities from any allocation of regional prospective need that met at least one of three criteria: (a) housing deficiency (i.e., substandard housing in need of rehabilitation) greater than its region's average, (b) population density greater than 10,000 persons per square mile, or (c) population density of 6,000 to 10,000 persons per square mile and less than five percent vacant land, non-farm parcels. The data needed to determine which municipalities to exempt are readily available. While the First Round and Second Round methodologies relied on six housing deficiency criteria, in its two iterations of Third Round calculations COAH revised the criteria to three criteria for which current, 2010 Census data is readily available<sup>15</sup>: (i) overcrowded unit built pre/1950, (ii) unit with inadequate plumbing, and (iii) unit with inadequate kitchen. The New Jersey Department of Community Affairs ("DCA") annually publishes the State's official list of Municipal (Urban) Aid municipalities.<sup>16</sup> Finally, NJDLWD publishes population density by municipality,<sup>17</sup> while DCA annually publishes data on vacant land by municipality.<sup>18</sup>
21. Step 11 – Calculate the equalized nonresidential valuation (ratables) factor – DCA's Division of Local Government Services collects, reports annually, and maintains accessible data on ratables by municipality. Data from 1998-2012 on equalized

<sup>15</sup> U.S. Census Bureau, American Fact Finder website: <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

<sup>16</sup> The DCA website currently posts only the 2012 list:

[http://www.state.nj.us/dca/divisions/dlgs/resources/muni\\_st\\_docs/2012\\_data/urban\\_2012.pdf](http://www.state.nj.us/dca/divisions/dlgs/resources/muni_st_docs/2012_data/urban_2012.pdf)

<sup>17</sup> [http://lwd.dol.state.nj.us/labor/pa/census/2010/2010census\\_index.html](http://lwd.dol.state.nj.us/labor/pa/census/2010/2010census_index.html)

<sup>18</sup> See the Property Value Classification spreadsheets available in Excel format for 1998-2012 on the DCA website: [http://www.nj.gov/dca/divisions/dlgs/resources/property\\_tax.html](http://www.nj.gov/dca/divisions/dlgs/resources/property_tax.html)

nonresidential valuation by municipality is readily available for downloading in Excel format from the DCA website.<sup>19</sup> This data is used for calculating total regional change and the municipal change in equalized nonresidential valuation (ratables), in order to compute the municipal change coefficient or factor, i.e., each municipality's share of the regional change in nonresidential valuation over a specified period, e.g., 1990-2011.

22. Step 12 – Calculate the undeveloped land factor – Under its Second Round methodology, COAH estimated the area of undeveloped land by municipality with satellite imagery and weighted the value of undeveloped land in keeping with the goals of the “planning areas” as delineated in the 1992 State Development and Redevelopment Plan adopted by the State Planning Commission. For example, undeveloped land in Planning Area 1, the Metropolitan Planning Area, was assigned a weighting of 1.0, while undeveloped land in Planning Area 4, the Rural Planning Area, was assigned a weighting of 0.0. The Second Round methodology also weighted undeveloped land in the Meadowlands and Pinelands according to the land capability designations of the Meadowlands Commission and the Pinelands Commission in their respective regions.
23. Since the 1994 adoption of COAH's Second Round methodology, the State established the Highlands Water Protection and Planning Council, which defined a 859,358 acre Highlands Region.<sup>20</sup> As the legislative intent for the Highlands Preservation Area was “stringent water and natural resource protection”, I recommend that undeveloped land in the Preservation Area be weighted zero (0.0). The Council's 2008 Highlands Regional Master Plan favors comparatively higher density, compact, and mixed-use development only in its Existing Community Zone. Most but not all municipalities in the Highlands Planning Area have opted to conform to the Regional Master Plan. For those Planning

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<sup>19</sup> See the Property Value Classification spreadsheets available in Excel format for 1998-2012 on the DCA website: [http://www.nj.gov/dca/divisions/dlgs/resources/property\\_tax.html](http://www.nj.gov/dca/divisions/dlgs/resources/property_tax.html)

<sup>20</sup> Highlands Water Protection and Planning Act, L. 2004, c. 120, N.J.S.A. 13:20-1 et seq.

