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PUBLIC HEARING

before

SENATE LEGISLATIVE OVERSIGHT COMMITTEE

"Status of the Council on Affordable Housing Personnel"

April 15, 1991
Room 334
State House Annex
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Gerald R. Stockman, Chairman
Senator John H. Ewing
Senator Wynona M. Lipman
Senator John O. Bennett

ALSO PRESENT:

Marvin W. Jiggetts
Office of Legislative Services
Aide, Senate Oversight Committee

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Gerald R. Stockman
Chairman
John H. Ewing
Wynona M. Lipman

New Jersey State Legislature
Senate Legislative Oversight Committee

STATE HOUSE ANNEX, CN 068
TRENTON, NEW JERSEY 08625-0068
TELEPHONE: (609) 984-4811

NOTICE OF PUBLIC HEARING

The Senate Legislative Oversight Committee will hold a public hearing on the following issue:

Status of the Council on Affordable Housing Personnel

The hearing will be held on Monday, April 15, 1991 at 10:00 a.m. in Room 334, State House Annex, Trenton.

The public may address comments and questions to Marvin W. Jiggetts, Senate Legislative Oversight Committee Aide and persons wishing to testify should contact Vivian Iski, secretary, at (609) 984-4811. Those persons presenting written testimony should provide 10 copies to the committee on the day of the hearing.

Issued 4/3/91

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SENATOR GERALD R. STOCKMAN (Chairman): I apologize for a little bit of a late start. There are a number of people who have expressed interest in participating in this hearing, so I think we ought to get started. Senator Bennett will try to be with us shortly, I understand. I appreciate Senator Lipman and Senator Ewing being here, right on time.

The purpose of this hearing is to determine whether any actions have been taken -- or are going to be taken -- to consolidate or eliminate the Council on Affordable Housing into the Division of Housing in the Department of Community Affairs.

We intend to receive testimony on the background of COAH, the effectiveness of COAH in fulfilling its mandates, and how important independence is in allowing COAH to function.

We have a number of witnesses. I'll ask those persons testifying to try not to duplicate testimony that has already been given.

The first person to testify will be a very busy member of the administration, Barry Skokowski, who is a fill-in for Assistant Commissioner, Chuck Richman, who was a fill-in for Commissioner Randy Primas.

SENATOR EWING: Shows you what priority they give us. (laughter)

SENATOR STOCKMAN: Now, I thought you were going to be nonpartisan, Jack. (laughter)

Barry, why don't you come on up? Before you speak, I would like to further try and, perhaps, set the stage by reading from a background paper; a very good one, I think. It was prepared by the Office of Legislative Services on this subject:

"The Council on Affordable Housing was created by the Fair Housing Act. This Act embodies the legislative response to the judicial doctrine stated in Mount Laurel I and II that municipalities are obligated constitutionally to provide a realistic opportunity for a fair share of the present and

prospective needs for housing of low- and moderate-income families. The legislative intent of the Act is to provide an administrative and planning mechanism under which municipalities may meet this constitutional obligation, which substitutes for the judicial mechanism and remedies being used prior to enactment" -- so called "builders' remedy." "The Act accords COAH 'primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State.' COAH is established in, but not of, the Department of Community Affairs. This language is used legally to denote that an entity of State government retains autonomy within a principal department, while complying with the constitutional requirement that all executive and administrative offices be placed 'within not more than twenty principal departments.' The language denotes that the agency allocated to the Department shall, nevertheless, be independent of any supervision or control by the Department or by any board or officer thereof.

"The legislative intent that COAH is to conduct its responsibilities independent of the Department. To supervise and control its own organization and employees is reinforced in another statute, which recites:

"The Council may establish, and from time to time alter, such plan of organization as it may deem expedient; and

"The Council shall appoint and fix the salary of an executive director who shall serve at its pleasure. The Council may employ such other personnel as it deems necessary."

I think most everyone here, looking at the audience, is generally familiar with that scheme and therefore, we will get started. I will say -- and I think it's also pretty well recognized -- that as recorded in the media, there was some indication of the likely discharge of eight of the thirteen members of the staff of COAH, and in particular, in an article that appeared in The Star-Ledger in March, there was a

reference to the fact that late in the day Governor Florio's press office issued a statement denying the layoffs and said the fate of COAH employees was tied to a long-ranged proposal to have DCA take over the Council's staff work. So certainly, one of the questions in this hearing will be that so-called long-ranged proposal to have DCA take over the staff work.

With that, I invite Mr. Skokowski to begin the hearing.

B A R R Y S K O K O W S K I, SR.: Thank you, Mr. Chairman. Good morning, ladies and gentlemen.

I would like to begin by indicating to you that I know of no plan, whatsoever, to get rid of the Council on Affordable Housing. I think there is some misconception here regarding the Council itself, versus staff. Furthermore, there have been absolutely no layoffs of any Council staff. I think that needs to be said up-front and very clearly.

There is, under discussion, a need in State government to economize, strategize, coordinate, and do things better where possible. Just by making a change is not necessarily better. It does require study, and it does require careful attention to the statutory mandate. It also requires a great deal of discussion with the people who are going to be impacted by any proposed changes, and also to get their input as to whether or not there should be changes.

I think it's encouraging to note that we have not taken any major action to do any of the things that the Department sometimes is accused of doing. But certainly we have started a dialogue -- and it's a dialogue, I think, that goes on in every single department of State government during these very tight economic times. I'm here to tell you that we think that the Council on Affordable Housing is a necessary Council. We think it's a very viable agency, and we think it should have our full and complete support.

Again, we did consider it with some people -- the review -- to see if there is any staff work that could be done

by the Department's central office in an effort to reduce costs to the taxpayers of the State of New Jersey. That has not been implemented. There has been no final decision made on that. I don't really have an awful lot more to indicate to you on that, because I've got to try to say it as frankly and as clearly as I can about the status of COAH and the Department of Community Affairs.

SENATOR STOCKMAN: Okay. I have some questions, but let me start with Senator Lipman.

SENATOR LIPMAN: Yes. Mr. Skokowski, I am a little confused here. If COAH is just functioning under the Department of Community Affairs, but an independent body -- sort of autonomous -- how could any department make a suggestion to fire their employees? Do you hire them?

MR. SKOKOWSKI: There have been no layoffs of any employees, okay--

SENATOR LIPMAN: I understand that, but--

MR. SKOKOWSKI: --and the idea in State government is to assess the "ins, but not ofs," in every single agency of State government. That is all that's going on. I mean, there has been no attempt to do that. Layoffs would always be implemented through the COAH Board. That is what is required, as I understand it. I'm not an expert in Civil Service laws, but that's what I understand. Mr. Primas has met with the Chairman of the COAH Board, and assured him that if this proceeds much further -- and it gets like we can have a better dialogue on it, if we get some more facts to discuss -- of course he'll bring in the Board and discuss it with them, because we need to have that type of dialogue. He said it to the Chairman. I've known the Commissioner many, many years, and I am sure he will do that at that time, if it is necessary.

SENATOR LIPMAN: Okay. You've clarified that point. Do you believe that your Department -- Community Affairs -- can really staff COAH as it is currently and professionally staffed?

MR. SKOKOWSKI: That is what we have not yet finalized. My background is not in housing. I've been in the local government area for 20-something years. My professional people, who are in the housing area, are assembling that kind of data right now, and when they get it we will discuss it with the Commissioner, and with the COAH people.

SENATOR LIPMAN: All right. That's all, Jerry.

SENATOR STOCKMAN: Barry, I know these are difficult times. Serving on the Appropriations Committee, it's patently evident that we're in a time of great challenge in terms of running State government and finding the revenue necessary. And it's also a time when a new administration has the perfect right to reexamine its design, and function, and operation. Therefore, I, speaking as one member of this Committee, want to be understanding, sympathetic, and appreciative of that thesis: the need to economize; the need, always, to reexamine the way we're doing things to be sure that the way we're doing them is up to snuff; and, where possible, to consolidate, and so on.

Having said all that-- I listened carefully, and in one sense, we could almost quickly send everybody home. What are all these people doing here? What are we doing here, you know, and why? I'm not sure, and that's not my instinct as to where to go. I want to explore further with you what you said.

You said that you know of no plan to get rid of COAH. Well, I would think if you're talking about getting rid of COAH -- I don't know whether it would be interpreted to be putting it into the Department of Community Affairs, dissolving it, or what -- and I'm sure that's accurate, but you did go on to say-- I know there are no layoffs, and if that were the only issue then, again, we could end this hearing. But you did say some other things that make it seem clear to me that -- within the Department of Community Affairs -- some individual or individuals have been seriously thinking about bringing COAH

into the Department of Community Affairs. One of the key questions in my mind in this-- Let me ask you this: Has somebody in the Department of Community Affairs been seriously thinking about and discussing bringing COAH into Community Affairs?

MR. SKOKOWSKI: I think that is at the one end of the discussion ratio. There are those who say, "Don't do anything with it," and there are those who say, "Bring it all in." I think that the focus is on the middle ground--

SENATOR STOCKMAN: Okay, but there's some advocate or advocates within the Department of Community Affairs who advocate bringing COAH in. And I understand they're not in the majority; they may be in the dramatic minority, but there is someone within Community Affairs who espouses that theory. I think that's what leads me to the question of: What is the relationship -- or was there -- to that thinking, that debate, that dialogue, that discussion -- however far it's gotten, we don't have a clear picture of that yet -- but between that and the notice by the Department of Personnel that eight members of COAH were on a "to be layed off list"?

MR. SKOKOWSKI: Okay. First of all, I think to say the word "advocate" for the bringing in of COAH to all the DCA, is a strong word. I think that there have been staff discussions, perhaps in frustration, much like, I'm sure, the people in COAH have frustration. I think that there has been a variety of scenarios for layoffs of people in State government. I have seen more lists of layoffs for every department of State government, and whatever has happened. Sometimes there's been a lot of changes made because of changing priorities, because the director of that division says, "Oh, you can't do that because that's essential for this, that, or the other thing." Or, "We have this legislative mandate to do, or that legislative mandate to do." So, I think that that's the-- You know, nobody can escape layoffs.

