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July 31, 2014

VIA EMAIL

Sean Thompson, Acting Executive Director
NJ Council on Affordable Housing
PO Box 813
Trenton, NJ 08625-0813

Re: Rule Comments
Borough of Dumont
MC Project No. DUT-010

Dear Mr. Thompson:

Please find below the Borough of Dumont's comments on the proposed Procedural Rules (N.J.A.C 5:98) and Substantive Rules (N.J.A.C. 5:99).

5:98-5.2 Comment:

This section spells out the process for development fee ordinance approval. Municipalities are required to file an adopted development fee ordinance with COAH within seven days of adoption, but there is no timeline for COAH to review and approve a development fee ordinance. The rules need to add a timeframe for COAH's review and approval of development fee ordinances.

5:98-5.4 Comment:

The rules restrict municipalities from spending trust fund money until the spending plan is approved by COAH. Some municipalities have been waiting since they submitted their prior Third Round petition in 2008 and 2009 to receive approval for their spending plan. COAH's snail-like pace in reviewing and approving spending plans is unacceptable, especially when there is a four-year timeline to spend/commit the money. The new rules should include a timeline for reviewing spending plans. There is no reason why it should take any more than six months to approve a spending plan. By delaying the review and approval of spending plans, COAH is working contrary to the Fair Housing Act and potentially postponing, if not hindering affordable housing projects.

5:99-1.2 Comment:

The rules define "individuals with special needs". Would the groups identified under this definition be eligible for crediting under "other techniques as proposed by the municipality" mentioned in 5:99-7.1(a) or under community residences in section 5:99-7.4?





5:99-2.2(b) Comment:

The rules do not indicate the time period for rehabilitation credits. In the previous set of Third Round rules, units rehabilitated between April 1, 2000 and December 31, 2018 were eligible for a credit. What is the time period for rehabilitation credits under the proposed rules? Municipalities that completed rehabilitations in a good faith effort between December 31, 2008 and the present should receive one credit for each rehabilitation completed.

5:99-2.2(c) Comment:

The municipal survey on COAH's website has three sections on the cover page:

- Areas of municipality surveyed
- Areas of municipality not surveyed
- Reason(s) for not surveying these areas

Is COAH going to provide guidance on areas that do not need to be surveyed – such as developments built in the last 10 years, neighborhoods where the majority of homes are less than 50 years old, etc.?

5:99-2.3(a) Comment:

The rules state that “prior obligations are reduced by past affordable housing completed and publicly subsidized affordable housing eligible for crediting”. Appendix D only shows unit credits and not bonus credits under “Past Affordable Housing Completions”. How can bonus credits, which were a part of the Prior Round rules, be eliminated? Completed projects should receive the bonuses they are owed and permitted to receive under 5:93.

5:99-2.3(b) Comment:

This section indicates that municipalities shall address the Unanswered Prior Obligation utilizing the standards in N.J.A.C. 5:93. N.J.A.C. 5:93-5.15(d) permits bonus credits for specific types of rental units. One rental bonus is permitted for rentals available to the general public and 0.33 rental bonus is permitted for age-restricted rentals. No rental bonuses are permitted in excess of the rental obligation. Does this mean that rental bonuses are permitted to address the Unanswered Prior Obligation?

5:99-2.4(b) Comment:

This section includes a provision for municipalities with excess credits, which is applicable to the Borough of Dumont. The proposed rules state that municipalities with a Unanswered Prior Obligation of less than zero (Dumont is -238) that did not receive a vacant land adjustment for the 1987-1999 or 1999-2014 periods may use surplus units to reduce its Fair Share of Prospective Need Obligation.

A portion of these excess credits include the 49 units at St. Mary's Senior Residence, which received its Certificate of Occupancy (CO) on December 10, 2009. These units meet the definition of “new construction”. Why can't the Borough utilize these units towards the



Rehabilitation obligation? COAH needs to differentiate “Past Affordable Housing Completions” from “new construction” credits.

5:99-3.3 Comment:

Each municipality’s Buildable Limit has been determined based on vacant land. The Buildable Limit can then be used to reduce a municipality’s Fair Share of Prospective Need and/or Unanswered Prior Round obligation. However, the Buildable Limit is the total number of units that can be built within a municipality, which assumes that all future residential development will be affordable units. If inclusionary zoning is only required to provide 10% of all units as affordable units, why wouldn’t the buildable limit be multiplied by 10% and the result of that calculation used as the buildable limit??

The buildable limit methodology is flawed and must be modified to recognize the fact that all future housing development **will not** be affordable housing. Logically, the numbers in Appendix E should be multiplied by 10% to produce a revised Buildable Limit.

5:99-4.3(a)2 Comment:

Is the minimum 13% very-low-income requirement calculated on the sum of the Rehabilitation, Unanswered Prior Obligation and Fair Share of Prospective Need? It would make sense to only apply the 13% to the sum of the Unanswered Prior Obligation and Fair Share of Prospective Need.

5:99-4.3(a)4 Comment:

COAH needs to provide one or more alternatives to the Economic Feasibility Study, which is a costly, unfunded mandate. Alternatives could include a Developer’s Agreement or commitment letter.

5:99-4.3(a)6 Comment:

Is the age-restricted 25% cap calculated on the sum of the rehabilitation, unanswered prior obligation and fair share of prospective need? By regional need, are you referring to the COAH regions?

5:99-5.2

Will COAH be providing forms for the vacant land adjustment as it did for the previous Third Round rules?