Area municipalities, I recommend that undeveloped land in the Existing Community Zone be assigned a weighting of 1.0. For those Planning Area municipalities that have not yet opted to conform, I recommend that undeveloped land in a DEP-approved sewer service area (where multifamily housing development is feasible) be assigned a weighting of 1.0.<sup>21</sup> All other undeveloped land in the Highlands Planning Area should be assigned a weighting of 0.0, as the legislative goal is to limit severely development in that region to protect water resources.

24. In summary, undeveloped land should be weighted as follows:

Weighting of Undeveloped Land for Undeveloped Land Factor	
Planning Area Type	Weighting Factor
Planning Area 1 - Metropolitan	1.0
Planning Area 2 - Suburban	1.0
Planning Area 3 - Fringe	0.5
Planning Area 4 - Rural	0.0
Planning Area 5 - Environmentally Sensitive	0.0
Pinelands Regional Growth Area	0.5
Pinelands Town	0.5
All Other Pinelands	0.0
Meadowlands	1.0
Highlands Preservation Area	0.0
Highlands Planning Area Existing Community Zone, if a municipality has opted to conform to the Highlands Regional Master Plan	1.0
Highlands Planning Area, DEP-approved sewer service area, if a municipality has not opted to conform to the Highlands Regional Master Plan	1.0
All Other Highlands Planning Area	0.0

<sup>21</sup> Bernard defines "opt to conform" as a municipality that has adopted a Planning Area Petition Ordinance and either a Highlands master plan element, Highlands land use ordinance or environmental resource inventory by May 1, 2012, the cutoff standard and date established by the Legislature in the 2012 Permit Extension Act, P.L. 2012, c.48, Section 3, for extensions of certain governmental approvals; see N.J.S.A. 40:55D-136.4b.(8), as amended in 2012. A different standard and/or cutoff date could be devised to establish weightings for undeveloped land in the Highlands Planning Area.

25. The “most up-to-date available data” for calculating undeveloped land by municipality statewide is the 2007 Land Use/Land Cover geospatial data available from DEP.<sup>22</sup> Researchers at Rutgers University and Rowan University used this and other data in 2010 to analyze changes in urban growth and open space loss in New Jersey between 1986 through 2007.<sup>23</sup> Digital maps of the current planning area types are available through the State’s Office for Planning Advocacy<sup>24</sup> and the Highlands Council.<sup>25</sup> Classifying and calculating the area of undeveloped land by planning area type is best done using a digital geographical information system (GIS) to overlay digital maps of the planning area boundaries with digital maps of undeveloped land and then calculate the total undeveloped land area by municipality by planning area type. Researchers at the Geospatial Research Laboratory at Rowan University already performed these overlay analyses and calculations in 2010-2012, and these data already produced by Rowan could be readily used. Alternatively, COAH could commission the Geospatial Research Laboratory at Rowan University, the Center for Remote Sensing and Spatial Analysis at Rutgers University, and/or the National Center for Neighborhood & Brownfields Redevelopment at the Bloustein School of Planning and Public Policy at Rutgers University,<sup>26</sup> or some other entity with appropriate GIS experience to undertake these analyses and calculations.
26. The final step in the process of calculating the undeveloped land factor is to apply the weighting factors and sum the total weighted undeveloped land area by municipality and

<sup>22</sup> <http://www.nj.gov/dep/gis/tulc07shp.html>

<sup>23</sup> John Hasse and Richard Lathrop, *Changing Landscapes in the Garden State: Urban Growth and Open Space Loss in NJ 1986 thru 2007, 2010*, [http://www.highlands.state.nj.us/njhighlands/actmaps/maps/gis\\_data.html](http://www.highlands.state.nj.us/njhighlands/actmaps/maps/gis_data.html), available at: <http://gis.rowan.edu/projects/luc/changinglandscapes2010.pdf>

<sup>24</sup> The State Planning Commission last adopted a revised *State Development and Redevelopment Plan* in 2001. Its State Plan Policy Map, with amendments adopted from time-to-time by the Commission, should be used in the calculation of undeveloped land by planning area types. The 2001 State Plan Policy Map and other maps and GIS resources are available at: <http://www.nj.gov/state/planning/plan.html>

<sup>25</sup> [http://www.highlands.state.nj.us/njhighlands/actmaps/maps/gis\\_data.html](http://www.highlands.state.nj.us/njhighlands/actmaps/maps/gis_data.html)

<sup>26</sup> COAH retained this Center for estimating vacant land in its second iteration of Third Round rules, in 2008.

then by region. Each municipality's share of its region's weighted undeveloped land becomes the undeveloped land factor or coefficient.

