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Report  
on New Jersey  
Council on  
Affordable  
Housing

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State  
Development  
AND  
Redevelopment  
Plan

N. J. COUNCIL ON AFFORDABLE HOUSING

In New Jersey's Fair Housing Act (1985 N.J. Laws 222), the Legislature found that the New Jersey Supreme Court, in its two Mount Laurel decisions, had established "a constitutional obligation on the part of every municipality in a growth area to provide through its land use regulations a realistic opportunity for a fair share of its region's present and prospective needs for housing for low and moderate income families." (1985 N.J. laws 222, 2(a)) The Legislature therefore established a comprehensive planning and implementation program to help municipalities meet that obligation. The Fair Housing Act created the Council on Affordable Housing (COAH) as the key agency for assessing the need for low and moderate income housing in the different regions of the state and for coordinating municipal responses to meet that need.

The Act assigns to the Council on Affordable Housing a number of duties. (See 1985 N.J. laws 222, 7(a)) It directs the COAH to define housing regions for the State, to estimate the present and prospective need for low and moderate income housing in each region and in the state as a whole, and to provide population and household projections for each housing region and the state as a whole. The Act directs the Council to <sup>v</sup> adopt criteria and guidelines for:

- (1) a municipality's determination of its present and future fair share of the housing need in its region;
- (2) adjustments by a municipality to its present and future fair share, based on available vacant and developable land, infrastructure considerations, or environmental or historic preservation factors; and
- (3) the phasing in of present and future fair share housing requirements.

The responsibility for providing realistic opportunities for meeting the municipality's fair share of the region's low and moderate income housing needs, as indicated by the COAH, remains with the municipality. The Act requires each municipality to prepare and adopt a housing element as part of its master plan. (1985 N.J. Laws 222, 29) The housing element must be designed to meet the goal of providing access to affordable housing. (1985 N.J. Laws 222, 10)

The housing element must consider a wide variety of means available to municipalities for meeting this obligation (1985 N.J. Laws 222, 11), including:

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- (1) rezoning for densities necessary to the economic viability of inclusionary developments;
  - (2) measures that the municipality will take to ensure that low and moderate income units remain affordable;

- (3) a plan for infrastructure expansion and rehabilitation to accommodate low and moderate income housing;
- (4) donation of municipally owned or condemned land for the construction of low and moderate income housing;
- (5) tax abatements; and
- (6) the use of federal, state, and municipal funds to subsidize the construction of low and moderate income housing.

A municipality may choose to meet part of its obligation through a Regional Contribution Agreement (RCA) with other municipalities in its region. (1985 N.J. laws 222, 11 (c)) An RCA is a voluntary contractual arrangement in which one municipality transfers up to one-third of its fair share obligation to another municipality. At least nine municipalities have identified themselves as interested in being "receivers" under an RCA. (See Figure 1)

There are several benefits accruing to municipalities which participate in the Fair Housing Act program administered by the COAH, Participation gives a municipality access to state funds to help implement their housing element and fair share plan. Participation provides flexibility to the municipality, in terms of adjustments to the calculation of its fair share of the regional need and the mediation of exclusionary zoning challenges to municipal plans and ordinances. Participation shifts the burden of proof in exclusionary zoning cases from the municipality to the challenger. Participation also helps the municipality avoid the uncertainties of judicial processes that have been used since the Mount Laurel decisions to decide exclusionary zoning cases. About 200 municipalities have filed letters of intent with the COAH to participate in the GQAH program. (See Figure 2)

The Fair Housing Act empowers the Council on Affordable Housing to review and certify the housing element filed by a municipality. (1985 N.J. Laws 222, 13-14) In any exclusionary zoning case filed against a municipality which has a "substantive certification" ~~from~~ the COAH, a presumption of validity attaches to the municipality's housing element and the ordinances implementing it. (1985 N.J. Laws 222, 17 (a)) A challenger can rebut this presumption only by submitting clear and convincing evidence that the housing element and ordinances do not provide a realistic opportunity for the provision of the municipality's fair share of the region's low and moderate income housing needs. (Id.) Regional Cooperation Agreements also must be reviewed and certified by the COAH and are subject to guidelines established by the Council for RCAs. (1985 N.J. laws 222, 12, 14) A presumption of validity attaches to an RCA approved by the COAH. (1985 N.J. Laws 222, 17 (b))