The other idea is, frankly, we were thinking about, with the concurrence of the Legislature -- in every area within DCA because there are several "in, but not of" agencies, like the Public Guardian and the Ombudsman for the Institutionalized Elderly -- having the statute changed to allow at least some of the people who work there to have Civil Service protection. I think that's not necessarily a bad idea because history has shown that people in the agencies last a relatively long period of time, but in these times of layoffs their rights are a little bit less than others. Therefore, we were thinking about going to the Legislature and suggesting that change, because these are unclassified people; every one of them is unclassified.

SENATOR STOCKMAN: Changed to classified status?

MR. SKOKOWSKI: Yes.

SENATOR STOCKMAN: But if I understood your answer, and I may not have, because I asked you whether there was any nexus -- whether it was absolutely coincidental or whether there was some nexus -- I interpret your answer to be that, in fact, there was some degree of connection between the discussions towards bringing COAH into Community Affairs and decisions to impose layoffs with regard to eight staff members of COAH.

MR. SKOKOWSKI: I would tend to not be able to be as definitive as you would suggest. I would think that there were lists in an absolute arithmetic cut of all the unclassified employees within the Department of Community Affairs, because we have strongly reduced the number of project specialists, which are unclassified positions, in the Department of Community Affairs. A couple of years ago we had 125. I think we're down to about 50 now, and those people are waiting to get off the Civil Service list. So this is the kind of thing that's ongoing in State government. We're trying to be fair to all employees, and I think this is another good concept that we

should pursue. But again, we have not come to the Legislature; that would require a statutory change. We have not suggested it to any member of the Legislature or the Governor, as yet.

SENATOR STOCKMAN: You see, where I see the mischief in this kind of evolution, because again, if I'm hearing you right, there was at least a-- I'm not clear on it, and apparently you can't be clear on it, which is troublesome. I'm not critical of you, but it's troublesome that the people involved either aren't here or we don't have that information. I'm afraid we could leave this hearing-- You could leave it with at least this member of the Commission, and perhaps others, not certain whether there was or was not a nexus between the discussions to possibly bring it in -- and I understand there were discussions -- and the decision to go as far as to publicly advertise the probable layoff of eight employees of COAH, a rather chilling and, you know, a real happening. And where I see the mischief is that it moves towards an action which directly violates your own expression of how these things should be handled; namely, that before any independent agency has any layoffs at all -- let alone massive layoffs -- that agency ought to have participation in the give and take dialogue over its wisdom or not. Otherwise, you're violating the kind of things that you said -- and I think we all agree -- could happen even in these tumultuous and difficult, difficult, and sometimes highly partisan-charged times.

MR. SKOKOWSKI: I agree that the system of employee fairness has got to be discussed with the COAH Board or their personnel and the COAH Chairman. And again, I repeat, that when Commissioner Primas met with the COAH Chairman, he assured him that should any ideas come down to the line where we think they're worth doing, we'll bring them in. We want to, number one -- most importantly -- and also, it's required. So that was a promise that was made, and I am sure it will be kept.

SENATOR STOCKMAN: Okay. I just am also nervous that that sequence not be of a nature that the fix be in. And again, I'm not focusing-- I'm now talking general behavior, because I have no evidence that the fix was in. Indeed, it looks like the fix wasn't in. I think the tricky question that we're grappling with is whether somebody was trying to put the fix in. But to have a Commissioner pretty much decide that "X" employees of an authority have to go and then bring the authority in and say, "Look, I feel bad but I think they have to go unless you absolutely convince me otherwise," it ought to be a little bit different. I'm not saying that it wasn't different, but I'm not hearing that it clearly was.

MR. SKOKOWSKI: I don't know that I'm responding clearly, only because I apparently don't understand. Do you want me to assure you that this is a decision that will be made by the Commissioner? It will be. He has not yet made that decision. And by the way, DCA never published a list of anybody getting layed off.

SENATOR STOCKMAN: How did that happen? Can you help us with that?

MR. SKOKOWSKI: Well, I can assure you that no one in the Department of Community Affairs put that out to the press. I read that like everybody else. I picked up The Star-Ledger or The Times or anything else, and was not thrilled either.

SENATOR STOCKMAN: That may be as important a question as any to clear up in terms of the future, as well. In other words, I gather Personnel put that out. I would think, just bringing logic and common sense -- that doesn't necessarily always carry the day-- But I would think that that had to follow some communication from the Department of Community Affairs. Can you answer that question?

MR. SKOKOWSKI: I would think that the names are available, both in DCA and in Personnel. I think that, obviously, there was something done wrong here, because we've

always indicated in every correspondence that I have seen regarding unclassified employees who work in other agencies that, you know, you have this statutory prohibition to go through the central agency, be it the Ombudsman, the Public Guardian, or COAH.

SENATOR STOCKMAN: What do you think was done wrong? And I appreciate that acknowledgement that something was done wrong.

MR. SKOKOWSKI: Well, when I say that there have been no layoffs, nobody has gotten a notice -- or I've never seen a notice or anybody getting one in COAH. I sometimes wonder--

SENATOR STOCKMAN: Right. I don't think anybody did get a notice. I think we can all agree on that. (confers with Douglas V. Opalski, Executive Director of COAH) Doug, nobody got a notice? (negative response) No.

MR. SKOKOWSKI: So, therefore, I'm somewhat saying, there's a lot of discussions that go on. I don't think I should be in the position of talking about all of the discussions I have on every subject. But no damage was done. Nobody was layed off. I think it was unfortunate that it did reach the press. I don't think any employee would like to read that.

SENATOR STOCKMAN: Well, I'm not sure I should touch the proposition that you shouldn't share all of the discussions you have within the Department. I guess that gets into nice refined questions about executive privilege. We don't want to turn this into, you know, too intense a hearing on it, but my sense is -- from listening to you, as well as what happened -- that something was handled wrong here. I though you echoed that and I'm trying to refine it to be sure that you and I agree on what it was. It seems to me that, to have a published statement by the Department of Personnel that eight employees of COAH were due to get pink slips -- based on what you're telling me the ground rules are or should be -- was wrong.

Now, either that was a mistake of the Department of Personnel or it was a mistake of the Department of Community Affairs, or both. And I'm not certain, listening to you, which.

MR. SKOKOWSKI: I don't know. What I'm saying is that the fact that it got to the press is absolutely unfortunate. I would certainly hate to be any employee over there who has to read that in the paper. And I was a career State employee; I can say that from the heart. At the same time, I repeat the fact that I don't know how it got out. I didn't send it out. I know the Commissioner didn't send it out. That's what I know.

SENATOR STOCKMAN: Senator Ewing, do you have any questions?

SENATOR EWING: On the cuts, are you taking an 8% cut over there? Have you already done it?

MR. SKOKOWSKI: We're taking the cuts out of the other expenses, yes.

SENATOR EWING: But not out of COAH?

MR. SKOKOWSKI: Yes. We get a budget from Mr. Opalski. He coordinates with us. The Council has been very frugal with us. In fact, Mr. Opalski has come to us with further reductions and ways to save money. It's always been a very good relationship that way. It's not that we're doing it categorically; it's that they are working with us and they have come to us to suggest even further savings.

SENATOR EWING: If it did go to DCA, do they have the expertise over there? Or, would these people just be shifted, or what? How would it operate?

MR. SKOKOWSKI: Well, because we don't have the finalized plan it's awfully difficult to answer that with specifics.

SENATOR EWING: Well, what of several plans that you've got, Barry? Come on.

MR. SKOKOWSKI: I don't have a plan, per se, because I think I want to come with a plan that we can discuss with the

COAH Board. But, essentially, I will answer you this way: There are people in the Division of Housing in the Department of Community Affairs, and some of them have a background similar to some of the folks at COAH. Some of the data they use is the same data. Okay? I mean, the demographics of housing, etc. are known by both sides. That's why they have to coordinate together -- and they try to coordinate together -- because they have to communicate. So, therefore, people do know what the others are doing, and vice versa.

SENATOR EWING: Does COAH come under your jurisdiction?

MR. SKOKOWSKI: No.

SENATOR EWING: Well, whose does it come under?

MR. SKOKOWSKI: Well, it's in, but not of, the Department of Community Affairs.

SENATOR EWING: Yeah, but you said, "I don't have a plan for it yet."

MR. SKOKOWSKI: I don't have a plan for it. I don't think the Department has a plan for it yet because we have not come to meet with the COAH Board with a specific plan. It's open for discussion.

SENATOR EWING: Well, would they save any money by putting it in DCA? What would be the-- You mean, all we're going on right now then are rumors?

MR. SKOKOWSKI: No. It was published in the paper, but nothing happened. Nothing has happened and nothing can happen unless the COAH Board gets it. So, I don't--

SENATOR EWING: Somebody over there must be sketching something on a piece of paper; otherwise, you're wasting a hell of a lot of people's time, including your own.

MR. SKOKOWSKI: I don't think that we can do anything until we have either given a layoff notice, which we have not done, or until we have discussed it with the COAH Chairman.

SENATOR EWING: Were you in the hierarchy over there that sit in on meetings like this, or not? Or, are you outside

and they're sending you because you don't know anything, and therefore, we can't question anybody?

MR. SKOKOWSKI: I'm the Deputy Commissioner, and while I've been to some meetings on this matter, I, as you know-- My other responsibilities-- I have been rather busy right now. (laughter) I'm rather busy right now. I got a call about this. I'm very concerned about it. As a career State employee, I want to emphasize the fact that we want to protect the rights of employees.

SENATOR EWING: Yeah but, Jerry, it seems peculiar they sent Barry over. I should think they'd damned well send somebody that we could talk to and ask questions of, because this is sort of futile. I would like to know what the sketched out plan is. You must have plan A, B, C, and D, or maybe only two plans, as to whether people will be transferred or whether they'd lose their jobs and you'd just use the people at DCA, or what. I mean, I don't see what the hell you've got to offer us, other than you don't want to see the people layed off or something. It's difficult for them, because the damage has been done psychologically if people worry about losing jobs, and certainly they can't be doing as good a job. I'm sure you realize that yourself -- human nature being what it is. So, it's--

SENATOR STOCKMAN: Barry, can we safely say there are no longer -- if there were or weren't -- any serious discussions going on about collapsing COAH into the Department of Community Affairs? Can we say that?

