

**5:91-3.5 Owners of sites designated for low and moderate income housing**

(a) At the time it files its petition for substantive certification, a municipality shall provide the Council with the following information:

1. The names and addresses of owners of sites that were included in previously certified or court settled plans that were zoned for low and moderate income housing and/or were to pay a negotiated fee(s). The owners of sites that have been completely developed shall not be included; and
2. The names and addresses of owners of all new or additional sites included in the 12-year housing plan.

(b) The owners of sites designated in the municipal submission shall be given individual written notice by the Council of the filing of the petition, may participate in mediation and shall have the rights granted to objectors of the municipal submission.

Amended by R.1998 d.21, effective January 5, 1998.  
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).  
Redesignated text into (a) and (b), and inserted (a)1 and 2.

**5:91-3.6 Municipal/developer incentives**

(a) When a municipality files a housing element and fair share plan and either petitions for substantive certification or is sued for exclusionary zoning within two years of filing its housing element, the municipality shall not be subject to a builder's remedy and the Council shall not award relief to a developer except in extraordinary situations. Extraordinary situations include, but are not limited to, the lack of suitable alternative sites in the municipality to produce the required low and moderate income housing. If contested issues are transferred to (OAL) pursuant to N.J.A.C. 5:91-8, the burden of proof shall be on the objectors to the municipal housing element, unless the Council determines that such an extraordinary situation exists and that the burden of proof is with the municipality.

(b) The Council shall consider awarding relief to a developer who objects to a municipal plan when:

1. The municipality has filed a housing element and petitions for substantive certification prior to an exclusionary zoning lawsuit but more than two years after filing its housing element and fair share plan;
2. The Council determines the municipal plan does not adequately address the municipal fair share; and
3. The objector offers a site that is available, approvable, developable and suitable, pursuant to N.J.A.C. 5:93-1.

(c) If an exclusionary zoning lawsuit is filed against a municipality prior to a municipal petition for substantive certification and the case is transferred to the Council by the Court, the Council shall presumptively require the mu-

nicipality to include the contested site as a component of its plan if:

1. The site is available, approvable, developable and suitable pursuant to N.J.A.C. 5:93; and
2. The municipality has not filed a housing element; or has filed a housing element but has not petitioned for substantive certification within two years of filing.

Amended by R.1998 d.21, effective January 5, 1998.  
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).  
Amended N.J.A.C. references.

**SUBCHAPTER 4. OBJECTIONS TO A PROPOSED HOUSING ELEMENT AND FAIR SHARE PLAN**

**5:91-4.1 Objection**

(a) Within 45 days of publication of the notice of a municipality's petition or repetition for substantive certification, any person may file objections with the Council and the municipality. An objection shall be in a form as may be determined by the Council and shall include at the very least:

1. A clear and complete statement as to each aspect of the municipality's housing element and fair share plan contested by the objector;
2. An explanation of the basis for each objection, including where appropriate citations to expert reports, studies, or other data relied upon by the objector;
3. Copies of all such expert reports, studies and data relied upon by the objector;
4. Proposed modifications, changes, or other measures which the objector contends would resolve the objector's dispute with the municipality and an explanation of how the objector's proposals are consistent with the Council's criteria and guidelines;
5. If the objector is seeking relief on a specific site in Planning Areas 3, 4 or 5 as designated in the State Development and Redevelopment Plan (SDRP) and the objector's site is not in a designated center, a statement addressing the appropriateness of identifying the area surrounding the objector's site for center designation using the criteria within the SDPR; and
6. A statement outlining the objector's prior efforts at premediation, participation in conferences, or public hearings and a summary of the results of any such efforts.

**Case Notes**

Objection to petition for substantive certification lack of statutorily-mandated notice held township "cured" defective notice through later

properly noticed hearing. Hills Development v. Bernards Twp., 229 N.J.Super. 318 (App.Div.1988).

#### 5:91-4.2 Review of objections

(a) The Council shall review objections subject to the requirements of N.J.A.C. 5:91-4.1. An objector who has filed a complete objection shall be able to participate in the Council's administrative process as described in these rules. Objections that are determined to be incomplete will be returned to the objectors with notice of their deficiencies.

