The Andover Borough Housing Plan Element And Fair Share Plan

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Minor corrections were made to this document on 12/18/08 based on input from The Planning Board members. See errata sheet at end of document for a list of those changes

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1.0 INTRODUCTION

Andover Borough, in its most recent master plan and previous master plans, included in those documents housing plan elements that subsequently served as the basis for the Borough's petition to the NJ Council on Affordable Housing (COAH) for substantive certification, as governed by that agency's "Second Round Rules". In reviewing the Borough's Housing Plan and Fair Share Plan several years ago, COAH raised a number of issues that the Borough was required to address before substantive certification could be granted. Most of those issues were addressed. However, before COAH could be fully satisfied, the original "Third Round Rules went into effect on December 20, 2004 and the Borough was therefore subject to those regulations.

As a consequence of the Third Round Rules going into effect, all municipalities in the process of obtaining substantive certification under the "Second Round Rules" were effectively given two options:

- Terminate the effort to obtain substantive certification

- Continue to seek substantive certification. However, in order to do so, a municipality's housing plan would have to be revised to also address the affordable housing "growth share" obligation, as delineated in the third round rules. If a municipality decided to proceed with this option, COAH would retain jurisdiction, provided the municipality agreed to submit a revised housing plan by December 20, 2005

Andover chose to revise its housing plan and to seek substantive certification from COAH. The revised housing plan (The 2005 Housing Plan and Fair Share Plan) built on the previous housing plan document prepared by Eric Snyder & Associates, which served as the basis for the Borough's substantive certification petition several years ago. The basic format and strategy of the Snyder document was incorporated into the revised housing plan prepared in response to the requirements of the Third Round Rules. The second round obligation,

however, changed from when the Snyder document was originally prepared, because of modifications made to COAH's formula, which determined each municipality's pre-credited need obligation. The Snyder document also primarily used 1990 census data, because that was the most recent data available at that time. The revised housing plan incorporated the 2000 census data, as required, but also made reference to earlier census information where appropriate.

In addition to the second round obligation, the 2005 Housing Plan and Fair Share Plan, also addressed the "growth share" obligation, as defined by the Third Round Rules. The growth share concept changed the entire approach to providing affordable housing opportunities in New Jersey. Instead of being assigned an affordable housing number by COAH (as per the second round rules), a municipality's obligation is now determined by how much it is projected to grow – both residential and non-residential growth – and ultimately how much it actually does grow.

The growth share portion of the 2005 document reviewed past development trends and also considered the future development scenarios applicable to the Borough. Having determined Andover's growth share obligation, The 2005 Housing Plan, in conjunction with the Fair Share Plan, also outlined the strategy to meet that obligation.

Finally, the growth share obligation, coupled with the revised obligation associated with the second round rules, constituted the Borough's total affordable housing obligation. That obligation was determined to be 8 units and the Borough addressed that obligation, as required by COAH with the intent of ultimately completing the COAH substantive certification process.

However, before the Borough was able to move ahead with the substantive certification process, several things happened. First, in a separate but related matter, the Borough became embroiled in litigation involving a proposed Planned Unit Development project – herein referred to as the **Beazer project** – that proposed to triple the population of the community. That litigation and the activities related to it consumed much of the Borough's energies between 2006 and 2008. Furthermore, the Beazer representatives were critical of the

2005 Housing Plan for not incorporating the Beazer project into it in a way acceptable to Beazer.

In the meantime, while the Borough was responding to the challenges of the Beazer proposal and litigation, the COAH rules were challenged from several directions, which ultimately resulted in the Third Round Rules being revised and all municipalities under COAH's jurisdiction being required, yet again, to submit revised housing plans based on these new regulations. This document, the 2008 Housing Plan and fair Share Plan is in response to the new regulations established by COAH

2.0 REGIONAL SETTING, DEMOGRAPHICS AND LAND USE FACTORS

2.1 OVERVIEW/REGIONAL SETTING

Andover Borough is located in the south central portion of Sussex County. The Borough is almost completely surrounded by Andover Township, with the communities of Green, Byram, Fredon, Sparta, and Newton nearby. Exhibit 1 - Regional Location Map - depicts the location of the Borough in relationship to its immediate region.
The Borough is less than 2.0 square miles in size, and consists of land with a variety of environmental constraints. A large portion (more than 50%) of the residential development in the Borough pre dates 1940 and is concentrated in the center of the community. A scattering of commercial development exists along Route 206 and the balance of the land is largely undeveloped. Water supply and sewage disposal issues are of great concern and pose a significant constraint in terms of future development. The Borough is completely dependent on individual subsurface sewage disposal systems but does have a central water system that services most of the residents of the community.

2.2 DEMOGRAPHICS – GENERAL INFORMATION

Andover Borough can be described as lightly settled. As already noted, most of the existing housing units pre date 1940 and 75% of them pre date 1960. So the existing development pattern of the community was established decades ago and has not changed much since then.

Andover Borough had a 1990 Census population of 707. In 2000 the population decreased to 650. In fact there has been a steady decrease in the Borough population since 1970 as illustrated in Exhibit 2. Furthermore, the 2007 population estimate for the Borough is 639, indicating that the population loss trend of the last several decades is continuing.

So, over the last forty years the Borough experienced a slight population increase from 1960 to 1970 and a slow but steady decrease

since then. Exhibit 2 provides a history of the population changes within the Borough from 1960 to 2000.

