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Memorandum

To: Princeton Mayor and Council
From: Shirley M. Bishop, P.P.
Date: July 21, 2014
Re: Draft Comments to COAH's Proposed
Substantive Rules, N.J.A.C.5:99 et seq.

Attached are comments to COAH's proposed rules for your review. The comments are those of the Princeton Affordable Housing Board, attorney and the public that have been formatted into the criteria for submittal to COAH.

In summary, the comments deal with COAH's not adopting rules similar to the second round rules which the Court ordered COAH to do; concerns that the 10 percent set-aside is too low and should be 20 percent; questions regarding the 151-unit rehabilitation obligation and the elimination of second round affordable housing options.

Please note 5:99 – 1.1 (e) where there is a space. Do you want to add "Mayor and Council" after "Princeton Affordable Housing Board?"

Please feel free to contact me by email or phone if you have any questions, additions, deletions or edits.

I will be at the July 28 Council Meeting for a brief presentation. Once you have finalized the comments, I would recommend that Mayor Lempert forward Princeton's comments to COAH. The League of Municipalities has asked to be copied on all comments to COAH.

**PRINCETON DRAFT COMMENTS TO COAH'S PROPOSED
SUBSTANTIVE RULES, NJAC 5:99**

5:99 – 1.1 (c) Comment: The rule states that bonuses are eliminated because they dilute the obligation for prospective need. Rental bonuses should be reinstated for family rentals with a cap of 25 percent of the prospective need obligation.

5:99 - 1.1 (c) Comment: This rule further states that zoning is the "preferred means of meeting a municipality's fair share obligation" and the proposed rules eliminate other municipal compliance mechanisms that have been authorized in the prior round rules such as accessory apartments, market to affordable, assisted living residences, affordable partnerships, extension of expiring controls and innovative production techniques. These non-zoning compliance techniques produced and/or maintained a substantial amount of affordable housing and no rational justification can be found for eliminating them as compliance mechanisms available to municipalities in the Third Round.

5:99 – 1.1 (d) Comment: Requiring an Economic Feasibility is a cost generating feature. An Economic Feasibility Study should only be required if a developer and a municipality disagree on the density and/or set aside. Such a study is detailed and cost prohibitive. The current COAH site selection process is sufficiently comprehensive to weed out unrealistic site selections.

5:99 – 1.1 (e) Comment: The rule establishes a 10 percent set aside for affordable housing subject to appropriate adjustments and compensatory benefits. This set aside is unacceptable. For more than 30 years, the established set-aside in Princeton was a 20 percent set aside. A 10 percent set aside will produce less affordable units, more market rate units and sprawl. A 10 percent set aside does not meet the needs of low and moderate income households and negates existing standards that have been productive. Both public commenters, the Princeton Affordable Housing Board and _____ overwhelmingly support the 20 percent set-aside, and some residents called for an even larger percentage. The 20 percent set-aside must be defended at all costs.

The core values of the Princeton community embrace socio-economic diversity. Racial and ethnic diversity translates to economic diversity. Princeton strongly and vigorously supports the 20 percent set-aside, and believes it to be an essential component of a viable housing program. The 20 percent set-aside has been practiced in Princeton since 1984 and to do away with it now would impact the very fabric of the community. Builders are used to this set-aside. It is a practical percentage and is not a burden.

5:99 – 2.2 (a) Comment: The rules states that July 1, 2014 is the commencement date for the crediting of rehabilitation. COAH has consistently used the start of the census year for crediting. As a result, all rehabilitation crediting should be from 2010.

5:99 – 2.2 (c) Comment: This rule states that a municipality may conduct a municipal survey in lieu of using the Total Rehabilitation Share in the methodology. Princeton is considering undertaking a municipal survey to reduce its 151 unit rehabilitation share. How much does COAH anticipate the cost of such a survey to be? Is the survey an eligible use of trust fund

money and in what category is a survey funded? Princeton has always been supportive of rehabilitation and currently has an ongoing program.

5:99 – 3.3 (b) Comment: Please confirm that if a municipality's Buildable Limit Capacity is zero, with no unanswered prior obligation and no prospective need obligation, such as Princeton, that affordable housing production is still ongoing and encouraged.

5:99 – 4.3 (a) 2. Comment: There is no mention of a rental obligation for prospective need. What is the rationale for eliminating such an obligation? It appears contrary to the current need of affordable households and market conditions.

5:99 – 4.3 (a) 2. Comment: Princeton is supportive of reserving at least 13 percent of its affordable housing for very low income households at 30 percent of median income.

5:99 – 5.2 (c) Comment: It is interesting to note that the rule permits other delivery techniques for a municipality to provide affordable housing if it is requesting a vacant land adjustment. COAH should consider the other mentioned techniques such as gut rehabilitation, accessory apartments, market to affordable and extension of expiring controls for also addressing prospective need. What is available to a vacant land adjustment municipality should also be available to a non-vacant land adjustment municipality.

5:99 – 5.3 (a) 3. Comment: In a vacant land adjustment, a 20 percent set aside is utilized. For consistency a 20 percent set aside should be utilized for all inclusionary developments.

5:99 – 7.1 (a) 1. Comment: There are no minimum densities. COAH must reconsider and propose minimum densities that have been in place and have been relied upon by both municipalities and developers: a minimum six to the acre for sale units eight to the acre for attached townhouses and 10 to the acre for multi-family units.

5:99 - 7.4 Comment: COAH's prior round regulations permitted the provision of affordable housing for broadly defined individuals with "special needs" and those requiring supportive housing which address the state's goal and objective to provide affordable shelter opportunities for individuals with special needs. Approximately 50,000 supportive and special needs housing units were produced under the prior COAH rules and more units are needed in the future. The proposed rule inexplicably deviates from the prior round rules by narrowing affordable housing opportunities to a single and defined population of "community residences for individuals with developmental disabilities". This limitation provided by the proposed rule unfairly restricts and limits affordable shelter opportunities for the rest of the "special needs" population that were accommodated and addressed in the prior COAH rounds. This rule therefore should be amended to reflect the more inclusive use of the term "special needs" as appears in the COAH Round II Rules.

5:99 – 7.5 Comment: What must be noted is what is missing from housing options to address prospective need: particularly the market to affordable program, family rentals, permanent supportive housing, transitional housing; accessory apartments, assisted living residences, affordable housing partnership programs, expanded crediting opportunities and extension of

expiring contracts. All compliance techniques that were available in previous third round rule iterations should be retained. In economically diverse times, flexibility is crucial. Municipalities should not be limited as to housing types.

5:99 – 10.1 (a) 1. Comment: Municipalities are concerned that a judgment of foreclosure or a deed in lieu of foreclosure extinguishes controls on an affordable housing unit. This is counterproductive to retaining affordable units and is a boon to the banking industry that was part of the problem in the first place when the secondary mortgage market refused to include affordable units in portfolios. The cost of replacing a unit is economically unfeasible. The Affordable Housing Board strongly supports deed restrictions that survive foreclosure. It is noted that Princeton has seen an increase in large banks that are willing to portfolio loans with efforts to provide loans on deed restricted properties.

5:99 – 11.9 (a) 6. Comment: The rule permits the use of trust fund money for accessory apartments. It is understood that accessory apartments can address an unanswered prior obligation but will a municipality receive credit for an accessory apartment that addresses prospective need? Why did COAH not include all housing options in N.J.A.C.5:93 for addressing prospective need? This use of funds section needs to be clarified and expanded.