27. Step 13 – Calculate the differences in household income factor – The COAH Second Round methodology defines the aggregate income difference factor as the average of two measures of median household income:

- Municipal share of the regional sum of the differences between median household income and an income floor (\$100 below the lowest average household income in the region) and
- Municipal share of the regional sum of the differences between median municipal household incomes and an income floor (\$100 below the lowest average household income in the region) weighted by the number of households in the municipality

28. Up-to-date median household income data by municipality are readily available from the 2010 Census and the American Community Survey conducted by the U.S. Census Bureau at various intervals.<sup>27</sup> This income data is used in the COAH methodology to calculate municipal shares of differences in regional household incomes, i.e., the income difference factor.

29. Step 14 - Distribute Low and Moderate Income Housing Need by Municipality – Once the three individual allocation factors have been determined, under the Second Round methodology they are averaged to yield the factor for distributing gross prospective need among a region's municipalities, with the exception of Urban Aid municipalities.<sup>28</sup> Multiplying the regional gross prospective need by a municipality's average allocation

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<sup>27</sup> <http://factfinder2.census.gov/faces/nav/jsf/pages/index.xhtml>

<sup>28</sup> See ¶20 above for an explanation of which Urban Aid municipalities have been exempted from this distribution.



factor, or coefficient, yields a municipality's fair share of the regional gross prospective need.

30. Once the gross municipal prospective need has been calculated, the next steps in the COAH First Round and Second Round fair share methodologies are to calculate the so-called "secondary sources of housing demand and supply." Gross municipal prospective housing need is then adjusted, based on these three components of the housing market that, according to the COAH methodology, affect the supply and demand for housing affordable to low and moderate income households: filtering, residential conversions, and demolitions.
31. Step 15 – Estimate filtering affecting low and moderate income households – Filtering is the private housing market process by which some units decline in value and become affordable to low and moderate income households. Filtering reduces housing need according to the COAH First and Second Round methodologies. However, the 2007 Appellate Division decision, invalidating N.J.A.C. 5:94-1 et seq., invalidated COAH's use of filtering.<sup>29</sup> As a result, COAH hired Econsult to estimate the impact of filtering through actual real estate transaction data. Econsult conducted its most recent analysis of filtering in 2007.<sup>30</sup> In 2008 COAH recalculated the impact of filtering as a secondary source of supply of low and moderate income housing at 23,626 housing units statewide for the period 1999-2018, and also calculated projected filtering by housing region and municipality.<sup>31</sup> This is the best available data on filtering, which may be extended by extrapolation to the full 1999-2023 projection period.

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<sup>29</sup> In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97 by the New Jersey Council on Affordable Housing, 390 N.J. Super. 1 (App. Div. 2007).

<sup>30</sup> N.J.A.C. 5:97 Appendix F.3. "Estimating The Extent To Which Filtering Is A Secondary Source Of Affordable Housing", Econsult Corporation, November 16, 2007.

<sup>31</sup> COAH's consultant, Econsult, estimated that "47,306 units were expected to filter down to households of lower incomes between 1999 and 2018" with one-half of these units in suburban communities. COAH chose to include only the suburban share of filtering as a secondary source. See N.J.A.C. 5:97 Appendix A and Appendix F.3. "Estimating The Extent To Which Filtering Is A Secondary Source Of Affordable Housing", Econsult Corporation, November 16,