MR. SKOKOWSKI: I would say there-- COAH, to me, is the Council itself -- okay? -- not necessarily the staff. As far as I know, there's never been any discussion about getting rid of appointed Council members. I've never heard that, okay? There was discussion about using some of the staff of Housing and the COAH staff. That's the extent of it.

SENATOR STOCKMAN: And that's still ongoing?

MR. SKOKOWSKI: Yes. I think we want to bring it to a conclusion quickly.

SENATOR STOCKMAN: Okay. Yes, Senator?

SENATOR LIPMAN: Could I just ask you one question? You have sort of intimated that certain duties, statistics, and so forth, are used in the Department of Community Affairs just as in COAH. How duplicative are these? Is it one-third, one-half?

MR. SKOKOWSKI: I think you've asked a question that would really respond to this issue; the answer that we are waiting for. I think that's the crux of the whole issue, and I appreciate your question because I think that is what has to be laid out. Then we can make a decision whether this is even worth talking to the COAH Board about.

SENATOR STOCKMAN: Or to the COAH staff. I would think you would talk to the Board and staff, right? I mean, if you're trying to evaluate whether there's an overlapping, you would want to as much talk to the staff of COAH as you would to the staff of Community Affairs, no?

MR. SKOKOWSKI: Because the discussions with staff are ongoing, okay? I mean, there's a lot of discussion, I understand -- and Mr. Opalski can correct me -- and I think he was just over last week talking to Chuck Richman. So, I mean, I know that's an ongoing dialogue. I didn't mean to preclude that at all. I meant to say, I assume that's ongoing.

SENATOR STOCKMAN: All right. So there's still likely to be some smoke left after this hearing. There's no fire, but there's going to be some smoke left.

SENATOR EWING: It's awfully foggy, I think. They don't--

SENATOR STOCKMAN: All right, Senator.

SENATOR EWING: No, wait a minute.

SENATOR STOCKMAN: You wait a minute.

SENATOR EWING: I've got another question.

SENATOR STOCKMAN: All right, but you're going to do it through the Chairman, I assume?

SENATOR EWING: Oh, yes.

SENATOR STOCKMAN: Oh, I thought you were just, you know-- All right. Okay. Senator Ewing, you have some further questions you want to ask?

SENATOR EWING: Thank you. Is the Council paid or not paid?

MR. SKOKOWSKI: They're not paid.

SENATOR EWING: Not paid. How many staff were there in the COAH operation last year -- a year ago?

MR. SKOKOWSKI: I think 16. Doug would know better than I, but I think 16.

SENATOR EWING: How many were there?

D O U G L A S V. O P A L S K I: (speaking from audience) Two years ago there were 19. Last year there were 16; now there are 13. There are seven vacancies. There's one DAG less as well, so there are seven vacancies that we have not been able to fill because we haven't been allowed to fill them.

SENATOR EWING: Freeze, yes. Does that put you behind, or is he--

SENATOR STOCKMAN: Yes. Doug is going to speak and he has to get up to the mike. So, why don't we finish with Barry, because Barry is under pressure and--

SENATOR EWING: Well, I just want to give a message to Barry to take back: I, personally, resent the fact that they sent you. I have tremendous respect for you, but it's not fair to you to send you over here. It's like sending a boy to do a man's job. You don't have the data or else you're under wraps, which could be true, also. And I think it's very unfortunate that Randy Primas is not here, or somebody who really knows and can answer me, is not here. I just can't believe, and I hope to God it's not true, that nobody's even sketched out something and said, "Well, we could go over there because we've got Smith

and Jones. They can do these two jobs. We can cut out people and we can still do it."

What does DCA use this data for that they collect that evidently there's an overlap on? What do they use it for?

MR. SKOKOWSKI: For some projection of housing costs, housing strategies, and various balanced housing programs to complement affordable housing issues.

SENATOR EWING: As to whether they could put housing into a--

MR. SKOKOWSKI: Yes. There's a variety of things that the technicians use that data for. It's also that the demographics are very important as to where we're putting the housing, etc.

SENATOR EWING: Whose data is best, COAH's data or DCA's? Because over here, the Office of Legislative Services' figures are a hell of a lot better than any administration's. I don't care whether it's Kean's, or whose; it's always been more accurate.

MR. SKOKOWSKI: I think whose data is better, is subjective. I'd like to say that I'm sure they're both very accurate.

SENATOR EWING: Well, let me phrase it a different way, Barry. Whose data has proven to be closer to being correct?

MR. SKOKOWSKI: Well, so often they shared the same data, that I don't know that we have to argue about that point.

SENATOR EWING: Okay. Thank you, Mr. Chairman.

SENATOR STOCKMAN: All right. Do you have anything, Wynona?

SENATOR LIPMAN: No.

SENATOR STOCKMAN: Okay. I want to disassociate myself from the analogy of: You may be a boy and not a man. But I want to share--

SENATOR EWING: No, I said, "Don't send a boy to do a man's job." Barry is a pillar of the State, without question. I have the highest respect for him.

SENATOR STOCKMAN: I thought you said he might be a boy. And I was impressed when he said-- Well, I won't get into that.

Barry, I want to suggest that I am uncomfortable a little bit, myself -- and it's no reflection on you -- but I think, inevitably, you may have left a tiny mystery that might have been cleared up by someone else. But, we'll go further and maybe it will get cleared up; maybe it won't. We'll have to deal with it. But I do -- and I know the Committee does -- appreciate you taking your time out of a very busy schedule to be here. So, thanks.

MR. SKOKOWSKI: Okay. Thank you.

SENATOR STOCKMAN: Okay. Next is Meg Worthington, COAH Board member. Meg?

D I A N N E B R A K E: (speaking from audience) Meg isn't here. I'm Dianne Brake.

SENATOR STOCKMAN: Okay, Dianne. Are you a Board member? (affirmative response) Okay, do you want to come up? My thinking is that maybe Doug Opalski should come up with you. It may facilitate things. And our next witness will be John Eppling, who I see, and I know also has a busy schedule. But why don't you two come up? We can hear from both the Board and the staff, at this point. And I will defer to you as to who goes first. I think you both understand what this hearing is all about.

MS. BRAKE: Yes, thank you. I'm Dianne Brake. I live in West Windsor and I was appointed to the Council back in September. I represent seven of the nine Council members who are, in fact, new appointees. In fact, we had our most recent appointment just this last month -- this last period. We only have two members of the Council who have been with it since its

inception. I think that if any of you know anything about the Council, you've heard quite a lot about how complicated the regulations are, and how complex the negotiations are with the different municipalities.

I have a statement that Meg was going to read. Meg Worthington is a Council member in Atlantic County -- one of the towns in Atlantic County -- and our public sector appointment.

SENATOR STOCKMAN: Dianne, remind me who the two old-timers are still on the Council.

MS. BRAKE: The Chairman is Chuck Griffiths from--

SENATOR STOCKMAN: Vineland.

MS. BRAKE: --Vineland, and Ara Hovnanian from the Hovnanian Corporation.

SENATOR STOCKMAN: Okay. Go ahead.

MS. BRAKE: Here are some thoughts you might want to consider as you're conducting this oversight hearing. Again, I say that only two of the nine COAH members are recent appointments and, therefore, they must rely on the staff to relate how the regulations, history, policy problems, and interpretations work before the Council can make a decision. The regulations are very complex, and the Council takes great pride in trying to negotiate a settlement with each town that suits that town. That was the nature of the Fair Housing Act --- that was the intent -- that, given the home rule, and the nature of planning in each town, that each town's solution should suit that town specifically.

Almost anyone can read and interpret rules and regulations in something as critical as the Mount Laurel process. However, we, as Council members, need to have people who have intimate knowledge of the regs and how they work in relation to different circumstances. I know just in the few months that I've been on the Council, it has been extremely helpful to have the staff as experienced as they are. The

staff that have been talking to us on the Council have been there since the beginning, and I think that is just so valuable -- that this is something that shouldn't be lost now that progress is beginning to be made.

Timing, continuity, and consistency, are all very important to the Mount Laurel process. Timing is the ability to move the certification of a municipality along quickly. It's very important to the town, the developers, the nonprofits involved, and, of course, to the people who need the housing. That goes without saying, I hope. If you don't have a staff that's familiar with these procedures, these valuable resources such as land, sewer, water, funding, and good economic climate, can all change very quickly, and therefore, housing possibilities could be lost.

Continuity: Currently COAH's staff is following 217 municipalities in its process, plus 28 regional contribution agreements. We need staff that's closely involved in what needs to be done in each of these communities, and can keep abreast of requirements and potential problems.

I know that some of the Council members have been concerned that even with this experienced staff, and with all of the best of intentions, the actual production of affordable units is painfully slow, and any time lost would be damaging to this process.

Consistency is also crucial in dealing with municipalities, each one of which may be unique in its own right, but similar to other towns. Every municipality must be dealt with in a fair and consistent manner, and the present COAH staff knows how to do just that. If another staff were assigned to COAH's duties there would obviously be a learning period. And I think that it's very clear that although DCA has some involvement in affordable housing, it's COAH's staff that's responsible for the production of the Mount Laurel mandate, and I think that is a very difficult and unique

process that only the COAH staff has really, at this time. Unfortunately, any change could be detrimental to some towns already under COAH's protection, and to those considering filing a housing element. This lag time could be anywhere from a few months to a few years, and if not properly monitored, these municipalities could lose their time, their resources, and possibly end up in court.

The Fair Housing Act states that if COAH has not completed its review and mediation process for a municipality within six months of the receipt of a request by a party who's instituted that litigation, and was told to exhaust the COAH process, the party may file a motion to go back to court. Thus, if we don't have a knowledgeable staff able to move these cases in the required time, we may end up with more municipalities in court. And COAH was created to provide an administrative alternative to having this judicial setting for clearing Mount Laurel housing.

My understanding is that the Council on Affordable Housing has ably operated as an "in, but not of" agency and its staff has been able to concentrate specifically on the mandates and duties as determined by the Fair Housing Act and delegated by the Council members. And I urge you to allow us to continue in that way.