(b) Once such deficiencies are corrected, the objections shall be resubmitted to the Council within 14 days of receipt of the notice of deficiency. If the resubmitted objections then conform to N.J.A.C. 5:91-4.1, the objector will then be able to participate in the Council's administrative process.

#### Case Notes

Council order was mere "interlocutory order" where matter was returned to jurisdiction of courts. Fair Share Housing Center, Inc. v. Township of Cherry Hill, 242 N.J.Super. 76, 576 A.2d 24 (A.D.1990).

### SUBCHAPTER 5. CONSIDERATION OF A MUNICIPALITY'S HOUSING ELEMENT AND FAIR SHARE PLAN WHEN NO OBJECTIONS ARE FILED

#### 5:91-5.1 Overview

This subchapter outlines the procedures for the review of a housing element to which no objections have been filed. The procedures are summarized in this subchapter.

Amended by R.1998 d.21, effective January 5, 1998.  
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).

#### 5:91-5.2 Council review

(a) After a municipality files a petition for substantive certification, the Council staff will prepare either a COAH report requesting additional information to be filed with COAH within 60 days of receipt of the COAH report requesting additional information or a compliance report. The COAH report requesting additional information will indicate any missing documentation and/or amendments to the housing element and fair share plan necessary to achieve substantive certification. The municipality and the service list shall receive copies of the COAH report requesting additional information. The compliance report will be submitted to the municipality and the service list for a 14-day comment period prior to Council action on a petition for substantive certification.

(b) If the municipality fails to submit the necessary documentation or fails to amend its housing element and fair share plan, if requested, after receiving the COAH report requesting additional information, the Council shall take whatever action is appropriate which may include dismissal of the petition.

(c) If the amendments required of the municipal housing element and fair share plan are substantial and require the designation of additional inclusionary sites, a change in inclusionary sites, a substantial increase in density or a fundamental change in approach, the municipality shall be directed to refile its housing element and fair share plan and to repetition for substantive certification within a timetable established within the COAH report requesting additional information. The municipality shall provide notice of repetition as required in N.J.A.C. 5:91-3.3. Repetition shall require an objector period as defined in N.J.A.C. 5:91-4.1.

(d) If objections are filed upon repetition to the refiled housing element and fair share plan, the municipal submission shall follow the procedures outlined in N.J.A.C. 5:91-6, beginning with N.J.A.C. 5:91-6.2(e).

(e) If there are no objections following the municipal amendment and refiling of its housing element and fair share plan and any applicable objector period, the Council staff shall prepare another COAH report requesting additional information or a compliance report. The COAH report requesting additional information shall indicate any further missing documentation and/or necessary amendments to the municipal submission to achieve certification. The municipality and the service list shall receive copies of the COAH report requesting additional information. The compliance report shall be circulated to the municipality and the service list for a 14-day comment period prior to Council action on the petition for substantive certification.

(f) If, after reviewing the COAH report requesting additional information, the Council finds that the refiled housing element and fair share plan continue to require substantial changes, such as the designation of additional inclusionary sites, a change in inclusionary sites, a substantial increase in density or a fundamental change in approach, the Council may dismiss the petition for substantive certification by issuing an administrative order pursuant to N.J.A.C. 5:91-10.3 or may deny the petition.

Amended by R.1995 d.491, effective September 5, 1995.  
See: 27 N.J.R. 2134(a), 27 N.J.R. 3329(a).  
Amended by R.1998 d.21, effective January 5, 1998.  
See: 29 N.J.R. 3665(a), 30 N.J.R. 194(b).  
Rewrote (b); deleted (f) and recodified (g) as (f).

#### 5:91-5.3 Grant of substantive certification

(a) The Council will issue substantive certification of a municipality's housing element and fair share plan if:

1. The municipality's proposed housing element and fair share plan complies with this chapter and N.J.A.C. 5:93;

2. The housing element and fair share plan is not inconsistent with the achievement of the low and moderate income housing needs of the region as adjusted pursuant to this chapter and N.J.A.C. 5:93; and