32. Step 16 – Estimate residential conversions affecting low and moderate income households – COAH in 2008 projected the impact of residential conversions of existing residential or non-residential structures as a secondary source of supply of low and moderate income housing at 10,366 housing units statewide for the period 1999-2018, and also estimated conversions by housing region.<sup>32</sup> Residential conversions reduce housing need according to the COAH First Round and Second Round methodologies. According to COAH's Third Round methodology, 19.5% of converted units are affordable to low and moderate income households. This is the best available data on residential conversions, which may be extended by extrapolation to the full 1999-2023 projection period. The COAH methodology then allocates each municipality's share of the region's residential conversions based on the municipal share of the region's 2-4 unit structures. The 2010 Census provides the best available data on the number of 2-4 unit structures by municipality, which can be used to estimate the municipal share of projected regional residential conversions affordable to low and moderate income households.
33. Step 17 - Estimate demolitions affecting low and moderate income households – According to the COAH Second Round methodology, 19.5% of demolitions affect low and moderate income households. Demolitions increase prospective need. COAH in 2008 estimated the impact of demolitions of residential structures as a secondary source of demand for low and moderate income housing at 18,361 housing units statewide for the period 1999-2018, and also calculated demolitions by housing region.<sup>33</sup> This estimate, based on readily available, up-to-date municipal-level demolitions data reported to DCA

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2007.

<sup>32</sup> See N.J.A.C. 5:97 Appendix A.

<sup>33</sup> See N.J.A.C. 5:97 Appendix A.

and published in its New Jersey Construction Reporter<sup>34</sup>, may be extended by extrapolation to the full 1999-2023 projection period.

34. Step 18 – Calculate net prospective need by municipality – Under the COAH First and Second Round methodologies, the addition of demolitions (from Step 17) and the subtraction of filtering (from Step 15) and residential conversions (from Step 16) from the gross prospective need for each municipality yields the net prospective need for each municipality.
35. Step 19 – Calculate the 20% cap and if applicable, reduce the prospective need – Under the COAH Second Round methodology, a municipality's prospective need cannot exceed a cap defined as 20% of the municipality's occupied housing.<sup>35</sup> The cap is calculated by multiplying the estimated 1999 occupied housing in the municipality, available by extrapolation from the Census, by 0.20. If the cap is larger than the net prospective need calculated in Step 18, the cap is not applicable. If the cap is smaller than the net prospective need calculated in Step 18, then the cap becomes the adjusted net prospective need. The data for this step is readily available from the Census.<sup>36</sup>

#### APPLYING THE POST-1999 PROSPECTIVE NEED METHODOLOGY

36. My explanation above in ¶¶10-35 of what steps must be taken to calculate post-1999 municipal prospective need is not merely a theoretical or conceptual exercise. I have recently and successfully used this methodology to estimate post-1999 municipal prospective need for two municipalities.<sup>37</sup> In Haddon Township, in Camden County, I estimated prospective need in a certification submitted in August 2013 in pending Mount

<sup>34</sup> <http://www.state.nj.us/dca/divisions/codes/reporter/>

<sup>35</sup> N.J.A.C. 5:93-2.16.

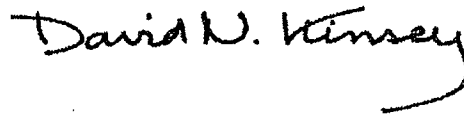
<sup>36</sup> In addition to these 19 steps, the Fair Housing Act imposes a limitation on the municipal fair share obligation of 1,000 units to be required to be created within ten years, in most circumstances, see N.J.S.A. 52:27D-307e.

<sup>37</sup> In these two tests of the methodology I used and analyzed municipal-level data both provided to me by Art Bernard, PP (see ¶8.) and that I obtained from standard sources, e.g., U.S. Census Bureau, NJDLWD, and DCA.

Laurel litigation. In New Milford, in Bergen County, I estimated prospective need in testimony and a letter-report in December 2013 in pending proceedings before its zoning board of adjustment.

I hereby certify that the foregoing statements are true and correct to the best of my knowledge and belief. I am aware that if any of the foregoing statements by me are willfully false, I am subject to punishment.


Dated: December 12, 2013

A handwritten signature in black ink that reads "David N. Kinsey". The signature is written in a cursive style with a long, sweeping underline.

