

Attorney ID: 012731981
Our File No.: C22172(SAK)

DiFRANCESCO, BATEMAN, COLEY, YOSPIN,
KUNZMAN, DAVIS, LEHRER & FLAUM, P.C.
15 Mountain Boulevard
Warren, New Jersey 07059-5686
(908) 757-7800
Attorneys for Township of Chatham

In the Matter of the Township :
of Chatham for a Judgment : SUPERIOR COURT OF NEW JERSEY
of Compliance of its Third : LAW DIVISION: MORRIS COUNTY
Round Housing Element and : Docket No.: *MRS-L-1659-15*
Fair Share Plan :
: (Mount Laurel)
: Civil Action
:
: COMPLAINT FOR
: DECLARATORY JUDGMENT
:

The Township of Chatham ("Township") by way of Complaint
for Declaratory Judgment in accordance with In the Matter of the
Adoption of N.J.A.C. 5:96, 221 N.J. 1 (2015) ("Decision")
states:

COUNT ONE FOR JUDGMENT OF COMPLIANCE

1. The Township is a municipal corporation of the State
of New Jersey.

2. The Township has diligently endeavored to fulfill its
constitutional obligation to provide a realistic opportunity for
producing a fair share of the regional present and prospective
need for low and moderate income housing as set forth in So.
Burlington Cty. N.A.A.C.P. v. Mount Laurel Tp., 92 N.J. 158

(1983) and its progeny ("Mount Laurel"), and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. ("FHA").

3. The FHA created the Council on Affordable Housing ("COAH") and assigned COAH to establish municipal fair share obligations on a periodic basis.

4. On March 5, 1997, the Township received Substantive Certification for the Township's Second Round fair share obligation.

5. The Township's First and Second Rounds cumulative obligation for the period 1987 to 1999 was calculated by COAH as 89 units (83 new construction and 6 rehabilitation) and was met as follows:

a.	Chatham Glen (for sale)	75
b.	Regional Contribution Agreement	8
c.	Group homes	6
d.	Rental bonus	<u>6</u>
	Total units and credits	95

6. Attached as Exhibit A is a true copy of the Second Round Substantive Certification.

7. The Township has produced seventy-five (75) affordable for sale units, six (6) group home bedrooms and eight (8) units rehabilitated through a Regional Contribution Agreement.

8. Accordingly, entering the Third Round, the Township carried forward the 12 credits for group homes and the accompanying rental bonus, having fulfilled the Township's recalculated prior round 83 unit obligation.

9. The Planning Board, on November 17, 2008, adopted a Housing Element and Fair Share Plan ("Third Round Plan") to meet the Township's Third Round fair share obligation.

10. Attached as Exhibit B is a true copy of the Third Round Plan.

11. The Township Committee, on December 4, 2008, adopted a Resolution endorsing the Third Round Plan and authorized the submission of a Petition for Third Round Substantive Certification to COAH.

12. On December 31, 2008, the Township submitted the Third Round Plan to COAH.

13. Attached as Exhibit C is the Township's cover letter to COAH, dated December 31, 2008.

14. On May 18, 2009, COAH declared the Township's Petition for Third Round Substantive Certification complete.

15. Attached as Exhibit D is COAH's letter, dated May 18, 2009.

16. The Township's Third Round Plan calculated the Township's Third Round fair share obligation by applying eighty-three (83) of the Township's COAH recognized units and credits to fully address the eighty-three (83) unit recalculated prior round obligation and carried forward the twelve (12) group home credits to be applied toward the very low income requirement.

17. The Township's Third Round Plan fully addressed the Township's Third Round fair share obligation with a nineteen (19) unit rehabilitation program in cooperation with the County of Morris, an eleven (11) unit accessory apartment program, a market-to-affordable program to deed restrict five (5) apartments to be affordable by low and moderate income households, nineteen (19) group home bedrooms, and the extension of expiring controls on the seventy-five (75) affordable units at Chatham Glen.

18. The Township is prepared to supplement the Third Round Plan to comply with the Township's constitutional obligation to create a realistic opportunity for producing a fair share of the regional present need and prospective need for low and moderate income housing consistent with all credits, adjustments, including physical and environmental factors.

19. The Township is working diligently to determine its obligation under Mount Laurel. To that end, the Township retained the services of an expert to assist the Township in calculating the extent of its Third Round fair share obligation.

20. In accordance with the Decision, the Township seeks a determination declaring that the Third Round Plan, as it is or as may be supplemented, meets the Township's constitutional obligation under Mount Laurel.

21. During the period that the Courts of New Jersey are reviewing whether the Township met its constitutional fair share obligation, the Township is entitled to immunity from suit by any party or entity, including any claim for builder's remedy.

22. Once the Courts of New Jersey declare that the Third Round Plan of the Township satisfies the Township's Mount Laurel obligation, the Township is entitled to further repose and immunity from litigation challenging the Plan, including any claim for builder's remedy for the duration of the adopted and approved Third Round Plan, which the Decision held at least until June 30, 2025.

23. In accordance with the Decision, interested parties are to be noticed of this action; those parties identified in the Decision and those who have requested notice shall be notified of the action and served with the filed pleadings; other potentially interested parties known to the Township will be provided notice of the proceedings.

WHEREFORE, the Township requests judgment declaring that:

- a. The Township be granted a Judgment of Compliance;
- b. The Third Round Plan meets the Township's constitutional obligation under Mount Laurel and the FHA;
- c. The Township is entitled to immunity and repose from litigation challenging any aspect of its Third Round Plan, including any claim for builder's remedy at least until June 30, 2025, or as otherwise directed by the Courts of New Jersey; and

d. Such other relief as is proper and just.

**COUNT TWO APPROVING DEVELOPMENT
FEE ORDINANCE AND SPENDING PLAN**

24. The Township repeats and relies upon each and every allegation set forth in Paragraphs 1-23 herein.

25. The Third Round Plan includes a Development Fee Ordinance ("Fee Ordinance") as well as a Spending Plan in accordance with the FHA.

26. On October 6, 2009, COAH approved Fee Ordinance 2008-19.

27. On December 3, 2009, the Township adopted a revised Fee Ordinance, Ordinance 2009-18, consistent with COAH's comments.

28. Attached as Exhibit E is a true copy of COAH's letter, dated October 6, 2009; Township letter to COAH, dated December 4, 2009 and Ordinance 2009-18.

29. The Decision removed all aspects of implementation of the FHA from COAH.

30. In order to continue to meet the provisions of the Plan, the Fee Ordinance and the Spending Plan may need to be amended and approved in accordance with the Decision.

31. In the absence of COAH, this determination must be made by the Courts of New Jersey.

WHEREFORE, the Township requests judgment declaring that:

a. The Fee Ordinance and Spending Plan meet the Township's requirements under the FHA and further fulfill the Township's constitutional obligation under Mount Laurel and the FHA; and

b. Such other relief as is just and proper.

**COUNT THREE PRESERVING THE MUNICIPAL
HOUSING TRUST FUNDS OF THE TOWNSHIP**

32. The Township repeats and relies upon each and every allegation set forth in Paragraphs 1-31 herein.

33. The FHA provided, in part, that the funds collected must be committed within four (4) years of collection or be forfeited to the New Jersey Housing Trust Fund and, under certain circumstances, to the State General Fund.

34. COAH failed to adopt regulations defining "commit for expend" funds, and the circumstances under which the funds could be forfeited.

35. In In Re Failure of the Council on Affordable Housing to Adopt Trust Fund Commitment Regulations, 440 N.J. Super. 220 (App. Div. 2015), the Appellate Division ruled that in the absence of appropriate direction from COAH, the determination of the use of a municipality's collected funds is part of this action.

36. The Fee Ordinance and Spending Plan prepared by the Township are components of the Third Round Plan that will enable

the Township to meet its constitutional obligation under Mount Laurel and the FHA.

37. Although the Township has not collected development fees to date, a forfeiture of any funds that may be collected in the future to the State of New Jersey Affordable Housing Trust Fund is contrary to the interests of the Township, the citizens of the State of New Jersey, and would impede the ability of the Township to implement the Third Round Plan and comply with its constitutional obligations under Mount Laurel and the FHA.

WHEREFORE, the Township requests judgment declaring that:

- a. The Fee Ordinance is approved;
- b. The Spending Plan is approved;
- c. Any development fees that may be collected by the Township not be forfeited to the State of New Jersey Affordable Housing Trust Fund;
- d. Any development fees collected by the Township are permitted to be used in accordance with the Spending Plan; and
- e. Such other relief as is just and proper.

DiFrancesco, Bateman, Coley, Yospin,
Kunzman, Davis, Lehrer and Flaum, P.C.

By: _____
Steven A. Kunzman

Date: June __, 2015

DESIGNATION OF TRIAL COUNSEL

Pursuant to R. 4:25-4, Steven A. Kunzman, Esq. is hereby designated as Trial Counsel for the Township of Chatham.

R. 4:5-1 CERTIFICATION

Pursuant to R. 4:5-1, the undersigned hereby certifies that at the time of filing the within, the matter in controversy is not the subject of any other action pending in any court and/or arbitration proceeding, and no other action or arbitration proceeding is contemplated, and the undersigned is unaware of any other party who is potentially responsible to any party on the basis of the facts set forth herein and who should be joined in this action pursuant to R. 4:28 and 4:29-1 et seq. However, many of the issues to be presented in the matter in controversy and to be addressed by the court will be the subject of similar matters that have been or will be filed by other municipalities and, as such, many of these issues may be required to be addressed by the court in conjunction or simultaneously with other such actions.

DiFrancesco, Bateman, Coley, Yospin,
Kunzman, Davis, Lehrer and Flaum, P.C.

By: _____
Steven A. Kunzman

Date: July __, 2015

Exhibits to Complaint

- A - Second Round Substantive Certification
- B - 2008 Housing Element and Fair Share Plan
- C - Letter from Township of Chatham to COAH, dated December 31, 2008
- D - Letter from COAH to Township of Chatham, dated May 18, 2009
- E - Letter from COAH to Township of Chatham, dated October 6, 2009; letter from Township to COAH, dated December 4, 2009 and Ordinance 2008-19.

Exhibit A

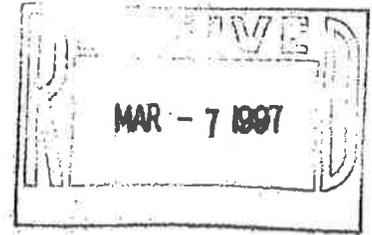


CHRISTINE TODD WHITMAN
Governor

State of New Jersey
COUNCIL ON AFFORDABLE HOUSING
CN-813
TRENTON NJ 08625-0813
609-292-3000
FAX: 609-633-6056
TDD#: (609) 278-0175

JANE M. KENNY
Chairman
SHIRLEY M. BISHOP, P.P.
Executive Director

March 5, 1997



Honorable Fred Pocci
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928-1199

Dear Mayor Pocci:

Congratulations!

Enclosed is a copy of the resolution by the Council on Affordable Housing (COAH) at the March 5, 1997 meeting that granted your municipality substantive certification. Please take note that all implementing ordinances including applicable zoning must be adopted no later than 45-days from the grant of substantive certification.

If you have any questions or need further information, please call Sean Thompson, COAH planner, at (609)292-1716.

Sincerely,

Shirley M. Bishop, P.P.
Executive Director

encl.

cc: attached service list
Sean Thompson, COAH planner

d3741w/1



The Honorable Fred Pocci
Township of Chatham
58 Meyersville Road
Chatham, NJ 07928-1199

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Township of Chatham
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Planning Board Secretary
Township of Chatham
58 Meyersville Road
Chatham, NJ 07928-1199

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Green Village, NJ 07935

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Schwartz, Tobia & Stanziale
Kip's Castle
22 Crestmont Road
Montclair, NJ 07042

RESOLUTION GRANTING SUBSTANTIVE CERTIFICATION NO. 70-99

WHEREAS, Chatham Township, Morris County, petitioned the Council on Affordable Housing (COAH) on September 12, 1996 for substantive certification in accordance with N.J.S.A. 52:27D-313 and N.J.A.C. 5:93 et. seq.; and

WHEREAS, Chatham Township published notice of its petition in the *Daily Record*, which is a newspaper of general circulation within the county on May 23, 1995, pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:91-3.3; and

WHEREAS, publication of notice initiated a 45-day objector period which resulted in no objections being filed; and

WHEREAS, COAH has established a 1987-1999 precertified need for Chatham Township of 89: six units of rehabilitation and 83 new construction; and

WHEREAS, COAH staff has reviewed the township's housing element and fair share plan; and

WHEREAS, on December 28, 1995, COAH staff issued a COAH Report Requesting Additional Information; and

WHEREAS, Chatham Township has provided COAH with the information that was requested; and

WHEREAS, on January 17, 1997 COAH issued a Compliance Report which was distributed to the Chatham Township service list for comment and COAH received comments that required a Revised Compliance Report; and

WHEREAS, on February 10, 1997 COAH issued a Revised Compliance Report (attached

hereto as Exhibit A) which was distributed to the Chatham Township service list for comment and COAH received comments from three parties on the service list; and

WHEREAS, the three comments do not alter the Revised COAH Compliance Report; and

WHEREAS, Chatham Township requested a reduction for 75 units that were constructed as part of a court order; and

WHEREAS, Chatham Township is also seeking credit for six bedrooms in two group homes that were constructed after December 15, 1986 and are eligible for six rental bonus credits; and

WHEREAS, Chatham Township requested that the six bonus credits be applied toward a future housing obligation; and

WHEREAS, in applying the reduction of 75 units and credit for six bedrooms in two group homes, Chatham Township has a calculated need of eight units, all new construction; and

WHEREAS, Chatham Township's plan consists of an eight-unit regional contribution agreement (RCA) with the City of Newark; and

WHEREAS, on November 6, 1996, COAH approved an RCA between the City of Newark and Chatham Township for eight units at \$20,000 per unit; and

WHEREAS, the township has forwarded a resolution of intent to bond for the RCA; and

WHEREAS, a motion was submitted by Chatham Township requesting a scarce resource constraint on existing sewer capacity that involved the Prudential Insurance Company of America site (Giralda Farms); and

WHEREAS, oral argument was heard at COAH's December 4, 1996 meeting; and

WHEREAS, on January 3, 1997, COAH voted not to issue a scarce resource order restraining the township from releasing existing sewer capacity; and

WHEREAS, COAH finds that the housing element and fair share plan submitted by Chatham Township comport with the standards set forth at N.J.S.A. 52:27D-314(a) and (b).

NOW THEREFORE BE IT RESOLVED that COAH has reviewed Chatham Township's petition for substantive certification and determines that it is consistent with the rules and criteria adopted by COAH and the achievement of the low and moderate income housing needs of the region; and

BE IT FURTHER RESOLVED that COAH grants the reduction of 75 units and credit for six bedrooms in two group homes based on the submitted documentation; and

BE IT FURTHER RESOLVED that COAH shall carry forward a surplus of six units of credit; and

BE IT FURTHER RESOLVED that any reference to a COAH or a court-ordered scarce resource constraint shall be deleted from the township's fair share ordinances; and

BE IT FURTHER RESOLVED that COAH grants substantive certification to Chatham Township for a period of six years from the date of this resolution; and

BE IT FURTHER RESOLVED that any changes in the facts upon which this certification is based or any deviation from the terms and conditions of this certification, which affects Chatham Township's ability for the realistic opportunity of its fair share of low and moderate income housing and which the borough's fails to remedy, may render this certification null and void.

I hereby certify that this resolution was
duly adopted by the Council on Affordable
Housing at its public meeting on 3/5/97

A handwritten signature in cursive script, appearing to read "Renee Reiss", is written over a horizontal line.

Renee Reiss, Secretary
Council on Affordable Housing



State of New Jersey
 COUNCIL ON AFFORDABLE HOUSING
 CN-813
 TRENTON NJ 08625-0813
 609-292-3000
 FAX: 609-633-6056
 TDD#: (609) 278-0175

CHRISTINE TODD WHITMAN
 Governor

JANE M. KENNY
 Chairman
 SHIRLEY M. BISHOP, P.P.
 Executive Director

COAH SUMMARY FACT SHEET - 1987-1999

1. Municipality Chatham Township 2. Date of
 County Morris Petition for Certification 9/12/95
 Region 2 Final Certification 3/05/97

Planning Areas: 1 and 5

Staff Reviewer Sean Thompson

4. Precredited Need		<u>89</u>
New Construction	<u>83</u>	
Rehabilitation Component	<u>6</u>	
Reduction		
Reduction (units built)	<u>-75</u>	
Credit(s)		
Credit (group home)	<u>-6</u>	
Rental Credits	<u>(6*)</u>	
Fair Share		<u>8</u>
Regional Contribution Agreement (RCA)	<u>8</u>	
Surplus		<u>6</u>

Recommendation

GRANT SUBSTANTIVE CERTIFICATION

(*The township asked that rental bonus credits be forwarded to a future obligation.)



**EXECUTIVE SUMMARY
CHATHAM TOWNSHIP/MORRIS COUNTY
REGION #2
PREPARED BY: SEAN THOMPSON**

The Planning Board of Chatham Township, Morris County, adopted a housing element and fair share plan addressing its 12-year cumulative 1987-1999 obligation of 89 units on May 15, 1995. Chatham Township petitioned for substantive certification on September 19, 1995. COAH received no objections during the 45-day objector period.

After a reduction of 75 units, credit for six bedrooms in two group homes and six rental bonus credits, Chatham Township's 1987-1999 need is two. However, the township requests that the six rental bonus credits be considered for a future obligation leaving a calculated need of eight. The township proposes an eight unit regional contribution agreement (RCA) with the City of Newark. On November 6, 1996 COAH approved an RCA with the City of Newark for \$160,000 at a total of eight units. Chatham Township has adopted a resolution of intent to bond for the RCA.

Chatham Township made a motion requesting a scarce resource order constraint on existing sewer capacity that involved the Prudential Insurance Company of America site. The oral argument was heard at COAH's December 4, 1996 meeting. On January 3, 1997, COAH voted not to issue a scarce resource order.

COAH received comments during the 14-day comment period which has been addressed in the COAH Report in Response to Comments.

COAH staff recommends that Chatham Township's fair share plan and housing element be approved for substantive certification. In addition, any reference to a COAH or court-ordered scarce resource constraint must be deleted from the township's fair share ordinances.

SHAW & SHAW, ESQS.

Stephen H. Shaw
Donna B. Shaw
3 Main Street
P.O. Box 3120
Newton, NJ 07860

Steven D. Gladstone,
Of Counsel, PA & NJ

Telephone: (201) 300-1055
Fax: (201) 300-1095

February 24, 1997

Shirley M. Bishop, P.P.
Executive Director
State of New Jersey Council on Affordable Housing
CN-813
Trenton, New Jersey 08625-0813

Re: Township of Chatham Petition for Substantive Certification
Revised Compliance Report

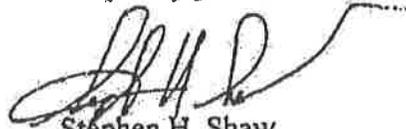
Dear Ms. Bishop:

The COAH staff recommendations should be reviewed.

The ordinance approving the 1994 Prudential Agreement is not a zoning ordinance adopted pursuant to procedures established by the Municipal Land Use Law. The zoning ordinance necessary to amend existing ordinances to implement the Prudential Agreement remains to be adopted. Also, since the ordinance approving the Prudential Agreement makes no reference to the scarce resource restraint and the agreement with Prudential contemplated the potential denial by COAH of scarce resource restraints, there are no ordinances relating to a scarce resource restraint to be deleted.

Accordingly, the COAH staff recommendation should require as a condition of approval adoption of a zoning ordinance to implement the affordable housing plan.

Very truly yours,



Stephen H. Shaw
Special Counsel, Chatham Township

cc: Renee Reiss
Sean Thompson
Service List

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February 24, 1997

VIA FAX

Shirley Bishop, Executive Director
State of New Jersey Council on Affordable Housing
CN 813 - 4th Floor
Trenton, New Jersey 08625-0813

Re: Township of Chatham Petition for Substantive Certification
Compliance Report

Dear Ms. Bishop:

We are attorneys for The Prudential Insurance Company of America ("Prudential"), the owner of certain real property located in Chatham Township known as "Giralda Farms" and an interested party in the above-referenced matter.