5:99-5.2(c) Comment:

The rules require an economic feasibility assessment of each vacant site identified in the vacant land inventory to determine the maximum set asides that would be economically feasible. An economic feasibility assessment for each site would be costly to the Borough. Why is an economic feasibility study required for each vacant site, when it is already required for any property proposed to be an inclusionary site? The economic feasibility assessment requirement



should be removed from the vacant land analysis and only required for properties to be zoned for inclusionary zoning.

This section as states that a municipality shall provide affordable housing through other delivery techniques, but provides no guidance on the amount of housing required. For example, if a municipality has an obligation of 50 (25 Unanswered Prior Round and 25 Prospective Need) and the vacant land adjustment reveals there is no land available, does the municipality still have to provide 50 units through “other delivery techniques”? Or is there a reduction in the municipality’s obligation?

5:99-5.3(a)3 Comment:

Why does the vacant land adjustment process apply a 20% set-aside to vacant land, when the inclusionary zoning only applies a 10% set-aside? The set-aside should be consistent throughout the rules.

5:99-6.1(b)5 Comment:

This section indicates that units eligible to receive new construction credit may be used to address the rehabilitation obligation. The definition of new construction doesn’t provide a time period of what constitutes “new”. Does an affordable unit with a 2009 CO constitute “new construction”? What about an affordable unit with a CO issued in the 1990s?

5:99-7.1(a) Comment:

The rules state, “a municipality shall consider the following techniques for providing low- and moderate-income housing within the municipality, as well as such other techniques as proposed by the municipality”. If a municipality proposed a market to affordable or accessory apartment program, would it be permitted?

5:99-7.1(a)1-6 Comment:

This section outlines mechanisms for the fair share of prospective need. The subsequent list of techniques does not include the market to affordable program, accessory apartment program or extension of expiring controls. Why have these mechanisms been removed? Furthermore, why can a municipality seeking a vacant land adjustment under Section 5:99-5.2(c) be permitted to utilize the market to affordable and accessory apartment programs, but not other municipalities? Also, the rules state that municipalities shall be governed by the standards in N.J.A.C. 5:93 to address the Unanswered Prior Obligation. N.J.A.C. 5:93-5.9 permits accessory apartments and N.J.A.C. 5:93-5.11 permits the market to affordable program. How can these mechanisms be valid for the prior round and not the third round?

5:99-7.2(a)1 Comment:

Why were the minimum densities (e.g. 8 units to the acre for PA1s) removed? The minimum densities provided a level of predictability for both municipalities and builders. Under the proposed rules, a municipality could have five affordable sites with five different densities and set-asides. The rules are complicated as it is; this only exacerbates the complexities. Minimum



densities or a density range should be reinstated. The Buildable Limit was generated using specific densities based on COAH Region and Planning Area – there should be a correlation between the Buildable Limit densities and the inclusionary zoning densities.

5:99-7.2(b) Comment:

The Economic Feasibility Study will generate significant costs and is an unfunded mandate. Why were the prior regulations, which provided for a reasonable assessment of site suitability eliminated and this more expensive and time consuming methodology created?

5:99-7.2(d)1.i Comment:

This rule provision should be eliminated or substantially revised to provide flexibility to both the municipalities and the developers. This is especially important for small inclusionary sites that would be required to construct one or two affordable units. Furthermore, it is important for municipalities with large Rehabilitation obligations to generate revenue to complete the rehabilitations. A payment in lieu for one affordable unit has the ability to fund numerous rehabilitations.

5:99-7.4(a)3 Comment:

Many community residences require residents to be 19 years of age or older. It is the operator's prerogative to accept certain type of clients, just as they can restrict the facility to seniors, why can't they have the freedom to exclude children? Furthermore, facilities likely do this because those under 18 need different services than those over age 18. COAH should remove this parameter from the rules.

5:99-11.1(d) Comment:

The rules restrict municipalities from spending trust fund money until the spending plan is approved by COAH. Some municipalities have been waiting since they submitted their prior Third Round petition in 2008 and 2009 to receive approval for their spending plan. COAH's snail-like pace in reviewing and approving spending plans is unacceptable, especially when there is a four-year timeline to spend the money. The new rules should include a timeline for reviewing spending plans. There is no reason why it should take any more than six months to approve a spending plan. By delaying the review and approval of spending plans, COAH is working contrary to the Fair Housing Act and potentially postponing, if not hindering affordable housing projects.

5:99-11.3(a) Comment:

The rules should also be amended to include a timeline for reviewing and approving development fee ordinances. These are template documents that either matches the standard template or not. By delaying the review and approval of development fee ordinances, COAH is working against the Fair Housing Act and reducing potential funding for affordable housing mechanisms.



5:99-11.9(a) Comment:

The list of activities that can be funded by an affordable housing trust fund should be expanded to include market to affordable and extension of expiring controls as they are permitted mechanisms under 5:99-5.2(c).

5:99-11.10(a)2 Comment:

This section notes that affordability assistance for very low-income households may include offering a subsidy to developers "to make them affordable to very low-income households including special needs and supportive housing opportunities". Does this mean that special needs and supportive housing could fall under "other techniques proposed by the municipality" as mentioned in 5:99-7.1(a)?

5:99-11.17(c) Comment:

Does this section intend to require quarterly trust fund monitoring updates instead of the annual end of year data entry?

The Borough of Dumont looks forward to your office's response to the above comments. If you have any questions or clarifications on the Borough's comments, please do not hesitate to call my office.

Very truly yours,

MASER CONSULTING P.A.

A handwritten signature in cursive script that reads 'Darlene A. Green'.

Darlene A. Green, P.P., AICP
Borough Planner

cc: Dumont Mayor and Council (via clerk email sconnelly@dumontboro.org)
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