EXHIBIT 2
POPULATION GROWTH

Year	Population
1960	743
1970	815
1980	791
1990	707
2000	658
2007	639 (estimate – NJ State Data Center)

Source: US Census

2.3 LAND USE RELATED FACTORS

There are a number of land use related factors that impact the affordable housing issue, as it relates to the Borough of Andover. These factors include a number of zoning, environmental and infrastructure issues. First, as noted earlier, the Borough's terrain encompasses many steeply sloped and otherwise environmentally constrained areas. These areas often have shallow depth to bedrock conditions and where depth to bedrock is not a constraint, wetlands or problematic soils are. In addition, much of the Borough is underlain by geologic formations that, if negatively impacted, could seriously degrade the water supply, not only in the community but in adjoining communities as well.

The environmental constraints within the Borough, along with other factors, have shaped the resulting land use pattern, as well as the community's planning policies. Andover is primarily a residential or "bedroom" community. There are also a number of retail and service commercial uses within the community but they primarily serve the local populace and the immediate region. Furthermore, these commercial uses account for less than 1% of the land area within the Borough. There are also several industrial operations in Andover but they are limited in size

As noted earlier, various environmental constraints have shaped, not only the land use pattern of the community, but also the community's planning and zoning policies. Included in Appendix A, is the Borough's Zoning Map which graphically depicts those planning and zoning policies. This map illustrates that most of the undeveloped portions of the community are now located primarily in the R-1 zone which is a large lot zoning district. Some of the undeveloped acreage is also zoned for commercial and industrial use but much of that acreage is constrained by sewage disposal limitations. Much but not all of this undeveloped acreage, at one time, was also regulated by a PUD overlay zone, which allowed development at a higher density, provided the needed utility infrastructure (central sewer and water facilities) could be made available. However, in 2007 the Borough eliminated that overlay zone, which prompted the aforementioned Beazer litigation.

3.0 THE NJ COUNCIL ON AFFORDABLE HOUSING AND THE AFFORDABLE HOUSING OBLIGATION

3.1 OVERVIEW

Over the past twenty years, the courts and legislature in New Jersey have wrestled with the following question: "What obligation does a municipality have to provide affordable housing for its current and future citizens ?" After the New Jersey Supreme Court's 1975/1983 "Mount Laurel" rulings which concluded that municipal zoning must provide realistic opportunities for low and moderate income housing, the State Legislature passed and the Governor signed, the Fair Housing Act (Chapter 222, Laws of 1985).

The Fair Housing Act established a nine member Council on Affordable Housing (COAH). The Council is required to promulgate a set of procedures and guidelines to assist municipal governments in meeting their responsibility under the Fair Housing Act.

In order to best determine each municipality's affordable housing obligation, COAH divided the State into six housing regions. The regions were defined by correlating residential areas to the predominant employment centers for residents of those areas. Andover Borough now lies within the Northeast Region (Region 1), as defined by COAH. This region includes Bergen, Passaic, Hudson and Sussex Counties. However, previously Sussex County was in a region that included Morris County.

Under the Fair Housing Act and the Municipal Land Use Law, each municipality has the obligation to prepare a housing plan element. The Municipal Land Use Law concisely defines the housing plan element as follows:

"A housing plan element, pursuant to …[the State Fair Housing Act], including, but not limited to, residential standards and proposals for the construction and improvement of housing. The State Fair Housing Act makes clear that the municipal housing element is to focus on affordable housing needs: A municipality's housing element shall be designed to achieve the goal of access to affordable housing to meet present and prospective housing needs, with particular attention to low and moderate income housing… ."

Municipalities in New Jersey, for a number of years now, have had a two-part constitutional housing obligation under the *Mount Laurel* doctrine, first articulated in 1975 and reaffirmed in 1983 by the New Jersey Supreme Court. First, municipalities must provide a realistic opportunity for decent housing for their poor residents, except if the municipality has a disproportionately large portion of such households compared with its region. This part of the obligation has been typically addressed by rehabilitating existing substandard housing occupied by low and moderate income households.

Second, municipalities had been required, under COAH's previous regulations to provide a realistic opportunity for the construction of their fair share of the regional need for low and moderate income housing. This part of the obligation has typically been addressed by "inclusionary zoning" that provides a density bonus for new residential development, with a mandatory set-aside of new housing that is affordable to low and moderate income households.

As already noted in Section 1.0 of this document, under COAH's Third Round Rules, the regional need concept has been supplanted by the "growth share" concept, which determines a municipality's new construction obligation based on how much growth a municipality anticipates and ultimately absorbs within its boundaries. At the time of the preparation of this document, the Third Round Rules, as amended by court challenges and legislative action that occurred between 2006 and 2008, are still under attack. Consequently, to what extent the growth share approach and other provisions of the Third Round Rules may be further changed as a result of litigation or legislation is not known. However, given the fact that COAH has imposed a December 31, 2008 deadline for the submission of housing plans, it has been determined that it will be in the Borough's best interests to comply with that deadline. Nevertheless, this document may need to be modified in the future depending on what additional challenges and / or rules changes occur that may make this housing plan obsolete.

3.2 HOUSING PLAN COMPONENTS

The current COAH regulations require that the housing plan element include the components identified in the NJ Municipal Land Use Law,

plus additional components needed to address the growth share obligation. A summary of the required components follows:

1. An inventory of the municipality's housing stock.

2. An analysis of the municipality's demographic characteristics.

3. A projection of the municipality's housing stock.

4. An analysis of the probable future employment characteristics of the municipality.

5. An analysis of the municipality's zoning districts.

6. A determination of the municipality's second round and third round obligations.

7. The identification of those properties that are most appropriate for the construction of low and moderate income housing.