By filing its housing element with the Council on Affordable Housing, a municipality brings into play a requirement that any person wishing to challenge the municipality's zoning ordinance on the basis that it fails to reasonably provide for low and moderate income housing must go through an administrative review and mediation process established by the Fair Housing Act before a court may entertain jurisdiction over the case. (1985 N.J. laws 222, 16 (b)) "The COAH is responsible for conducting the review and mediation process. (1985 N.J. Laws 222, 15) This process comes into play whenever a person files with the COAH an objection to the municipality's petition for certification of its housing element or RCA or when a person directly petitions the COAH and challenges the municipality's plan or ordinances as exclusionary. (1985 N.J. Laws 222, 15(a)) She COAH first meets with the municipality and the challenger to attempt to mediate a resolution of the dispute and, if mediation is successful, to issue an appropriate certification. (1985 N.J. Laws 222, 15 (b)-(c)) If mediation fails, then the GOAH conducts a hearing to determine whether the municipality is entitled to certification, fid.)

The Council on Affordable Housing has made significant progress to date in carrying out its duties under the Fair Housing Act. It has adopted rules which:

- (1) establish standards for the content of municipal housing elements;
- (2) define the state's housing regions (see Figure 3);
- (3) establish population and household projections for the state and each housing region;
- (4) establish estimates of the present and future need for low and moderate income housing in each region;
- (5) establish a methodology for municipalities to use in calculating their present and future need for low and moderate income housing;
- (6) establish criteria for the adjustment of a municipality's fair share calculation;
- (7) establish standards for municipal schedules for phasing in low and moderate income units to meet their fair share obligations;
- (8) establish standards and guidelines for RCAs; and
- (9) establish standards and guidelines for municipal measures to ensure the continued affordability of low and moderate income housing.

(See 18 N.J. Admin. Reg. 1527-41 (August 4, 1986)) In addition, over 25 court cases have been transferred to the COAH for municipalities with housing elements due in January 1987. (See Figure 4)

There are at least four areas where the Fair Housing Act calls for coordination between the Council on Affordable Housing

and the State Planning Commission. Section 4(j) calls for calculations of future low and moderate income housing needs to consider economic projections prepared by the State Planning Commission. Section 7(c)(2)(e) calls for municipalities to adjust their calculations of present and future fair share whenever the pattern of development they indicate is contrary to the planning designations in the State Development and Redevelopment Plan. Section 7(e) directs the State Planning Commission to annually provide the Council with six-year projections for economic growth, development, and decline in each housing region. Section 12 (c) calls for county planning boards or other county agencies to consider the State Development and Redevelopment Plan in their review of Regional Cooperation Agreements. In addition, there are many areas of overlapping interest, such as the formulation of growth projections, in which the COAH and the State Planning Commission can and should coordinate and provide mutual support. The COAH has expressed its eagerness to act as a "sounding board" for the State Planning Commission as the State Development and Redevelopment Plan is being drafted. (Memorandum of Presentation to State Planning Commission by Douglas Opalski, COAH Executive Director, January 13, 1987)

## RESULTS OF THE GALLUP POLL.

In order to carry out the mandate of the Act to "[c]oordinate planning activities and establish Statewide planning objectives", the State Planning Commission undertook a survey of public opinion in regard to New Jersey land Use Planning. The results of that survey demonstrate that residents of the State are pleased with conditions in New Jersey, but that there are areas of significant concern that residents believe could threaten the quality of life in New Jersey if additional management programs are not put in place.

The survey indicates that New Jersey residents are generally satisfied with the condition of the State as a whole and the communities in which they reside. When asked to describe the things the respondents liked best about New Jersey, more than 60% responded: "pleasant area", "friendly/nice people", "country/suburban atmosphere" and "small town", location, access to shopping, schools, access to jobs, cultural opportunities and safe, crime free were other characteristics that were described as of importance. Indeed, more than 76% of those surveyed indicated that New Jersey was a good or excellent place to live. And, the survey suggests, most residents (73%) expect that the quality of life in New Jersey will remain unchanged or improve in the next 5 to 10 years, notwithstanding expressed concern about increased traffic congestion and crime. In fact, 38% of the respondents answered that "development" had been good for their hometowns and another 35% believed that development had no impact on the quality of life in their communities. When asked to describe the things the respondents liked least about living where they lived, 25% answered "nothing."