David N. Kinsey, PhD, FAICP, PP

I hereby certify that the affiant acknowledged the genuineness of his signature and that the document with an original signature affixed will be filed if requested by the court or a party.

12/13/13

  
\_\_\_\_\_  
Kevin D. Walsh, Esq.

**FAIR SHARE HOUSING CENTER**  
510 Park Boulevard  
Cherry Hill, New Jersey 08002  
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F: 856-663-8182  
Attorneys for Appellant  
By: Kevin D. Walsh, Esq.

**In re Adoption of Third Round  
Regulations, N.J.A.C. 5:96 and  
5:97, by the Council on  
Affordable Housing,**

SUPERIOR COURT  
APPELLATE DIVISION

Docket No.: A-5451-07T3  
**Lead Docket Number A-5382-07T3**

On remand from In re N.J.A.C.  
5:96 and 5:97, 416 N.J. Super.  
462, 512 (App. Div. 2010), aff'd  
215 N.J. 578 (2013)

CIVIL ACTION

On Appeal from New Jersey Council  
on Affordable Housing

**CERTIFICATION OF KEVIN D. WALSH  
IN SUPPORT OF APPELLANTS MOTION  
TO ENFORCE LITIGANTS RIGHTS**

1. I, Kevin D. Walsh, Esquire, am a staff attorney for Fair Share Housing Center. I make this certification in support of Appellant's Motion to Enforce Litigants' Rights.

2. On November 14, 2012, the Supreme Court of New Jersey held oral argument in the above-captioned matter.

3. Video/audio recording of the argument is available at [http://njlegallib.rutgers.edu/supct/args/A\\_90\\_91\\_92\\_93\\_94\\_10.php](http://njlegallib.rutgers.edu/supct/args/A_90_91_92_93_94_10.php) (last visited December 12, 2013).

4. During the argument, at the 2:55:06 time as recorded in the video available in the above link, Justice LaVecchia held the following dialogue with Geraldine Callahan, DAG, counsel for the Council on Affordable Housing (COAH):

**Justice LaVecchia:** Just a hypothetical, if the Court were to affirm the Appellate Division's invalidation of the regulations, how long would it take COAH to comply with the remand that's been ordered by the Appellate Division?

**Ms. Callahan:** I do not know the precise answer to that question, um -

**Justice LaVecchia:** How difficult would it be to reconfigure based upon Round 1 and 2 methodologies?

**Ms. Callahan:** I think that a lot of it is in place, so I'm not sure it would be incredibly difficult, I'm just hesitant to pin a number for the agency, but I think a lot of the -

**Justice LaVecchia:** Ballpark?

**Ms. Callahan:** - the basics are there since it's a methodology that has been used.

**Justice LaVecchia:** Like ballpark - months?

**Ms. Callahan:** A month I would say, yes.

5. On May 1, 2013, COAH held its first public meeting since December 8, 2010. The agendas of the May 1, 2013 and December 8, 2010 COAH meetings are included in the Appendix supporting Appellant's Motion to Enforce Litigant's Rights, Aa1-3, Aa33-36.

6. At the May 1, 2013 meeting, COAH did not establish a schedule for any future meetings. Excerpts of the transcript of the May 1, 2013 that reflect no future meetings would be scheduled are included in the Appendix supporting Appellant's Motion to Enforce Litigant's Rights, Aa46-47.

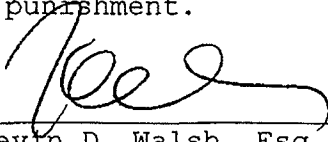
7. COAH has not held a public meeting since May 1, 2013.

8. The email attached to this certification at Aa Aa73 was sent by me to Geraldine Callahan, DAG and Sean Thompson, the Executive Director of COAH.

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

Dated:

12/17/2013

  
\_\_\_\_\_  
Kevin D. Walsh, Esq.

Ra000071

## Kevin Walsh

---

**From:** Kevin Walsh  
**Sent:** Tuesday, November 26, 2013 10:29 AM  
**To:** Geraldine Callahan; sean.thompson@dca.state.nj.us  
**Cc:** 'Adam Gordon'  
**Subject:** inquiring about compliance with the remand deadline

Gerri and Sean:

From what I can tell, it does not appear that COAH has taken any steps to draft or propose Third Round regulations. Please advise if I am wrong regarding that.