This letter is being submitted to clarify certain statements which were inserted into the revised Compliance Report dated February 8, 1997. Specifically, Articles VII and XII of the Compliance Report conclude with the following sentence:

"In addition, Prudential will provide Chatham Township with sewer reservation fees that may be used for a future affordable housing obligation and with a tract of land that also may be used for a future affordable housing obligation. It is noted that neither the sewer reservation fees nor the land is dedicated specifically for affordable housing purposes."

Among the affordable housing contributions to be made by Prudential to Chatham Township under the December 22, 1994 Sewer Agreement was an option granted to Chatham Township to accept either (i) the contribution of a 23 acre parcel to be used for affordable housing purposes, or (ii) in lieu of the land donation, accept \$20,000 per unit toward the regional contribution agreement and 50% of the net proceeds from the sale of the 23 acre parcel. Article V of the Sewer

SCHEENK, PRICE, SMITH & KING

Shirley Bishop, Executive Director
February 24, 1997
Page 2

Agreement previously filed with your office provides that the net proceeds from such sale payable to Chatham "will be used by the municipality for affordable housing purposes." Accordingly, the last sentences of the above cited sections are inaccurate. They also give the incorrect impression that Prudential's contribution will be limited to \$160,000.

It is respectfully requested that the last two sentences of the above Articles be amended to read as follows:

"In addition, Prudential will pay Chatham Township sewer reservation fees of up to \$1,500,000 which may be used, at the discretion of Chatham Township, for future affordable housing needs and 50% of the net proceeds from the sale of a 23 acre parcel will be used by the Township for affordable housing purposes."

With respect to Mr. Bisgaier's letter of February 20, 1997, we believe that his assertions are without merit. The current agreement with Chatham Township is analogous to Judge Skillman's 1986 Court Order, which tied the construction of affordable housing to the construction of office buildings at the Giralda Farms site. Mr. Bisgaier incorrectly implies once again that Prudential's current affordable housing contribution is tied to the creation of zoning for office space at the site. As we have stated repeatedly, the record discloses that zoning for office space at Giralda Farms was created in 1979, well before Chatham Township approached Prudential for assistance with its affordable housing obligation. Based upon this zoning, a Development Agreement was entered into with Chatham Township on September 15, 1980. The relatively minor enhancements provided in connection with Prudential's involvement in the satisfaction of Chatham's affordable housing obligation are clearly in line with any zoning benefit it will receive, especially when zoning concessions and prior expenditures made by Prudential, including the limitation on total development at the site and the expenditure of \$500,000 to create existing sewer capacity in Chatham's plant are considered. The affordable housing nexus to the creation of this capacity was clearly recognized by Judge Skillman when he granted the August 20, 1990 Scarce Resource Order. Finally, we are at a loss as to Mr. Bisgaier's implication that the 1994 Sewer Agreement does not remain in effect. The Agreement speaks for itself. Mr. Bisgaier evidently continues to pursue any means possible to obtain access for his client to sewer capacity which would not even be in existence but for the efforts of Prudential.

If COAH would like to discuss this matter, we would be pleased to do so.

SENT BY:

2727 07 1 4-0000 10000000 10000 10000

SCHENCK, PRICE, SMITH & KING

Shirley Bishop, Executive Director
February 24, 1997
Page 3

Very truly yours,

SCHENCK, PRICE, SMITH & KING, LLP


Edward John Trawinski

EJT:hsl

cc: Service List

202048

FLASTER
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PHILADELPHIA, PA 19103
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SENT FACSIMILE ONLY

Shirley M. Bishop, Executive Director
New Jersey Council on Affordable
101 South Broad Street, CN-813
Trenton, NJ 08625-0813

RE: Chatham Township

Dear Ms. Bishop:

I am in receipt of a copy of your letter of February 11, 1997 to Mayor Poggi and the enclosed Revised Compliance Report ("Report"). The Report refers somewhat obliquely to the Giralda Farms as a "site that will provide a contribution of \$160,000.00 to the township's affordable housing obligation for the RCA, *once certain actions have occurred.*" Emphasis supplied.

I am question that there might be an inference which could be drawn from this statement regarding an assertion that Giralda Farms is an affordable housing site and entitled to the procedural projections provided by COAH regulations. For example, if the Township were to rezone the Giralda Farms site, would it be in violation of an order granting substantive certification (regardless of whether such an action would violate certain contractual obligations of the Township)?

My assumption is that the Giralda Farms site, as presented to COAH, does not have the status of an affordable housing site for several reasons. First, Giralda Farms is not needed as an affordable housing site given the Township's commitment with regard to funding the RCA and the lack of a suitable commitment by Giralda Farms to provide timely and sufficient financing. I would agree that there are instances in which a development that has committed to providing RCA funding is entitled to affordable housing site status. As will be discussed below, presumably there would be at least two (2) preconditions: (1) a firm commitment to provide the subsidy (see,

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STEPHEN M. GREENBERG*
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February 20, 1997

Shirley M. Bishop, Executive Director
February 20, 1997
Page 2

for example, COAH's treatment of commitments in the context of municipally sponsored sites, municipally funded RCAs and developer rental credits); and (2) the existence of a rational relationship between the amount of the funding and the benefit received by the developer (for example, presumably COAH would not provide such status to a residential developer who is building several hundred market rate units and only eight [8] inclusionary units. Such a "setaside" would be tantamount to a sham, a wee tail wagging a monster of a dog.

Second, the owner of the Giralda Farms site has no current commitment to provide the funding. The funding "commitment", as indicated in the Report is conditional. The conditions which were to be met have not been satisfied. In fact, there is a question as to the status of the contract which provides the basis for the funding "commitment". None of the parties have indicated that the contract is presently in force.

Third and, perhaps, most important, granting this site affordable housing status based simply on the "commitment" to pay \$160,000.00 would take COAH into uncharted waters. Affordable housing status presumably grants to a site certain protections from rezoning and certain priorities regarding obtaining infrastructure. As indicated above, presumably before COAH would provide a site with such status (particularly as opposed to other sites), there must be a rational *quid pro quo* relating to the production of affordable housing.

There are standards which COAH and the courts have used to measure such a rational relationship. These include, for example, the assumption of a 15% or 20% residential setaside or the financial equivalent in the context of commercial projects. In fact, the Supreme Court presumed a 20% setaside as the minimum. Regardless, the Court never would have tolerated the minimum reflected in the context of the Giralda Farms "commitment" of \$160,000.00, (the functional equivalent of eight [8] units) as a basis to grant the relief being sought for Giralda Farms; zoning and sewerage treatment for a massive office complex. There is no rational relationship between the affordable housing "commitment" and the benefit which COAH would have granted the site with regard to zoning and infrastructure prioritization.

Thank you for your consideration of the above.

Respectfully yours,



Carl S. Bisgaier, Esq.

CSB/scs

cc: The Honorable Fred Pocci (sent facsimile only)
Robert O'Grady, P.P. (sent facsimile only)
Edward Trawinski Esq. (sent facsimile only)
James T. Gaffney (sent facsimile only)
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SENT FACSIMILE ONLY

Shirley M. Bishop, Executive Director
New Jersey Council on Affordable
101 South Broad Street, CN-813
Trenton, NJ 08625-0813

RE: Chatham Township

Dear Ms. Bishop:

I am in receipt of a copy of Mr Shaw's letter to you of February 24, 1997 regarding the Revised Compliance Report ("Report"). Mr Shaw states that:

The zoning ordinance necessary to amend existing ordinances to implement the Prudential Agreement remains to be adopted. ... Accordingly, the COAH staff recommendation should require as a condition of approval adoption of a zoning ordinance implementing the affordable housing plan,

This is completely misplaced. You should have copies of my prior correspondence regarding the misapplication of the term "inclusionary project" to the Prudential development. whatever it may be, if is not an inclusionary project and the funding "commitment" (which does not exist) does not make it an inclusionary project under COAH standards and judicial precedent.

Further, there are no ordinances which must be adopted as a condition of substantive certification. The entire municipal commitment (other than what has already been constructed) is for an RCA. That obligation is all that need be required consistent with COAH regulations relating to RCA agreements.

The municipality has undertaken the RCA obligation. The Prudential "underwriting" of that obligation, even if it were a firm commitment (which it is not), is not of a magnitude to warrant inclusionary developer status and should not be so ordained by an unnecessary COAH directive.

File

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Since no zoning ordinance amendment is necessary for purposes of the compliance plan and none is necessary to implement the compliance plan, none should be ordered, directed or recommended by COAH. I am not quite certain how to characterize the Prudential "agreement" or "commitment"; however, I do know that it is not an affordable housing commitment warranting the imprimatur of COAH.

I am also in receipt of a copy of Mr. Trawinski's letter regarding the Prudential "commitment". He states that the Prudential agreement is still in effect and "speaks for itself". I would welcome your review of it. The agreement clearly indicates that the "commitment" to provide affordable housing contributions is conditional. It is not a firm commitment. If it is, Mr. Trawinski simply should so indicate, and we can get off of this topic.

Regardless, even if it were a firm commitment, it does not provide the rational nexus for inclusionary developer status. His reference to Judge Skillman's prior order actually undermines Prudential's position in that regard. Judge Skillman's order came at a time when the Prudential commitment was for the actual construction of over one hundred affordable units. In fact, when that changed, and explicitly in light of that change, Judge Skillman vacated the order. COAH simply cannot grant this project inclusionary developer status. If it did, it would be making a mockery of the concept.

The issue of sewerage treatment capacity alone reveals the absurdity of Prudential's position (note that Prudential seeks other benefits as well). Essentially, Prudential is seeking to buy a COAH guarantee for 750,000 g.p.d. of sewerage treatment capacity. In turn, it offers a financial contribution to underwrite an eight (8) unit RCA. In residential terms, 750,000 g.p.d. of sewerage treatment capacity, even assuming 300 g.p.d. for single-family detached units, represents 2,500 units. Eight (8) affordable units represents a setaside of less than one percent; that is, 32%. If one assumed a multifamily project, the yield would be much greater and the affordable percentage much less. If that is a "rational nexus", then anything is. Clearly, COAH and the courts have required much, much more.

Thank you for your consideration of the above.

Respectfully yours,



Carl S. Bisgaier, Esq.

CSB/scs

cc: The Honorable Fred Pucci (sent facsimile only)
Robert O'Grady, P.P. (sent facsimile only)
Edward Trawinski Esq. (sent facsimile only)
James T. Gaffney (sent facsimile only)
Steve Shaw, Esq. (sent facsimile only)
Judeth Piccininni, D.A.G. (sent facsimile only)
Julia M. Somers (sent facsimile only)
Carl Woodward, Esq. (sent facsimile only)

**COAH REPORT IN RESPONSE TO COMMENTS
TO REVISED COMPLIANCE REPORT
CHATHAM TOWNSHIP/MORRIS COUNTY
REGION #2
PREPARED BY: SEAN THOMPSON, PRINCIPAL PLANNER**

During the 14-day comment period following the receipt of Chatham Township's Revised Compliance Report, three comments were received: Stephen Shaw, Esq., township attorney; Edward Trawinski, Prudential Insurance Company of America (Prudential) attorney; and Carl Bisgaier, attorney representing Tublitz, a property owner in Chatham Township. All comments are attached and do not alter the Revised Compliance Report.

Chatham Township's Comments

Shaw's February 24, 1997 letter states that the ordinance approving the 1994 Prudential agreement was not a zoning ordinance adopted pursuant to procedures established by the Municipal Land Use Law and must be adopted. In addition, there are no municipal ordinances that reference the scarce resource restraint, so none have to be deleted.

In regard to Shaw's letter, both the Compliance Report and the Revised Compliance Report regarding Chatham Township reference Chatham's adopting an affirmative marketing ordinance. As to the Prudential Agreement, the method of implementation of the Developer Agreement between Chatham Township and the Prudential Insurance Company of America is between the township and Prudential.

Prudential Insurance Company of America's Comments

Trawinski's letter, dated February 24, 1997, mirrors and reinforces previous comments that are incorporated in the Revised COAH Compliance Report.

COAH staff has reviewed the comments and determined that the Revised Compliance Report remains as prepared.

Tublitz' Comments

Bisgaier's letters, dated February 20 and 24, 1997, challenge the validity of the Prudential

site as an affordable housing site in addressing a portion of Chatham Township's housing obligation before COAH.

The site owned by Prudential is the focus of a Developer Agreement between Chatham Township and Prudential. In that agreement, Prudential is to provide Chatham with \$160,000 to fund a regional contribution agreement (RCA). As such, the Prudential site is a site that is contributing a negotiated fee for the provision of affordable housing.

EXHIBIT A

REVISED COAH COMPLIANCE REPORT
CHATHAM TOWNSHIP/MORRIS COUNTY
REGION #2
PREPARED BY: SEAN THOMPSON
February 8, 1997

I. INTRODUCTION

Chatham Township, Morris County, received a Judgment of Compliance and Repose from the Honorable Stephen Skillman, J.S.C., on August 20, 1986 for an obligation of 200 units, all new construction. On January 24, 1995, Chatham Township was transferred to the Council on Affordable Housing (COAH). Subsequently, Chatham Township adopted a housing element and fair share plan addressing its 12-year cumulative obligation of 89 units on May 15, 1995. Chatham Township petitioned COAH on May 19, 1995 and published notice on May 23, 1995. COAH received no objections. However, COAH did receive correspondence that an original party to the court case, Ramon and Mindele Tublitz, was an intervenor on issues relating to sewer.

II. INVENTORY ANALYSIS

A. Housing Stock

According to the 1990 census, there were 3,729 housing units in the township. The median value of owner-occupied housing in 1990 was \$336,400.

B. Demographic Characteristics

According to the 1990 census, the township had a population of 9,361. In 1990 there were 3,571 households with an average household size of 2.59 persons. The median income was \$75,597.

In reviewing Chatham Township's housing element, information meeting the requirements of N.J.A.C. 5:93-5.1 was submitted regarding housing stock, demographic characteristics, employment characteristics and population trends.

III. BACKGROUND

The township's Judgment of Compliance and Repose contained two components to address

the 200-unit first round obligation: 75 units constructed on the Baker-Firestone site in the Chatham Glen Development and the proposed construction of 125 units on a portion of a 23-acre site known as Giralda Farms, south of Woodland Avenue, owned by the Prudential Insurance of America (Prudential).

Prior to the judgment, the township rezoned Giralda Farms, identified as Lot 1, Block 142, to permit the construction of office buildings subject to a requirement of 125 low and moderate income housing units. The Giralda Farms property was not within a sewer service area and discharge capacity was not available. In addition, the 1986 Judgment of Compliance and Repose stipulated that if sewer capacity did not become available, the township would be required to amend its plan to address the remaining 125-unit obligation.

IV. AMENDMENT TO JUDGMENT OF REPOSE AND COMPLIANCE

After the 1986 Judgment of Compliance and Repose, the township requested a scarce resource order. On August 20, 1990 Judge Skillman approved a motion requesting the imposition of scarce restraints. The order also granted intervenor status to the following parties: Ramon and Mindele Tublitz; New Jersey Conservation Foundation; Environmental Defense Fund; Arthur Heyl and Hel Roses, Inc.; Helen and Arthur Fenske and the New Jersey Department of Environmental Protection (DEP), acting through the Attorney General of the State of New Jersey for matters related to the allocation of sewage capacity in Chatham Township. At that time, all intervenors were accorded the right to participate with respect to applications concerning the allocation of sewage capacity and were to be serviced with any correspondence from any party in the litigation.

In the order, the Township of Chatham was restrained from allocating sewage treatment capacity to any party, other than Prudential, until sufficient capacity was made available to Prudential to complete its project, including both the affordable housing component and the office park development.

Subsequent to an order to amend its plan in July 1990 and to the August 20, 1990 scarce resource order, the township passed Ordinance 5-91 on February 8, 1991. In that ordinance, the township adopted land use regulations to comply with affordable housing requirements, including the rezoning of the township portion of the property known as Giralda Farms to permit the construction

of office buildings and 125 low and moderate income housing units. It is noted that sanitary sewer treatment and discharge capacity were not available to service the Giralda Farms property and the subject property was not located within an existing sewer service area. As a result, the township proposed the improvement and expansion of WPC (water pollution control) Plant #1 to accommodate 1,000,000 gpd.

Simultaneously, the township amended its plan to address its affordable housing obligation. The amendment included provisions for sewer service to Prudential for the Giralda Farms site through the expanded sewage treatment plant and an enlarged sewer service area for WPC Plant #1 subject to the adoption and approval by DEP of an appropriate wastewater management plan and the issuance of all other necessary approvals and permits.

In addition, the township entered into an agreement with Prudential setting forth the processes, terms and conditions concerning reimbursement to the township for funds expended in expanding the sewage treatment plant, for obtaining DEP approvals and discharge allocation certificates and for setting forth the obligations of Prudential for the development of 125 units of affordable housing. The agreement proposed a relocation of the affordable housing units, the continued allocation of sewerage capacity for commercial office space to the Giralda Farms property, monetary contributions toward the enhancement of the sewage treatment plant, the construction of a pump station, the dedication of a 23-acre parcel to the township, monetary contributions to facilitate a regional contribution agreement (RCA) for 100-units and monetary contributions to facilitate the construction of 25 units within the township.

On January 24, 1995, Judge Skillman transferred jurisdiction of Chatham Township to COAH, vacated the scarce resource order and ordered that the township could apply to COAH for a new scarce resource order, if it so desired. In addition, Judge Skillman denied a motion by intervenors Ramon and Mindele Tublitz for full intervenor status.

V. **REDUCTION(S)/CREDIT(S)**

The township is seeking a reduction for 75 affordable units constructed and occupied in Chatham Glen which was part of its Judgment of Compliance and Repose. The township is eligible to receive this reduction.

The township is also seeking credit for six bedrooms in two alternative living facilities each containing three bedrooms. The Arc/Morris Chapter owns and administers a three-bedroom facility located at 371 Fairmount Avenue. The facility was opened in March 1988. Our House, Inc., owns and administers a three-bedroom facility located at 1 Robert Drive. The facility was opened in October 1991. Both group homes house persons with developmental disabilities and both receive funding from the New Jersey Department of Human Services/Division of Developmental Disabilities which retains a perpetual lien on the property. These six bedrooms qualify for six rental bonus credits. At this time the township request that the six bonus credits be applied towards a future housing obligation.

In summary, the township is eligible to receive reduction/credits for 75 new units, six bedrooms in two group homes and six rental bonus credits for a total of 87.

VI. NUMBER

Chatham Township's precredited 1987-1999 need is 89: six units of rehabilitation and 83 new construction units. Based on the information submitted for reductions and credits, the township's calculated obligation is two. However, the township requests that the six rental bonus credits be considered for a future obligation leaving a calculated need of eight.

VII. FAIR SHARE PLAN

Regional Contribution Agreement (RCA)

Chatham Township may transfer up to one-half of its obligation or 44 units. Chatham Township proposes an RCA for eight units. On November 6, 1996 COAH approved an RCA between the City of Newark and Chatham Township for eight low and moderate income units at \$20,000 per unit. Chatham Township has agreed to transfer \$160,000 within 60 days of receiving substantive certification. The township has forwarded a resolution of intent to bond for the RCA.

The Giralda Farms site was included in the township's plan to address its Judgment of Compliance. At that time, the site was zoned to provide 125 affordable housing units. In December 1994 the township and Prudential revised the affordable housing component of their agreement to reflect a forthcoming reduction in Chatham's affordable housing obligation. The Giralda Farms site

is now a site that will provide a contribution of \$160,000 to the township's affordable housing obligation for the RCA, once certain actions have occurred. In addition, Prudential will provide Chatham Township with sewer reservation fees that may be used for a future affordable housing obligation and with a tract of land that also may be used for a future affordable housing obligation. It is noted that neither the sewer reservation fees nor the land is dedicated specifically for affordable housing activity.

Development Fee Ordinance

No mandatory development fee ordinance was submitted by the township. If Chatham Township intends to collect fees, then a draft ordinance must be forwarded to COAH for review and approval.