Just a few more thoughts: In my capacity as President of MSM Regional Council, we've just completed a research study about the implementation of Mount Laurel obligations in the towns in our region. We represent about 32 municipalities in central New Jersey. Marcia Steinberg, who is a consultant to us and who's here today, has completed this study. We found that, although there's a number of places in New Jersey where things haven't moved ahead, in central New Jersey the process has, in fact, achieved about 70% of the mandate for this time period, either in housing that has been completed, or has its final approval to be completed. And I think that states that

we have had some success. This is housing that would not have been built without the Mount Laurel mandate, and without the Fair Housing Act, and I think that in the six years in which COAH has been operating they have developed a great deal of experience. They've had to create this from nothing. We are a State that's considered advanced in this area, and I think it's primarily due to the experience of COAH staff, that has achieved this significant amount of affordable housing.

SENATOR STOCKMAN: Thank you. Why don't we hear from Doug, and then we can take questions for both of you, and it might expedite things?

MR. OPALSKI: Thank you very much, Mr. Chairman. I appreciate the opportunity to provide you with some insight on two questions: One is whether, indeed, the Council, in, but not of, serviced by staff that is not beholden to it, could remain independent? And the second question that is pressing, is whether any staff that I know of has the capacity to absorb that responsibility and run with it right now, whether it's DCA or another agency?

And to that purpose, I would like to share with you excerpts from a summary that Chuck Griffiths would provide you with if he were here. He had cleared his calendar for last Thursday when you originally scheduled this meeting, but his work load today prohibits him from being here. He asked, however, that I give you a summary of some of the main thoughts that he had.

In order to put this in perspective, Chuck would have shared with you that COAH has been created -- as you had characterized it -- as an alternative to court-ordered compliance. However, it has, to a degree, been frustrated and continues to be compromised in achieving its proper role and mission as you've assigned it. And this is borne out by a number of instances that have occurred. One of them is, in fact, that the market has gone soft. The very day that Council

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opened its doors to receive housing elements, the building permits in the State of New Jersey began to diminish, and it has plummeted now to the lowest on record, less than 16,000 units last year. And, as you know, the Fair Housing Act drives the process forward through the pressure put upon a number of towns to comply, or face the alternative of litigation. It is not a very popular program, inasmuch as it's perceived to be a program that has costs attendant to it, and that is the social cost of servicing people in units that otherwise wouldn't be there. So you take the hammer of the litigation away, and then the Council's ability to invoke voluntary compliance is diluted, and that's part of the problem.

The second is that the courts--

SENATOR STOCKMAN: Let me ask you to dwell on that for a minute, Doug, because it isn't that simple in my mind -- and, you know, maybe others -- that the market is a major mischievous force in this program. Can you spell out, a little more, why?

MR. OPALSKI: The builders' remedy is what, Jerry, you had pointed to before, and I think it had been a point to a number of towns. Do you remember the acrimony that occurred in 1983 when Mount Laurel II came down and the court was using that remedy to drive the process forward? That was a cause of concern for a lot of towns which would otherwise accept the Mount Laurel obligation, but the four additional units for every low- and moderate-income unit became a social overhead that a lot of towns were not prepared to accommodate. So that was the main driving force that pushed litigation forward. It was the tool that the courts were using to hammer out housing elements.

The Legislature and the Fair Housing Act began to point to other tools that could be used. One of those other tools was the presence of balanced housing funds. Balanced housing funds have only yielded sufficient moneys to cover 5%

to 10% of the need, so that the moneys that emanate from the Fair Housing Act are minuscule in comparison to the need.

SENATOR STOCKMAN: What are those moneys? Where have they been and where do they come from? The balanced housing funds--

MR. OPALSKI: I saw an accounting from OMB that showed that on an annual average, $26.6 million per year has been made available from two sources: the balanced housing fund and the $15 million, onetime appropriation made to HMFA.

SENATOR STOCKMAN: What year was that made in?

MR. OPALSKI: This was in the fall of 1990 that OMB had those statistics. And, if you assume that the subsidy per unit is $10,000 to $20,000, then those moneys could only cover about 5% to 10%. Thirteen hundred to 2600 units could have been covered by those funds in that time period. This is why it's so important that the Affordable Housing and Jobs bond issue find some success this year. That would help drive the process even further. But right now, we don't have that bond issue and what we do--

SENATOR STOCKMAN: But since enacting the Fair Housing Act, which was in what year?

SENATOR LIPMAN: 1985.

MR. OPALSKI: 1985.

SENATOR STOCKMAN: In '85. We've been committing roughly $26 million a year?

MR. OPALSKI: Right.

SENATOR STOCKMAN: And that comes out of fees assessed against realty transfers for houses at values over $50,000?

SENATOR LIPMAN: Right.

MR. OPALSKI: Exactly.

SENATOR STOCKMAN: And with the housing market -- with the sales down and the price of housing down, that figure has dropped, has it? What is it estimated to be in this fiscal year?

MR. OPALSKI: We've seen it up to $30 million. I don't have the latest projections of what it will be.

SENATOR STOCKMAN: But, it's down?

MR. OPALSKI: It is down substantially.

SENATOR STOCKMAN: And that $26 million a year has been going into this program?

MR. OPALSKI: That's exactly right.

SENATOR STOCKMAN: And can you briefly explain how it has been spent, typically, on a unit?

MR. OPALSKI: Rehabilitation -- up to about $7500. And there are, I think, ceilings placed on towns simply because there aren't sufficient moneys to, in fact, meet all the demands. I believe those ceilings are up to $3 million per town, at this point in time.

SENATOR STOCKMAN: Okay. That would be to rehab older homes to put them up to code?

MR. OPALSKI: Right.

SENATOR STOCKMAN: Then to be sold with some restriction on them for use as low- and moderate-income homes.

MR. OPALSKI: Jerry, the program speaks to occupied units and the Council is -- and I think DCA as well, appropriately-- Those people who are in the units won't be displaced so long as they income-qualify, and their unit is below code, they are eligible, and they remain in the unit after their unit is repaired. But there are deed restrictions that run with the improvement.

SENATOR STOCKMAN: I won't get too far into an education that-- To me, it's an update. It's an area that I have an interest in but I haven't kept very current, and I don't think this is the place to do that. But it is interesting to explore just how successful the Council's effort has been.

We'll move on from there.

MR. OPALSKI: Thank you. I agree with you. I think it is important to understand the background.

The next event that happened beyond the Council's control was that the courts began to adapt the Council's lower numbers and our guidelines and standards as a point of departure. And that really meant that what separated the Council from the courts wasn't so much the need number, but rather the tool used to meet it. And, as we shared before, builders remedy as opposed to a number of other options, RCAs, use of balanced housing funds, flexible rules at the Council where accessory apartments subsidized may be going ahead, no buy downs; a whole host of other mechanisms that you envisioned as alternatives to a rather large obligation.

SENATOR STOCKMAN: You can't say I. You remember, I was one of two members that had some misgivings about the Council. But we won't get into that. (laughter) But I hear you. I'm sorry.

SENATOR EWING: I'm glad you brought it up. (laughter)

MR. OPALSKI: So the courts then began to adapt, at least, the ceiling of need to the Council's ceiling of need, which then made them less onerous for a municipality. Then litigation didn't loom as large as it did prior to the Council and its need numbers.

And then a third event occurred that is quite disturbing, and that is: The courts began to alter codes, procedures, and processes and make them more akin to the discovery game that's used in court to break the bank and the backs of municipalities in litigation. In effect, the court said that any unresolved objections in mediation would have to be sent over to the Office of Administrative Law for resolution. For its part, OAL was attempting to absorb the entire housing element and pass judgment on the issues in dispute in the context of the entire housing element, as opposed to just dealing with the issues the Council transferred

to it. And that comes from confusion in the Fair Housing Act, which needs to be clarified. It seems to us that it was the intent of the Legislature to merely have the issues in dispute resolved. So the costs of going before COAH were now being complicated by additional costs at OAL, which towns hadn't realized they would have to face, and we didn't until the Vance decision came down.

The fourth event was that the judiciary appointed 17 new judges, not just the three who were appointed by the Supreme Court, but 17, and you remember the press on that. So, there are now 20 Mount Laurel judges, 17 of whom are new, and their court-appointed masters call us from week to week to become conversant in the Council's rules. We have a number of judges who are viewed now as perhaps susceptible to compromise on uniform Fair Housing standards across the State, and we are viewing with alarm a number of credits and waivers that appeared to be granted by the courts that were never going to be entertained by Council, given its past history and precedence, which only encouraged towns to look to those judges and visionages to seek a larger relief than they would have gotten at the Council. Now, this dilutes the ability of the Council to induce voluntary compliance.

And, as I shared with you before, the balanced housing subsidies on the Fair Housing Act were beginning to dry up as the market dried up, and as a result, one of the precious few inducements left for voluntary compliance that you had, as a legislator, written into the Fair Housing Act, was now vanishing. Indeed, under section 20 of the Fair Housing Act, you had linked the availability and access to those funds to four categories: municipalities that had COAH certification; municipalities that had court-ordered compliance; regional contribution agreements furtherance; and a slant toward Urban Aid cities. It was apparent to the Council that you intended those funds to induce municipalities to participate in the

process. So on top of the funds being dried up at this point, there is also another complication. You have a budget recommendation that these funds be completely separated from the access qualifications you placed upon them in the Fair Housing Act and that co-ratified as you directed. We passed a resolution saying, indeed, these are the categories that should be the accessible categories for the funding.

And finally, there is damage done to the COAH staff. There's no question. Senator Ewing is absolutely right. It is a psychological cloud to labor under, not knowing whether you're of valued service to the State after having worked through five years of a process and helped, in fact, to relieve the trauma that occurred when we all had merely one alternative -- litigation. And so the staff is certainly demoralized by that, but their professionalism shows through despite the fact that these threats of imminent layoffs are still out there and we have no signal to the contrary. The staff has not walked out. The staff continues to perform its job. We've met all of our deadlines since last month, despite the fact that we may be viewed as excess baggage.

