



American Planning Association
New Jersey Chapter

Making Great Communities Happen

Below is a written statement based on testimony the New Jersey Chapter of the American Planning Association (APA-NJ) provided to the Senate Economic Growth Committee at hearings on February 1 and 8, 2010. It is a compilation of opinions and ideas of members of the APA-NJ Legislative Committee and members of the APA-NJ Housing Committee. A copy of the Bill can be found at http://www.njleg.state.nj.us/2010/Bills/S0500/1_I1.HTM. We urge all interested planners to contact the Bill's sponsors and their own representative about this important legislative policy.

APA-NJ Statement

Bill S1: An Act concerning affordable housing, supplementing and revising parts of the statutory law.

We can all agree that the Fair Housing Act offers a complex set of mandates to municipalities in the state. The Council on Affordable Housing, created by that Act, was given a difficult responsibility in determining the obligation of each municipality in the state to provide opportunities for housing affordable to low and moderate-income households. This was a difficult concept for many of the towns in New Jersey to accept. For many years, control of land uses through zoning had been used to ensure that the municipality stayed the way the elected officials perceived the population wanted it...basically the way it was.

It is little wonder that COAH became the "bad guy", trying to carry out a huge and complex task. The real wonder is that even though many in the state involved in housing thought reforms in the COAH process were needed, New Jersey became the "poster state" for developing affordable housing.

Two nationwide studies done on affordable housing in the United States, one done in 2003 "Regional Approaches to Affordable Housing", published by the Planning Advisory Services the research arm of the American Planning Association, and sponsored by the U.S. Department of Housing and Urban Development, and one done in 2009 for the Lincoln Institute of Land Policy, "Smart Growth Policies: An Evaluation of Programs and Outcomes", compared New Jersey against other states and assessed the impact in terms of production and effect on affordability. On the basis of these studies--the only two evaluations of the New Jersey system to date--it is believed that the New Jersey system is the only system in the United States that is producing affordable housing in a quantity that can be measured as significant: over 24,000 units per decade. The Lincoln Institute study provided empirical evidence that the New Jersey system is in fact making

housing more affordable for low- and moderate-income families, who would otherwise be spending 30 percent or more of their household income for housing. We can provide copies of both of these studies for committee members.

New Jersey has also measurably improved affordability for owners and renters. One of the rules of COAH, giving double credit for affordable rental units over affordable sales units, has had a real impact on the number of new rental units being built – more than any other state in the study.

So even as we agree that reform is needed, we must be certain that a new process can maintain at least as notable a success rate of affordable housing production as the process we are replacing.

Following are recommendations by APA-NJ on relatively broad principles addressed in our efforts to facilitate the development of affordable housing in a high cost state.

Recommended and Supported Principles of the S1:

1. The APA-NJ Housing Committee agrees that reform is needed for both the Fair Housing Act and the State Planning Act. In reference to S1 there should be a preamble to establish that it upholds the Mount Laurel Doctrine and that it furthers the legislative findings included in the State Planning Act (SPA) wherein it notes the need for

“integrated Statewide planning and the coordination of Statewide planning with local and regional planning to conserve its natural resources, revitalize its urban centers, protect the quality of its environment, and provide needed housing and adequate public services at a reasonable cost while promoting beneficial economic growth, development and renewal.”

2. We applaud the addition of the Housing Element as a requirement under the MLUL, as well as revising the SPA to extend the re- adoption of the State Plan to six years to be in line with the municipal master plan re-examinations. We suggest that re-adoption of the State Plan be extended to every ten years, starting in 2012, to take advantage of the wealth of data the census provides. To that end, municipal Master Plan re-examination could occur every five years to be better coordinated with the State Plan re-adoption.

3. S1 refers in several sections to the definition of regions and the value of regional planning. We recommend a stronger role for regional planning within the process this legislation addresses. Housing is dynamic and is an integral part of comprehensive planning. A regional planning approach best addresses and anticipates the needs of New Jersey’s communities, as opposed to a process through which each municipality determines its own housing needs without involvement of regional planners and regional elected officials.

4. We feel that the inclusion of defined “work force housing” as part of the choice and variety of housing available in all municipalities in the state is a valuable addition to the

State's housing stock. However, we are deeply concerned that the Court's direction to provide opportunities for low income housing (below 50% of median income) and moderate income housing (between 50% and 80% of median income) will not be complied with if the workforce housing becomes an equal partner with low income and moderate-income housing in the housing mix. The workforce housing, in order to comply with the Court's direction, could be a very helpful "add-on", but cannot be included in the affordable housing opportunities obligated to be provided by every municipality in a growth area "...for a fair share of its region's present and prospective needs for housing for low and moderate income families".