VIII. MOTION

By motion, Chatham Township requested a scarce resource constraint on existing sewer capacity that involved the Prudential site (Giralda Farms). Oral argument was heard at COAH's December 4, 1996 meeting. The issue was held over for further discussion and recommendation by a COAH task force. On January 3, 1997, after discussion COAH decided not to issue a scarce resource order restraining the township from releasing existing sewer capacity for the Prudential site. A written decision was memorialized at the February meeting. In addition, any reference to a COAH or court-ordered scarce resource constraint must be deleted from the township's fair share ordinances.

IX. CONTROLS ON AFFORDABILITY

In accordance with N.J.A.C. 5:93-9, the New Jersey Department of Human Services/Division of Developmental Disabilities retains a perpetual lien on the property on the two alternative living arrangement properties. The 75 units of new construction have appropriate deed restrictions in place.

X. AFFIRMATIVE MARKETING

An affirmative marketing plan in accordance with COAH regulations outlined in N.J.A.C.

5:93-11 must be adopted to insure that as resales and rentals occur, the units are marketed according to N.J.A.C. 5:93-11. COAH has provided Chatham Township with a draft affirmative marketing ordinance.

XI. CONCLUSION

Pursuant to N.J.A.C. 5:93 et. seq., Chatham Township's fair share plan and housing element are in compliance with the standards for substantive certification. The township is entitled to 87 units of credits/reductions. The township will address its calculated need through an eight-unit RCA and carry forward a surplus of six credits.

After careful review and analysis, COAH staff recommends that Chatham Township's fair share plan and housing element be approved for substantive certification. Chatham Township must adopt its affirmative marketing ordinance within 45 days of receiving substantive certification and delete any ordinances relating to a scarce resource constraint.

XI. COMMENTS TO THE COAH COMPLIANCE REPORT

COAH issued a Compliance Report on January 13, 1997. During the 14-day comment period, COAH received four comments: two comments from Stephen Shaw, Esq., attorney representing Chatham Township; Edward John Trawinski, Esq., attorney representing Prudential Insurance of America, Inc. (Prudential); and Carl S. Bisgaier, Esq., attorney representing Mr. Tublitz. These comments resulted in this Revised Compliance Report and is being forwarded to all parties for a 14-day comment period. The comments are summarized below.

In his letter, Mr. Trawinski states that the report does not accurately reflect the activities that transpired between Prudential and the township and that the COAH Compliance Report did not include Prudential as an inclusionary development. Mr. Trawinski states that Giralda Farms was acquired by Prudential in 1978. Subsequently, as a result of negotiations between the township and Prudential, the township adopted Land Use Ordinance 2-79, which permitted the construction of office buildings on the Giralda Farms site as a conditional use. On September 15, 1980, Prudential and Chatham Township entered into a developer's agreement regarding the development of the Giralda Farms corporate office facility. The office zoning and the development agreement were

unrelated to any affordable housing requirements in that agreement. Prudential's involvement in addressing a portion of Chatham Township's affordable housing obligation was the result of a "builder's remedy" brought by Green Village 139 Corp. As a result of this lawsuit, Chatham Township negotiated an agreement with Prudential to address the remaining portion of its judgment of repose of 125 units. Prudential's involvement in the affordable housing plan did not create zoning for office buildings but rather revised zoning already in place.

Finally, Mr. Trawinski states that since the Giralda Farms site will provide contributions to satisfy the township's present and future housing obligations, it is an integral component of Chatham Township's affordable housing plan.

In his letter, Mr. Bisgaier indicated that Prudential's commitment to provide funding is predicated on several activities, which remain incomplete, and is not "an integral part of the fair share plan."

Mr. Shaw forwarded two letters to COAH. In the first letter, Mr. Shaw requested a clarification regarding the impact of substantive certification on "that portion of the township's affordable housing plan referencing Prudential as a cash contribution affordable housing site." In a January 31, 1997 letter, Mr. Shaw requested that COAH adjourn any action on Chatham Township's petition for substantive certification until March 5, 1997.

XII. COAH RESPONSES TO THE COMMENTS

In response to the comments received from all parties the following is a revision to Section VII of the Compliance Report and has been included under the RCA section above:

Inclusionary Development (Giralda Farms)

The Giralda Farms site was included in the township's plan to address its Judgment of Compliance. At that time, the site was zoned to provide 125 affordable housing units. In December 1994 the township and Prudential revised the affordable housing component of their agreement to reflect a forthcoming reduction in Chatham Township's affordable housing obligation. The Giralda Farms site is now a site that will provide a contribution of \$160,000

to the township's affordable housing obligation for the RCA, once certain actions have occurred. In addition, Prudential will provide Chatham Township with sewer reservation fees that may be used for a future affordable housing obligation and with a tract of land that also may be used for a future affordable housing obligation. It is noted that, neither the sewer reservation fees nor the land is dedicated specifically for affordable housing activity.

Exhibit B

Housing Plan Element and Fair Share Plan

Chatham Township Morris County

**Adopted:
November 17, 2008**

**Prepared by:
The Chatham Township Planning Board**

In Consultation with:

**Banisch Associates, Inc.
111 Main Street
Flemington, New Jersey 08822**



Francis J. Banisch III, PP/AICP P.P. License #1686

December 30, 2008

Date Signed

INTRODUCTION

Chatham Township is an attractive suburban residential community at the eastern edge of Morris County where land use, zoning, and building regulations support a varied inventory of housing, and an array of buildings supporting business, institutional, and educational activities as well as active and passive recreational activities. A limited supply of vacant or partially developed land will constrain housing growth within the sewer service area located in the Metropolitan Planning Area, an area designated for growth in the State Development and Redevelopment Plan.

In December of 2005, the Township prepared and submitted to COAH the adopted 2005 Housing Element and Fair Share Plan. This plan fully satisfied Chatham Township's initial Third Round (2004 to 2014) affordable housing obligation and, after deducting the 95 COAH-certified credits, left a surplus of affordable housing credits toward future obligations. However, under the latest revised rules for the Third Round (January 1, 2004 to December 31, 2018), and after applying the 95 COAH-certified credits, the Township has a remaining obligation to rehabilitate 19 units and to provide, through zoning or other approved methods, for another 98 housing units affordable to moderate, low and very low income households.

This Housing Element and Fair Share Plan details how Chatham Township is planning to provide for affordable housing in accordance with rules established by the Council on Affordable Housing (COAH). The Housing Element documents the fact that the Township met its fair share obligation for the period 1987-1999, and outlines how it proposes to meet its continuing affordable housing obligation for the period January 1, 2004 to January 1, 2014.

This 2008 Third Round Housing Plan Element identifies the recalculated "prior round" affordable housing obligation of 83 units for the period 1987 through 1999, corresponding to the First and Second Rounds. Combined with a rehabilitation obligation of 19 units and a "growth Share" obligation of 110 affordable units, these components of housing need combine to generate a total Third Round affordable housing obligation of 212 affordable units.

Chatham Township's prior affordable housing production has included the construction and occupancy of affordable housing units at Chatham Glen, the establishment of group homes in the Township and a Regional Contribution Agreement with the City of Newark. COAH has previously acknowledged that these efforts qualified for 95 units of credit toward the housing obligation.

The Fair Share Plan is designed to ensure the provision of the required affordable housing in the Township with a minimal impact on neighborhood character and community services. This plan will establish affordable housing initiatives to create accessory apartment units, rehabilitate deficient units and convert market-rate apartment units to affordable units. Additionally, a major element of this compliance plan will be the extension of the controls on affordability on the existing affordable family units in Chatham Glen. This will retain a valuable affordable housing resource that is currently part of the fabric of the community.

To provide funding for these initiatives, Chatham Township will continue collecting development fees from new home construction and will collect an affordable housing fee of 2.5% of equalized assessed value on non-residential development. The Township will also

explore rehabilitation and development of affordable units through partnership efforts to address its affordable housing obligations.

Statutory Affordable Housing Obligations

This Housing Plan Element has been prepared in accordance with the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-28b(3) to address Chatham Township's cumulative housing obligation for the period 1987- 2014. This Plan has also been prepared pursuant to N.J.S.A. 52:27D-310, which outlines the mandatory requirements for a Housing Plan Element, including an inventory and projection of the municipal housing stock; an analysis of the demographic characteristics of the Township's residents; and, a discussion of municipal employment characteristics. It also responds to the affordable housing mandates of the Third Round Substantive Rules of the Council on Affordable Housing (N.J.A.C. 5:97-1 et seq.).

The Fair Housing Act requires municipalities that choose to enact and enforce a zoning ordinance to prepare a Housing Element as part of the community's Master Plan. The Fair Housing Act also established the Council on Affordable Housing (COAH) as the State agency to create rules and regulations to develop low- and moderate-housing in the State and administer municipal implementation of these plans.

COAH's Changing Rules

COAH has established both procedural and substantive rules for a Compliance Plan to address the affordable housing obligation, based on a regional fair share allocation formula. Municipal land development regulations are now entitled to a ten-year presumption of validity against a builders remedy challenge where a local Housing Element/Fair Share Plan either receives substantive certification from COAH or a Judgment of Compliance and Repose approved by a Court.

The first round COAH regulations covered the 1987-1993 time period, and in 1994 COAH again adopted substantive and procedural rules establishing the requirements for the Second Round of affordable housing plans, covering a twelve-year cumulative period from 1987-1999. The substantive rules for COAH's Third Round were adopted on December 20, 2004, covering the period from January 2000 through December 2018.

Summary of Prior Round and Third Round Obligation

COAH originally calculated a cumulative obligation of 89 units for Chatham Township for the First and Second Rounds (1987-1999). Affordable housing obligations assigned to municipalities by COAH for the current Third Round (through 2018) have been recalculated from prior round estimates and forecast estimates, based on population and housing data from the 2000 Census and permit activity after 2004.

The revised Third Round rules continue the “growth share” methodology, whereby the regional housing need is assigned to communities based on their projected growth. COAH Third Round rules provide that a growth share obligation accrues, beginning January 1, 2004, in relation to new residential and non-residential development.

The obligation accrues to the municipality at the rate of one new affordable housing unit for every four market-rate homes constructed (“one among five”) and one new affordable housing unit for every sixteen new jobs, based upon net increases in market-rate housing and square footage of non-residential construction, as well as from replacement residential infill, sometimes referred to as “teardowns”. Chatham Township has seen a considerable amount of this type of activity in certain neighborhoods, and will likely see this trend continue as the housing market recovers.

After the Appellate Division found critical flaws in the original (2004) Third Round regulations, COAH recalculated each municipality’s prior round obligation, remaining rehabilitation component and anticipated residential and non-residential growth through the year 2018, to generate new affordable housing obligations for each municipality. The compliance period for this obligation is the period from January 1, 2004 to December 31, 2018.

The total Third Round obligation, which is cumulative for all prior cycles, is shown in Table 1:

Table 1
Chatham Township’s Fair Share Obligation
Per COAH’s 2008 Revised 3rd Round Rules

Prior round new construction obligation (1987-1999)		83
Number of affordable units based upon projected residential growth to Year 2018	87.4	
Number of affordable units based upon projected non-residential growth to Year 2018	22.3	
Total 3 rd round new construction obligation to Year 2018		109.7
Rehabilitation obligation: 2004-2018		19
Total Fair Share Obligation		212*

* Rounded.

In total, the 83- unit recalculated prior round obligation for Chatham Township, added to the 110-unit growth share obligation and 19-unit rehabilitation need translates to a 212-unit affordable housing obligation through 2018.

COAH rules also specify *minimum and maximum* requirements governing how this new growth share obligation must be satisfied, including minimum requirements for family units, rental units and very low income housing and maximum limits on the percentage of units that can be age-restricted and the percentage of rental units that can qualify for bonus credits.

Family Housing

At least 50 percent of the units within the municipality addressing the growth share obligation shall be family units [see 5:97-3.9]

Growth share obligation: $110 \times .5 =$ *55 family units*

Very Low Income Requirement

Recent legislation (P.L. 2008, c.46) has added a requirement that at least 13 percent of the municipal growth share obligation be affordable to very low income households (household income 30 percent or less of regional median)

Growth share obligation: $110 \times .13 = 14.3$ units. = *14 very low income units*

Rental Requirement

The minimum rental requirement for the Third Round is 25 percent of the total growth share obligation (see 5:97-3.10 (b) 3).

Growth share obligation: $110 \times .25 = 27.5 =$ *28 rental units*

Family Rental Requirement

At least 50 percent of the rental housing requirement for the projected growth share obligation addressed within a municipality shall be family housing (see 5:97-3.4 (b)).

3rd round rental obligation: 27.5 units $\times .5 = 13.75 =$ *14 family rental units*

Maximum Age-restricted Units

The maximum proportion of the affordable units that can be age-restricted for the Third Round is 25 percent of the total growth share obligation (see 5:97-3.10 (b) 3)

Growth share obligation: $110 \times .25 = 27.5 =$ *27 age-restricted units*

Maximum Rental Bonus

The maximum rental bonus permitted for the Third Round is 25 percent of the total growth share obligation (see 5:97-3.10 (b) 3). $110 \times .25 = 27.5$ rounded down to *27 rental bonus credits*

COAH-Certified Second Round Units and Credits

Chatham Township has been a participant in the COAH process and has seen its housing plan certified by the Council. The Substantive Certification issued by COAH on March 5, 1997 cited an 89-unit 12-year cumulative obligation (1987-1999), and acknowledged 87 COAH-certified Credits and Reductions as of March 1997:

Subsequent to the 1997 Certification by COAH, Chatham Township entered into a Regional Contribution Agreement that funded 8 affordable units in Newark, bringing the total of affordable units or credits to 95. The COAH Compliance report of April 28, 2005 noted that Chatham Township had 95 affordable units or credits previously certified by COAH, compared with an 89-unit prior round obligation at that time.

Table 2
Summary of Chatham Township's
Affordable Housing Completion Status

Chatham Glen (for sale)	75
RCA	8
Group Homes	6
+ rental bonuses	6
Units and credits	95

Meeting the Recalculated Prior Round Obligation

Table 3 illustrates how 83 of the total of 95 COAH-certified units and credits are being applied to the 83-unit recalculated obligation. The 8 RCA units and 75 Chatham Glen units combine to meet the 83-unit recalculated prior round obligation.

Table 3
Summary of Chatham Township's Recalculated Prior Round
Affordable Housing Compliance

Project Name	Total Units Approved	Number Bedrooms	Affordable Units Applied to Second Round Obligation
RCA (Newark)	8	---	8
Chatham Glen (for sale)	75	---	75
Total			83

Table 4 indicates the remaining previously certified units and credits that can be applied to the Third Round. This includes the 6 group home credits and 6 COAH-certified bonus credits for a total of 12 group home credits.

Table 4
COAH-Certified Affordable Housing
Applicable to the Third Round

Project	Number Bedrooms	Rental Bonus Credits*	Total Affordable Units and Bonus Credits
Group homes	6	6	12
Total			12

Meeting the 3rd Round COAH Obligation – Fair Share Plan

After applying 83 of the Township’s COAH-recognized units and credits to fully address the recalculated prior round obligation, the Township carried forward the remaining 12 group home credits not required to address the recalculated prior round obligation, which can be applied toward the very low income requirement of 14 units.

Table 5
Preliminary Third Round Compliance Strategy

<i>Affordable Housing Types</i>	<i>#</i>	<i>Rentals</i>	<i>Very Low Income</i>	<i>Portion of Need Addressed</i>
Accessory apartments	11	11		Growth share
Market to affordable-existing apartments	5	5		Growth share
Group homes*	19	19	19	Growth share
Extended Affordability Controls	75			Growth share
Rehabilitation program	19			Rehabilitation
Rental bonuses (27 maximum)	TBD			Growth share
Total affordable units and credits	129	35	19	

*-includes 12 units/credits from prior COAH certification; Township will provide residential lot for new group home

The Fair Share Plan compliance program outlined above fully addresses the rehabilitation share (19 units) with a rehabilitation program, and also meets and exceeds the 110-unit growth share obligation as shown in Table 5.. The 19-unit rehabilitation obligation will be met by establishing a rehabilitation program in cooperation with Morris County. An 11-unit accessory apartment program will be established to provide for creation of affordable units through conversion of interior space within a dwelling or accessory building to an affordable unit with affordability controls for a 10 year period. And, working with local apartment complex owners, a market-to-affordable program will deed restrict 5 apartments to be affordable by low and moderate income households.

An existing group home, not counted in the prior round, will result in at least 2 additional bedrooms. Combined with the 12 credits for prior round group home production and a 5-

bedroom group home to be developed on donated Township land, these units will provide a total of 19 group home bedrooms, exceeding the 14-unit very low income requirement.

The largest component of the 3rd Round compliance plan is the extension of expiring controls on 75 units at Chatham Glen. This technique, which provides credit for imposing new affordability restrictions for another 30-year period, will retain this valuable component of the local housing stock. COAH has indicated that the affordability restrictions can be extended administratively at the time of resale, a practice that is becoming increasingly common.

According to N.J.A.C. 5:97-3.6 (a)(4) which governs rental bonuses for the growth share obligation, a municipality may not receive bonuses for rental units in excess of its growth share rental obligation unless a minimum of 50 percent of the rental housing requirement has been addressed with family rental units. "Family unit" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is available to the general public and *not restricted to any specific segment of the population*. Thus, age restricted and group home units do not qualify as family units. However, the 11 accessory apartments to be created will qualify to meet this requirement.

Of the 35 rental units shown on Table 5, 19 are group home units and 16 are family units (accessory apartments and market to affordable apartments). These exceed both the overall rental obligation (35 provided vs. 28 required) and also exceed the 14-unit family rental obligation by 2 units. A municipality may also receive 1.25 units of credit for each bedroom in supportive and special needs housing (group homes) provided pursuant to N.J.A.C. 5:97-6.10, where the unit of credit is the bedroom. It is unclear whether rental credits will be available, since part of the prior round crediting was a 2:1 bonus for the 6 group home bedrooms in the prior round.

The following summary confirms compliance with the detailed requirements regarding family, rental and very low income units:

Family housing obligation- 55 required vs. 75 Chatham Glen extended controls provided

Very Low Income- 14 required vs. 19 units/credits provided (12 prior round, 7 in 3rd Round)

Rental Requirement - 28 required vs. 35 provided

Family Rental Requirement - 14 family rental units required vs. 16 provided

Maximum Age-restricted Units-27 age-restricted units maximum (none proposed)

Maximum Rental Bonus - 27 rental bonus credits permitted (no bonus taken – calculation basis unclear)

For the Third Round, Chatham Township's fair share plan will address its third round rehabilitation and growth share obligations by applying credits from past affordable housing production, as indicated above, and will add new components that offer an excellent fit for the Township, maintaining the character of existing neighborhoods and avoiding expansive, inclusionary development.

The fair share plan is intended to be flexible, in order to meet emerging needs and opportunities. With this compliance plan, Chatham Township has fully met and exceeded its prior round obligation, as well as meeting the third round growth share obligation, and has met the minimum rental, family and very low income requirements and not exceeded the maximum share of age-restricted units or bonus credits.

**APPENDIX A
HOUSING AND DEMOGRAPHIC CHARACTERISTICS**

Inventory of Municipal Housing Conditions

The primary source of information for the inventory of Chatham Township's housing stock is the 2000 U.S. Census, with the data reflecting conditions in 2000. In 2000, the Township had 4,019 housing units, of which 3,920 (98%) were occupied. Table 1 identifies the units in a structure by tenure; as used throughout this Plan Element, "tenure" refers to whether a unit was owner-occupied or renter-occupied. While the Township largely consisted of one-family, detached dwellings (67% of the total, compared to 69% in the County), there were 1,336 units in attached or multi-family structures. The Township had a lower percentage of renter-occupied units, 16%, compared to 24% in Morris County and 32% in the State.

TABLE A-1: Units in Structure by Tenure

Units in Structure	Vacant Units	Occupied Units		
		Total	Owner	Renter
1, detached	22	2,661	2,572	89
1, attached	10	170	162	8
2	0	24	12	12
3 or 4	10	120	62	58
5+	57	945	466	479
Other	0	0	0	0
Mobile home or trailer	0	0	0	0
Total	99	3,920	3,274	646

Source: 2000 U.S. Census, Summary Tape File 3 (STF-3) for Township, QT-H10 and DP-4.