All this has undermined seriously the mission of COAH to induce voluntary compliance and, indeed, if the courts aren't sure that COAH will be there and functioning, it has inhibited them from coming forward voluntarily, as well. We're taken back to the future by all this and we may well revisit the litigation, the acrimony, and the costs that we faced in the 1974 through '85 period before COAH.

In the final analysis, the ability of municipalities to control their own destinies is at stake. A weakened COAH and a strengthened judiciary doesn't bode well for municipal management of a fair share and voluntary compliance. What would, would be a replenished menu of State aid and inducements under the Fair Housing Act. As far as that goes, there are certain fundamental principles in the Act that, in your wisdom

-- the legislative wisdom -- you have placed there. We believe that your initial judgment was correct -- and I think experience bears it out -- and that is, the Council must be accountable directly to you and to the Governor to achieve the delicate, sensitive, and focused mission of the Fair Housing Act.

The Council must be able to balance and reconcile diverse interests of major housing stakeholders, nonprofits, developers, utilities, municipalities, and a whole range of others. We need to be a body that bears impartial alternatives to litigation, and functions that way with a broad spectrum of stakeholders, including the municipalities. That's the only way in which I believe the Fair Housing Act can be implemented; if the Council is perceived as an impartial, creditable party which can balance these interests. If it's perceived that we're in the pocket of one or the other of the stakeholders, then I think the entire process has been compromised.

COAH can control its low- and moderate-income housing policy directly, and only if its staff is directly and immediately accountable to the Council. I believe that. Our current staff is not as protected and independent as it would tend to be under the mantle of Civil Service. These people mediate disputes at 3:00 in the morning and on weekends. These people will work on weekends in order to work the job and not the title.

The sensitive low- and moderate-income housing policy area must not be entangled with other diverse missions of any other department or subject to related compromises and disruptive politicizing with successive changes in administration. For that reason, you, indeed, had appointed COAH members to six-year overlapping terms. It so happens, at this point in time, there are six members -- no, seven -- who have been appointed within the last seven months.

Nevertheless, I think it was the intent of the Legislature to ensure continuity, as Dianne had mentioned.

A creditable COAH must be able to relate easily with the judiciary, so comity and fair shares are achieved between the Council and court towns in substance. Indeed the courts uphold most of the rules and regulations and guidelines against appeals; and the courts tend to use the Council's guidelines and standards. However, the court and COAH must be sufficiently different by streamlining and expediting compliance at COAH relative to the courts and OAL.

And for that we would begin to recommend some improvements to the Fair Housing Act to you, to do that. One set would be to-- Procedural inducements would be to allow voluntary participants at COAH to opt for mediation, not be required to go through mediation. The Act now requires them to, but it seems to me that every town need not address every objector and be caught up in the mire of OAL. Another would be for the Fair Housing Act to be clarified so that OAL has jurisdiction only over the issues and disputes that are transferred to it, and not over the entire housing element. I don't think the courts want to be making housing policy.

Finally, COAH and its staff are similar to other State policy bodies that you have created, and they include the Office of State Planning, the Housing Mortgage Finance Agency, and others that have unclassified personnel. Why treat COAH any differently now? Indeed, it is time to reinstate the Council to a position where it can carry out the heavy duties and mission you assigned it.

Perhaps Chuck would have shared with you an analog, which is that you have an extraordinary staff -- the Office of Legislative Services. Imagine that if that staff were to be supplanted with another staff in another arm of State government, for example, the Office of Management and Budget, with personnel who are not beholden to you. And that's the

Council's position if, indeed, it would be serviced by a body where it had no control over its staff. Those are the summations of Chuck Griffith's remarks.

I could probably summarize mine for you, very simply. I had prepared a summary, but I think in terms of time, perhaps I can cut through it. I was going to share with you three things. I'll just give you the summary of that and I'll give you what might well be something that cuts to the quick on this.

One is that the staff of COAH is unique. It has been trained as mediators. It has planning licenses as per the Professional Planners Act, and as such, it can, in fact, provide creditable defenses against appeals to municipal housing elements, regional contribution agreements, COAH guidelines and rules. And it has five years of experience which isn't easily duplicated. I say this with a great deal of prejudice. (laughter) I've seen the staff in operation and there are people on the staff more qualified than I am in certain areas, and that would be lost. These people have a great deal of knowledge. They're knowledgeable of a whole host of other State regulatory schemes and may apply them. More important, they're conversant with the rules. Now, the Council rules may be Xeroxed but knowing how they may be applied in each and every instance is the critical factor.

There are 147 motion decisions. The Council sits as a quasi-judicial body. The Supreme Court set it up to do that; to impose restraints on development; to give priority to affordable housing; to put bans on developments or extensions; access to gallonage and so on, until the low and moderate developments receive that first. There are 147 motion decisions. They may be Xeroxed, but it's the staff that knows how those decisions are consistently applied. And, as Dianne pointed out, with seven new members it would place an enormous burden on the Council with an inexperienced staff who is not conversant in those 147 decisions.

Mediation, of course, is the heart and soul of the process. You made it a requirement in the Fair Housing Act. It works. It works. Eighty percent of the units we've certified have come from 40% of the certified towns before the Council. Seventy percent of our mediations have been successful. That's twice the national average success rate for mediation, and that's because it's an acquired skill, and this staff has acquired it over five years. So, 80% of the units we've certified are the product of mediation. We have to mediate disputes that come from court. We've had 42 of them, and they've been entrenched, long-fought battles where municipalities, for up to 18 years, have been entrenched against developer litigants. The staff has been able to maneuver towns and all parties through that process and resolve disputes. That's an acquired skill. We'd lose that if the staff was dismantled or supplanted.

What about our records? We have files that we are attempting to computerize. We would have done it earlier had we the resources. We don't have them, but we are prepared to do that beginning now, so that by this fall we will be well underway. Those files are not easy to digest; they're loaded with appeals and motions. The Council staff knows the ins and outs of those files and we would hope to work with the Otis people to computerize that. How will that be done if there's a staff that's not conversant with those files? And how would a new staff know how to use those files?

If I could, there are two letters that we received that speak to this more eloquently than I ever could. One came from Norman Williams, Visiting Professor of Law, The University of Arizona, who wrote to Governor Florio on April 11. In quotes, I'd like to excerpt what he said to the Governor, and this is addressed, Jerry, to yourself and John Lynch: "I'm writing to urge you to support both the continued independent status of the Council on Affordable Housing and its present

level of staffing. The Council has done a remarkable job, under very difficult circumstances, pioneering nationwide on one of our most important problems, and deserves your full support. Nobody anywhere else is doing comparable work.

"I write as a longtime resident of Princeton, and member of the Planning Board there, now retired. I, myself, am proud of the fact that I helped prepare, and actually argued, the Mount Laurel case. Only this month I received the American Planning Association's award for distinguished leadership, in large part because of my Mount Laurel work -- which shows how the trend of thought is beginning to run nationally."

The second letter comes from Mr. Ed Logue, former Executive Director of New York State Urban Development Corporation. You remember back in the '60s, New York attempted to do essentially what the Council is doing now. And from his letter of February 21 1990, Mr. Logue writes to the Council: "Thank you very much indeed for sending the material on the New Jersey Mount Laurel programs.

"Fifteen years ago I thought we were doing pretty well in New York State with the UDC's 5000 suburban units in five years, but this is clearly a great improvement. It shows how far an otherwise progressive program in Massachusetts has to go. Very best wishes."

It wouldn't be bad if this was all we had to do, but there are three new duties that have been assigned to us: Implement the recent amendment to the Fair Housing Act that the Legislature passed and the Governor signed on November 30. This amendment could induce up to 60 more towns to seek certification and result in 12,000 more units. And our staff is attempting to draft rules to implement your amendment to the Fair Housing Act, right now.

The second is, we're attempting to promulgate a development fee rule as per the Supreme Court's decision of December 18, 1990, and with that rule in place, we could assist

municipalities and businesses with funding in producing thousands of units that otherwise would only be covered by the potential for zoning.

And third, we're attempting to revisit all of our rules and guidelines and pre-credited need estimates so that by the middle of next year -- a full year before the next period of certification -- every municipality in the State has the very best benefit of a full year of guidance before they can, in fact, fashion and refine a housing element that they'll feel comfortable with. And by that time, we would also hope to have this coordinated with an adopted SDRP, with the best available census data, and current and comprehensive vacant land estimates, and also with broad public support.

Every Tuesday we meet with all the major stakeholders in the State to review our substantive and procedural rules. The Council has always taken the posture that we can't do this alone. We need the consent of the people who are going to implement the program before we carry it out. That's part of the hallmark of the Council. Any one of these duties represents a major task, but together they represent the formidable challenge that any staff would have to face, especially this staff which only has half the manpower that it needs in order to carry out its mandatory statutory responsibilities. We have 13 people. We should actually have 25. We had 19 two years ago, Senator Ewing, and as a result of a very slow process of filling vacancies -- and then the freeze -- we were precluded from filling seven of those positions; six of which are on staff and one DAG. We, quite literally, need three attorneys to move ahead on appeals. There are at least a dozen major appeals before the courts on COAH. We're now down to one DAG.

I'd like to point out to you that the courts have a third of the caseload that the Council has. They have 71 municipalities and we have 217, and yet they have three times

the personnel at their disposal -- 80 people versus 23, if you count the Council members and its attorneys. They contact us weekly to be conversant in the Council's rules. Ironic.

The cost of litigation runs a municipality from two to 12 times what it would cost. That's the extent of the damage just in the legal fees. It costs in legal fees, two to 12 times as much to defend yourself in court as it would to get certification at COAH. Now, Moorestown in Burlington County spent a differential of over half-a-million dollars -- $550,000 in court fees -- without ever having a compliance plan. And that's the cost overrun. The Council's process-- If that's prototypical, then the Council's process has saved local taxpayers up to $24 million in the 42 towns that have been transferred to the Council, and this is just in legal fees. And we've expedited the housing elements in a sixth of the time.

I did a little analysis with the Department of Commerce and I used their input/output model. I calculated what the dollar value to the State is of COAH. For every dollar that has been spent on the Council over the last six years, at least $5.50 has been returned to the State Treasury in terms of tax flow set in motion by the housing that has been created. So, the Council is a revenue center for costs for the State government. It's not a cost center.