The Third Round rules are complicated and there are a variety of ways that a municipality can meet its affordable housing obligation. Furthermore, there are various requirements, exceptions, limitations and other standards that every housing plan and fair share plan must address. The most important of all of the requirements contained in the revised Third Round Rules involves how many affordable units are required based on the amount and type of growth that a municipality absorbs between 2004 and 2018. Specifically, any new residential development within a municipality is subject to a 4 : 1 ratio. This means that for every <u>four market rate</u> units built, the municipality must provide for the realistic opportunity that one affordable unit will be constructed somewhere within the community. Likewise, new non-residential development generates an obligation which is based on the number of jobs created by that development. That obligation is based on a ratio of 16 : 1….. or for every 16 jobs created, the municipality must provide for the realistic opportunity of one affordable unit being constructed somewhere within the community. The term "realistic opportunity" is very important

because it means that COAH and the courts will not accept any housing plan that does not appear to be realistic in terms of the production of affordable housing. On the other hand, there is nothing in COAH regulations that requires that a municipality actually be directly involved in the production of those units.

So, COAH has direct involvement in how a municipal housing plan and fair share plan is structured, based on the provisions contained within the revised Third Round Rules. However, it is still within the municipality's power to shape a plan that is in the best interests of the community. This document, then, The Andover Borough Housing Plan and Fair Share Plan is being shaped to meet both the legal standards as promulgated by COAH and the planning goals and objectives of Borough, as they relate to land use, economic development, historic preservation and a variety of other matters directly related to the affordable housing issue.

4.0 HOUSING INVENTORY

Andover Borough, as of the 2000 Census, contained 273 housing units. Most of the units are single family detached homes. As with most municipalities, the housing stock of Andover Borough is a mix of old and new, single family and some multiple family structures, owner and renter occupied. Exhibits 3 to 8 provide the characteristics of the Borough housing stock as it existed in 2000. Some totals may be different, because some questions included on the census forms were only answered on a sample basis and then projected to reach a municipal total. Exhibit 3 specifically provides data that pertains to total number of units, vacancies and the split between owner and renter occupied units.

EXHIBIT 3
HOUSING UNITS BY TENURE

Total Housing Units	273
Occupied Housing Units	261
Owner Occupied	156
Renter Occupied	105
Vacant	12

Source: 2000 US Census

Exhibits 4 and 5 provide the general age distribution and type of housing units located in the Borough as of 2000.

EXHIBIT 4
AGE OF STRUCTURE

YEAR BUILT	NUMBER OF UNITS
1995 – 2000	10
1990 – 1994	0
1980 – 1989	0
1970 – 1979	20
1960 – 1969	37
1940 – 1959	55
1939 or earlier	150
TOTAL	272

Source : 2000 Census

EXHIBIT 5
TYPES OF STRUCTURES

TYPE	# OF UNITS	PERCENTAGE
Single family, detached	205	75.4
Single family, attached	0	0.0
Duplex	19	7.0
Three and four units	18	6.6
Five to nine units	27	9.9
Ten to nineteen units	0	0.0
Twenty or more units	0	0.0
Mobile homes or trailers	3	1.1

Source: 2000 Census

The preceding data indicates that a substantial amount of the residential construction activity, as noted earlier, occurred prior to 1960. And most of the units built were single family homes. This data provides a good picture of the growth of the housing stock of the Borough.

In addition to the age of the housing stock and the types of units, the value of a unit is also important in determining its availability to various segments of the housing market. The same is true regarding the range of rental costs. Exhibits 6 and 7 provide the market value of owner occupied structures and the value, by contract rent, of renter occupied units.

EXHIBIT 6
OWNER OCCUPIED UNITS BY MARKET VALUE

Value	Number	Percent
Less than $50,000	1	0.7
$50,000 to $99,999	5	3.6
$100,000 to $149,999	56	40.6
$150,000 to $199,999	47	34.3
$200,000 to $299,999	25	18.2
$300,000 to $499,999	3	2.2
$500,000 to $999,999	0	0.0
$1,000,000 or more	0	0.0
Total:		
Median (dollars)	154,800	

Source: 2000 Census

EXHIBIT 7
RENTER OCCUPIED UNITS BY GROSS RENT

Gross Rent	Number	Percent
Less than $200	0	0.0
$200 to $299	0	0.0
$300 to $499	7	6.5
$500 to $749	32	29.9
$750 to $999	46	43.0
$1,000 to $1,499	17	15.9
$1,500 or more	0	0.0
No cash rent	5	4.7
Total:		
Median (dollars)	804	(X)

Source: 2000 Census

It is important to note, however, relative to the data in Exhibits 6 and 7 that since April of 2000 when the 2000 Census was taken, housing costs in Andover, as well as throughout most of New Jersey, increased substantially and along with that increase in value, there was a corresponding increase in rents. It was estimated in the 2005 Housing Plan that the median market value for an Andover house was $197,000 and the average cost associated with a rental unit was approximately $ 950. However, the devastating collapse of the real estate market nationwide during 2007 and 2008 has undoubtedly affected market values in Andover as well. The extent to which values may have changed relative to the 2005 estimates or the 2000 census data is however, beyond the scope of this document.

Housing conditions, of course, are not defined solely by cost or type of unit or by the age of structure. Decent housing must have complete plumbing facilities, a heating plant, be in a reasonable state of repair, and not be overcrowded.

Overcrowded and substandard housing conditions include:

1. Occupancy by more than 1.01 persons per room.
2. Lack of complete plumbing facilities for exclusive use.
3. Physical dilapidation.
4. Age greater than 40 years.
5. Lack of a proper heating plant.

A residence meeting any two of the aforementioned criteria is considered substandard. Exhibits 8 and 9, which follow, provide data about substandard and overcrowded conditions as of 2000.

EXHIBIT 8
SELECTED CHARACTERISTICS

Lacking Complete Plumbing Facilities	0
Lacking Complete Kitchen Facilities	0

Source: 2000 Census

EXHIBIT 9
OCCUPIED HOUSING UNITS BY PERSONS PER ROOM

1.00 or fewer	260
1.01 – 1.50	0
1.51 or more	0

Source: 2000 Census

The aforementioned data indicates that in 2000 there were no households which were overcrowded or substandard thus indicating that generally the Borough's housing stock is in good condition.