Table A-2 indicates the year housing units were built by tenure, while Table A-3 compares the Township to Morris County and the State. Approximately 58% of the owner-occupied units in the Township were built before 1970. Conversely, most renter-occupied units (47%) were also built after 1970.

TABLE A-2: Year Structure Built by Tenure

Year Built	Vacant Units	Occupied Units		
		Total	Owner	Renter
1990-2000	10	438	369	39
1980-1989	53	705	565	140
1970-1979	0	578	453	125
1960-1969	14	597	499	98
1950-1959	0	920	792	128
1940-1949	7	288	247	41
Pre-1940	15	424	349	75

Source: 2000 U.S. Census, STF-3 for Township, QT-H7.

Table A-3 identifies the year of construction for all dwelling units in the Township, Morris County and the State. The Township had a much larger percentage of units built between 1940 and 1959 than the County or State, and a smaller percentage of units built before 1940 and between 1990 and 2000. This is clearly seen in the median year built between the State, County and Township.

TABLE A-3: Comparison of Year of Construction for Township, County, and State

Year Built	%		
	Chatham Township	Morris County	New Jersey
1990 – 2000	10.4	13.5	10.5
1980 – 1989	18.9	12.6	12.4
1970 – 1979	14.4	15.3	14.0
1960 – 1969	15.2	18.6	15.9
1940 – 1959	30.2	24.8	27.1
Pre-1940	10.9	15.3	20.1
Median Year	1966	1965	1962

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-4.

The 2000 Census documented household size in occupied housing units by tenure, and the number of bedrooms per unit by tenure; these data are reported in Tables 4 and 5, respectively. Table A-4 indicates that renter-occupied units generally housed smaller households, with 79% of renter-occupied units having 2 persons or fewer compared to 55% of owner-occupied units. Table A-5 indicates that renter-occupied units generally had fewer bedrooms, with 83% having two bedrooms or fewer, compared to 24% of owner-occupied units.

TABLE A-4: Household Size in Occupied Housing Units by Tenure

Household Size	Total Units	Owner-occupied Units	Renter-occupied Units
1 person	1,028	725	303
2 persons	1,294	1,089	205
3 persons	536	475	61
4 persons	658	610	48
5 persons	365	347	18
6 persons	33	22	11
7+ persons	6	6	0
Total	3,920	3,274	646

Source: 2000 U.S. Census, SF-3 for Township, H-17.

TABLE A-5: Number of Bedrooms per Unit by Tenure

Number of Bedrooms	Total Units	(%)	Vacant Units	Occupied Units		
				Total	Owner	Renter
No bedroom	18	.4	0	18	6	12
1 bedroom	658	16.4	38	620	226	394
2 bedrooms	730	18.2	39	691	562	129
3 bedrooms	1,014	25.2	7	1,007	935	72
4 bedrooms	1,196	29.8	8	1,188	1,159	29
5+ bedrooms	403	10	7	396	386	10

Source: 2000 U.S. Census, SF-3 for Township, QT-H8 and QT-H5.

Table A-6 compares the Township's average household size for all occupied units, owner-occupied units, and renter-occupied units in 2000 to those of the County and State. The Township's average household size for owner-occupied and renter-occupied units was lower in 2000 than the County and the State.

TABLE A-6: Average Household Size for Occupied Units for Township, County, and State

Jurisdiction	All Occupied Units	Owner-occupied units	Renter-occupied units
Chatham Township	2.54	2.70	1.76
Morris County	2.72	2.88	2.21
New Jersey	2.68	2.81	2.43

Source: 2000 U.S. Census, SF-1 for Township, County, and State, DP-1.

The distribution of bedrooms per unit, shown in Table A-7, indicates that the Township contained fewer small units (2-3 bedroom) than the County or State and a greater proportion of larger units (4 or more bedroom) than either the County or State.

TABLE A-7: Percentage of All Units by Number of Bedrooms

Jurisdiction	None or one	Two or Three	Four or More
Chatham Township	16.8	43.4	39.8
Morris County	15.2	49.8	35
New Jersey	18.3	59.2	22.6

Source: 2000 U.S. Census, SF-3 for Township, County, and State, QT-H4.

In addition to data concerning occupancy characteristics, the 2000 Census includes a number of indicators, or surrogates, which relate to the condition of the housing stock. These indicators are used by the Council on Affordable Housing (COAH) in calculating a municipality's deteriorated units and indigenous need. In the first Two Rounds of COAH's fair share allocations (1987-1999), COAH used seven indicators to calculate indigenous need: age of dwelling; plumbing facilities;

kitchen facilities; persons per room; heating fuel; sewer; and, water. In the Round Three rules, COAH has reduced this to three indicators, which in addition to age of unit with more than 1 person per room (Pre-1940 units in Table A-2), are the following, as described in COAH's rules.

Plumbing Facilities Inadequate plumbing is indicated by either a lack of exclusive use of plumbing or incomplete plumbing facilities.

Kitchen Facilities Inadequate kitchen facilities are indicated by shared use of a kitchen or the non-presence of a sink with piped water, a stove, or a refrigerator.

Table A-8 compares the Township, County, and State for the above indicators of housing quality. In 2000, the Township had fewer units with inadequate plumbing and kitchen facilities than the County and State.

TABLE A-8: Housing Quality for Township, County, and State

Condition	%		
	Chatham Township	Morris County	New Jersey
Inadequate plumbing ¹	.3	0.4	0.7
Inadequate kitchen ¹	.2	0.3	0.8
Overcrowding	.6	2.6	5

Notes: ¹The universe for these factors is all housing units.

Source: 2000 U.S. Census, SF-3 for Township, County, and State QT-H4.

Other factors used to characterize the municipal housing stock are the housing values and gross rents for residential units. With regard to values, the 2000 Census offers a summary of housing values, seen in Table A-9, which indicate that 81% of all residential properties in the Township were valued over \$300,000 with 40% valued between \$300,000 and 499,999. The median housing value for the Township in was \$449,000.

TABLE A-9: Value of Owner Occupied Residential Units

Value	Number of Units	%
\$0 – 50,000	0	0
\$50,000 – 99,999	0	0
\$100,000 – 149,999	11	.4
\$150,000 – 199,999	78	3
\$200,000 – 299,999	403	15.3
\$300,000 – 499,999	1053	40
\$500,000 – 999,999	980	37.2
\$1,000,000 +	107	4.1

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-4.

The data in Table A-10 indicate that in 2000 most housing units rented for more than \$1,000/month (93%) with the largest percentage, 61.1%, found between \$1,000 and \$1,499 per month, and 30.8% of the units renting for over \$1,500/ month.

TABLE A-10: Gross Rents for Specified Renter-Occupied Housing Units¹

Monthly Rent	Number of Units	%
Under \$200	12	1.9
\$200 – 299	0	0
\$300 – 499	8	1.2
\$500 – 749	0	0
\$750 – 999	26	4
\$1,000 – 1,499	395	61.1
\$1,500 or more	199	30.8
No Cash Rent	6	.9

Note: Median gross rent for Chatham Township is \$1,371.

Source: 2000 U.S. Census, SF-3 for Township, QT-H12.

The data in Table A-11 indicate that in 2000 there were 151 renter households earning less than \$35,000 annually. At least 131 of these households were paying more than 30% of their income for rent; a figure of 30% is considered the limit of affordability for rental housing costs.

TABLE A-11: Household Income in 1999 by Gross Rent as a Percentage of Household Income in 1999¹

Income	Number of Households	Percentage of Household Income					Not computed
		0 – 19%	20 – 24%	25 – 29%	30 – 34%	35% +	
< \$10,000	37	0	0	0	0	17	20
\$10,000 – 19,999	12	0	0	0	0	12	0
\$20,000 – 34,999	102	0	0	0	0	102	0
\$35,000 +	495	251	84	41	18	95	6

Note:

¹The universe for this Table is specified renter-occupied housing units.

Source:

2000 U.S. Census, SF-3 for Township, QT-H13.

Analysis of Demographic Characteristics

As with the inventory of the municipal housing stock, the primary source of information for the analysis of the demographic characteristics of the Township's residents is the 2000 U.S. Census. The Census data provide a wealth of information concerning the characteristics of the Township's population in 2000.

The 2000 Census indicates that the Township had 10,086 residents, or 725 more residents than in 1990. The Township's 8% increase during the 1990's compares to a 12% increase in Morris County and an 8% increase in New Jersey.

The age distribution of the Township's residents is shown in Table A-12. The age cohorts remained relatively evenly split between males and females with a predominance of males in the age range of 5-19 and a female predominance in the 19+ age groups.

TABLE A-12: Population by Age and Sex

Age	Total Persons	Male	Female
0-4	768	403	365
5-19	2,057	1,057	1,000
20-34	1,251	584	667
35-54	3,536	1,668	1,868
55-69	1,487	701	786
70+	987	390	597
Total	10,086	4,803	5,283

Source: 2000 U.S. Census, SF-1 for Township, QT-P1.

Table A-13 compares the Township to the County and State for the same age categories. The principal differences among the Township, County, and State occurs in the age categories 20-34 where the Township had fewer residents and 35+ age groups where the Township had a higher percentage of population located in those cohorts. The average age of Chatham Township residents (41 years) reflects this more mature local population, compared to the County (37.8) and the State (36.7).

TABLE A-13: Age Distribution for Township, County, and State (% of persons)

Age	Chatham Township	Morris County	New Jersey
0 - 4	7.6	7	6.7
5 - 19	20.5	19.9	20.4
20 - 34	12.4	17.9	19.9
35 - 54	35	33.6	30.9
55 - 69	14.8	13.3	12.4
70 +	9.7	8.3	9.7
Median	40.1	37.8	36.7

Source: 2000 U.S. Census, SF-1 for Township, County, and State. QT-P1.

Table A-14 provides the Census data on household size for the Township, while Table A-15 compares household sizes in the Township to those in Morris County and the State. The Township had a higher percentage of households with 1 or 2 persons and a lower percentage of households with 3 to 4 persons than the County or State.

TABLE A-14: Persons in Household

Household Size	Number of Households
1 person	1,030
2 persons	1,293
3 persons	539
4 persons	653
5 persons	321
6 persons	73
7 or more persons	11

Source: 2000 U.S. Census, STF-1 for Township, QT-P10.

**TABLE A-15: Comparison of Persons in Household for Township, County, and State
(% of households)**

Household Size	Chatham Township	Morris County	New Jersey
1 person	26.3	21.5	24.5
2 persons	33	31.8	30.3
3 persons	13.8	17.6	17.3
4 persons	16.7	17.7	16.0
5 persons	8.2	7.8	7.5
6 persons	1.9	2.3	2.7
7 or more persons	.3	1.3	1.7
Persons per household	2.54	2.72	2.68

Source: 2000 U.S. Census, SF-1 for Township, County, and State, QT-P10.

Table A-16 presents a detailed breakdown of the Township's population by household type and relationship in 2000. There were 8,646 people living in family households in the Township and 1,321 people living in non-family households; a family household includes a householder living with one or more persons related to him or her by birth, marriage, or adoption, while a non-family household includes a householder living alone or with non-relatives only. In terms of the proportion of family and non-family households, the Township had more persons in family households than the County or State (86% for the Township, 73.6% for the County, and 70.3% for the State).

TABLE A-16: Persons by Household Type and Relationship

	Total
In family Households:	8,646
Married	2,753
Child	3,198
In Non-Family Households:	1,321
Male householder:	392
Living alone	329
Not living alone	63
Female householder:	766
Living alone	700
Not living alone	66
Non-relative	163
In group quarters:	119
Institutionalized	103
Non-institutionalized	16

Source: 2000 U.S. Census, SF-3 for Township, QT-P11 and QT-P12.

Table A-17 provides 1999 income data for the Township, County, and State, when the Township's per capita and median incomes were higher than those of the County and State. The definitions used for households and families in Table A-17 are similar to those identified in the description of Table A-16, so that the households figure in Table A-17 includes families.

TABLE A-17: 1999 Income for Township, County, and State

Jurisdiction	Per Capita Income (\$)	Median Income (\$)	
		Households	Families
Chatham Township	65,497	106,208	131,609
Morris County	36,964	77,340	89,773
New Jersey	27,006	55,146	65,370

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-3.

Table A-18 addresses the lower end of the income spectrum by providing data on poverty levels for persons and families. The determination of poverty status and the associated income levels are

based on the cost of an economy food plan and ranges from an annual income of \$8,501 for a one-person household to \$28,967 for an eight-person family for the year 1999. According to the data in Table A-18, the Township had proportionately fewer persons and families qualifying for poverty status than the County and State. The percentages in Table A-18 translate to 271 persons and 54 families in poverty status. Thus, the non-family households had a larger share of the population in poverty status.

**TABLE A-18: Poverty Status for Persons and Families for Township, County, and State
(% with 1999 income below poverty)**

Jurisdiction	Persons (%)	Families (%)
Chatham Township	2.7	1.9
Morris County	3.9	2.4
New Jersey	8.5	6.3

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-3.

The U.S. Census includes a vast array of additional demographic data that provide interesting insights into an area's population. For example, Table A-19 provides a comparison of the percent of persons who moved into their homes between the years 1995-1998; this is a surrogate measure of the mobility/stability of a population. The data indicate that the percentage of year 2000 Township residents residing in the same house in 1995 was roughly the same as that of the State and less than the County.

TABLE A-19: Comparison of 1995-1998 Place of Residence for Township, County, and State

Jurisdiction	Percent living in same house in 1995-1998
Chatham Township	28.1
Morris County	28.2
New Jersey	27.7

Source: 2000 U.S. Census, SF-3 for Township, County, and State, QT-H7.

Table A-20 compares the educational attainment for Township, County, and State residents. The data indicate that more Township residents achieved a high school diploma or higher or a bachelor's degree or higher than the County and State.

**TABLE A-20: Educational Attainment for Township, County, and State Residents
(Persons 25 years and over)**

Jurisdiction	Percent (%) high school graduates or higher	Percent (%) with bachelor's degree or higher
Chatham Township	96.6	65.7
Morris County	90.6	44.1
New Jersey	82.1	29.8

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-2.

The 2000 Census also provides data on the means of transportation which people use to reach their place of work. Table A-21 compares the Census data for the Township, County, and State relative to driving alone, carpooling, using public transit, and using other means of transportation. The Township had a relatively high percentage of those who drive alone, and a relatively low percentage of workers who carpool or used public transit. Of the 7% of workers who resided in the Township and used other means of transportation to reach work, 274 workers worked at home and 45 workers walked to work.

**TABLE A-21: Means of Transportation to Work
for Township, County and State Residents
(Workers 16 years old and over)**

Jurisdiction	Percent who drive alone	Percent in carpools	Percent using public transit	Percent using other means
Chatham Township	73.9	4.4	14.8	7
Morris County	81.2	8.2	4.2	6.4
New Jersey	73	10.6	9.6	0.9

Source: 2000 U.S. Census, SF-3 for Township, County, and State, DP-3

**RESOLUTION OF THE PLANNING BOARD OF
THE TOWNSHIP OF CHATHAM ADOPTING THE
HOUSING ELEMENT AND FAIR SHARE PLAN**

WHEREAS, the Planning Board of the Township of Chatham, State of New Jersey, adopted its current Master Plan pursuant to N.J.S.A. 40:55D-28 on October 18, 1999; and

WHEREAS, the Master Plan includes a Housing Element pursuant to N.J.S.A. 40:55D-28b(3); and

WHEREAS, N.J.A.C. 5:94-2.2(a) requires the adoption of the Housing Element by the Planning Board and endorsement by the Governing Body; and

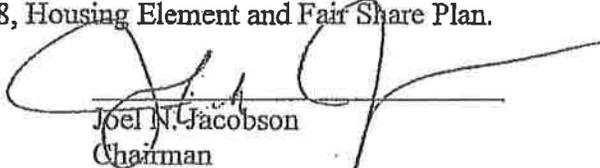
WHEREAS, N.J.A.C. 5:94-4.1(a) requires the preparation of a Fair Share Plan in accordance with the Housing Element of the Master Plan; and

WHEREAS, N.J.A.C. 5:94-4.1(b) requires the adoption of the Fair Share Plan by the Planning Board and endorsement by the Governing Body; and

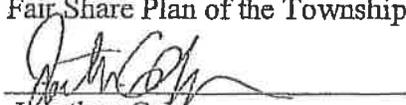
WHEREAS, upon notice duly provided pursuant to N.J.S.A. 40:55D-13, the Planning Board of the Township of Chatham held a public hearing on the Housing Element and Fair Share Plan on November 17, 2008; and

WHEREAS, the Planning Board has determined that the Housing Element and Fair Share Plan are consistent with the goals and objectives of the Township of Chatham's October 18, 1999 Master Plan and that adoption and implementation of the Housing Element and Fair Share Plan are in the public interest and protect public health and safety and promote the general welfare;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Township of Chatham, County of Morris, State of New Jersey, that the Planning Board hereby adopts the November 17, 2008, Housing Element and Fair Share Plan.


Joel N. Jacobson
Chairman

I hereby certify that this a true copy of the Resolution adopting the Housing Element and Fair Share Plan of the Township of Chatham, County of Morris on November 17, 2008.


Jonathan Cohn,
Planning Board Secretary

RESOLUTION 2008-220

RESOLUTION OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS,
STATE OF NEW JERSEY ENDORSING THE AMENDED HOUSING ELEMENT
AND FAIR SHARE PLAN OF THE TOWNSHIP MASTER PLAN AND RE-
PETITIONING THE COUNCIL ON AFFORDABLE HOUSING FOR
SUBSTANTIVE CERTIFICATION

WHEREAS, the Planning Board of Township of Chatham, County of Morris,
State of New Jersey, adopted an amended Housing Element and Fair Share Plan on
December 1, 2008 and

WHEREAS, a true copy of the resolution of the Planning Board adopting the
amended Housing Element and Fair Share Plan is attached pursuant to N.J.A.C. 5:96-
2.2(a)2.

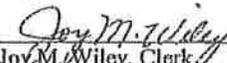
NOW, THEREFORE BE IT RESOLVED, that the Governing Body of the
Township of Chatham, County of Union, State of New Jersey, hereby endorses the
amended Housing Element and Fair Share Plan as adopted by the Township of Chatham
Planning Board; and

BE IT FURTHER RESOLVED, that the Governing Body of Township of
Chatham pursuant to the provisions of N.J.S.A. 52:27D-301, et seq. and N.J.A.C. 5:96-3.4,
submits this re-petition for substantive certification of the amended Housing Element
and Fair Share Plan to the Council on Affordable Housing for review and certification;
and

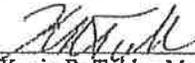
BE IT FURTHER RESOLVED, that all objectors and owners of sites in the
Housing Element and Fair Share Plan have received notice of the re-petition; and

BE IT FURTHER RESOLVED, that notice of this re-petition for substantive
certification shall be published in a newspaper of countywide circulation pursuant to
N.J.A.C. 5:96-3.5 within seven days of issuance of the notification letter from the
Executive Director of the Council on Affordable Housing indicating that the submission is
complete and that a copy of this resolution, the adopted amended Housing Element and
Fair Share Plan and all supporting documentation shall be made available for public
inspection at the Township of Chatham municipal clerk's office located at 58 Meyersville
Road, Chatham, New Jersey, during the hours of 9:00 am to 4:00 pm on Monday through
Friday for a period of 45 days following the date of publication of the legal notice pursuant
to N.J.A.C. 5:96-3.5.

Adopted: December 4, 2008
Attest:


Joy M. Wiley, Clerk

TOWNSHIP OF CHATHAM,
COUNTY OF MORRIS,
STATE OF NEW JERSEY


Kevin R. Tubbs, Mayor

Certified To: COAH

I, Gregory J. LaConte, Deputy Township Clerk of the
Township of Chatham in the County of Morris, New
Jersey, hereby certify the foregoing to be a true
complete copy of a resolution adopted by the
Township Committee of the Township of Chatham
at a Workshop meeting held
on 12/4/2008.