Without this affordable shelter that's being created, it's likely that many more firms and jobs with income flows would locate outside the State in a chase for the required labor force. Governor Florio pointed to Prudential Insurance Company in Morris County which had left for Allentown, Pennsylvania in chase of labor, simply because they couldn't find affordable housing in Morris County to accommodate the labor skills they needed. The Governor is deeply concerned about stemming this with constructive, affordable housing, and COAH helps make that possible. Thus, we're part of a sound,

positive economic policy for New Jersey, in addition to being a social cornerstone and foundation for constitutional rights. Therefore, I would urge you to safeguard the COAH you created, its mission, and the remaining staff.

It's true that I had a meeting with Chuck Richman on April 4 and, after having described all this to Chuck, his conclusion was that the Department of Community Affairs could not handle the task.

SENATOR STOCKMAN: Okay. Thank you, Doug. I'm sure there are questions this panel will have. I just have a couple, initially, and really your last question goes to it. I thought you said, early on, that there was no signal to the contrary that the layoffs were not imminent. I thought-- I got the impression things were different in that regard, but can you explain what you mean by that? I mean, if you're talking about replenishing State aid or getting more revenue, I think you know this is the wrong Committee; this is the wrong time and place, to see that succeed.

MR. OPALSKI: Sure.

SENATOR STOCKMAN: That's one question. Revenue is a major problem, and I think everybody on this Committee understands. If you're talking otherwise, I'm not sure I understand you, because I thought that there were different signals even from Barry Skokowski and, indeed, this meeting with Chuck Richman.

MR. OPALSKI: Oh, there were. The meeting with Chuck resulted in an acknowledgment that he could not see where the Department could pick up these responsibilities. There were conversations that gave me the clear impression that, indeed, the services of the Council were looked on favorably by the Department, and it was my impression that there was no disfavor with either the Council and its policies, or its staff. I asked Chuck directly whether that was the case, and he advised

me, too, at the meeting on April 4, that he could think of no disfavor with either the Council or the staff.

SENATOR STOCKMAN: Well, how do you reconcile it with your statement about the layoffs being imminent? I'm trying to get a handle on it.

MR. OPALSKI: Well, there was a letter that came from Bill Scheuer that is in your packet.

SENATOR STOCKMAN: That's some time back. But that's been-- Even the administration, I thought, had publicly rescinded that intent.

MR. OPALSKI: Well, I asked for a rescinding of it in writing. I wasn't sure-- It seemed to me that, based on our legal opinion, that the Council has the power to fire and hire. Based on that, I asked the Department of Personnel and OMB to rescind any list that there may be, and I didn't get anything back in writing. There's a verbal confirmation, but with a staff that saw something in writing it seemed to me that the most appropriate thing would be to rescind it in writing.

SENATOR STOCKMAN: And that's what you meant; that you would be more comfortable if that-- Do you have a copy of that communication?

MR. OPALSKI: I do. It's in the green folder and it would be Appendix A of the green folder. You'll see the summaries that I just shared with you underneath that. That's it bound together. You'll find an Appendix, and in Appendix A is a letter from Bill Scheuer, toward the back. This is the letter of February 28, the letter signaling imminent dismissal. It's a letter--

SENATOR STOCKMAN: Now, you've talked to Mr. Scheuer, or somebody on his staff, and they've told you to disregard that letter?

MR.OPALSKI: Well, he said that he would not be prepared to rescind it now, simply because it has already been made public.

SENATOR EWING: Well, well, well.

SENATOR STOCKMAN: All right. Well, perhaps we can assist on that score.

MR. OPALSKI: That would help immeasurably. I think the staff's morale is really an important element, and Senator Ewing has appropriately pointed that out.

SENATOR STOCKMAN: All right. Perhaps Committee members-- Senator Lipman?

SENATOR LIPMAN: I see that you have prepared for us a nice summary of the status of your personnel, but since we haven't had a chance to read this, I'd like to ask a couple of questions about your personnel. You say that the staff has been cut in half, really?

MR. OPALSKI: Yes.

SENATOR LIPMAN: All right. I heard that. Is your staff now adequate to take care of the COAH mandate?

MR. OPALSKI: It's a thin blue line, Senator. It's a thin blue line simply because the caseload has dropped, and at this point in time we're able to handle it. If there should be any major marching in of municipalities, for example, to have development fee roles certified by COAH as the Supreme Court directed, we'd be hard-pressed to do that in a timely way. We'd be hard-pressed to do that in a timely way -- and we w uld want to do it in a timely way -- because such rules would spring loose funds for production of housing. So, my judgment is that so long as there is no unusual disruption, we can manage to meet our basic statutory responsibilities, barely.

SENATOR LIPMAN: Well, your answer has indicated that you positively could not do without eight staff members, which would leave you five.

MR. OPALSKI: That's inexperienced people who have never done this before, and I think it would put everyone in a very awkward position, including the Council.

SENATOR LIPMAN: Okay.

MS. BRAKE: May I just add to that? I think there are two parts: One is certainly we could not do without the eight staff members, but I think you're also adding that even if they were replaced with other people, that it would also be inadequate to do the job.

SENATOR LIPMAN: Yes, that was going to be my next question.

MS. BRAKE: Oh, I'm sorry.

SENATOR LIPMAN: That's all right, you've sort of answered it. Would you sort of differentiate between the planning functions that you do, and the legal functions that you do, and could you accomplish these two things if you were put in the DCA? And, I've heard everything you've said. You said you absolutely have to be independent. I understand that.

MR. OPALSKI: I don't believe so, Senator. I don't believe so. There isn't any evidence that I've seen -- and I've asked for it -- to suggest that there is the capacity to absorb these responsibilities and not drop the ball.

SENATOR LIPMAN: Okay. Let's see. Oh, I have one more question which has to do with your prestige. You say that you are a leader among the states?

MR. OPALSKI: These are outside housing specialists who have acknowledged that.

SENATOR LIPMAN: And so then, what COAH has done for low- and moderate-income housing in New Jersey sort of stands out as a good example to the rest of the nation?

MR. OPALSKI: Yes, Senator. Fairfax County in Maryland has just emulated the rules and regulations of COAH, and a number of other states are looking very carefully to see how the process plays itself out. It's an imperfect process, but it's the best one that I know of, and it certainly can be improved upon. And I'm sure with the legislators' support, amendments -- appropriate amendments -- to the Fair Housing Act can be made and we can make it a more perfect system.

SENATOR LIPMAN: All right, thanks for now.

SENATOR STOCKMAN: Senator Ewing?

SENATOR EWING: Thank you. Would there be any feasibility in charging the town for the service that you give them in order to make yourself self-supporting?

MR. OPALSKI: That was a proposal I had made with DCA and I looked to them for advice. I also looked to our DAGs. Their advice was that it couldn't be done through the budget statute; it had to be done through an amendment to the Fair Housing Act. And it may well be that there are extraordinary charges that the Council faces; for example: motions, appeals, and so on -- that I made an estimate of -- and it may well be that up to 20% of our budget could be justified under these extraordinary tasks that we're called on to perform, and with reasonable fees attached to them. It may well be that it's time for some revenue generation at COAH for those extraordinary tasks. For regular tasks that municipalities are sure are available, it seems to me there shouldn't be disincentives for them to come to us.

SENATOR EWING: Yeah, but it would be a lot cheaper for them to use you than to use these lawyers.

MR. OPALSKI: Yeah.

SENATOR BENNETT: We can't be supportive of that. (laughter)

SENATOR EWING: No, but really, why couldn't it be self-supporting all the way through?

MR. OPALSKI: I don't know. I have to take a look at it. I think what we've done, if you can see the map, we've tapped out-- That map shows 287 municipalities in the State of New Jersey, which are somewhere in the compliance pipeline. The red, the purple, and the green, happen to be under COAH's jurisdiction. The yellow, the 71 in yellow, happen to be those under the court's jurisdiction. Now, what remains? The built-up area in northeastern New Jersey, the vacant area with

essentially no infrastructure in northwestern New Jersey, Warren and Sussex and areas in a portion of western suburban counties, the Pinelands areas, the CAFRA region; and an area where the market hasn't come yet which is Gloucester and Salem. So it is unlikely that many of those will be coming in unless we can create inducements -- incentives rather than disincentives -- at this point. So it's really a question of, what's the most cost-effective way of doing it, and can we do it in a way that doesn't discourage more compliance? We tapped out the easy market. The difficult market now has to be brought in. I'm concerned -- that's the only thing -- about how much people would be discouraged from coming in if we did charge for regular servicing.

SENATOR BENNETT: But have you got some plan for this?

SENATOR STOCKMAN: Bill Dressel is wincing back there. We'll ask him when he gets up here. (laughter)

W I L L I A M G. D R E S S E L, JR.: (speaking from audience) I was yawning. (laughter)

SENATOR EWING: No, they cut his salary--

But, do you have some sketch-out of what trying to pick up 20% of the total cost would be?

MR. OPALSKI: I've done some preliminary memos on that. I shared it with the Council and our DAGs, and they're still looking at it. I believe it's feasible.

SENATOR EWING: Why not let the Legislature and the DAG--

MR. OPALSKI: I think we would want to be pretty clear about this not impinging on any right and due process, and then we would bring it -- if we thought it was appropriate -- before the Council and then to the Legislature and, indeed, you may want to consider changing it, refining it, on doing as you please with it. Sure.

SENATOR EWING: Yeah, but some other lawyer gets ahold of that DAG, and he says, "No, that is illegal," and your guys say it was okay. (laughter)

MR. OPALSKI: There's always that problem.

MS. BRAKE: Guess that's the advantage of only having one DAG left at COAH. (laughter)

MR. OPALSKI: That's right.

SENATOR EWING: Well, are you pushing on that?

MR. OPALSKI: I was hoping to bring that forward.

SENATOR EWING: You said earlier something about 70% of the disputes problems that have been-- The other 30% are the ones in court, is that it?

MR. OPALSKI: They went to OAL. They're intractable problems.

SENATOR EWING: You mean the townships would not give in at all, and the developer wouldn't?