In order to determine, on average, what housing might be available to persons of low or moderate income, we need to look at value, rent, and income. (Income data is presented in section 5.0 of this document). The following calculations indicate that a significant segment of the population, in 1999 had incomes insufficient to secure housing at the median value.

Median Value Home	$154,800
Down Payment (10%)	$15,400
Mortgage	$139,400
30 Year Mortgage Annual Payment	$ 9,600

A housing payment should be no more that 28% of gross income.

The median Borough household income in 1999 was $60,000. Of the 272 households in Andover, then, approximately 50 percent or more could not afford the median priced home.

Median rent in 1999 was $804 per month in Andover. Using this, and 30% of income for shelter, the median rental opportunity would be available to households with an annual income of $ 32,000 or more.

In addition to the aforementioned data, Exhibit 10 delineates the percentage of the number of persons and families at, or below, the poverty level.

EXHIBIT 10
FAMILIES AND PERSONS BELOW POVERTY LEVEL

FAMILIES	PERCENT	PERSONS	PERCENT
0	0.0	18	2.8

It is well documented that lower income persons and families are the least mobile within any area. Considering the sharp increase in the market values of houses and market rents, which occurred in the earlier part of this decade, it can be reasonably assumed that the status of the indigenous poor population, with respect to housing affordability - although small in number - has probably worsened.

5.0 POPULATION AND INCOME ANALYSIS

As already noted in section 2.2, the 2000 census count determined that there were 650 residents in the Borough at that time. The 2000 Census also provides a detailed analysis of the characteristics of the Borough population. Exhibits 11A, 12 and 13 provide some of that data which can be summarized as follows:

> **The total Borough population decreased slightly (a decrease of 49 residents or 7%) between 1990 and 2000. And in terms of the number of people in each age group, the 2000 figures are still reasonably similar to the 1990 census data. However, the Borough population continues to age with 19.7% of the population over the age of 55 in 2000 compared to 14.9% in 1990. Exhibit 11B provides some information about the Borough population from the 1990 Census. Furthermore, as noted previously, the total population of the Borough continues to decrease and in 2007 that total was estimated to be 639.**
>
> **In terms of income data, the median income household figure was $60,000 in 1999 compared to $37,031 in 1989. The number of social security recipients was 55 in 2000, while during that same time the number of public assistance recipients was one.**

With respect to some other population and income information not provided in Exhibits 11A, 11B, 12 & 13, the 2000 census indicates that the Borough is overwhelmingly white, with 610 residents in that category. Black or African American residents accounted for 2.3% of the population and Asians also 2.3%. The 2000 Census also found that 2.6% or 17 residents, of the Borough population were of Latino heritage. The average household size was determined to be 2.52 residents per household, with owner occupied units having a slightly higher average size (2.75/unit) and renter occupied units being significantly lower (2.18/unit).

EXHIBIT 11A
PERSONS BY SEX AND AGE-2000

SEX AND AGE	NUMBER	PERCENT
Male	335	50.9
Female	323	49.1
Under 5 years	30	4.6
5 to 9 years	47	7.1
10 to 14 years	44	6.7
15 to 19 years	37	5.6
20 to 24 years	35	5.3
25 to 34 years	86	13.1
35 to 44 years	146	22.2
45 to 54 years	104	15.8
55 to 59 years	34	5.2
60 to 64 years	30	4.6
65 to 74 years	33	5.0
75 to 84 years	27	4.1
85 years and over	5	0.8
Total	658	100.0
Median age (years)	38.3	
18 years and over	515	78.3
Male	256	38.9
Female	259	39.4
21 years and over	492	74.8
62 years and over	82	12.5
65 years and over	65	9.9
Male	25	3.8
Female	40	6.1

Source: 2000 Census

EXHIBIT 11B
PERSONS BY SEX AND AGE - 1990

AGE	TOTAL	PERCENT
0 - 4 years	52	7.4
5 – 9 years	39	5.6
10 – 14 years	47	6.7
15 – 19 years	43	6.1
20 – 24 years	60	8.6
25 – 29 years	70	10
30 – 34 years	63	9
35 – 44 years	126	18
45 – 54 years	96	13.7
55 – 59 years	29	4.1
60 – 64 years	27	3.9
65 – 74 years	26	3.7
75 – 84 years	18	2.6
85 years and over	4	.06
TOTAL	700	100

Source: 1990 Census

EXHIBIT 12
HOUSEHOLD AND FAMILY INCOME

INCOME IN 1999	HOUSEHOLDS		FAMILIES	
	#	%	#	%
Less than $10,000	4	1.6	0	0.0
$10,000 to $14,999	4	1.6	4	2.5
$15,000 to $24,999	19	7.6	4	2.5
$25,000 to $34,999	38	15.2	18	11.3
$35,000 to $49,999	29	11.2	26	16.3
$50,000 to $74,999	66	26.4	40	25.0
$75,000 to $99,999	42	16.8	29	18.1
$100,000 to $149,999	39	15.6	35	21.9
$150,000 to $199,999	8	3.2	4	2.5
$200,000 or more	1	0.4	0	0.0

Median household income (dollars): $60,000
Median family income (dollars): $69,688

Source: 2000 Census

EXHIBIT 13
HOUSEHOLDS WITH INCOME IN 1999
BY INCOME TYPE

	TOTAL	MEAN
• Earnings	230	64,147
• Social Security	55	11,382
• Public Assistance	1	100
• Retirement Income	28	15,579

Source: 2000 Census

6.0 EMPLOYMENT CHARACTERISTICS

Andover Borough has not participated in the economic growth of the region in recent years. This fact is reflected in the relative lack of new construction (both residential and non-residential) recently and the fact that most of the Andover work force is employed outside of Sussex County. The mean travel time to work in 2000 was 29.9 minutes. However, of particular interest is the fact that the 2000 census counted 13 residents, out of a total potential workforce of 442 residents, who worked from home. As commuting times continue to increase in the years ahead, there is the possibility that there will be a significant increase in this number.