Date Issued: Gregory J. LaConte
12/29/08 Deputy Township Clerk

The Honorable Kevin R. Tubbs
Mayor
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928-1199

Carl R. Woodward, III, Esq.
Carella Byrne Bain Gilfillan et al.
5 Becker Farm Rd
Roseland, New Jersey 07068

Joy M. Wiley
Municipal Clerk
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928-1199

Thomas E. Ciccarone
Administrator
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928-1199

Ruth Sabonya
Housing Officer
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928

John Ruschke
Township Engineer
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928-1199

Kali Tsimboulis
Planning Board Manager
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928-1199

Jacqui Adam
Allies, Inc.
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Bldg A, Ste 101
Hamilton, New Jersey 08690

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Executive Director
Jewish Community Housing Corp.
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West Orange, New Jersey 07052

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Regional Planner
New Jersey Highlands Council
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Boonton, New Jersey 07005

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Boonton, New Jersey 07005

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Planning, Development and Technology
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Morristown, New Jersey

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C/o Carl S. Bisgaier, Esq.
1810 Chapel Avenue West
Cherry Hill, New Jersey 08002



STATE OF NEW JERSEY
 DEPARTMENT OF COMMUNITY AFFAIRS
 COUNCIL ON AFFORDABLE HOUSING
 PETITION APPLICATION



This application is a guideline for creating a Housing Element and Fair Share Plan. A completed version of this application must be submitted as part of your petition for substantive certification to COAH. This application will be used by COAH staff to expedite review of your petition. This application can serve as your municipality's Fair Share Plan. A brief narrative component of the Fair Share Plan should be included with this application and can serve primarily to supplement the information included in the application form. Additionally, the narrative section of the Fair Share plan would include a description of any waivers being requested.

This form reflects COAH's newly adopted procedural and substantive rules and the amendments to those rules adopted on September 22, 2008. Footnotes and links to some helpful data sources may be found at the end of each section. To use this document electronically, use the TAB KEY to navigate from field to field. Enter data or use the Right Mouse Button to check boxes.

MUNICIPALITY	Chatham Township	COUNTY PLANNING AREA(S)	Morris
COAH REGION	<u>2</u>		PA 1 & 5
SPECIAL RESOURCE AREA(S)	_____		
PREPARER NAME	Frank Banisch	TITLE	Consulting Planner
EMAIL	Frankbanisch@Banisch.Com	PHONE NO.	908-782-0835
ADDRESS	111 Main St Flemington, Nj 08822	FAX NO.	908-782-7636
MUNICIPAL HOUSING LIAISON	Ruth Sabonya	TITLE	Housing Officer
EMAIL		PHONE NO.	(732) 635-4600
ADDRESS	<u>58 Meyersville Road Chatham, New Jersey 07928</u>	FAX NO.	_____

Enter the date(s) that COAH granted Substantive Certification or that the Court granted a Judgment of Compliance (JOC) on the Housing Element and Fair Share Plan.

History of Approvals	<u>COAH</u>	<u>JOC</u>	<u>N/A</u>
First Round	_____	_____	<input type="checkbox"/>
Second Round	<u>3/5/1997</u>	_____	<input type="checkbox"/>
Extended Second Round	<u>05/11/05</u>	_____	<input type="checkbox"/>

Does the Petition include any requests for a waiver from COAH Rules? Yes No
 If Yes, Please note rule section from which waiver is sought and describe further in a narrative section: _____

FILING/PETITION DOCUMENTS (N.J.A.C. 5:96-2.2/3.2 & N.J.A.C. 5:97-2.3/3.2)

All of the following documents must be submitted in order for your petition to be considered complete. Some documents may be on file with COAH. Please denote by marking the appropriate box if a document is attached to the Housing Element and Fair Share Plan or if you are using a document on file with COAH from your previous third round submittal to support this petition. Shaded areas signify items that must be submitted anew.

Included	On File	Required Documentation/Information
<input checked="" type="checkbox"/>		Certified Planning Board Resolution adopting or amending the Housing Element & Fair Share Plan
<input checked="" type="checkbox"/>		Certified Governing Body Resolution endorsing an adopted Housing Element & Fair Share Plan and either (check appropriate box): <input checked="" type="checkbox"/> Petitioning <input type="checkbox"/> Filing <input type="checkbox"/> Re-petitioning <input type="checkbox"/> Amending Certified Plan
<input checked="" type="checkbox"/>		Service List (in the new format required by COAH)
<input checked="" type="checkbox"/>		Adopted Housing Element & Fair Share Plan narrative (including draft and/or adopted ordinances necessary to implement the Plan)
<input type="checkbox"/> <input checked="" type="checkbox"/> N/A		If applicable, Implementation Schedule(s) with detailed timetable for the creation of units and for the submittal of all information and documentation required by N.J.A.C. 5:97-3.2(a)4
<input type="checkbox"/> <input checked="" type="checkbox"/> N/A	<input type="checkbox"/>	If applicable, Litigation Docket No., OAL Docket No., Settlement Agreement and Judgment of Compliance or Court Master's Report
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Municipal Master Plan (most recently adopted; if less than three years old, the immediately preceding, adopted Master Plan)
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Municipal Zoning Ordinance (most recently adopted) ¹ Date of Last Amendment: <u>6/12/2008</u> Date of Submission to COAH: _____
<input checked="" type="checkbox"/>	<input type="checkbox"/>	Municipal Tax Maps (most up-to-date, electronic if available) Date of Last Revision: _____ Date of Submission to COAH: _____
<input type="checkbox"/>	<input type="checkbox"/>	Other documentation pertaining to the review of the adopted Housing Element & Fair Share Plan(list):

FOR OFFICE USE ONLY			
Date Received _____	Affidavit of Public Notice _____	Date Deemed _____	
Complete/Incomplete _____	Reviewer's Initials _____		

¹ Pursuant to N.J.S.A. N.J.S.A. 52:27D-307, as amended by PL 2008 c.46, any residential development resulting from a zoning change made to a previously non-residentially-zoned property, where the change in zoning precedes or follows the application for residential development by no more than 24 months, shall require that a percentage be reserved for occupancy by low or moderate income households.

HOUSING ELEMENT

(N.J.A.C. 5:97-2 & N.J.S.A. 40:55D-1 et seq.)

The following issues and items must be addressed in the Housing Element for completeness review. Where applicable, provide the page number(s) on which each issue and/or item is addressed within the narrative Housing Element.

1. The plan includes an inventory of the municipality's housing stock by¹:

- Age;
- Condition;
- Purchase or rental value;
- Occupancy characteristics; and
- Housing type, including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated

Yes, Page Number: 1t5 No (incomplete)

2. The plan provides an analysis of the municipality's demographic characteristics, including, but not necessarily limited to²:

- Population trends
- Household size and type
- Age characteristics
- Income level
- Employment status of residents

Yes, Page Number: 6t10 No (incomplete)

3. The plan provides an analysis of existing and future employment characteristics of the municipality, including but not limited to³:

- Most recently available in-place employment by industry sectors and number of persons employed;
- Most recently available employment trends; and
- Employment outlook

Yes, Page Number: 6t10 No (incomplete)

4. The plan includes a determination of the municipality's present and prospective fair share for low and moderate income housing and an analysis of how existing or proposed changes in zoning will provide adequate capacity to accommodate residential and non-residential growth projections.
AND

The analysis covers the following:

- The availability of existing and planned infrastructure;
- The anticipated demand for the types of uses permitted by zoning based on present and anticipated future demographic characteristics of the municipality;
- Anticipated land use patterns;
- Municipal economic development policies;
- Constraints on development including State and Federal regulations, land ownership patterns, presence of incompatible land uses or sites needing remediation and environmental constraints; and
- Existing or planned measures to address these constraints.

Yes, Page Number: 1 No (incomplete)

5. The plan includes a consideration of lands that are most appropriate for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

Yes, Page Number: 1 No (incomplete)

6. The plan relies on household and employment projections for the municipality as provided in Appendix F of COAH's rules (if yes check the yes box below and check no in lines 6a-8).

Yes, Page Number: 4 No (go to 6a)

- 6a. The Plan relies on higher household and employment projections for the municipality as permitted under N.J.A.C. 5:97-2.3(d) (optional - see Fair Share Plan section starting on page 7 of this application).

Yes (go to 7 and 8) No (go to 6b)

- 6b. The Plan relies on a request for a downward adjustment to household and employment projections for the municipality as provided in N.J.A.C. 5:97-5.6 (optional - see Fair Share Plan section starting on page 7 of this application).

Yes, Page Number: _____ No

7. If the municipality anticipates higher household projections than provided by COAH in Appendix F, the plan projects the municipality's probable future construction of housing for fifteen years covering the period January 1, 2004 through December 31, 2018 using the following minimum information for residential development:

- Number of units for which certificates of occupancy were issued since January 1, 2004;
- Pending, approved and anticipated applications for development;
- Historical trends, of at least the past 10 years, which includes certificates of occupancy issued; and
- The worksheet for determining a higher residential growth projection provided by COAH. (Worksheets are available at www.nj.gov/dca/affiliates/coah/resources/gsworksheets.html)

Yes, Page Number: _____

No (incomplete)

Not applicable (municipality accepts COAH's projections)

8. If the municipality anticipates higher employment projections than provided by COAH in Appendix F, the plan projects the probable future jobs based on the use groups outlined in Appendix D for fifteen years covering the period January 1, 2004 through December 31, 2018 for the municipality using the following minimum information for non-residential development:

- Square footage of new or expanded non-residential development authorized by certificates of occupancy issued since January 1, 2004;
- Square footage of pending, approved and anticipated applications for development;
- Historical trends, of at least the past 10 years, which shall include square footage authorized by certificates of occupancy issued;
- Demolition permits issued and projected for previously occupied non-residential space; and
- The worksheet for determining a higher non-residential growth projection provided by COAH.

Yes, Page Number: _____

No (incomplete)

Not applicable (municipality accepts COAH's projections)

9. The plan addresses the municipality's :

Rehabilitation share (from Appendix B);

Prior round obligation (from Appendix C); and

Projected growth share in accordance with the procedures in N.J.A.C. 5:97-2.4.

Yes, Page Number: 7 No (incomplete)

10. If applicable, the plan includes status of the municipality's application for plan endorsement from the State Planning Commission.

Yes, Page Number: _____ No (incomplete) Not Applicable

Petition date: _____ Endorsement date: _____

¹ Information available through the U.S. Census Bureau at http://factfinder.census.gov/servlet/ACSSAFFHousing?sse=on&submenuId=housing_0

² Information available through the U.S. Census Bureau at <http://factfinder.census.gov/home/saff/main.html>.

³ Information available through the New Jersey Department of labor at <http://www.wnjp.in.net/OneStopCareerCenter/LaborMarketInformation/lmi14/index.html>

FAIR SHARE PLAN (N.J.A.C. 5:97-3)

Please provide a summary of the Fair Share Plan by filling out all requested information. Enter N/A where the information requested does not apply to the municipality. A fully completed application may serve as the actual Fair Share Plan. A brief narrative should be attached to supplement the information included in the application form. Additionally, the narrative section of the Fair Share plan would fully describe, under a separate heading, any waivers that are being requested.

Determining the 1987-2018 Fair Share Obligation

The following tables will assist you in determining your overall 1987-2018 fair share obligation. For each cycle of the affordable housing need and rehabilitation share, please use the "need" column to enter the number of units addressed in the municipal petition. Where the municipality has received and/or is proposing any adjustments to its rehabilitation share, prior round and/or growth share obligation, use the footnotes providing rule references and follow the procedures for determining the municipal need and/or for calculating any adjustments applicable to the municipality. Enter the affordable housing need as provided by COAH or that results from the adjustment under the "Need" column.

Line	<u>Need</u>
1 <input type="radio"/> Rehabilitation Share (From N.J.A.C. 5:97 Appendix B) OR	<u>19</u>
2 <input type="radio"/> Optional Municipally Determined Rehabilitation Share (If a municipally determined rehabilitation share is being used, attach the survey results as an exhibit to this application and indicate that it is attached as Exhibit _____.)	_____
	<u>Need</u>
3 <input type="radio"/> Prior Round (1987-1999) Affordable Housing Obligation (From N.J.A.C. 5:97 Appendix C)	<u>83</u>
<input type="radio"/> Prior Round Adjustments:	
<input type="radio"/> 20% Cap Adjustment	<u>0</u>
<input type="radio"/> 1000 Unit Cap Adjustment	<u>0</u>
4 Total Prior Round Adjustments	<u>0</u>
5 Adjusted Prior Round Obligation: (Number in Appendix C minus Total Prior Round Adjustment(s))	<u>83</u>
<hr/>	
<input type="radio"/> Prior Round Vacant Land Adjustment (Unmet Need)	<u>0</u>
6 _____ Realistic Development Potential(RDP) ¹	<u>0</u>

¹ RDP = Adjusted Prior Round Obligation minus Vacant Land Adjustment

Determining the Growth Share Obligation

All municipalities must complete the "COAH projections" table below. Only municipalities that anticipate higher projections or that are seeking a growth projection adjustment based on a demonstration that insufficient land capacity exists to accommodate COAH projections need complete the corresponding additional table. COAH has published three workbooks in Excel format to assist with preparing this analysis. All municipalities must complete Workbook A. Workbook B must be used when the municipality anticipates that its growth through 2018 is likely to exceed the growth through 2018 that has been projected by COAH and the municipality wants to plan accordingly. Workbook C must be used by municipalities seeking a downward adjustment to the COAH-generated growth projections based on an analysis of municipal land capacity. Workbooks may be found at the following web location:

www.nj.gov/dca/affiliates/coah/resources/gsworksheets.html.

The applicable workbook has been completed and is attach to this application as Exhibit _____.

Line	<i>o Required 2004-2018 COAH Projections and Resulting Projected Growth Share</i>			
	Household Growth (From Appendix F)	<u>437</u>	Employment Growth (From Appendix F)	<u>356</u>
	Household Growth After Exclusions (From Workbook A)	<u>437</u>	Employment Growth After Exclusions (From Workbook A)	<u>356</u>
	Residential Obligation (From Workbook A)	<u>87.40</u>	Non-Residential Obligation (From Workbook A)	<u>22.25</u>
7	Total 2004-2018 Growth Share Obligation			<u>110.00</u>
	<i>o Optional 2004-2018 Municipal Projections Resulting in Higher Projected Growth Share</i>			
	Household Growth After Exclusions (From Workbook B)	_____	Employment Growth After Exclusions (From Workbook B)	_____
	Residential Obligation (From Workbook B)	_____	Non-Residential Obligation (From Workbook B)	_____
8	Total 2004-2018 Projected Growth Share Obligation			_____
	<i>o Optional Municipal Adjustment to 2004-2018 Projections and Resulting Lower Projected Growth Share</i>			
	Household Growth After Exclusions (From Workbook C)	_____	Employment Growth After Exclusions (From Workbook C)	_____
	Residential Obligation (From Workbook C)	_____	Non-Residential Obligation (From Workbook C)	_____
9	Total 2004-2018 Growth Share Obligation			_____
10	Total Fair Share Obligation (Line 1 or 2 + Line 5 or 6 + Line 7, 8 or 9)			<u>212.00</u>

Summary of Plan for Total 1987-2018 Fair Share Obligation

(For each mechanism, provide a description in the Fair Share Plan narrative. In the table below, specify the number of completed or proposed units associated with each mechanism.)

	<u>Completed</u>	<u>Proposed</u>	<u>Total</u>
Rehabilitation Share			<u>19</u>
<i>Less: Rehabilitation Credits</i>			
Rehab Program(s)		19	<u>19</u>
Remaining Rehabilitation Share			<u>19</u>
Prior Round (1987-1999 New Construction) Obligation			<u>83</u>
<i>Less: Vacant Land Adjustment (If Applicable)</i>			
<i>(Enter unmet need as the adjustment amount. Unmet need = Prior round obligation minus RDP):</i>			
Unmet Need			
RDP			
Mechanisms addressing Prior Round			
Prior Cycle Credits (1980 to 1986)			
Credits without Controls			
Inclusionary Development/Redevelopment	<u>75</u>		<u>75</u>
100% Affordable Units			
Accessory Apartments			
Market-to-Affordable			
Supportive & Special Needs	<u>6</u>		<u>6</u>
Assisted Living			
RCA Units previously approved	<u>8</u>		<u>8</u>
Other			
Prior Round Bonuses	<u>6</u>		<u>6</u>
Remaining Prior Round Obligation			<u>0</u>
Third Round Projected Growth Share Obligation			<u>110</u>
<i>Less: Mechanisms addressing Growth Share</i>			
Inclusionary Zoning	<u>75</u>		<u>75</u>
Redevelopment			
100% Affordable Development			
Accessory Apartments		<u>11</u>	<u>11</u>
Market-to-Affordable Units		<u>5</u>	<u>5</u>
Supportive & Special Need Units	<u>2</u>	<u>5</u>	<u>7</u>
Assisted Living: post-1986 Units			
Other Credits	<u>12</u>		<u>12</u>
Compliance Bonuses			
Smart Growth Bonuses			
Redevelopment Bonuses			
Rental Bonuses			
Growth Share Total			<u>110</u>
Remaining (Obligation) or Surplus			<u>0</u>

PARAMETERS¹

<u>Prior Round 1987-1999</u>			
RCA Maximum	41	RCAs Included	8
Age-Restricted Maximum	20	Age-Restricted Units Included	0
Rental Minimum	20	Rental Units Included	6

<u>Growth Share 1999-2018</u>			
Age-Restricted Maximum	27	Age-Restricted Units Included	0
Rental Minimum	28	Rental Units Included	35
Family Minimum	55	Family Units Included	75
Very Low-Income Minimum ²	14	Very Low-Income Units Included	19

¹ Pursuant to the procedures in N.J.A.C. 5:97-3.10-3.12

² Pursuant to N.J.S.A. 52:27D-329.1, adopted on July 17, 2008, at least 13 percent of the housing units made available for occupancy by low-income and moderate income households must be reserved for occupancy by very low income households.

Summary of Built and Proposed Affordable Housing

Provide the information requested regarding the proposed program(s), project(s) and/or unit(s) in the Fair Share Plan. Use a separate line to specify any bonus associated with any program, project and/or unit in the Plan. As part of completeness review, all monitoring forms must be up-to-date (i.e. 2007 monitoring must have been submitted previously or included with this application) and all proposed options for addressing the affordable housing obligation must be accompanied by the applicable checklist(s) (found as appendices to this application). Enter whether a project is proposed or completed and attach the appropriate form or checklist for each mechanism as appendices to the plan. Please note that bonuses requested for the prior round must have been occupied after December 15, 1986 and after June 6, 1999 for the third round.

Please make sure that a corresponding mechanism checklist is submitted for each mechanism being employed to achieve compliance. Separate checklists for each mechanism are available on the COAH website at www.nj.gov/dca/affiliates/coah/resources/checklists.html.

Table 1. Projects and/or units addressing the Rehabilitation Share

Project/Program Name	Proposed (use Checklists) or Completed (use <u>Rehabilitation Unit Survey Form</u>)	Rental, Owner Occupied or Both	Checklist or Form Appendix Location ¹
1. <u>County Progra</u>	<u>Proposed</u>	<u>Both</u>	<u>19</u>
2. _____	_____	_____	_____
3. _____	_____	_____	_____

¹ If all completed units have already been reported to COAH as part of 2007 monitoring or subsequent CTM updates, there is no need to re-submit Rehabilitation Unit Survey Forms. If additional units have been completed subsequent to 2007 monitoring, the municipality may submit updated forms. If the plan relies only on completed units previously reported via 2007 monitoring, enter "on file" in this column.

Table 2. Programs, Projects and/or units addressing the Prior Round.

Project/Program Name	Mechanism or Bonus Type	Proposed (use checklists) or Completed (use Project/Unit Program Information Forms)	Units		Number Addressing Rental Obligation)	Number Subject to Age-Restricted Cap	Checklist or Form Appendix Location ¹
			Obligation (Note with "BR" where Special Needs bedrooms apply)				
1. Chatham Glen	Inclusionary Zoning	Completed	75				
2. RCA Newark	RCA	Completed	8				
3. Group Home	Alternative Living	Completed	6		6		
4. Rental Bonus	Rental Bonus	Completed	6				
5.							
6.							
7.							
8.							
9.							
10.							
11.							
12.							
13.							
14.							
15.							
Subtotal from any additional pages used							
Total units (proposed and completed)					95		
Total rental					6		
Total age-restricted					0		
Total very-low					6		
Total bonuses					6		

Please add additional sheets as necessary.