5. Although workforce housing is a good concept for those just below and just above the median income in their region, it would be a cruel hoax to say this housing is only affordable to the first buyer and renter...and when that family moves to another location, the workforce housing is no longer affordable to another comparable working family. Moreover, it would encourage the "flipping" of for sale units.

We strongly urge that, even though the workforce housing does not meet the test standards that the Court called for in terms of affordability, that it have a restricted affordability designed to keep it affordable to the "workforce population" that it was designed to assist. If the affordability standard for 80% to 120% of median income is not protected by resale or re-rental price restrictions, then Section 19 will allow a very small window of affordability to the very population municipalities would like to serve.

6. We strongly recommend that the proposal in S1 that EDA take on the responsibility for evaluating the feasibility of a housing development, in terms of affordability and density, be amended. This is not the most efficient way for the SPC to achieve its goals. First, it adds another level of bureaucracy to seek reprise from a second government entity. Moreover, to add an additional ninety-day review period to a process whose length is often discouraging to private and nonprofit developers will have a serious negative effect. SPC can either hire qualified staff or request the assistance from a state agency, such as NJHMFA, which has been evaluating affordable rental and sales housing projects for over twenty years, and who could provide training to appropriate staff persons at SPC. This would be much more efficient, and could further the skill set and independence of SPC staff.

7. In relation to determining a reasonable opportunity for the provision of affordable housing, the rulings of the New Jersey Supreme Court in 1975 and 1983, and later, must be adhered. The process is complicated and lengthy. We do not believe that the process that process of reassigning this task to another agency with no similar experience can be "fast-tracked". We believe that the result will be more successful if done at a pace that allows municipal, county, and state officials to confer thoughtfully, and develop procedures that are thought through sufficiently to ensure their success; including an evaluation of who might monitor the process, who will assist the municipalities in determining their goals, and who will track compliance.

We urgently recommend slowing down this process to allow sufficient time for the above activities to be planned, with the inclusion of all those who might be involved.

8. We feel that the affordable housing function is appropriately placed with the SPC, but urge that a transitional period be established to allow the staff of the SPC to be enlarged as needed, and to adapt and develop the needed processes, regulations, and proceedings that will be placed within that agency. It is suggested that the legislature might expand the SPC to include several appointments with specific housing expertise. Using all the talent and experience that we (the State government) have, will ensure that changes in process, in rules, and in regulations will be carried out with the skill that comes with experience.

In addition to the above eight principles, for which we have made recommendations, there are a number of issues in the bill as written that need clarification, such as:

- The impact of this Bill on the number of lawsuits a municipality might face.
- The compliance ordinance that a municipality is entitled to adopt is unclear regarding the burden of proof a municipality must provide that they have met the requirements of “reasonable opportunities”.
- The inclusionary ordinance as described in the bill would reduce the obligation from 100% of the affordable housing units to be provided to 50% of that number of units to be provided for low and moderate income households. This would seem to raise the issue of constitutionality of the ordinance itself.
- The process for certification that a municipality has met its obligation is not clear and raises the concern of having a court making the housing decisions.
- The bill includes little guidance for administration of the “development fees” or administration and monitoring of the housing affordability.
- Finally, the proposed affordability restriction period of six years is unrealistic in terms of providing the opportunities for affordable housing within every municipality. Most subsidy programs, federal or state, use thirty years as a reasonable length of time to protect affordability. Banks providing the permanent financing for price-restricted housing are willing to provide thirty year fixed rate mortgages. Since the need for affordable housing will never end (there will always be minimum wage jobs in every municipality) a number of subsidy programs have extended the restrictive period to over thirty years. Moreover, without affordability controls of 30 years, municipal governments that provide realistic opportunities for affordable housing will find themselves in a constant battle to replenish the supply, because the affordable housing will simply disappear after six years without appropriate long-term restrictions. It will place municipalities at risk from additional Mt. Laurel lawsuits.

These are details one might say, but if there ever was a situation where “the devil is in the details”, the provision of affordable housing would go to the head of the line!

We appreciate very much your time and attention, and the APA-NJ will be happy to discuss any of these ideas with you further.