Exhibits 14 to 17 describe the labor force in Andover in some detail.

EXHIBIT 14
LABOR FORCE STATUS

	TOTAL
Labor Force:	
Armed Forces	0
Civilian employed	423
Civilian unemployed	19
Unemployment rate	3..5%
Not in labor force	106

Source: 2000 Census

EXHIBIT 15
EMPLOYED CIVILIAN POPULATION

OCCUPATION	NUMBER	PERCENT
Management, professional and related occupations	117	27.7
Service occupations	44	10.4
Sales and office occupations	127	30.0
Farming, fishing, and forestry	10	2.4
Construction, extraction, and maintenance	61	14.4
Production, transportation, and Material moving	64	15.1
TOTAL:	423	100.0

EXHIBIT 16
EMPLOYED CIVILIAN POPULATION

INDUSTRY	NUMBER	PERCENT
- Agriculture, forestry, fishing and hunting, and mining	10	2.4
- Construction	49	11.6
- Manufacturing	64	15.1
- Wholesale trade	20	4.7
- Retail trade	73	17.3
- Transportation and warehousing, and utilities	15	3.5
- Information	8	1.9
- Finance, insurance, real estate, and rental and leasing	27	6.4
- Professional, scientific, management administrative, and waste management services	35	8.3
- Educational, health and social services	54	12.8
- Arts, entertainment, recreation, accommodation and food services	15	3.5
- Other services (except pubic administration)	13	3.1
- Public administration	40	9.5

EXHIBIT 17
EMPLOYED CIVILIAN POPULATION

CLASS OF WORKER	NUMBER	PERCENT
- Private wage and salary workers	340	80.4
- Government workers	69	16.3
- Self-employed workers in own not incorporated business	14	3.3
- Unpaid family workers	0	0.0

Generally, the 2000 Census data presented in Exhibits 14 to 17, indicates that the residents of Andover, who were in the labor force, were overwhelmingly employed in the civilian sector, and 340 were private sector wage and salary workers, with another 69 employed by government. White collar positions (management, professional, office etc.) were occupied by 57% of the labor force, while various construction, production and service occupations accounted for the

remainder. In terms of what industry categories employed Borough residents, the four leading categories were educational, health and social services – 12.8%; manufacturing -15.1%; retail trade – 17.3% and construction 11.6%. All other categories were below 10%.

7.0 TRENDS AND PROJECTIONS

7.1 INTRODUCTION

COAH's Third Round Rules, as amended during 2008, are based on legal challenges and legislative action that occurred during 2007 and 2008. Those rules require municipalities to estimate the "growth share" obligation that is likely to result from both residential and non-residential development anticipated to occur between January 1, 2004 and January 1, 2018. COAH has established a specific set of procedures to follow in calculating the required projections and this section complies with those procedures.

COAH has established the residential growth projections and the increase in the number of jobs for the Borough, for the 2004 to 2018 time frame, as part of the amended Third Round Rules. These numbers are presented in Section 7.2, together with some observations and comments. Certificates of occupancy and demolition data for the Borough, for both residential and non-residential development, during the last ten years, prior to 2004 have also been tabulated. Finally, a review has been undertaken of all approved projects (that have not yet obtained certificates of occupancy), pending projects and any other anticipated or projected development activity that could be completed prior to 1/1/18, which might have an impact on the Borough's affordable housing obligation.

One final note with respect to the issue of growth projections, involves the PUD overlay zone that was previously established by the Borough, which involved the Beazer property and other locations within the Borough and which was mentioned in the Borough's 2005 Housing Plan. Consequently, this overlay zone has not been factored into the Borough's growth projections for the time frame 2004 to 2018. The previously zoned PUD areas, in question, are currently used primarily for agricultural purposes or are vacant wooded tracts and will continue to be so used for the foreseeable future. At such time as it is reasonable to incorporate this acreage into the Borough's growth projections, this document will be revised accordingly.

7.2 COAH PROJECTIONS 2004 TO 2018 - RESIDENTIAL AND NON- RESIDENTIAL

The residential growth projections established by COAH, as part of the revised Third Round Rules, indicate that by 2018 the Borough will accommodate 30 new market rate units. This figure would seem to be reasonable since there are certainly some opportunities for in-fill development and small subdivisions in the Borough. It is also recognized and acknowledged, that if the previously mentioned Beazer project were to be reactivated in some form, then the Borough's development potential and subsequent affordable housing obligation would increase significantly. More about this issue will be discussed in Section 7.4 and other portions of this document.

In terms of non-residential growth projections, the COAH projection anticipates that the Borough will accommodate 686 new jobs by 2018 or well over 60 new jobs per year. The COAH projection does not specify what land use categories will generate these jobs, nor does the projection provide any information about the actual amount of new non-residential floor space that will be constructed. Suffice it to say, that…….. given previous growth trends, the constraints associated with the available vacant land in the Borough, the inadequate transportation network serving this part of Sussex County, the changing face of the retail and service commercial real estate market countywide and the overall planning policies of the community…… this number promulgated by COAH is completely unrealistic. In addition, Andover is primarily a residential community and intends to remain so. Consequently, it is anticipated that the number of new jobs created in the Borough by 2018 will be closer to several dozen, rather than several hundred.

