

# **AFFORDABLE HOUSING**

## **Achievable Flexible Simple**

05/13/10

***OVERVIEW:*** This plan creates a standards-based, municipally-controlled system of providing for a realistic opportunity for affordable housing. This goal is achieved by prohibiting exclusionary zoning practices and creating an affirmative obligation to build “low” and “moderate” income housing, i.e., affordable.

All municipalities are required to inventory existing affordable housing stock to determine which, if any, is sub-standard and adopt a plan to rehabilitate that stock. New residential construction, with certain exceptions, must include affordable housing.

The State’s on-going involvement in this process is minimal.

### **Municipal Obligation**

- COAH and State imposed affordable housing obligations are abolished.
- All municipalities have an obligation to provide an opportunity for affordable housing. Municipalities must conduct an inventory of existing stock to determine which stock must be rehabilitated and develop a plan to achieve this rehabilitation.
- New residential construction triggers an obligation for affordable housing. Developments of two or more housing units must include or provide for low and moderate-income housing. In developments greater than 10 units, at least 10 percent of the units must be designated for that population. These units either can be built on-site or in another location within the municipality. In developments of 2-to-10 units, in lieu of constructing affordable units, a municipality may impose a fee (see Development Fees).

## **Municipal Zoning**

- **Municipalities seeking to comply with the law must credibly demonstrate in their master plans and related ordinances that undeveloped residentially-zoned land and redevelopment will accommodate the affordable housing requirement.**
- **Municipalities must ensure that residentially-zoned vacant land provides for a variety of housing types.**
- **Environmental and infrastructure constraints--provided that they are specifically identified and supported by facts--are grounds for not accommodating on-site affordable housing. These exceptions, however, do not necessarily exempt the development from any obligation to provide low and moderate income housing.**

## **Required Municipal Action**

- **A municipality seeking protection from legal challenges and court-imposed remedies must develop and adopt a Master Plan which describes how the municipality intends to meet the obligations described above. Guidance on effective ways to provide affordable housing opportunities will be available from the DCA. After adoption, the plan is filed with the department.**
- **The Master Plan developed by the planning board and adopted by ordinance by the municipal governing body must include specific findings of fact as they relate to housing which is in need of rehabilitation and undeveloped residentially-zoned land.**

## **Safe Harbor Provisions**

- **A municipality that adopts a Master Plan in accordance with this new standard is protected from legal challenge, as it is deemed presumptively valid. Legal challenges have the burden to demonstrate that, as implemented, the plan is exclusionary and therefore non-compliant.**
- **A municipality that chooses not to adopt a Master Plan in accordance with this new standard exposes itself to legal challenges and the remedies that a court might impose.**

- **Challenges to municipal plans are first made to the Dept. of Community Affairs (DCA) which will determine whether or not the plan is factually accurate and consistent with the law. The DCA engages in fact-finding only. It cannot force a municipality to change its Master Plan and it does not engage in mediation between the municipality and the challenger. Appeals from DCA's determination are made directly to the Appellate Division, pursuant to the provisions of the Administrative Procedures Act.**

### **COAH**

- **Six months after the enactment of this legislation, the Fair Housing Act is repealed and COAH is abolished.**
- **Affordable housing plan certifications granted by COAH remain in effect and are afforded the continued legal protections until the certifications expire.**
- **Municipalities with pending certification requests are permitted to pursue those certifications or may withdraw and develop new plans consistent with the new law.**

### **Development Fees**

- **For residential developments of less than two units, there is no obligation.**
- **For residential developments of two to ten units, municipalities may impose a fee up to 1.5 percent, which is based on the project's fair market value or some other equitable calculation.**
- **For residential developments of eleven or more units, 10% must be set aside for low and moderate income housing (50-50), or municipalities may impose a fee up to 2.5 percent, which is based on the project's fair market value or some other equitable calculation. The fee may be deposited in a municipal housing fund or used to provide off-site affordable housing.**
- **The current 2.5% commercial development fee is repealed.**

### **Promoting Housing Types**

- **Projects which provide for special needs housing will be given priority for housing trust funds.**
- **Low and moderate income housing obligations may be met on or off-site, or through the payment of residential development fees.**

- **Municipalities may use funds in their affordable housing trust funds to underwrite rehabilitation projects in other municipalities which have significant rehabilitation needs but limited resources.**
- **Alternatively, municipalities can make payments to the State Affordable Housing Trust Fund, which can undertake rehabilitation projects on behalf of other towns.**
- **Existing balances in municipal trust funds must be used within two years of the enactment of this law. Unspent balances will be transferred to the State fund.**
- **Future affordable housing fees must be obligated within two years after being deposited. Unobligated fees will be transferred to the State.**

### **State Role**

- **A municipality seeking to comply with the law is required to file its municipally-approved plan with the DCA, which shall be made publicly available.**
- **If challenged, the Department of Community Affairs conducts a review of municipal plans, which is limited to a determination that the plan is factually accurate and consistent with the law.**
- **The DCA administers the State Affordable Housing Trust Fund.**