¹ If all completed units have already been reported to COAH as part of 2007 monitoring or subsequent CTM updates, there is no need to re-submit monitoring forms. If additional units have been completed subsequent to 2007 monitoring, the municipality may submit updated forms. If the plan relies only on completed units previously reported via 2007 monitoring, enter "on file" in this column.

Table 3. Programs, Projects and/or Units Addressing the Third Round.

Project Name	Mechanism or Bonus Type	Proposed (use checklist(s) or Completed (use Project/Unit Program Information Form)	Units Addressing Obligation (Note with "BR" where Special Needs bedrooms apply)	Units Addressing Rental Obligation	Units Addressing Family Obligation	Units Subject to Age-restricted Cap	Checklist or Form Appendix Location ¹
16. Chatham Glen	Control Extension	Proposed	75		75		
17. Accessory Apartments	Accessory Apartment	Proposed	11	11			
18. Market To Affordable	Market to Affordable	Proposed	5	5			
19. Group Homes	Special Needs	Proposed	5	5			
20. Group Homes	Special Needs	Completed	8	8			
21. Rental Bonus	Rental Bonus	Completed	6				
22.							
23.							
24.							
25.							
26.							
27.							
28.							
29.							
30.							
Subtotal from any additional pages used			Total units (proposed and completed)				
Total family units		75	Total rental units			28	
Total age-restricted units		0	Total family rental units			16	
Total Supportive/Special Needs units		0	Total very-low units			18	
Total Special Needs bedrooms		13	Total bonuses			6	

Please add additional sheets as necessary.

¹ If all completed units have already been reported to COAH as part of 2007 monitoring or subsequent CTM updates, there is no need to re-submit monitoring forms. If additional units have been completed subsequent to 2007 monitoring, the municipality may submit updated forms. If the plan relies only on completed units previously reported via 2007 monitoring, enter "on file" in this column.

Please answer the following questions necessary for completeness review regarding the municipality's draft and/or adopted implementing ordinances.

AFFORDABLE HOUSING TRUST FUND (N.J.A.C. 5:97-8)

1. Does the municipality have an affordable housing trust fund account? (Note: Pursuant to P.L. 2008 c.46, municipalities that do not submit a fully executed escrow agreement will forfeit the ability to retain development fees.)

Yes, Bank Name _____

(Choose account type) Separate interest-bearing account

State of New Jersey cash management fund

No (Skip to the Affordable Housing Ordinance section)

2. Has an escrow agreement been executed? Yes No
(If no, petition is incomplete. Submit an executed escrow agreement.)

3. Is all trust fund monitoring up-to-date as of December 31, 2007? Yes No
(If no, petition is incomplete. Submit an updated trust fund monitoring report.)

DEVELOPMENT FEE ORDINANCES (N.J.A.C. 5:97-8.3)

1. Does the Fair Share Plan include a proposed or adopted development fee ordinance? (Note: Pursuant to P.L. 2008 c.46, municipalities that do not submit a development fee ordinance will forfeit the ability to retain non-residential development fees)

Yes,

Adopted OR Proposed

No Skip to the next category; Payments-in-Lieu

2. If adopted, specify date of COAH/Court approval here: _____

- Have there been any amendments to the ordinance since COAH or the Court approved the ordinance?

Yes, Ordinance Number: _____ Adopted on: _____

No (Skip to the next category; Payments-in-Lieu)

- If yes, is the amended ordinance included with your petition?

Yes

No, (Petition is incomplete. Submit ordinance with governing body resolution requesting COAH approval of amended ordinance)

3. Does the ordinance follow the ordinance model updated September 2008 and available at www.nj.gov/dca/affiliates/coah/resources/planresources.html? If yes, skip to question 5.

Yes No

4. If the answer to 3. above is no, indicate that the necessary items below are addressed before submitting the Development Fee ordinance to COAH:

Information and Documentation

The ordinance imposes a residential development fee of ____% and a Non-residential fee of 2.5 %

A description of the types of developments that will be subject to fees per N.J.A.C. 5:97-8.3(c) and (d);

A description of the types of developments that are exempted per N.J.A.C. 5:97-8.3(e)

A description of the amount and nature of the fees imposed per N.J.A.C. 5:97-8.3(c) and (d)

A description of collection procedures per N.J.A.C. 5:97-8.3(f)

A description of development fee appeals per N.J.A.C. 5:97-8.3(g)

A provision authorizing COAH to direct trust funds in case of non-compliance per N.J.A.C. 5:97-8.3(h)

If part of a court settlement, submit court ordered judgment of compliance, implementation ordinances, information regarding period of time encompassed by the judgment of compliance and a request for review by the court

5. Does the ordinance include an affordability assistance provision per N.J.A.C. 5:97-8.8 (Note: must be at least 30 percent of all development fees plus interest)?

Yes (Specify actual or anticipated amount) \$_____

No **Submit an amended ordinance with provisions for affordability assistance along with a governing body resolution requesting COAH approval of the amended ordinance.)**

■ If yes, what kind of assistance is offered?

■ Has an affordability assistance program manual been submitted? Yes No

¹ Any amendment to a previously approved and adopted development fee ordinance must be submitted to COAH along with a resolution requesting COAH's review and approval of the amendment prior to the adoption of said amendment by the municipality.

**PAYMENTS-IN-LIEU OF CONSTRUCTING AFFORDABLE UNITS ON
SITE (N.J.A.C. 5:97-8.4)**

1. Does the Fair Share Plan include an inclusionary zoning ordinance that provides for payments-in-lieu as an option to the on-site construction of affordable housing?
 Yes No (Skip to the next category; Barrier Free Escrow)

2. Does the plan identify an alternate site and/or project for the payment-in-lieu funds? (Optional)
 Yes (attach applicable checklist)
 No (identify possible mechanisms on which payment in lieu will be expended in narrative section of plan.)

3. Does the ordinance include minimum criteria to be met before the payments-in-lieu becomes an available option for developers? (Optional)
 Yes (indicate ordinance section) _____
 No

BARRIER FREE ESCROW/OTHER FUNDS (N.J.A.C. 5:97-8.5/8.6)

1. Has the municipality collected or does it anticipate collecting fees to adapt affordable unit entrances to be accessible in accordance with the Barrier Free Subcode, N.J.A.C. 5:23-7?
 Yes No

2. Does the municipality anticipate collecting any other funds for affordable housing activities?
 Yes (specify funding source and amount) _____
 No

SPENDING PLANS (N.J.A.C. 5:97-8.10)

1. Does the petition include a Spending Plan? (Note: Pursuant to P.L. 2008 c.46, municipalities that do not submit a Spending Plan will forfeit the ability to retain development fees.)

Yes No

2. Does the Spending Plan follow the Spending Plan model updated October 2008 and available at www.nj.gov/dca/affiliates/coah/resources/planresources.html? If yes, skip to next section - Affordable Housing Ordinance.

Yes No

3. If the answer to 1. above is no, indicate that the necessary items below are addressed before submitting the spending plan to COAH:

Information and Documentation

- A projection of revenues anticipated from imposing fees on development, based on actual proposed and approved developments and historical development activity;
- A projection of revenues anticipated from other sources (specify source(s) and amount(s));
- A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
- A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. 5:97-8.7;
- A schedule for the expenditure of all affordable housing trust funds;
- A schedule for the creation or rehabilitation of housing units;
- If the municipality envisions being responsible for public sector or non-profit construction of housing, a detailed pro-forma statement of the anticipated costs and revenues associated with the development, consistent with standards required by HMFA or the DCA Division of Housing in its review of funding applications;
- If the municipality maintains an existing affordable housing trust fund, a plan to spend the remaining balance as of the date of its third round petition within four years of the date of petition;
- The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan;
- A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation; and
- If not part of the petition, a resolution of the governing body requesting COAH review and approval of spending plan or an amendment to an approved spending plan.

AFFORDABLE HOUSING ORDINANCE (N.J.A.C. 5:80-26.1 et seq.)

1. Does the Fair Share Plan include an Affordable Housing Ordinance?
 Yes No
2. Does the ordinance follow the ordinance model available at www.nj.gov/dca/affiliates/coah/resources/planresources.html? Yes No
3. If the answer to 1. or 2. above is no, indicate that the required items below are addressed before submitting to COAH. If the required items are addressed in ordinances other than an Affordable Housing Ordinance, please explain in a narrative section of the Fair Share Plan.

Required Information and Documentation

- Affordability controls
- Bedroom distribution
- Low/moderate-income split and bedroom distribution
- Accessible townhouse units
- Sale and rental pricing
- Municipal Housing Liaison
- Administrative Agent
- Reference to the Affirmative marketing plan or ordinance (N.J.A.C. 5:80-26.15)

AFFORDABLE HOUSING ADMINISTRATION (As Applicable)

Items that must be submitted with the petition:

- Governing body resolution designating a municipal housing liaison (COAH must approve)

Items that must be submitted prior to COAH's grant of Substantive Certification:

- Operating manual for rehabilitation program
- Operating manual for affordability assistance
- Operating manual for an Accessory Apartment program
- Operating manual for a Market-to-Affordable program
- COAH approved administrative agent if municipal wide

Items that must be submitted prior to any time prior to marketing completed units:

- COAH approved administrative agent(s) is project specific
- Operating manual for sale units
- Operating manual for rental units
- Affirmative marketing plan or ordinance (N.J.A.C. 5:80-26.15)

CERTIFICATION

I, FRANCIS J. BANWISCH^{III}, have prepared this petition application for substantive certification on behalf of Chatham Township. I certify that the information submitted in this petition is complete, true and accurate to the best of my knowledge. I understand that knowingly falsifying the information contained herein may result in the denial and/or revocation of the municipality's substantive certification.

Francis J. Banwisch

12-29-09

Signature of Preparer (affix seal if applicable)

Date

Consulting Planner

Title

N.J.S.A. 2C:21-3, which applies to the certifications, declares it to be a disorderly person offense to knowingly make a false statement or give false information as part of a public record.

Spending Plan

Township of Chatham
Morris County, New Jersey

DRAFT
Not for Adoption Prior to COAH Review

December 30, 2008

Prepared by
East Amwell Township
in consultation with Barisch Associates, Inc.
111 Main Street, Flemington, NJ 08822

INTRODUCTION

Chatham Township has prepared a Housing Element and Fair Share plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing (proposed Ordinance 2008-20) was introduced on October 20, 2008. An ordinance establishing the Chatham Township Affordable Housing Trust Fund for which this spending plan is in preparation and no escrow account has been established to date.

1. REVENUES FOR CERTIFICATION PERIOD

To calculate a projection of revenue anticipated during the period of third round substantive certification, Chatham Township considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

Actual and committed payments in lieu (PIL) of construction from developers set forth in §30-147.7.as follows:

(c) Other funding sources:

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, proceeds from the sale of affordable units

Not Applicable

(d) Projected interest:

- Anticipated interest on projected revenue in the affordable housing trust fund is the current average interest rate of 1.5%.

SOURCE OF FUNDS	PROJECTED REVENUES-HOUSING TRUST FUND - 2008 THROUGH 2018											
	7/18/08 Through 12/31/08	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018	Total
(a) Development fees:		171150	171150	171150	171150	171150	171150	171150	171150	171150	171150	1711500
1. Approved Development												
2. Development Pending Approval												
3. Projected Development												
(b) Payments in Lieu of Construction												
(c) Other Funds (Specify source(s))												
(d) Interest		2567	2567	2567	2567	2567	2567	2567	2567	2567	2567	25670
Total		173717	173717	173717	173717	173717	173717	173717	173717	173717	173717	1737170

Note: Forecast assumes \$50/sf for non-residential construction and COAH's Region 2 cost estimates.

Chatham Township projects a total of \$ 1,737,170 in revenue to be collected between 2009 and December 31, 2018. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by Chatham Township

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with Chatham Township's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

1. Rehabilitation in cooperation with Morris County
2. Accessory apartments
3. Market to affordable units
4. Special needs housing
5. Extension of controls and
6. Affordability assistance

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)

Chatham Township will dedicate \$1,816,786.31 to rehabilitation or new construction programs (see detailed descriptions in Fair Share Plan) as follows:

Rehabilitation program: \$ 190,000

New construction project(s): \$

1. Accessory apartments-\$247,500
2. Market to affordable units -\$137,500
3. Special needs housing -land plus \$200,000
4. Extension of controls-administrative

(b) Affordability Assistance (N.J.A.C. 5:97-8.8)

Projected minimum affordability assistance requirement: Consistent with COAH regulations

Actual development fees through 7/17/2008		\$0.00
Actual interest earned through 7/17/2008	+	\$0.00
Development fees projected* 2008-2018	+	\$1,711,500
Interest projected* 2008-2018	+	\$25,670
Less housing activity expenditures through 6/2/2008	-	\$0.00
Total	=	\$1,737,170
30 percent requirement	x 0.30 =	\$521,150
Less Affordability assistance expenditures through 12/31/2004	-	\$0.00
PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2005 through 12/31/2018	=	\$521,150
PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2005 through 12/31/2018	÷ 3 =	\$173,716

* Note: The 2008 portion of this projection reflects 2008 subsequent to July 17 as the remainder of 2008 is included in the actual figure reported above.

Chatham Township will dedicate \$521,150 from the affordable housing trust fund to render units more affordable, including at least \$173,716 to render units more affordable to households earning 30 percent or less of median income by region, as follows:

\$100,000 to provide rental assistance for low income households

\$175,000 to provide rental assistance for very low income households;

\$200,000 to non-profit management group as seed money for non-profit to construct special needs housing for very low income;

\$90,000 to purchase 30-year deed restrictions creating 3 market-to-affordable low income rental units and 2 market-to-affordable moderate income rental units;

(c) Administrative Expenses (N.J.A.C. 5:97-8.9)

Chatham Township projects that up to \$342,300 will be available from the affordable housing trust fund to be used for administrative purposes. Projected administrative expenditures, subject to the 20 percent cap, are as follows:

Staff administrative services and professional services (attorney, planner, engineer and administrative agent) for:

- Preparation of Housing Element and Fair Share Plan
- Coordination of COAH activities, including petition for substantive certification
- Any other eligible expenses as may become necessary or appropriate

4. EXPENDITURE SCHEDULE

Chatham Township's affordable housing trust fund revenues for the provision and/or rehabilitation of housing units. Where applicable, the creation/rehabilitation funding schedule below parallels the implementation schedule set forth in the Housing Element and Fair Share Plan and is summarized as follows.

Program <i>[Individually list programs and projects e.g. Rehab, Accessory Apartments, for-sale and rental municipally sponsored, etc].</i>	Number of Units Projected	Funds Expended and/or Dedicated 2005- July 17, 2008	PROJECTED EXPENDITURE SCHEDULE 2009-2018 (THOUSANDS)										Total			
			7/18/08 - 12/31/08	2009	2010	2011	2012	2013	2014	2015	2016	2017		2018		
Rehabilitation	19		20	20	20	20	20	20	20	20	20	20	20	20	20	190.0
Accessory Apartments	11		20	25	30	30	25	20	25	20	25	30	30	20	22.5	247.5
Market-to Affordable	5		30													137.5
Special Needs Housing ¹	5+8 ²															200.0
Extension of Controls	75															
Total Programs	123	\$0	\$70	\$245	\$75	\$45	\$70	\$45	\$70	\$45	\$75	\$50	\$57.5	\$44.5	\$775	
Affordability Assistance	\$545.0		\$0	\$52.1	\$52.1	\$52.1	\$52.1	\$52.1	\$52.1	\$52.1	\$52.1	\$52.1	\$52.1	\$52.1	\$52.1	521
Administration	\$342.3		\$42.5	30	30	30	30	30	30	30	30	30	30	30	30	342.3
Total		\$0	42.5	152.1	327.1	157.1	127.1	152.1	127.1	157.1	127.1	132.1	139.6	126.6	1638.9	

5. EXCESS OR SHORTFALL OF FUNDS

The governing body of Chatham Township has not adopted a resolution agreeing to fund any shortfall of funds required for implementing housing programs within this spending document.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to fund rehabilitation or other eligible expenses.

6. BARRIER FREE ESCROW

Collection and distribution of barrier free funds shall be consistent with Chatham Township's Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5.

SUMMARY

Chatham Township intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the housing element and fair share plan dated November 17, 2008.

Chatham Township is in the process of establishing a housing trust fund and anticipates \$1,737,170 in development fee revenues before the expiration of substantive certification. The municipality will dedicate \$775,000 towards rehabilitation, accessory apartments, market to affordable units, special needs housing and extension of controls, \$521,000 to render units more affordable, and \$342,300 to administrative costs.

SPENDING PLAN SUMMARY	
Balance as of July 17, 2008	\$0
PROJECTED REVENUE July 18, 2008-2018	
Development fees	+ \$1,711,500
Payments in lieu of construction	+ \$
Other funds	+ \$
Interest	+ \$25,670
TOTAL REVENUE	= \$1,737,170
EXPENDITURES	
Funds used for Rehabilitation	- \$190,000
Funds used for New Construction	
1. Accessory apartments	- \$247,500
2. Market to affordable	- \$137,500
3. Extension of Control	- administrative
4. Special Needs Housing ³	- \$200,000
5.	- \$
6.	- \$
7.	- \$
8.	- \$
9.	- \$
10.	- \$
Affordability Assistance	- \$521,150
Administration	- \$342,300
Excess Funds for Additional Housing Activity	= \$98,720
1. <i>[list individual projects/programs]</i>	- \$
2.	- \$
3.	- \$
TOTAL PROJECTED EXPENDITURES	= \$1,638,450
REMAINING BALANCE	= \$98,720

³ Funds are included in affordability assistance

TOWNSHIP OF CHATHAM
NOTICE OF
INTRODUCTION

ORDINANCE 2008-19

I, Joy M. Wiley, Municipal Clerk of the Township of Chatham, do hereby certify that the following ordinance was introduced on first reading at a regular meeting held on October 9, 2008 and said ordinance will be submitted for consideration and final passage at a regular meeting to be held on October 23, 2008 at 7:30 p.m., in the Municipal Building at which time and place any person who may be interested therein will be given an opportunity to be heard concerning said ordinance.

October 14, 2008

Joy M. Wiley
Municipal Clerk

ORDINANCE 2008-19

AN ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS,
STATE OF NEW JERSEY ADOPTING A DEVELOPMENT FEE ORDINANCE FOR
THE TOWNSHIP

BE IT ORDAINED by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, that the following development fee ordinance is hereby adopted:

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) The Township of Chatham 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 zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half percent (1.5%) 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 (6%) 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 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 residential structures demolished and replaced as a result of a fire, flood or other natural disaster shall be exempt from paying a development fee.
 - v. Within the AH Affordable Housing District, residential developers shall be exempt from paying a development fee.

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.
- iii. 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.
- iv. 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 the Township of Chatham 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 the Township of Chatham 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 the Township of Chatham. 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 the Township of Chatham. 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 of the Township 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 the Township of Chatham's affordable housing program.
- c) Within seven days from the opening of the trust fund account, the Township of Chatham shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, 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 Township of Chatham's 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 reimbursement of the Township 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. The use of development fees in this manner shall entitle the Township of Chatham to bonus credits pursuant to N.J.A.C. 5:97-3.7.
 - 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) The Township of Chatham 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) The Township of Chatham 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 the Township'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 the Township of Chatham to impose, collect and expend development fees shall expire with its substantive certification unless the Township 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 the Township of Chatham 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). The Township of Chatham 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 the Township retroactively impose a development fee on such a development. The Township of Chatham shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

- 11. This ordinance shall take effect as provided by law.**

Introduced: October 9, 2008

TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY

Adopted:

Attest:

BY: _____

Kevin R. Tubbs, Mayor

Joy M. Wiley, Clerk

Exhibit C

B A N I S C H
A S S O C I A T E S , I N C .