Finally, it is not feasible, at this time, to seek a vacant land adjustment in order to reduce the jobs projection figure established by COAH. Instead, the Borough contends that a jobs growth figure of 50 to 100 for the time frame 2004 to 2018 is more realistic and is based on the analysis and NJTPA figures contained in the Borough's 2005 Housing Plan, as well as a review of data regarding actual construction that has occurred in the Borough since 2005 and the date of this document. The Borough, however, reserves the right to prepare a vacant land

adjustment analysis at a later date in order to support the Borough's position.

7.3 RESIDENTIAL AND NON RESIDENTIAL GROWTH TRENDS 1995-2003

The residential population of the Borough of Andover, as noted earlier, did not increase between 1970 and 2000, based on available census data. The building permit, certificate of occupancy and demolition permit data for a portion of that time frame, reflects that fact. That information is depicted in Exhibit 18.

EXHIBIT 18
RESIDENTIAL TRENDS IN NUMBER OF UNITS

	1996	1997	1998	1999	2000	2001	2002	2003	2004
CO's Issued	0	4	2	0	0	0	1	0	1
Demolitions	0	0	1	0	0	0	1	1	0
Net	0	4	1	0	0	0	0	1	1

Source: NJDCA

Exhibit 18, then, indicates that the net number of new housing units added to the Andover housing inventory, between 1996 and 2003, was a total of 6 or approximately .75 units per year. The net number of units added to the Borough inventory during 2004 was 1.

Furthermore, during the three and a half year period extending from 2005 to the end of July 2008, no CO's for new residential units were issued but two demolition permits were approved.

The amount of non-residential development was equally minimal. The net amount of floor area added to the Borough's non-residential inventory during the same 1996 to 2003 time frame is depicted in Exhibit 19 which follows. Based on available records, all of the construction that occurred during this time was in the office usage group. Clearly, as Exhibit 19 depicts, the net amount of non-residential growth in the Borough between 1996 and 2003 was minimal or non existent, as was true for 2004. Specifically, the amount of office space added during this time frame was only 12,325 sq ft. and the amount of retail space was 0, as was true for all other use group categories.

EXHIBIT 19
NON-RESIDENTIALTRENDS IN Sq. Ft.

Co's Per Use Group	96 Sq. Ft.	97 Sq. Ft.	98 Sq. Ft.	99 Sq. Ft.	00 Sq. Ft.	01 Sq. Ft.	02 Sq. Ft.	03 Sq. Ft.	04 Sq. Ft.
B-Office	0	0	5,125	0	0	0	7,200	0	0
M-Retail	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0
Demolitions Per Use Group									
B-Office	0	0	0	0	0	0	0	0	0
M-Retail	0	0	0	0	0	0	0	0	0
Other	0	0	0	0	0	0	0	0	0

Source: NJDCA

Furthermore, based on a review of the most recent data from the NJ Dept of Community Affairs, for the time period between 2005 and mid 2008, the amount of new non residential development constructed in the Borough was also virtually non existent. The exception to this statement involves a 10,400 sq ft addition to an existing retail establishment at the southern end of the Borough, which engages in the sale of automobiles and related motorized equipment. The total number of jobs, then, created by this limited amount of new development over a period extending from 1996 through most of 2008, based on the formula established by COAH of 2.8 jobs per 1,000 sq ft, is slightly more than 60 or approximately 5 per year. It should be noted that the COAH projection for the Borough is approximately10 times this number

7.4 RESIDENTIAL GROWTH PROJECTIONS 2004-2018

Projecting the amount of residential growth that will occur in the Borough between 2004 and 2018, must take into consideration a number of factors, many of which were discussed in section 2.3 of this document. First, the environmental constraints, associated with any development activity within the Borough, are significant. Among the constraints to be considered are steep slopes, and wetlands plus sewage disposal and potable water supply limitations. In addition, the multi acre minimum lot size zoning requirements enacted by the Borough in recent years will curtail the amount of residential

development that is expected to occur. Furthermore, as of the date of this document there are no known approved, pending or anticipated residential projects of any significance on the horizon. The exception to this statement is the project (Beazer Homes) mentioned earlier that has been the subject of protracted litigation. However, the zoning that would have allowed that project to proceed has been rescinded and the Beazer proposal is not currently an active application. This project is discussed in more detail in section 9.0 herein.

So, exclusive of the Beazer Homes project or something similar, the anticipated new residential growth between 2004 and 2018 should be well within the range of 4 units per year, based on COAH's projection for the Borough. Therefore, the Borough's accepts the COAH projection of 30 market rate units.

It is anticipated, then, that any new housing units will probably occur on isolated lots or on lots created via minor subdivisions or possibly via the conversion of single family homes to two family structures, as allowed by ordinance. However, if any use variances are unexpectedly approved by the Borough's Planning Board / Zoning Board, the number of new market rates units could increase beyond 30 and the Borough is prepared to respond to that eventuality as discussed later in this document.

7.5 NON RESIDENTIAL GROWTH PROJECTIONS 2004-2018

The amount of non-residential development expected to occur within the Borough between 2004 and 2018, will in all likelihood be minimal or non existent. Again, environmental constraints, lack of sewage disposal capacity and other limitations, as discussed in section 2.3, will have a significant impact on the amount of non-residential development that will be possible.

The COAH projections anticipate that approximately 60 new jobs per year will be created in the Borough. The trend in recent years, as documented in section 7.3, would dispute the likelihood of this possibility. As already noted, the Borough is not an attractive location for non-residential development for a number of reasons. Although it is possible that some non residential development may occur, it will no doubt be almost exclusively small scale retail or office uses along

Route 206, and will employ few people. Currently, there are no non-residential projects of any significant size that have been approved or are pending approval or that are anticipated.

It is not clear how COAH arrived at the jobs projection for the Borough, although one contributing factor is that the base employment figure for the Borough is probably incorrect. There is the strong possibility that a number of employers, actually located in adjoining Green or Andover Townships utilize an Andover Borough mailing address and therefore the jobs associated with those employers have been credited to the Borough.

