



Development Opportunities and COAH Third Round Plans: Are Your Projects Impacted?

Client Advisories

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December 31, 2008, was the Council on Affordable Housing's ("COAH") deadline for the vast majority of New Jersey's municipalities to submit "Round 3" Fair Share Plans and updated Housing Elements (collectively, "FSPs"). A total of 290 municipalities have filed with COAH, including 238 that have filed under Round 3 and another 52 that are located in the Highlands and have filed for an extension until December 8, 2009, in accordance with a Memorandum of Understanding between the Highlands Council and COAH. Failure of a municipality to either submit a FSP by the December 31, 2008, deadline, or qualify for an extension to file, subjects it to the risk of "Builder's Remedy" lawsuits and the loss of its affordable housing trust fund monies.

The list of municipalities that have filed can be found on COAH's website at the following link:

<http://www.state.nj.us/dca/affiliates/coah/reports/newthirdround.xls>. The list includes the filing date, status of the application, deadline for public comment and whether any objections have been filed.

Pursuant to COAH's Regulations, interested parties have forty-five (45) days to file an objection to an FSP. The 45-day period commences with the publication of the notice of the municipality's petition for substantive certification.

Under COAH's Round 3 Regulations, sites that are designated for residential inclusionary development must be afforded with minimum presumptive densities and additional "compensating benefits" such as relaxed zoning standards. COAH has established presumptive densities and affordable housing set-asides for inclusionary developments based on the State Development and Redevelopment Plan. Higher density standards are established in Planning Areas 1, 2 and Centers, and lower densities outside of these growth areas. For example: Planning Area 1 will have a presumptive density of 8 units per acre with a 25% set-aside for affordable units and Urban Centers will be required to provide at least 22 units per acre and a 20% set aside. Unfortunately, we are aware of municipalities that are ignoring COAH regulations and are attempting by way of their FSPs to impose "growth share" without either a presumptive density or "compensating benefits," as required by law.

By filing an objection to an FSP with COAH, a party obtains the status as an objector under COAH regulations, which provides it with an opportunity to participate in the COAH process and influence the final version of the FSP. An objector also retains the right to challenge the ultimate adoption of the FSP.

The year 2008 also brought the Comprehensive Housing Reform Package, commonly known as A-500, which eliminated Regional Contribution Agreements, commonly known as RCAs, and further provides that municipalities are no longer permitted to collect non-residential development fees as a pre-condition to the issuance of building permits. Rather, municipalities are now permitted to collect non-residential development fees only after a developer calls in for final inspection of the work covered by its building permits and prior to issuance of a certificate of occupancy.

The elimination of RCAs has had an enormous effect on how a municipality is able to deliver its affordable housing obligation. This has resulted in municipalities attempting to revisit project approvals, including projects with vested rights, in an attempt to impose new or additional COAH-related obligations.

If you have vacant land, projects in the pipeline or have approved and unbuilt projects, now is the time to review how each FSP will affect your property or development. We can also help review FSPs to determine if there are opportunities for increased density to meet municipal fair share needs that might also be beneficial to your project.

If you have any questions or want to discuss how an FSP or A-500 may affect your current or future projects, please contact one of the following members of Archer's Land Use Group:

Haddonfield Office:

- **Robert W. Bucknam, Jr.** at (856) 354-3025

Flemington Office:

- **Guliet D. Hirsch** at (908) 788-4305

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Related People



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Related Services

- Land Use

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