Planning and Design

December 31, 2008

Ms. Lucy Vandenberg, Executive Director
New Jersey Council on Affordable Housing
101 South Broad Street
P.O. Box 813
Trenton, NJ 08625-0813

Re: Chatham Township Petition for Substantive Certification

Dear Ms. Vandenberg,

Enclosed please find the following documents in support of this petition:

- o Housing Element and Fair Share Plan adopted November 17, 2008
- o Planning Board certified resolution adopting Housing Element and Fair Share Plan
- o Township Committee certified Resolution #2008-220 endorsing Housing Element and Fair Share Plan
- o Service list
- o Petition Application
- o Draft spending plan
- o Draft copy of development fee Ordinance #2008-19

Respectfully,

Francis J. Banisch III, PP/AICP

Cc: Mayor Kevin Tubbs
Joel N. Jacobson, Planning Board Chair
Tom Ciccarone, Township Administrator

111 Main Street, Flemington, NJ 08822

908-782-0835/908-782-7636(fax)

frankbanisch@banisch.com

Exhibit D



State of New Jersey
COUNCIL ON AFFORDABLE HOUSING
101 SOUTH BROAD STREET
PO Box 813
TRENTON NJ 08625-0813
(609) 292-3000
FAX: (609) 633-6056
coahmail@dca.state.nj.us

RECEIVED

MAY 20 2009

**BANISCH
ASSOCIATES, INC.**

JOSEPH V. DORIA, JR.
Commissioner

LUCY L. VANDENBERG
Executive Director

JON S. CORZINE
Governor

May 18, 2009

The Honorable Kevin R. Tubbs
Chatham Township
58 Meyersville Rd
Chatham, NJ 07928

Dear Mayor Tubbs:

The Council on Affordable Housing (COAH) acknowledges receipt on December 31, 2008 of the Chatham Township, Morris County, petition for substantive certification of the Township's Housing Element and Fair Share Plan. All required documents in accordance with N.J.A.C. 5:96-3.2(a) have been received. We appreciate your participation in the COAH process and your commitment to provide affordable housing. COAH staff looks forward to working with you to implement your third round growth share plan.

Please note that your service list may have been updated to reflect COAH records and the attached service list should be used for all future correspondence. Within seven days of this letter, you must publish notice of your petition in a newspaper of general circulation within the municipality and county (i.e., Herald News, Daily Record, Star Ledger). A list of acceptable publications is available on COAH's website at <http://www.nj.gov/dca/affiliates/coah/resources/planresources/publications.pdf>. A sample public notice is enclosed with this letter.

Publication of your public notice will commence the 45-day comment period. Please send the affidavit of publication to the address above and to the enclosed service list. Comments must be in writing and sent both to COAH's office and to the municipal clerk by the end of the comment period, which COAH estimates will be July 2, 2009. COAH staff will continue to work with Chatham Township on a substantive review of your third round growth share plan to culminate in final approval.



RECEIVED

If you have any questions or need further information, please contact Daniel Burton, COAH planner, at (609) 984-3410. We look forward to working with you to implement your fair share plan.

THOMPSON ASSOCIATES, INC.

Sincerely,

Lucy L. Vandenberg

Lucy Vandenberg, PP, AICP
Executive Director

cc: Attached Service List
Sean Thompson, COAH manager of planning
Kathy McGlinchy, COAH monitor
Daniel Burton, COAH planner
Joanne Wiggins, COAH supervisor

5:96-3.5 Notice

(a) In order to provide the general public with an opportunity to review the municipal Housing Element and Fair Share Plan and to submit objections or comments, when a municipality petitions for substantive certification or is deemed to have petitioned pursuant to N.J.A.C. 5:96-3.3, it shall publish notice of its petition. Within seven days of the issuance of the notification letter from the Council's Executive Director pursuant to N.J.A.C. 5:96-2.2(b) indicating the submission is complete, notice shall be published in a newspaper of general circulation within the municipality and county. The public notice shall be in the legal newspaper of the municipality as well as one that is widely circulated within the county if the legal newspaper is not widely circulated within the county. If the Council's Executive Director determines that notice was not published in a newspaper of general circulation, the municipality shall be required to re-publish in another appropriate newspaper.

(b) Notice of a petition for substantive certification shall be provided in the following format:

**NOTICE OF PETITION
FOR SUBSTANTIVE CERTIFICATION**

NOTICE is hereby given that (MUNICIPALITY) has petitioned the New Jersey Council on Affordable Housing for Substantive Certification of its Housing Element and Fair Share Plan pursuant to N.J.S.A. 52:27D-301 et seq. and N.J.A.C. 5:96-3.1 et seq. A copy of the adopted Housing Element and Fair Share Plan and supporting documentation is available for public inspection at the office of the (Municipal Clerk, etc.), Municipal Building, located at (street address), during the hours of _____. Comments or objections to said petition for Substantive Certification shall be filed with the New Jersey Council on Affordable Housing, 101 South Broad Street, PO Box 813, Trenton, New Jersey 08625-0813 and with the municipal clerk by (DATE) which is within 45 days of publication of this notice.

Municipal Clerk

The Honorable Kevin R. Tubbs
Mayor
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928-1199

Carl R. Woodward, III, Esq.
Carella Byrne Bain Gilfillan et al,
5 Becker Farm Rd
Roseland, New Jersey 07068

Joy M. Wiley
Municipal Clerk
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928-1199

Thomas E. Ciccarone
Administrator/CFO/Housing Liaison
Township of Chatham
58 Meyersville Rd
Chatham, New Jersey 07928-1199

John Ruschke
Township Engineer
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928-1199

Kali Tsimboukis
Planning Board Manager
Township of Chatham
58 Meyersville Road
Chatham, New Jersey 07928-1199

Jacqul Adam
Allies, Inc.
1262 White Horse-Hamilton Sq Rd
Bldg A, Ste 101
Hamilton, New Jersey 08690

Harold Colton-Max
Executive Director
Jewish Community Housing Corp.
750 Northfield Ave
West Orange, New Jersey 07052

Karl Hartkopf
Office of Smart Growth, Dept of Community Affairs
101 S Broad St
PO Box 204
Trenton, New Jersey 08625

Margarita Howard
Town of Boonton Housing Authority
125 Chestnut St
Boonton, New Jersey 07005

James Humphries
New Jersey Highlands Council
100 North Rd
Rte 513
Chester, New Jersey 07930-2322

Dan McGuire
Homeless Solutions
6 Dumont Place
3rd Floor
Morristown, New Jersey 07960

Sherry L. Sims
Town of Boonton Housing Authority
125 Chestnut Street
Boonton, New Jersey 07005

Suzanne Smith
Paralegal
Hill Wallack LLP
202 Carnegie Ctr
PO Box 5226
Princeton, New Jersey 08543

Jon Vogel
Development Director
AvalonBay Communities, Inc.
517 Route One South
Suite 5500
Iselin, New Jersey 08830

Morris County Planning Board
Planning, Development & Technology
PO Box 900
Morristown, New Jersey 07963-0900

Frank Banisch, PP, AICP
Banisch Associates, Inc.
111 Main St
Flemington, New Jersey 08822

James T. Gaffney
NJ DEP - Office of Environment Planning
401 East State Street
P.O. Box 418
Trenton, New Jersey 08625-0418

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Sills, Cummis, Epstein & Gross
One Riverfront Plaza
Newark, New Jersey 07102-5400

Judith Piccininni, Esq.
DAG for DEP
Richard J. Hughes Justice Complex
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Trenton, New Jersey 08625

Tedd Rechler
Reckson Associates
51 JFK Parkway
Short Hills, New Jersey 07078

Gary S. Rosensweig, Esq.
Archer and Greiner, PC
700 Alexander Road
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Princeton, New Jersey 08540

Julia M. Somers
Great Swamp Watershed Association
P.O. Box 300
New Vernon, New Jersey 07976

Edward J. Trawinski, Esq.
Schenck, Price, Smith & King, LLP
10 Washington St
PO Box 905
Morristown, New Jersey 07963-0905

Ramon Tubltz
C/o Carl S. Bisgaler, Esq.
1810 Chapel Avenue West
Cherry Hill, New Jersey 08002

Exhibit E



State of New Jersey
Council on Affordable Housing

101 SOUTH BROAD STREET
PO BOX 813
TRENTON NJ 08625-0813

(609) 292-3000
(609) 633-6056 (FAX)

JON S. CORZINE
Governor

CHARLES A. RICHMAN
Acting Commissioner
LUCY VANDENBERG
Executive Director

October 6, 2009

OCT 13 2009

The Honorable Kevin R. Tubbs
Chatham Township
58 Meyersville Rd
Chatham, NJ 07928

RE: Development Fee Ordinance
Chatham Township, Morris County

Dear Mayor Tubbs:

The Council on Affordable Housing (COAH) is in receipt of your development fee ordinance, *Ordinance No. # 2008-19*.

We are pleased to provide a copy of a COAH report and resolution approving Chatham Township's development fee ordinance with revisions. The Township must file the revised ordinance with COAH within seven days of adoption. In addition, your municipality may not expend any funds until a spending plan has been approved by COAH.

Kindly call Ngozi Obi at (609) 633-0597 if you have any questions. We look forward to working with you to implement your Housing Element and Fair Share Plan.

Sincerely,

Lucy L Vandenberg

Lucy Vandenberg, PP, AICP
Executive Director

Enc.

cc: Attached Service List
Joanne Wiggins, Supervising Planner
Ngozi Obi, COAH Planner
Larissa DeGraw, COAH



The Honorable Kevin R. Tubbs
Mayor
Township of Chatham
58 Meyersville Road
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Staff Attorney
Fair Share Housing Center
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Cherry Hill, New Jersey 08002

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101 S Broad St
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Chatham, New Jersey 07928

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New Vernon, New Jersey 07976

Edward J. Trawinski, Esq.
Schenck, Price, Smith & King, LLP
10 Washington St
PO Box 905
Morristown, New Jersey 07963-0905

**RESOLUTION APPROVING MANDATORY DEVELOPMENT FEE ORDINANCE
THE TOWNSHIP OF CHATHAM /MORRIS COUNTY**

WHEREAS, the Township of Chatham ("Chatham" or "the Township"), Morris County, received second round substantive certification of its housing element and fair share plan on March 5, 1997; and

WHEREAS, Chatham submitted a petition to COAH for third round substantive certification on December 31, 2008, which was deemed complete on May 18, 2009; and

WHEREAS, COAH received the Township's proposed ordinance (Exhibit A) as part of its December 31, 2008 petition; and

WHEREAS, on July 27, 2009 Governor Corzine signed the New Jersey Economic Stimulus Act of 2009 (P.L. 2009, c. 90), portions of which impact local development fee ordinances, in regard to fees collected for non-residential development; and

WHEREAS, this new legislation suspends the statewide development fee of two and one-half percent (2.5%) for non-residential development; and

WHEREAS, specifically, the imposition of a non-residential development fee does not apply to non-residential properties that received preliminary or final site plan approval prior to July 1, 2010, provided a building permit is issued prior to January 1, 2013; and

WHEREAS, municipalities may continue to collect non-residential development fees from non-residential properties that have made or committed to make a financial or other contribution prior to July 17, 2008; and

WHEREAS, a developer is considered to have made or committed itself to make a financial or other contribution if the contribution has been transferred, including but not limited to when the funds have already been received by the municipality; the developer has obligated itself to make a contribution as set forth in a written agreement with the municipality, such as a developer's agreement; or the developer's obligation to make a contribution is set forth as a condition in a land use approval issued by a municipal land use agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.); and

WHEREAS, municipalities may continue to collect non-residential development fees from non-residential properties that received preliminary or final site plan approval prior to July 17, 2008, which have not been issued certificates of occupancy, in accordance with the non-residential fee percentage included in its COAH approved development fee ordinance in place prior to the enactment of the Statewide Non-Residential Development Fee Act; and

WHEREAS, any portion of Chatham Township's development fee ordinance that conflicts with P.L. 2009, c. 90 is null and void; and

WHEREAS, pursuant to N.J.A.C. 5:97-8.3(c), the Township of Chatham proposes to impose mandatory development fees of one and one-half percent (1.5%) of the equalized assessed value of all new residential development within all zoning districts, provided no increase in density is permitted; and

WHEREAS, the Township also proposes to impose a development fee on developers that build new buildings, expand existing buildings or change to a more intense use; and

WHEREAS, for building expansions and site changes, the fee shall be calculated based on the increase in the equalized assessed value of the improved property; and

WHEREAS, if a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(5), then the additional residential units realized (above what is permitted by right under the existing zoning) will incur a development fee of six percent (6%) of the equalized assessed value of the additional residential development; and

WHEREAS, Chatham has exempted from payment of development fees all affordable housing developments, developments where the developer has made a payment in lieu of constructing affordable units, and residential developments that have received preliminary and/or final approval prior to the effective date of the initial development fee ordinance (unless the developer seeks a substantial change in the approval); and

WHEREAS, the proposed ordinance applies a mandatory development fee of two and one-half percent (2.5%) of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot(s) within the Township; and

WHEREAS, the non-residential development fee applies to the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes, or resulting from the replacement of a demolished building, in which cases the fee is based on the difference in equalized value of the pre-existing land and improvements and the equalized value of the newly improved or replaced structure (i.e., land and improvement); and

WHEREAS, the ordinance exempts from the non-residential development fee the following: an increase in equalized assessed value resulting from alterations; change in use within an existing footprint; reconstruction, renovations and repairs; and other exemptions required pursuant to P.L.2008, c.46; and

WHEREAS, fifty percent of the development fees shall be collected at the time of issuance of a building permit and the remaining portion shall be collected at the issuance of a certificate of occupancy; and

WHEREAS, the procedure for development fee collection is outlined in the ordinance; and

WHEREAS, Chatham Township will establish a separate interest bearing housing trust fund for the purpose of depositing development fees collected in accordance with the ordinance and other sources of funding, which shall at all times be identifiable by source and amount; and

WHEREAS, development fees that are contested will be placed in an interest bearing escrow account by the Township, and any part of fees returned to a developer will include interest accrued on the returned amount; and

WHEREAS, Chatham will execute a three-party escrow agreement with the institution in which the funds are deposited and COAH; and

WHEREAS, the expenditure of funds must be consistent with a spending plan to be approved by COAH, and in case of non-conformance with COAH's rules, COAH may direct the manner in which the housing trust fund shall be expended; and

WHEREAS, 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 Township's Fair Share Plan, one-third of which shall be used to provide affordability assistance to very low-income households; and

WHEREAS, COAH has reviewed Chatham's development fee ordinance for compliance with N.J.A.C. 5:97-8 and has determined that with minor revisions noted, the ordinance complies with all the requirements set forth in these sections, as outlined in the COAH report dated September 23, 2009 (Exhibit B).

NOW THEREFORE BE IT RESOLVED that COAH hereby approves Chatham Township's development fee ordinance with the following minor revisions:

1. In section 4.(a)(ii), revise the "Example:" paragraph to read: If an approval allows four units to be constructed on a site that was zoned two units, the fees will equal one and one-half (1.5%) of the equalized assessed value on the first two units; and six percent (6%) 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.
2. Delete the last sentence in section 8. (c)(ii).

BE IT FURTHER RESOLVED that COAH's approval of the development fee ordinance and the adoption of the ordinance by Chatham's governing body will enable the Township to begin imposing residential development fees pursuant to N.J.A.C. 5:97-8.3(c) and continue to collect non-residential fees as required pursuant to P.L.2008, c.46 and P.L.2009, c.90; and

BE IT FURTHER RESOLVED, that Chatham shall notify COAH immediately upon receipt of the first development fee payment; and

BE IT FURTHER RESOLVED that, upon receipt of the first development fee payment, Chatham shall establish a separate interest bearing housing trust fund for the purpose of depositing development fee payments. The housing trust fund shall comply with all COAH regulations, including the requirement that the Township execute a three-party escrow agreement with the bank and COAH; and

BE IT FURTHER RESOLVED that the development fee ordinance must be submitted to COAH within seven days of adoption by the governing body; and

BE IT FURTHER RESOLVED that Chatham must receive approval of a development fee spending plan prior to the grant of third round substantive certification and before it may disburse any of these funds; and

BE IT FURTHER RESOLVED that in the event Chatham withdraws its petition, fails to obtain substantive certification, allows its certification to lapse, or its substantive certification is revoked, this ordinance shall be null and void.

Date: _____

9/24/09

Lucy Vandenberg
Lucy Vandenberg, Executive Director
Council on Affordable Housing

Exhibit A

TOWNSHIP OF CHATHAM
NOTICE OF
INTRODUCTION
ORDINANCE 2008-19

I, Joy M. Wiley, Municipal Clerk of the Township of Chatham, do hereby certify that the following ordinance was introduced on first reading at a regular meeting held on October 9, 2008 and said ordinance will be submitted for consideration and final passage at a regular meeting to be held on October 23, 2008 at 7:30 p.m., in the Municipal Building at which time and place any person who may be interested therein will be given an opportunity to be heard concerning said ordinance.

October 14, 2008

Joy M. Wiley
Municipal Clerk

ORDINANCE 2008-19

**AN ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS,
STATE OF NEW JERSEY ADOPTING A DEVELOPMENT FEE ORDINANCE FOR
THE TOWNSHIP**

BE IT ORDAINED by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, that the following development fee ordinance is hereby adopted:

1. Purpose

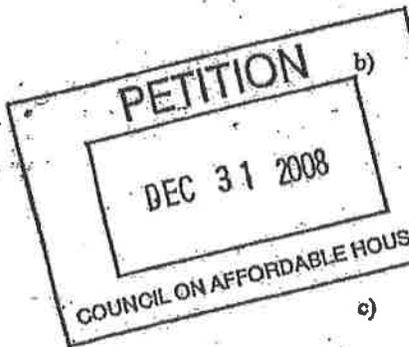
- a) In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable 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) The Township of Chatham 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 zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half percent (1.5%) 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 (6%) 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 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 residential structures demolished and replaced as a result of a fire, flood or other natural disaster shall be exempt from paying a development fee.
- v. Within the AH Affordable Housing District, residential developers shall be exempt from paying a development fee.

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.
- iii. 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.
- iv. 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 the Township of Chatham 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 the Township of Chatham 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 the Township of Chatham. 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 the Township of Chatham. 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 of the Township 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 the Township of Chatham's affordable housing program.
- c) Within seven days from the opening of the trust fund account, the Township of Chatham shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, 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 Township of Chatham's 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 reimbursement of the Township 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. The use of development fees in this manner shall entitle the Township of Chatham to bonus credits pursuant to N.J.A.C. 5:97-3.7.
 - 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) The Township of Chatham 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) The Township of Chatham 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 the Township'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 the Township of Chatham to impose, collect and expend development fees shall expire with its substantive certification unless the Township 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 the Township of Chatham 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). The Township of Chatham 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 the Township retroactively impose a development fee on such a development. The Township of Chatham shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

11. This ordinance shall take effect as provided by law.

Introduced: October 9, 2008

TOWNSHIP OF CHATHAM, COUNTY OF
MORRIS, STATE OF NEW JERSEY

Adopted:

Attest:

BY: _____

Kevin R. Tubbs, Mayor

Joy M. Wiley, Clerk

Exhibit B



NEW JERSEY COUNCIL ON AFFORDABLE HOUSING
REVIEW OF DEVELOPMENT FEE ORDINANCE
TOWNSHIP OF CHATHAM/MORRIS COUNTY
REGION # 2



Prepared by Ngozi Obi, Assistant Planner
September 23, 2009

I. BACKGROUND

The Council on Affordable Housing (COAH) granted second round substantive certification of a housing element and fair share plan to the Township of Chatham, Morris County, ("Chatham" or "the Township") on March 5, 1997, and the Township submitted a petition for third round substantive certification on December 31, 2008, which was deemed complete on May 18, 2009. A proposed development fee ordinance was submitted to COAH as part of its December 31, 2008 petition and is the subject of this review. This report reviews the draft development fee ordinance in accordance with N.J.A.C. 5:97-8.

II. ORDINANCE REVIEW

Pursuant to N.J.A.C. 5:97-8.3(c), the Township of Chatham proposes to impose a mandatory development fee of one and one-half percent (1.5%) of the equalized assessed value of all new residential development within all zoning districts, provided no increase in density is permitted. The Township also proposes to impose a development fee when an existing structure undergoes a change to a more intense use, is demolished and replaced, or expanded, if not otherwise exempt. Development fees for building expansions and site changes shall be calculated based on the increase in the equalized assessed value of the improved property. The fee shall not be imposed on residential structures demolished and replaced as a result of fire, flood and natural disaster.