So, it is the Borough's position that the 60 or more jobs per year figure, or a total of 686 jobs by 2018, projected by COAH, is excessive. A more reasonable figure would be 6 jobs or less per year, based on the actual amount of non-residential development that has occurred in recent years and what is known about approved, pending and anticipated projects that may be implemented in the future. Therefore the Borough's position is that a reasonable jobs growth figure for the Borough is 75 for the time frame in question.

However, as indicated in Section 7.2, the Borough is prepared to undertake the vacant land adjustment analysis at a later date, in order to confirm the unlikelhood of 686 new jobs being created in the Borough during the next several years. Nevertheless, in the eventuality that such growth occurs, as projected by COAH, the Borough is prepared to respond to that eventuality as discussed later in this document.

8.0 THE FAIR SHARE OBLIGATION

8.1 OVERVIEW UNDER THE THIRD ROUND RULES

The Borough's Fair Share Obligation is cumulative - composed of three parts: 1) the rehabilitation share 2) the prior round share (1987-1999) and 3) the growth share. As already noted, the Borough had previously petitioned COAH for substantive certification under the second round rules. Substantive certification was not granted prior to 12/20/04, the date that the Third Round Rules went in effect. Therefore, the Borough is still obligated to address both its rehabilitation share and its prior round obligation, as modified by the provisions of the Third Round Rules.

8.2 THE REHABILITATION SHARE OBLIGATION

The Borough's rehabilitation share under the second round rules was determined to be 7 units. However, the rehabilitation share obligation, as determined by the revised Third Round Rules, has taken into consideration the data available from the 2000 census regarding substandard housing. The new rehabilitation share number for the Borough has now been reduced to 0. The fact that the Borough's rehabilitation share has been so reduced is undoubtedly attributable, in large part, to the housing rehabilitation program that the Borough has conducted for the past fifteen years or more.

8.3 THE PRIOR ROUND SHARE OBLIGATION

Under the revised Third Round Rules, the prior round obligation of 5 has been increased to 7. This increase is the result of the prior round obligation being recalculated by COAH based on the changes to the COAH formula

8.4 THE GROWTH SHARE OBLIGATION

The revised Third Round Rules continue to use the growth share approach but again, changes have been made to the COAH formula. Furthermore, COAH has now established growth projections that are to be considered the minimum unless a municipality anticipates more

growth or the lack of available land or infrastructure inadequacies makes the COAH growth projections unattainable. Finally, COAH emphasizes that the actual obligation is ultimately determined by how much growth actually occurs

The growth share formula is relatively simple and is divided into two parts. First, in terms of the residential component, every four market rate units built in a municipality generates an obligation of one affordable unit. This 5:1 ratio can be addressed in a variety of ways according to the provisions of the revised Third Round Rules.

With respect to the second part of the growth share obligation – the non-residential development component – the obligation is based on the number of new jobs created. For every sixteen new jobs, one affordable unit is required. This 16:1 ratio is applied to the amount of new floor space associated with each use group – i.e. offices, retail uses, factories etc. COAH requires that a use group chart, adopted as part of the revised Third Round Rules be utilized to determine the specific number of new jobs that will be generated by the amount of new development in each use group. The same strategies that can be used to address the obligation generated by the amount of residential development can also be used to address the obligation caused by the amount of new non-residential development.

Based on the projections contained in section 7.0 of this document, the **growth share obligation** that the Borough must address for the period ending January 1, 2018 has been calculated to be 11. This figure is divided between the obligation generated by the amount of new residential development – 6 units and the obligation generated by the amount of new non-residential development – 5 units.

In summary then, the Borough's obligation based on the revised Third Round Rules is as follows:

Rehabilitation Share –	0 Units
Prior Round Share –	7 Units
Growth Share –	11 Units
Total	18 Units

9.0 THE FAIR SHARE PLAN

9.1 OVERVIEW

The Fair Share Plan for Andover Borough is based on the affordable housing obligation identified in Section 8.0 of this document. The Fair Share Plan, as outlined herein and as required by statute, specifies the projects, strategies and funding sources that will be employed to address the Borough's affordable housing obligation. This section is divided into the following components:

- The Rehabilitation Share Strategy
- The Prior Round Share Strategy
- The Growth Share Strategy
- The Administrative and Procedural Issues
- The Fair Share Plan Summary

9.2 THE REHABILITATION SHARE STRATEGY

As noted earlier in this document, (section 8.2), the Borough has administered a successful housing rehabilitation program for many years. This program has been largely responsible for reducing the number of substandard units in the Borough to 0. In summary, then the Borough has no rehabilitation share obligation but will continue to facilitate the rehabilitation of any substandard units that are identified within the Borough, in the future.

9.3 THE PRIOR ROUND SHARE STRATEGY

Section 8.3 discusses the prior round obligation of the Borough and the fact that under the revised Third Round Rules that obligation is now 7 units.

The 7 units that are part of the prior round obligation will be addressed as follows:

The Borough will work with local non profit agencies to establish one or more group homes within the community in

appropriate locations and will provide financial incentives to help facilitate that possibility. The Borough will also recruit property owners via financial incentives, to employ the existing single family to two family conversion provision contained in the Borough's land use regulation, thus resulting in a market rate unit and a COAH eligible unit at such locations, the Borough will also consider undertaking one or more "Buy Down" projects. Finally, the Borough intends to investigate the possibility of incorporating some affordable units into the upper floors of selected commercial properties within the core of the Borough's business district. This approach may include new construction or just be limited to the rehabilitation of existing space and will be part of any business district revitalization effort undertaken by the Borough.