MR. OPALSKI: Either that or the developer, and those cases are over at OAL. They come back in 90 days except with an extension, and they come back with one of three recommendations that the Council can make on them: rejected, accepted, or modified. And we have 60 days to do that, so we weigh upon them.

SENATOR EWING: Well, with the shortage in staff that you're alluding to, are you way behind in your work? Are you getting the cases where the court is going to step in and say, "You didn't do it in the 30," or whatever days it is, and then go, "They've got to do what we say"?

MR. OPALSKI: We've asked for extensions because we simply don't have the staff time to cover our deadlines in the Fair Housing Act, and there is an ability to do that. And that, however, puts municipalities at risk. That was the point that Dianne made, which is that any developer/objector may choose to bring the case back to court at that point. So we are at risk when we do that, but we have no choice.

SENATOR EWING: Well, if the court gives you an extension, then the developer can't go back in again. It

can't-- If you get an extension from the court, can the developer still go over your head?

MR. OPALSKI: Sure. After six months he may choose to do that and say, "You've exhausted the administrative remedy. This is the timetable set up in the Fair Housing Act. I have a right to take you back to court."

SENATOR EWING: Even though the court gave you an extension?

MR. OPALSKI: Well, the OAL does. The OAL does that. The court, when it sends it over from--

SENATOR BENNETT: It's not the court--

SENATOR EWING: Well, is that part of the recommendations of change you're going to make?

MR. OPALSKI: Yes. We would like more time to manage our caseloads so that this doesn't become a problem for towns in the process which have spent all that time, money, and aggravation getting to the point where they are. Sure.

SENATOR EWING: Where are these recommendations now? Are they waiting for the DAG to look at them, or--

MR. OPALSKI: Well, they're in two places. We sent a report to the Legislature in September 1988, and--

SENATOR EWING: '88? That must be in my bottom drawer, okay. (laughter)

MR. OPALSKI: Yes, some of them are in there. (laughter) But there are others we'd like to entertain with you and we think that they're timely; the business of making sure that OAL knows what its obligations are and what its obligations aren't.

SENATOR EWING: Well, is anybody working on those?

MR. OPALSKI: Yes, we have a pretty refined draft of the language changes.

SENATOR EWING: Well, I should say it another way: Are there any legislators working on it for you?

MR. OPALSKI: Well, I understand that Senator Lynch is interested in revisiting the Fair Housing Act.

SENATOR EWING: That isn't what I asked you. He might be interested, but is he working on it?

MR. OPALSKI: Well, his aide is here.

MR. DAUL (Senate Majority staff): We'll be working on it very shortly.

SENATOR EWING: They're not working on it yet. Why don't you give the rest of us copies of it, too?

MR. OPALSKI: I'd like to do that. I'd love to share it with you. Sure.

SENATOR EWING: In your mind, what help do you get from the DCA staff now that does-- I gather there's some duplication of work where your're getting data or things like that. Do you work with them closely, or not?

MR. OPALSKI: Well, we try to.

SENATOR EWING: Or they borrow your stuff?

MR. OPALSKI: We exchange data every month. We have a meeting with them in order to go over the balanced housing municipalities we both share. We have the meetings on a monthly basis at a staff level with HMFA to review status reports. That has to do with coordination as opposed to borrowing. I want to make sure that each of the agencies -- our sister agencies -- knows exactly what we're doing and vice versa. And that's the point of those meetings. As a matter of fact, our DAG is paid for out of our budget, but serves double duty by providing legal advice to the Balanced Housing Program. So, what we're doing is really sharing our resources with DCA.

SENATOR EWING: You talked about the money going from the State from certain fees to housing. What audit is done? Who does the auditing to make sure the money was spent on the housing, and not 50% for administration and 50% to fix some houses?

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MR. OPALSKI: Well, Senator, we don't administer the Balanced Housing funds. That would be a question you would want to ask of DCA. All we do is make sure that towns in our certifications are linked to that resource, and if they don't tap it, then they are obliged to come up with alternative funding to do their rehabilitation. And, it's up to the town. They use their bonding capacity. They may have a mandatory development fee rule, or other ordinances, or appropriations, or other grants and aid, Farmer's Home. There are other series of HCDBG moneys that they may use, as you've identified in the Fair Housing Act. All we do is make sure that our certifications reference that. But the administration of the moneys is clearly a DCA responsibility, and the accountability is DCA's. They assure the accountability of those funds.

SENATOR EWING: What do they call it again? Balanced what?

MR. OPALSKI: Balanced Housing Program.

SENATOR EWING: Balanced Housing Program.

MR. OPALSKI: Balanced Housing Neighborhood Preservation Program, section 20 of the Fair Housing Act.

SENATOR EWING: That's all I have. Thank you, Mr. Chairman.

SENATOR STOCKMAN: Senator Bennett?

SENATOR BENNETT: Mr. Chairman, I apologize for being late and hopefully I'm not going to duplicate a question that was asked earlier.

Of the 70,764 units that have been certified or approved, how many are actually built?

MR. OPALSKI: I could give you an estimate. The reason I can't give you a specific, Senator, is because I don't have the court's data. I've asked Chief Justice Wilentz to prevail on the justices and to comport their monitoring with ours so that everyone has the same monitoring forms and uses them. There are boxes of court compliance plans laying around

somewhere in the Rutgers Law Center, but it would take staff to ferret them out. I don't have that.

I could tell you that a best estimate is somewhere between 8000 and 12,000 units. DCA's monitoring, as of the middle of last year, was something like 7600 units, and it may well be more than that. I believe it's more than that, simply because no one has access to the court compliance plans which were early on and that had been driven forward by the market, more so than COAH's. When you take a look at the credits, what the Fair Housing Act allows for credits-- My estimate is that about 8800 units are creditworthy under the Act, and including RCAs, about 3000 rehabilitations have occurred. Alltogether, if you take 10,000 as new construction, 3000 as rehabilitation, and 8800 as creditworthy units, 21,800 can be accounted for as under the umbrella of the Fair Housing Act. In three-and-a-half years, that works out to an annual average of around 5400 units a year.

Historically, New Jersey is accustomed to about 1200 units a year. From the first day of the Federal Fair Housing Act of 1938 through 1980, deed-restricted units averaged out -- in the State -- to 1200 a year. This is a fivefold increase over that. So, even though we haven't met nearly what some would regard as the completion of the obligation, in the historic perspective it has done a substantial job in moving the process ahead. And that's why we have letters, like the one we have from Mr. Logue.

SENATOR BENNETT: The question wasn't made to be critical, more primarily to be factual.

MR. OPALSKI: No, it's a good question. It's a good question. Absolutely.

MS. BRAKE: Senator, we have information from central New Jersey just on our recent study that indicates that 40% are actually constructed. I think that central New Jersey probably moved ahead more than any other part of the State because the

big building boom that happened was certainly played out actively in central New Jersey. So, if you took that as any kind of estimate on active towns, and that includes the court cases as well--

SENATOR BENNETT: When you say central New Jersey, what counties are you encompassing?

MS. BRAKE: Southern Middlesex, northern Somerset, and all of Mercer County.

SENATOR BENNETT: Okay. See, Monmouth always ends up not being counted in the north and not being counted in the south. Now you don't even count it as in the central. (laughter)

MS. BRAKE: Well, we're a private nonprofit that has a historical boundary, but always willing to talk about adding Monmouth County. (laughter) Too many "Ms" to the--

SENATOR BENNETT: Absolutely. So, part of Middlesex, Somerset, and Mercer. Going back to the essence of where this problem in this letter came up, it is my understanding, from what the Chairman had asked you, that your nervousness was because of the letter that came from the Acting Commissioner and no written document to rescind it. Okay. Now, in reading this press report -- which clearly is nothing more than being in the newspaper -- it says that the response to that question still said that the employees of COAH were going to be tied to long-range proposals to have DCA take over the Council's staff work. Now, would that require legislation for that to take place, or could that merely be done by a redirection administratively-- Can DCA take over the staff work of COAH without the Legislature getting involved? Maybe that's as simple as I can make the question.

MR. OPALSKI: Well, our DAG says no; that it would require an amendment to the Fair Housing Act.

SENATOR EWING: Through legislation--

MR. OPALSKI: Yes.

MS. BRAKE: Because it says that the Council itself has the right to hire and fire.

SENATOR BENNETT: Why is that?

SENATOR EWING: Huh. Like the Arts Council?

MS. BRAKE: Right. And, also, that they must not be Civil Service protected. They must be whatever that word is--

MR. OPALSKI: Unclassified.

MS. BRAKE: I always think, noncommissioned. (laughter)

SENATOR BENNETT: Okay. Was that a written opinion? And the DAG has said that the staff cannot be replaced without the Legislature changing the Fair Housing Act?

MR. OPALSKI: Yes.

SENATOR BENNETT: Okay. To date, Mr. Chairman, there's no proposed legislation to implement that change?

SENATOR STOCKMAN: To my knowledge, there is none.

SENATOR LIPMAN: No. Not to my knowledge either. No.

SENATOR BENNETT: So, I'm trying to come back to-- If that's the case, why is there still the nervousness, I guess?

SENATOR STOCKMAN: Well, I think Mr. Opalski suggests that he would feel better if there was something in writing from the writer of the original letter. I think we could look into that and maybe be able to get that clear.

SENATOR BENNETT: Right. I agree. All right, thank you, Mr. Chairman.

MR. OPALSKI: There's that, and also the fact that there are staff who have their resumes out. They've been encouraged to do so, simply because they're not sure of their status.

SENATOR BENNETT: I would assume that the morale is not at the highest.

MR. OPALSKI: Not at the highest level, but the performance is still there, despite all that.

MS. BRAKE: But we need some reassurances.

MR. OPALSKI: That's right.

SENATOR STOCKMAN: We understand that and there are two aspects of reassurance: One is to lay to rest, it seems to me, this question of bringing COAH into the Department. The other is a separate fiscal problem that hovers over all of us. Even legislators are really a little restless about meeting budget or their salaries, I'm told. (laughter) So, we appreciate your remarks, and I think we have your message, and unless any other Committee members have any questions, I think we're going to move on.

MS. BRAKE: Thank you.