Thank you.

Kevin D. Walsh, Esq.  
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December 23, 2013

Edward J. Buzak, Esq.  
002131973

Joseph Orlando, Clerk  
Superior Court of New Jersey  
Appellate Division  
Hughes Justice Complex  
25 West Market Street, P.O. Box 006  
Trenton, New Jersey 08625

FEDERAL EXPRESS

Re: In the Matter of the Adoption of  
N.J.A.C. 5:96 and 5:97 by the New Jersey  
Council on Affordable Housing, Docket No. 67,126  
LEAD Docket No. A-5382-07T3

Dear Mr. Orlando:

Please be advised that we represent the New Jersey State League of Municipalities ("NJLM" or "League"), in the above captioned litigation. In that capacity we submit this letter brief in lieu of a more formal brief in opposition to the motion to enforce litigant's rights filed by the Fair Share Housing Center ("FSHC") which was served on us on December 16, 2013.

stated that the executive branch was in fact consulting with outside consultants to work on the drafting of the new rules. [http://www.nj.com/politics/index.ssf/2013/12chris\\_christie\\_slams\\_supreme\\_court\\_as\\_out\\_of\\_control\\_over\\_affordable\\_housing\\_ruling.html](http://www.nj.com/politics/index.ssf/2013/12chris_christie_slams_supreme_court_as_out_of_control_over_affordable_housing_ruling.html) In addition, although the agency may be unable to meet the precise notice requirements under the APA, FSHC has ignored the statutory provision which allows an agency to forego the typical notice and comment period and instead promulgate emergency regulations. Thus, N.J.S.A. 52:14B-4(c) provides:

If an agency finds that an imminent peril to the public health, safety, or welfare requires adoption of a rule upon fewer than 30 days' notice and states in writing its reasons for that finding, and the Governor concurs in writing that an imminent peril exists, it may proceed without prior notice or hearing, or upon any abbreviated notice and hearing that it finds practicable to adopt the rule. The rule shall be effective for a period of not more than 60 days unless each house of the Legislature passes a resolution concurring in its extension for a period of not more than 60 additional days. The Rule shall not be effective for more than 120 days unless repromulgated in accordance with normal rulemaking procedures.

Because it is indisputable that these affordable housing issues affect the public welfare, and the failure to promulgate the regulations would create an imminent peril to a municipality's ability to satisfy its constitutional obligation, it is maintained that the agency has the power to adopt emergency regulations under this section, arguably as late as February 26, 2014. Based upon this available procedure, even assuming that FSHC's factual information is correct to date, the agency still has time to adopt the regulations and thus the Court should not act precipitously to

municipalities of the protections they fought so long to achieve.

For these reasons, we submit that no municipality should be deprived of the protection that it has under the FHA if this Court finds that the agency is unwilling to undertake its obligations and fulfill the Order of the Supreme Court

CONCLUSION.

For the reasons as set forth herein, it is respectfully maintained that jurisdiction in this matter be transferred to the Supreme Court and that the Supreme Court deny the motion of FSHC to enforce litigant's rights for the reasons set forth herein.

Respectfully submitted,  
THE BUZAK LAW GROUP, LLC  
Edward J. Buzak

EJB:fd word doc. (M-534)  
cc: Honorable Jose L. Fuentes Federal Express  
Service List E-Mail and Regular Mail  
William Dressel, Executive Director NJLM E-Mail  
Michael Cerra E-Mail  
William J. Kearns, Esq. E-Mail

**JEFFREY R. SURENIAN AND ASSOCIATES, LLC**

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**Attorneys for Appellant, Borough of Atlantic Highlands**