The results do indicate that there are serious areas of concern, particularly in regard to the effectiveness of local and state government control of the use of land. 13% of the respondents said that traffic problems were the thing they liked least about their community and another 16% listed overcrowding or high taxes as undesirable aspects of their community. When asked to identify important community issues, the respondents favored traffic, housing costs, taxes, the environment, schools, community appearance and crime. The survey shows that the public, while convinced that development has been and will continue to be good for New Jersey, believe that development will have a significant impact, not all of it good, on the community issues that they believe are important. For example, 57% of the respondents believed that development would increase employment opportunities while at the same time 78% answered that development will increase traffic congestion. Similarly a majority of respondents believed that development will increase access to shopping (56%), a perceived desirable impact, but will increase the cost of housing (77%), increase local taxes (63%) and increase the local crime rate (59%). 49% of the respondents

anticipated a less healthful environment as a result of development and 36% believed that development would make their community less attractive.

One series of questions in the survey dealt with the preferred location of future development. A majority (52%) of the respondents answered that development should be located in cities, a response that is apparently connected to the substantial majority of respondents (87%) that believe that it is possible to revitalize the state's urban cities. Only 23% of the respondents indicated that suburban areas were the preferred location for new growth and development and 19% selected rural areas as the preferred location of future development. The respondents did indicate reasonable support for the concept of corridors (defined as areas "along major highways") - 54% identifying growth along corridors as good and only 28% answering bad.

The survey also asked a series of questions directed to the environment. The responses revealed that 86% of New Jersey residents identified the environment as an important community value and 88% of the respondents believed that the natural resources of the State are threatened by development. The extent of citizen concern about the vulnerability of the State's resources is underscored by a series of questions directed at the "strictness" of governmental control of development. 75% of the respondents answered that government controls should be strict or very strict, but only 22% believed that existing government controls are very strict or strict. This disparity/according to the analysis of the pollster, means that only a small fraction of the public (18%) is satisfied with the present level of government control of development and that fully 68% of the respondents support stricter government control of development.

Finally the survey probed into the public's view of the appropriate level of governmental control of development. Surprisingly, only 52% of the respondents opined that development should be controlled by local government, suggesting far less devotion to "home rule" than is generally expected. The survey instrument does not indicate why the respondents were so open to greater than local concern, 40% supported regional level control; however, it is possible to speculate that the relatively successful efforts in the Meadowlands and the Pinelands have softened the traditional, home rule bias. On the other hand the public's opinion may be nothing more than a reflection of the public's lack of familiarity with existing governmental roles in development control. In fact, with the exception of the Meadowlands, the Pinelands and CAERA, development control is primarily the responsibility of towns and cities, yet 60% of the respondents answered that counties and the state are currently responsible for development control. The fact remains, however, that 53% of all respondents answered that the counties or the

state were the level of government best able to control development; though the survey results on this point are characterized as soft by the pollster.

In summary, the survey results, when viewed as a whole by the pollster, the Gallup Organization, Inc., indicate:

New Jerseyans tend to enjoy their communities and the state as a place to live and are generally optimistic about the future of the state;

New Jerseyans see a number of positive and negative consequences of growth and development, but on balance tend to be positively predisposed toward development;

The greatest concerns associated with development are increased traffic, increased crime rate, damage to the environment, and higher local taxes;

The greatest benefits associated with development are increased employment opportunities, better schools and improved access to shopping;

State residents favor increased development in urban areas over suburban or rural areas, and are optimistic about the ability to revitalize the state's major cities;

Residents of communities that have experienced high growth rates are more concerned about future development than those living in areas with a lower growth rate;

New Jerseyans are not highly "home rule" oriented; 40% favor a regional approach to planning while 52% believe local towns and cities can best manage growth;

The majority support stringent control of development, although there is no consensus on the level of government that should have primary responsibility.