If a "d" variance is granted pursuant to N.J.S.A. 40:55D-70d(5), then the additional residential units realized (above what is permitted by right under the existing zoning) will incur a development fee of six percent (6%) of the equalized assessed value of the additional residential development.

Within all the zoning districts within the Township, the proposed ordinance applies a mandatory development fee of two and one-half percent (2.5%) of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot(s).

This fee also applies to the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes, or resulting from the replacement of a demolished building. In the case of expansion or replacement, the fee is based on the difference in equalized value of the pre-existing land and improvements and the equalized value of the newly improved or replaced structure (i.e., land and improvement).

The Township of Chatham has exempted from payment of development fees all affordable housing developments and developments where the developer has made a payment in lieu of constructing affordable units. An exemption also applies to developers that have received preliminary and/or final approval of a residential development prior to the effective date of the initial development fee ordinance, unless the developer seeks a substantial change in the approval.

The ordinance exempts from the non-residential development fee the following: an increase in equalized assessed value resulting from alterations; change in use within an existing footprint; reconstruction, renovations and repairs; and other exemptions required pursuant to P.L.2008, c.46.

Fifty percent of the development fees shall be collected at the time of issuance of a building permit. The remaining portion shall be collected at the issuance of a certificate of occupancy. The procedure for development fee collection is outlined in the ordinance.

The Township of Chatham will create a separate interest bearing housing trust fund for the purpose of depositing development fees collected in accordance with the ordinance and other sources of funding, which shall at all times be identifiable by source and amount. Other sources of funding include: recapture funds, proceeds from the sale of affordable units, payments in lieu, developer contributed barrier free funds, repayments from affordable housing program loans, and other funds collected in connection with the Township's affordable housing program. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

Development fees that are contested will be placed in an interest bearing escrow account by the Township. Any part of fees returned to a developer will include interest accrued on the returned amount.

The Township of Chatham will execute a three-party escrow agreement with the institution in which the funds are deposited and COAH. In case of non-conformance with COAH's rules, COAH may direct the manner in which the housing trust fund shall be expended.

The expenditure of funds must be consistent with a spending plan to be approved by COAH. At least 30 percent of the development fees collected and interest earned shall be used for affordability assistance to low- and moderate-income households in affordable units included in the Township's Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to very low-income households.

On July 27, 2009 Governor Corzine signed the New Jersey Economic Stimulus Act of 2009 (P.L. 2009, c. 90), portions of which impact local development fee ordinances, in regard to fees collected for non-residential development. This new legislation suspends the non-residential statewide development fee of 2.5% for non-residential development. Specifically, the imposition of a non-residential development fee does not apply to non-residential properties that received preliminary or final site plan approval subsequent to July 17, 2008 and prior to July 1, 2010, provided a building permit is issued prior to January 1, 2013. However, municipalities may continue to collect non-residential development fees from non-residential properties that have made or committed to making a financial or other contribution prior to July 17, 2008. A developer is considered to have made or committed itself to make a financial or other contribution if the contribution has been transferred, including but not limited to when the funds have already been received by the municipality; the developer has obligated itself to make a contribution as set forth in a written agreement with the municipality, such as a developer's agreement; or the developer's obligation to make a contribution is set forth as a condition in a land use approval issued by a municipal land use agency pursuant to the "Municipal Land Use Law," P.L.1975, c.291 (C.40:55D-1 et seq.) Therefore, municipalities may continue to collect non-residential development fees from non-residential properties that received preliminary or final site plan approval prior to July 17, 2008, which have not been issued certificates of occupancy, in accordance with the non-residential fee percentage included in its COAH approved development fee ordinance in place prior to the enactment of the Statewide Non-

Residential Development Fee Act. Any portion of Chatham Township's development fee ordinance that conflicts with P.L. 2009, c. 90 is null and void.

Chatham will complete and return to COAH all monitoring forms, including the annual monitoring report 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 and any other funds collected in connection with Chatham's housing program, and the expenditure of revenues and implementation of the plan certified by COAH.

III. RECOMMENDATION

Based on this review, COAH staff recommends approval of the Township of Chatham's development fee ordinance subject to the following revisions:

1. In section 4.(a)(ii), revise the "Example:" paragraph to read: If an approval allows four units to be constructed on a site that was zoned two units, the fees will equal one and one-half (1.5%) of the equalized assessed value on the first two units; and six percent (6%) 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.

2. Delete the last sentence in section 8. (c)(ii):

COAH's approval of the development fee ordinance and the adoption of the ordinance by Chatham's governing body will enable the Township to begin imposing development fees pursuant to N.J.A.C. 5:97-8.3(c) and continue to collect non-residential fees pursuant N.J.S.A. 52:27D-329.2 and as required by N.J.S.A. 40:55D-8.1 through 8.7 and P.L. 2009, c. 90. The development fee ordinance must be submitted to COAH within seven days of adoption by the governing body. Chatham must receive approval of an updated development fee spending plan prior to the grant of third round substantive certification and before it may disburse any of these funds. In the event Chatham fails to obtain substantive certification, allows its certification to lapse or be revoked the ordinance shall be null and void.

Reviewed by:

Township of Chatham
Morris County
September 23, 2009


Deputy Attorney General

9/29/09
Date



TOWNSHIP OF CHATHAM

58 Meyersville Road
Chatham, New Jersey 07928
(973) 635-4600
Fax (973) 635-2644

April 1, 2009

Lucy Vandenberg
Executive Director
State of New Jersey
Council on Affordable Housing
PO Box 813
Trenton, NJ 08625-0813

Dear Ms. Vandenberg:

Please find enclosed a certified copy of Ordinance 2009-04 adopted by the Township Committee of the Township of Chatham on March 26, 2009. The ordinance addresses the requirements of the Council on Affordable Housing regarding compliance with the municipality's prior round and third round affordable housing obligations.

If you have any questions, please do not hesitate to contact us.

Sincerely,

Joy M. Wiley
Municipal Clerk

Enclosures

cc: Carl R. Woodward, III, Esq.
Frank Banisch, PP, AICP

ORDINANCE 2009-04

AN ORDINANCE OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, TO ADDRESS THE REQUIREMENTS OF THE COUNCIL ON AFFORDABLE HOUSING (COAH) REGARDING COMPLIANCE WITH THE MUNICIPALITY'S PRIOR ROUND AND THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS

BE IT ORDAINED by the Township Committee of the Township of Chatham, County Morris, State of New Jersey that Chapter XXIX, Affordable Housing Administration, of the Code of the Township of Chatham is hereby repealed in its entirety and the following ordinance to address the requirements of the Council on Affordable Housing (COAH) regarding compliance with the municipality's prior round and third round affordable housing obligations is hereby adopted in its place:

Section 1. Affordable Housing Obligation

- (a) This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- (b) The Township of Chatham Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways the Township of Chatham shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element.
- (c) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.
- (d) The Township of Chatham shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Township of Chatham Municipal Building, Municipal Clerk's Office, 58 Meyersville Road, Chatham, NJ 07928, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, www.nj.gov/dca/affiliates/coah.

Section 2. Definitions

The following terms when used in this Ordinance shall have the meanings given in this Section:

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq.

"Affirmative marketing" means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

"Affordability average" means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

"Affordable" means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

"Affordable development" means a housing development all or a portion of which consists of restricted units.

"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.

"Affordable housing program(s)" means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality's fair share obligation.

"Affordable unit" means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

"Agency" means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

"Age-restricted unit" means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as "housing for older persons" as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

"Assisted living residence" means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

"Certified household" means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

"COAH" means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

"DCA" means the State of New Jersey Department of Community Affairs.

"Deficient housing unit" means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

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

"Development" means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use

or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

"Inclusionary development" means a development containing both affordable units and market-rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

"Low-income household" means a household with a total gross annual household income equal to 50 percent or less of the median household income.

"Low-income unit" means a restricted unit that is affordable to a low-income household.

"Major system" means the primary structural, mechanical, plumbing, electrical, fire protection or occupant service components of a building which include but are not limited to weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

"Market-rate units" means housing not restricted to low- and moderate-income households that may sell or rent at any price.

"Median income" means the median income by household size for the applicable county, as adopted annually by COAH.

"Moderate-income household" means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

"Moderate-income unit" means a restricted unit that is affordable to a moderate-income household.

"Non-exempt sale" means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor's deed to a class A beneficiary and the transfer of ownership by court order.

"Random selection process" means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

"Regional asset limit" means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by COAH's adopted Regional Income Limits published annually by COAH.

"Rehabilitation" means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

"Rent" means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

"Restricted unit" means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHARP or MONI.

"UHAC" means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

"Very low-income household" means a household with a total gross annual household income equal to 30 percent or less of the median household income.

"Very low-income unit" means a restricted unit that is affordable to a very low-income household.

"Weatherization" means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

Section 3. Affordable Housing Programs

The Township of Chatham has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

- (a) A Rehabilitation program.
 1. The Township of Chatham's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
 2. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds.
 3. The Township of Chatham will address its rehabilitation requirement of 19 units through its participation in the Morris County Homeowner Rehabilitation Program.
 4. The program is maintained by the Morris County Division of Community Development. The program is funded through the U.S. Department of Housing and Urban Development (HUD). This program is a cooperative effort of the federal government through the Morris County Board of Chosen Freeholders and 37 municipalities to meet housing and neighborhood needs throughout the County. The Housing Rehabilitation Program is only one of the many activities receiving funding through this annual grant. Funds are to be used for major repairs or conditions related to health or safety. Examples of Work: roof replacement, furnace replacement, upgrade electrical, construct new well or septic, sewer or water hook-ups, provide handicapped access; and Type of Assistance: No Interest, No Payment 6-Year or 10-Year Forgivable Loan (Term is dependent on amount of assistance).
 5. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units the control period will be enforced with a lien and for renter-occupied units the control period will be enforced with a deed restriction.
 6. The Township of Chatham shall dedicate a minimum of \$10,000 from its Housing Trust Fund for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
 7. The Township of Chatham shall designate, subject to the approval of COAH, the Morris County Division of Community Development to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The County shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of COAH. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the County.
 8. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
 - i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.

- ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.
- iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
- iv. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

(b) An Accessory Apartment program.

1. All accessory apartments shall meet the following conditions:

- i. Accessory apartments are permitted by the Zoning Ordinance for various zoning districts, provided the units are affordable to low- and moderate-income households. Accessory apartments may be developed as low-income or moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).
- ii. Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes, and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
- iii. At the time of initial occupancy of the unit and for at least ten years thereafter, the accessory apartment shall be rented only to a household which is either a low- or moderate-income household.
- iv. Rents of accessory apartments shall be affordable to low- or moderate-income households as per COAH and UHAC regulations.
- v. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.
- vi. The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
- vii. The Township of Chatham's accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
- viii. No accessory apartment created as a result of this article or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.

2. The maximum number of creditable accessory apartments shall be equal to 10 units or 10 percent of the Township of Chatham fair share obligation, whichever is greater (Additional units may be approved by COAH if the municipality has demonstrated successful completion of its accessory apartment program).

3. The Township of Chatham shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:

- i. The Administrative Agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.

- ii. The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements and/or the provisions of this section/article. All denials shall be in writing with the reasons clearly stated.
- iii. In accordance with COAH requirements, the Township of Chatham shall provide from its Housing Trust Fund at least \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.

4. Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:

- i. A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
- ii. Rough elevations showing the modifications of any exterior building façade to which changes are proposed; and
- iii. A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any man-made conditions which might affect construction.

(c) A Market to Affordable program.

- 1. A market to affordable program is established to permit the purchase or subsidization of units through a written agreement with the property owner and sold or rented to low- and moderate-income households. Subject to the provisions of 2iii below, the market to affordable programs may produce both low- and moderate-income units (the program may be limited to only low- or only moderate-income units as per the Fair Share Plan).
- 2. The following provisions shall apply to market to affordable programs:
 - i. At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.
 - ii. The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.
 - iii. The municipality will provide from its Housing Trust Fund a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize the each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.
 - iv. The maximum number of creditable market to affordable units shall be equal to no more than 10 for sale units and 10 rental units or a combined total of 10 percent of the fair share obligation, whichever is greater. (Additional units may be approved by COAH if the municipality demonstrates the successful completion of its initial market to affordable program.)
- 3. The units shall comply with N.J.A.C. 5:97-9 and UFAC with the following exceptions:
 - i. Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c));
 - ii. Low/moderate income split (N.J.A.C. 5:80-26.3(a)); and
 - iii. Affordability average (N.J.A.C. 5:80-26.3(d) and (e)); however:

A. The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income; and

B. The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income.

(d) Extending of Controls.

1. During the third affordable housing period, the existing controls on 75 affordable units in the Township of Chatham will expire before 2018.
2. The Township of Chatham intends to extend the controls on these units
3. The Township intends to extend the affordability restrictions for another 30-year period administratively at the time of resale.

(e) Special Needs Housing.

1. A special needs program is hereby established to permit the construction of a special needs structure municipal property with an entity that will be determined at a later date.
2. The Township also intends to work with the provider of an existing group home to expand the existing facility by two (2) bedrooms and to carry forward the 12 credits of affordable units from the existing group home.
3. These bedrooms shall be for individuals that meet the definition of very low income that is an individual with a total gross annual income equal to 30 percent or less of the median income.

Section 4. New Construction

The following general guidelines apply to all newly constructed developments that contain low- and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

(a) Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
3. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - ii. At least 30 percent of all low- and moderate-income units shall be two bedroom units;
 - iii. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
 - iv. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-

income units within the inclusionary development. The standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(b) Maximum Rents and Sales Prices

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish a least one rent for each bedroom type for both low-income and moderate-income units.
 - i. At least 10 percent of all low- and moderate-income rental units shall be affordable to households earning no more than 30 percent of median income.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
 - iii. A two-bedroom unit shall be affordable to a three-person household;
 - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
 - v. A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
 - i. A studio shall be affordable to a one-person household;
 - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
 - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under

N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.

8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
10. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
11. Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

Section 5. Affirmative Marketing Requirements

- (a) The Township of Chatham shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 3 and covers the period of deed restriction.
- (c) The Administrative Agent designated by the Township of Chatham shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- (d) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (e) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (f) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by the Township of Chatham.

Section 6. Occupancy Standards

- (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
 1. Provide an occupant for each bedroom;

2. Provide children of different sex with separate bedrooms; and
 3. Prevent more than two persons from occupying a single bedroom.
- (b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.

Section 7. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until the Township of Chatham elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

Section 8. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.
- (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

Section 9. Buyer Income Eligibility

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

Section 10. Limitations on indebtedness secured by ownership unit; subordination

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

Section 11. Control Periods for Restricted Rental Units

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until the Township of Chatham elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Morris. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
- (c) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
 - 1. Sublease or assignment of the lease of the unit;
 - 2. Sale or other voluntary transfer of the ownership of the unit; or
 - 3. The entry and enforcement of any judgment of foreclosure.

Section 12. Price Restrictions for Rental Units; Leases

- (a) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (b) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.

- (c) Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

Section 13. Tenant Income Eligibility

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
 2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
 3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 3. The household is currently in substandard or overcrowded living conditions;
 4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b) 1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

Section 14. Administration

- (a) The position of Municipal Housing Liaison (MHL) for the Township of Chatham is established by this ordinance. The Township of Chatham shall make the actual appointment of the MHL by means of a resolution.
1. The MHL must be either a full-time or part-time employee of Township of Chatham
 2. The person appointed as the MHL must be reported to COAH for approval.
 3. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.
 4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of Chatham including the following responsibilities which may not be contracted out to the Administrative Agent:

- i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - ii. The implementation of the Affirmative Marketing Plan and affordability controls.
 - iii. When applicable, supervising any contracting Administrative Agent.
 - iv. Monitoring the status of all restricted units in the Township of Chatham's Fair Share Plan;
 - v. Compiling, verifying and submitting annual reports as required by COAH;
 - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
 - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.
- (b) The Township of Chatham shall designate by resolution of the Township Committee, subject to the approval of COAH, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC.
- (c) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of COAH. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- (d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26, 14, 16 and 18 thereof, which includes:
1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
 2. Affirmative Marketing;
 2. Household Certification;
 3. Affordability Controls;
 4. Records retention;
 5. Resale and re-rental;
 6. Processing requests from unit owners; and
 7. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
 8. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

Section 15. Enforcement of Affordable Housing Regulations

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief

to prevent further violation of the regulations, entry on the premises, and specific performance.

- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:
 - i. A fine of not more than \$2,000 or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
 - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Chatham Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
 2. The municipality may file a court action in the Superior Court seeking a judgment which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.
- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable

housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.

- (f) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (g) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (h) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

Section 16. Appeals

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Executive Director of COAH.

Section 17. Repealer

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

Section 18. Severability

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

Section 19. Effective Date

This ordinance shall take effect as provided by law.

Introduced: March 12, 2009
Adopted: March 26, 2009
Attest:

Joy M. Wiley
Joy M. Wiley, Clerk

TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY

BY: Kevin R. Tubbs
Kevin R. Tubbs, Mayor

#365040 v3 - Chatham Tp - Affordable Housing Ord

Continued to: COAH

I, Joy M. Wiley, Township Clerk of the Township of Chatham in the County of Morris, New Jersey, hereby certify the foregoing to be a true and correct copy of a resolution adopted by the Township Committee of the Township of Chatham at a meeting held on March 26, 2009

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Date Issued: 4/1/09 Joy M. Wiley
Township Clerk



TOWNSHIP OF CHATHAM

58 Meyersville Road
Chatham, New Jersey 07928
(973) 635-4600
Fax (973) 635-2644

December 4, 2009

Lucy Vandenberg, Executive Director
State of New Jersey
Council on Affordable Housing
P.O. Box 813
Trenton, NJ 08625-0813

Re: Development Fee Ordinance

Dear Ms. Vandenberg,

Please find enclosed a certified copy of Ordinance 2009-18 adopting a development fee. This ordinance makes the necessary revisions to Ordinance 2008-19 as required by COAH. The Township Committee adopted this ordinance on December 3, 2009.

Please let me know if you need any additional information.

Sincerely,

Gregory J. La Conte
Deputy Municipal Clerk

Enclosure

cc: Carl R. Woodward III, Esq.
Thomas E. Ciccarone, Administrator

ORDINANCE 2009-18

AN ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS,
STATE OF NEW JERSEY ADOPTING A DEVELOPMENT FEE ORDINANCE FOR
THE TOWNSHIP

BE IT ORDAINED by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, that the following development fee ordinance is hereby adopted:

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. The Township of Chatham 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 zoning districts, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of one and one-half percent (1.5%) 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 (6%) 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 will equal one and one-half (1.5%) percent of the equalized assessed value on the first two units; and six (6%) 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 residential structures demolished and replaced as a result of a fire, flood or other natural disaster shall be exempt from paying a development fee.
- v. Within the AH Affordable Housing District, residential developers shall be exempt from paying a development fee.

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 the Township of Chatham 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 the Township of Chatham 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 the Township of Chatham. 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 the Township of Chatham. 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 of the Township 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 the Township of Chatham's affordable housing program.
- C. Within seven days from the opening of the trust fund account, the Township of Chatham shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, 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 Township of Chatham's 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 reimbursement of the Township 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. The Township of Chatham 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. The Township of Chatham 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 the Township'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 the Township of Chatham to impose, collect and expend development fees shall expire with its substantive certification unless the Township 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 the Township of Chatham 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). The Township of Chatham 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 the Township retroactively impose a development fee on such a development. The Township of Chatham shall not expend development fees after the expiration of its substantive certification or judgment of compliance.

11. This ordinance shall take effect as provided by law.

Introduced: November 12, 2009

TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY

Adopted: December 3, 2009

Attest:

BY:


Kevin R. Tubbs, Mayor


Gregory J. LaConte, Deputy Clerk

#356326 v2 - Chatham Tp - Development Fee Ord 2008

I, Gregory J. LaConte, Township Clerk of the Township of Chatham in the County of Morris, New Jersey, hereby certify the foregoing to be a true complete copy of an ordinance adopted by the Township Committee of the Township of Chatham at a regular meeting held on 12/3/2009.

Date Issued: 6/9/2015


Township Clerk