By: Jeffrey R. Surenian, Esq. 024231983

Michael A. Jedziniak, Esq. 012832001

IN THE MATTER OF THE ADOPTION  
OF N.J.A.C. 5:96 AND 5:97 BY  
THE NEW JERSEY COUNCIL ON  
AFFORDABLE HOUSING

**APPELLATE DIVISION**

**DOCKET NOS.**

A-5404-07T3	A-5382-07T3
A-5424-07T3	A-5423-07T3
A-5451-07T3	A-5429-07T3
A-5458-07T3	A-5455-07T3
A-5461-07T3	A-5460-07T3
A-5752-07T3	A-5590-07T3
A-5757-07T3	A-5756-07T3
A-5760-07T3	A-5758-07T3
A-5763-07T3	A-5761-07T3
A-5767-07T3	A-5765-07T3
A-5920-07T3	A-5871-07T3

**LEAD DOCKET A-5382-07T3**

**Civil Action**

On Appeal from the Council on  
Affordable Housing, with a  
remand in In re N.J.A.C. 5:96  
and 5:97, 416 N.J. Super. 462,  
512 (App. Div. 2010), aff'd 215  
N.J. 578 (2013)

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**BRIEF OPPOSING APPELLANT FAIR SHARE HOUSING CENTER'S  
MOTION TO ENFORCE LITIGANT'S RIGHTS**

---

Jeffrey R. Surenian, Esq.  
Of Counsel and On the Brief

Michael A. Jedziniak, Esq.  
On the Brief

POINT II

ALTHOUGH FSHC PRESUMES THAT COAH CANNOT AND WILL NOT PROMULGATE REGULATIONS RESPONSIVE TO THE SUPREME COURT'S DECISION, COAH CAN INDEED MEET THE DEADLINE; AND, GIVING COAH MORE TIME, IF NECESSARY, IS PREFERABLE TO ANY ALTERNATIVE.

FSHC presumes that COAH cannot, and will not, satisfy the five-month deadline that the Supreme Court imposed. However, as the League explained, COAH can indeed still meet this deadline through the process for the adoption of emergency regulations. See the League's Opposition Brief, dated December 23, 2013, at 9-11.<sup>4</sup>

Moreover, even if COAH needs more time, all stakeholders would benefit from having the state agency with "primary jurisdiction" promulgating regulations. N.J.S.A. 52:27D-304a. After all, the alternative to COAH promulgating regulations would be to have a multitude of trial judges establishing the laws concerning fair share allocation and compliance on an ad

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<sup>4</sup> Although COAH currently has six members instead of twelve as provided for in the FHA, this does not preclude COAH from acting. In fact, Article 2 ("Council Meetings"), Section 5 (Quorum) of COAH's Bylaws expressly addresses the issue:

At any meeting of the Council a quorum shall constitute a majority of the appointed members for all purposes. No vacancy in the membership of the Council shall impair the right of a quorum of the members to exercise all the powers and perform and the duties of the Council. Aa82 (emphasis added).

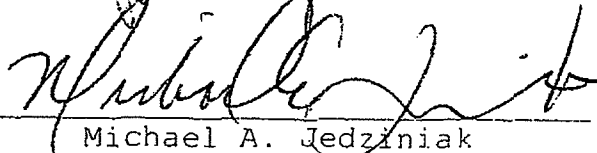
Thus, COAH's by-laws permit the COAH board to meet with a majority of four members and to act.

CONCLUSION

For the reasons set forth above, the Borough of Atlantic Highland urges this Court to deny FSHC's motion and to limit any remedy it may impose as set forth herein.

JEFFREY R. SURENIAN AND  
ASSOCIATES, LLC  
Attorneys for Appellant

By   
Jeffrey R. Surenian

By   
Michael A. Jedziniak

Dated: January 3, 2014

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an example where a trial judge in the Oceanport matter has given FSCH full reign to object even though FSHC is not a party to Oceanport's declaratory judgment action.

## NJ court orders affordable housing agency to get back to work

Loading Photo Gallery

**Salvador Rizzo/The Star-Ledger** By **Salvador Rizzo/The Star-Ledger**

**Email the author | Follow on Twitter**

on March 07, 2014 at 2:37 PM, updated March 07, 2014 at 9:15 PM

**TRENTON** — In a furious ruling that threatened "civil detention" for one of Gov. Chris Christie's cabinet officers, a state appeals court today ordered the governor to reignite New Jersey's affordable housing program after years of inactivity.