9.4 THE GROWTH SHARE STRATEGY

As already noted earlier in this document, the data available about past development activity within the Borough, plus the known constraints affecting future development activity, indicates that the amount of growth expected to occur in Andover, between 2004 and 2018, will be minimal. However, as also noted previously, there is a caveat to this statement. Specifically, the Beazer Homes development proposal, or some variation of it, could still materialize again at some point in the future. However, the likelihood of that happening has been significantly reduced since the preparation and adoption of the Borough's most recent Housing Plan of 2005. Consequently, it is the position of the Borough that it would be inappropriate to include this project in the Borough's growth share calculations at this time and much of the language contained in the 2005 Plan, related to Beazer, has been deleted. However, if that project were to be reactivated in the future, the Borough would require that most, or all, of the resulting growth share obligation be accommodated on site.

With respect to the anticipated growth share obligation of 11 units resulting from anticipated residential and non residential growth that will be generated, the Borough will do the following:

The Borough will utilize the funds generated by a COAH approved Development Fee Ordinance, together with grants that the Borough will pursue, to finance a Buy Down Program, concentrating on many of the smaller single family homes that still exist within the community. Alternatively, or in combination with the Buy Down Program, the Borough will work with local non profit agencies to locate one or more group homes, in appropriate locations, within the Borough. The Borough will also utilize a growth share ordinance, where appropriate, to require the on site location of affordable housing units, where the size, nature and location of the project makes it reasonable to do so.

9.5 THE ADMINISTRATIVE AND PROCEDURAL ISSUES

The Borough of Andover acknowledges that as part of its affordable housing program it will be necessary to establish a mechanism to promote and monitor the availability of affordable units within the Borough. Toward that end, the Borough will enact the necessary ordinances related to its affordable housing program that will ensure that any such units are affirmatively marketed and that affordability controls are enforced in accordance with the provisions of the Fair Housing Affordability Controls Act NJAC 5180-26.1 et seq.

Finally, given the increased workload associated with the provisions of the Borough's Fair Share Plan, it is anticipated that it will be necessary to utilize administrative consulting services in connection with the implementation activities associated with the Borough's Fair Share Plan. The anticipated additional costs will be funded by the funds generated by the Borough's Development Fee Ordinance.

9.6 THE FAIR SHARE PLAN SUMMARY

In summary, Andover Borough must address the following obligation:

- Rehabilitation Share – 0 Units
- Prior Round Share – 7 Units
- Growth Share – 11 Units

18 Units

A variety of COAH approved mechanisms will be used to address that number between now and 2018. The intent is to seamlessly incorporate these units into the Borough, so that they are truly part of the community. The Borough fully embraces its obligation, and will move expeditiously to make these units a reality.

APPENDIX B

ANDOVER BOROUGH
DEVELOPMENT FEE ORDINANCE

1. Purpose

a) *In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.*

b) *Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.*

c) *This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.*

2. Basic requirements

a) This ordinance shall not be effective until approved by COAH pursuant to *N.J.A.C.* 5:96-5.1.

b) Andover Borough shall not spend development fees until COAH has approved a plan for spending such fees in conformance with *N.J.A.C.* 5:97-8.10 and *N.J.A.C.* 5:96-5.3.

3. Definitions

a) The following terms, as used in this ordinance, shall have the following meanings:

i. "**Affordable housing development**" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.

ii. "**COAH**" or the "**Council**" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.

iii. "**Development fee**" means money paid by a developer for the improvement of property as permitted in *N.J.A.C.* 5:97-8.3.

iv. "**Developer**" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

v. "**Equalized assessed value**" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

vi. "**Green building strategies**" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

4. Residential Development fees

a) Imposed fees

i. Within all of Andover Borough's zoning districts, residential developers, except for developers of the types of development

specifically exempted below, shall pay a fee of one and a half percent of the equalized assessed value for residential development provided no increased density is permitted.

ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of six percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

b) Eligible exactions, ineligible exactions and exemptions for residential development

i. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.

ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.

iii. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

iv. Developers of individual single family homes on existing lots shall be subject to a reduced fee of .5 percent.

5. Non-residential Development fees

a) Imposed fees

i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.

ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.

iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

b) Eligible exactions, ineligible exactions and exemptions for non-residential development

i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.

ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.

iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.

iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.

v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by Andover Borough as a lien against the real property of the owner.

6. Collection procedures

a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.

b) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.

d) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.

e) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all

requests for the scheduling of a final inspection on property which is subject to a development fee.

f) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.

g) Should Andover Borough fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).

h) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

i) Appeal of development fees

1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by Andover Borough. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

2) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Andover Borough. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

7. Affordable Housing trust fund

a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.

b) The following additional funds shall be deposited in the Affordable Housing Trust

Fund and shall at all times be identifiable by source and amount:

1. payments in lieu of on-site construction of affordable units;
2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
3. rental income from municipally operated units;
4. repayments from affordable housing program loans;
5. recapture funds;
6. proceeds from the sale of affordable units; and
7. any other funds collected in connection with [*insert municipal name*]'s affordable housing program.

c) Within seven days from the opening of the trust fund account, Andover Borough shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, _____ and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

8 Use of funds

a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Andover Borough fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to

be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

b) Funds shall not be expended to reimburse Andover Borough for past housing activities.

c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.

i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.

ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.

iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.

d) Andover Borough may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.

e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of

households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

9. Monitoring

a) Andover Borough shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with Andover Borough's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH . All monitoring reports shall be completed on forms designed by COAH.

10. Ongoing collection of fees

a) The ability for Andover Borough to impose, collect and expend development fees shall expire with its substantive certification unless Andover Borough has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If Andover Borough fails to renew its ability to impose and collect development fees prior to the expiration of *substantive certification it* may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). Andover Borough shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall Andover Borough retroactively impose a development fee on such a development. Andover Borough shall not expend development fees after the expiration of its substantive certification or judgment of compliance.