The appellate court thundered against the Council on Affordable Housing and the Christie administration for ignoring two prior rulings — including one **by the state Supreme Court last year** — that had ordered housing officials to get back to work and write a long-awaited rulebook for towns and developers by Feb. 26.

The deadline passed and the dormant agency, known as COAH, still had not held any meetings or written the new guidelines.

"COAH has failed to offer any plausible explanation for its failure to carry out this court's order," Judge Jose Fuentes wrote for the three-judge appellate panel, and it "has not done anything to comply with our straight-forward mandate."

To end the "intransigence," the judges crafted a detailed calendar of meetings for COAH that begins next week, and they ordered that the new housing guidelines be drafted by March 26.

If the agency doesn't comply, Fuentes warned, its board members will be forced into a courtroom to face contempt charges and possibly fines and "civil detention."

"We remain hopeful, however, that reasonable minds will prevail, and that the members of the COAH board will see that this course of intransigence serves only to needlessly undermine the public's confidence in the effectiveness of public institutions," Fuentes wrote.

The housing agency is chaired by Christie's community affairs commissioner, Richard Constable, and has not met regularly since 2010. In the meantime, towns and developers have been in the dark as to how many affordable-housing units they should be building every year.

Tim Doherty, a member of COAH's board since 2008, said today that he has tried repeatedly to get the agency to meet and sort out all the kinks. Constable has not answered his requests, he said.

"I got no communication whatsoever," said Doherty, the executive director of Project Freedom, a nonprofit that builds affordable housing units. "I would have expected, just out of being a board member, that there would be communication one way or the other."

Spokesmen for Christie and Constable declined to comment today and referred questions to the state Attorney General's Office.

An assistant state attorney general, Robert Lougy, immediately asked Fuentes and the two other judges to stay their ruling today, arguing they had overstepped their bounds under the state constitution. But the judges disagreed and denied his request. The battle now heads back to the state Supreme Court.

Lougy argued that the appellate court "has stepped into the shoes of the agency and is ordering the council members to undertake discretionary action, under the threat of detention and personal liability, on a timetable inconsistent with (state law) and inconsistent with the separation of powers."

He added that the state has asked the Supreme Court for an extension to write the rules until May 1 and is waiting to hear back. The state will also ask the justices to stay Fuentes's ruling, a spokesman for the Attorney General's Office said this evening.

Challenges to New Jersey's affordable housing program have flooded the courts for four decades. Mayors, developers, civil rights groups and housing advocates for the poor **say the debate has raged for too long**, and that COAH needs to figure out a solution soon or New Jersey will become too expensive for the next generation of working-class families.

Last year, the state Supreme Court ruled that COAH had until Feb. 26 to draft the new rules. But **Christie blasted that ruling**, the agency remained inactive, and a nonprofit group of housing advocates, the Fair Share Housing Center, **filed a lawsuit** to force COAH to comply.

The appeals court ordered the council to meet March 12, March 26 and May 14; to review input from the public at the May 14 meeting; and to submit biweekly reports on its progress.

Kevin Walsh, associate director of the Fair Share Housing Center, has been fighting Christie over New Jersey's stalled affordable housing program for years. He said yesterday's ruling was welcome but still only an "incremental victory" until the new rules are out.

"This is in many ways unprecedented — a recalcitrant administration and a recalcitrant agency that have really thumbed their nose at the courts," he said.

The New Jersey Supreme Court ruled in 1983 that municipalities must provide a "fair share" of affordable homes for their poorest residents. Studies show that 36,000 to 60,000 such homes have been built in the interim. Under Christie, much of COAH's staff has been diverted to other departments, according to his former community affairs commissioner.

The Republican governor, who has criticized the Supreme Court for its affordable housing rulings, tried to disband COAH last year and transfer its powers to his community affairs department. **The state Supreme Court blocked that move**, saying Christie needed the state Legislature to approve his plan first.



"I think it's no secret: The governor has publicly said he believes COAH is a travesty, and continues to say that," Doherty said. "This is the court's effort to get the administration to do what the Supreme Court has ruled. We live in a land of laws that even the governor has to obey."

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