MR. OPALSKI: Thank you very much.

SENATOR LIPMAN: Jerry, just a second. Wait a minute.

SENATOR STOCKMAN: I'm sorry. Doug, do you want to wait a minute? (Senator Lipman confers with Senator Stockman; indiscernible to transcriber)

Senator Lipman has brought up this question: That the statute speaks in terms of you having control over your staff, but -- and I think it goes to an ultimate question -- that you suggested you wanted to be accountable to the Legislature directly. But I think you also would recognize that putting aside for a minute the Commissioner of the Department of Community Affairs-- Do you want to be accountable, or must you be accountable to the Governor as part of the executive branch of government?

MR. OPALSKI: Oh, yes. That's exactly--

SENATOR STOCKMAN: And in an ultimate sense, therefore, the Governor -- through budgetary constraints -- would have the right, it seems to me, to some role in that.

SENATOR LIPMAN: To request they reduce, not request they disappear.

SENATOR STOCKMAN: Right. Right.

MR. OPALSKI: We absolutely agree that everyone doing their fair share in many ways is the way to go. And I would certainly suggest that a third of the staff already having been ratcheted down as a result of unfilled vacancies is more than a fair share. It represents a 16% reduction, as opposed to eight.

SENATOR STOCKMAN: All right. I don't want to get into what really is an Appropriations Committee question more than an Oversight Committee question, Doug. I just want to make one more point, or get one more point clear in my mind. I understand that the job that we were doing in terms of providing low- and moderate-income housing in 1985 was abominable. I understand with the creation of COAH that we've multiplied five times our performance. What's the answer to the question of whether we are further behind or catching up relatively in terms of low- and moderate-income housing needs in New Jersey in 1985 and in 1991?

MR. OPALSKI: We've slipped. We're still slipping, and the reason is that--

SENATOR STOCKMAN: Those combinations of reasons you alluded to. I think I understand that. So, the picture is clear that New Jersey's needs for low- and moderate-income housing were very substantial in '85?

MR. OPALSKI: Very substantial. Exactly.

SENATOR STOCKMAN: New Jersey's needs for low- and moderate-income housing, even though COAH has multiplied five times what New Jersey was accomplishing in that area, are greater today than they were in '85.

MR. OPALSKI: No question.

SENATOR STOCKMAN: I thought that. I wanted that clear. All right.

MR. OPALSKI: May I just add a point? I don't want to burden you, but 55% of the need is found in the urban areas. These are units that are unsound and already occupied. Eighty thousand units of the need don't need to be built, but rather

rehabilitated. This gets at a long-term commitment to the urban areas. That fell into disrepair over decades, and I think we have to scale our expectations to fiscal reality. It's going to take decades to address. I think part of the problem we face is the perception problem that the need number has to be addressed in the certification period.

SENATOR STOCKMAN: What's frustrating is we are losing ground, not gaining it, notwithstanding COAH, and that observation is not intended to be a criticism of COAH.

We've got to move on. I appreciate your remarks.

John Eppling, I have a problem with another witness who is under great pressure. You've been very accommodating. This witness, Bill Dressel, assures me that he will be brief. Can you accommodate him and go after him?

J O H N W. E P P L I N G: I'll accommodate him and go after him.

UNIDENTIFIED MEMBER OF AUDIENCE: I've never known Bill to be that brief. (laughter)

SENATOR STOCKMAN: Well, we're going to put him to the test. All right. Thank you. Bill, do you want to come up with Ed and--

MR. DRESSEL: Thank you, Mr. Chairman, and thank you Mr. Eppling, for being so kind with your time today. Mr. Chairman and members of the Committee--

SENATOR STOCKMAN: That's right. He owes you one with regard to your work with the State Planning Commission. You should get a major concession out of the League of Municipalities over this, Mr. Eppling. (laughter)

MR. DRESSEL: On second thought, maybe we'll wait, Mr. Chairman. (laughter)

All of you have received a copy of our formal statement. We thank you for the opportunity to appear before you to present the League's point of view on this timely matter. We applaud your decision to conduct an oversight

hearing on this subject. We believe that the Legislature has a responsibility, if not an obligation, to explore further this matter and to be actively involved in the ultimate decision to do whatever has to be done with COAH, if anything.

Today I am joined by Mr. Ed Schmierer. He's a township attorney for Princeton. Following my comments, Ed will further elaborate on his experiences with the Council on Affordable Housing.

SENATOR EWING: Just a minute. We don't have copies of your comments, or dissertation.

MR. DRESSEL: Oh, I'm sorry. (copies distributed)

We recently read, with considerable alarm, news articles -- copies of those news articles are attached -- on the administration's proposal to eliminate some eight staff employees in the Council on Affordable Housing.

I'd like to draw your attention to an article that appeared in The Times on Monday, April 1. We were hoping that that was an April Fools' joke, but we were quite alarmed in the article where Ms. Lovejoy, the reporter, quoted a Nancy Kearney. In fact, I'll read it: "Nancy Kearney, a Florio spokeswoman, confirmed that the administration is considering consolidating the Council on Affordable Housing with the Division of Housing within the State Department of Community Affairs.

"Kearney stressed that Florio was not backing away from his commitment to affordable housing, but said that the administration's consideration of consolidating COAH is part of the Governor's overall attempt to streamline State government."

We think that that is a reason for alarm. Having been involved in State government and an observer through the legislative process for some 17 years, when I hear the words, "streamline, consolidate, economize," used in reference to State agencies, that does send up a flag -- the red flag. It does signal that the worst is on the horizon.

This decision could not come at a worse possible time, given the Supreme Court's recent decision which directed the Council on Affordable Housing to promulgate a development fee regulation that municipalities can use to collect money for low- and moderate-income housing.

Additionally, there is an immediate need for more technical and planning staff support in the low- and moderate-income housing area which will help local governments and the State of New Jersey accomplish the goal of providing housing for those who need it. Given the huge cuts in personnel that the Department of Community Affairs has already experienced, we question whether or not the Division of Housing, or any other agency within the Department of Community Affairs, can absorb these additional responsibilities. We also fear that COAH would lose a degree of independence in decision-making authority that it presently enjoys if it was enveloped within another division or agency of State government. I thought that the OLS analysis that was done at the outset of the meeting, Mr. Chairman, amplified further on that particular point.

At present, COAH is involved in an ambitious project of self-evaluation and issues examination. The League of Municipalities is an active participant in this process and we are hopeful that this will result in meaningful changes.

The Council on Affordable Housing is not perfect; we believe there is room for some improvement. However, we strongly believe that COAH should be an integral part of our State's efforts to develop a meaningful housing policy at a time when we need it.

At this time, Mr. Chairman, I would like to introduce Ed Schmierer, who serves in a dual capacity: He's Counsel, as I indicated previously, in Princeton Township, and he is a member of the League's Affordable Housing Committee. He's been involved in a number of task forces that COAH has established

to look at the rules and regulations. Mr. Schmierer?

E D W I N W. S C H M I E R E R, ESQ.: Gentlemen and Mrs. Lipman, thank you. Jerry, I'll be brief. I really think it's important to keep this agency independent and keep it alive.

We work with COAH, and I represent a town that's not before COAH, so we don't really have the same perspectives as a town which might be trying to work through the substance of certification. But we've worked with COAH through the League of Municipalities and we've always been impressed with their ability to, what I'll say, take the high road to evaluate the side that the League might put forward, to evaluate the side that the Builders Association might put forward, and to work a consensus that will really work.

The most recent effort that we've been involved with, that Bill alluded to, was a follow-up to the Holmdel decision. That instructed COAH to come up with a rule, a very difficult rule, about how we're going to collect affordable housing fees. The numbers here are dramatic. I know you don't want to get into the financial side, in terms of what will be saved by pulling COAH into the Department of Community Affairs, but this developer fee rule alone, the one that I used to travel down and see then Assemblyman John Bennett about in 1986, is finally here. There are towns that have collected -- that we estimate -- close to $30 million, which COAH has frozen by virtue of an order, and is working very hard on a rule that hopefully will allow towns to keep that. But, more importantly, will encourage towns to develop a rule to collect more money for affordable housing in the future. We're talking about big dollars.

SENATOR STOCKMAN: Excuse me, did you say a rule that would allow the towns to keep that $30 million--

MR. SCHMIERER: Well, we hope so.

SENATOR STOCKMAN: --to use for low- and moderate-income housing--

MR. SCHMIERER: Yes.

SENATOR STOCKMAN: --in their own way?

MR. SCHMIERER: Yes. There have been towns -- and I think John knows -- there have been towns in his area and our area that have collected money since 1984 and 1985, from developers building office buildings, and so on. That money has been set aside because the legality of that has been in flux.

Our Supreme Court surprised us and delighted us all in December and said that's not such a bad idea, provided we have some COAH rules and guidelines. They have been working on that.

We've been working for the last eight weeks on a task force, and they are about to develop this rule and regulation.

Interestingly, some of the most, I think, interesting participants on this task force have been people who have come to COAH from the Department of Community Affairs. Chuck Richman and his staff have been at the task force with us with people from the developers' community, debating what should go into this rule. I really think that having COAH in a position to kind of oversee this and bring their expertise to it, as opposed to being in a little pigeonhole within DCA, wouldn't have brought out the same kind of debate that we just went through in the last eight weeks. Chuck Richman really would have had Doug or somebody there, basically, working for his organization.

So, that's just an illustration of the reason why this agency, I think, needs to be supported and needs to be independent. I really think you will be sending the wrong signal. I mean, you've got the Supreme Court that has been beating on this affordable housing drum since 1975, and you have the Legislature that delivered -- through, Jerry, a great deal of your support -- in 1985, with the Fair Housing Act. And I just think--

SENATOR STOCKMAN: We didn't deliver near what I wanted to deliver, and that's why I didn't vote for the Act. We don't want to get back into that.

MR. SCHMIERER: Well, we got something, which was something more than we had. I think we would drift back tremendously if this agency was basically gutted and consolidated into a more, in my opinion, bureaucratic and more laborious organization.

SENATOR STOCKMAN: All right. I think we understand that view.

Let me ask you, though, particularly Bill, can you shed any further light on how you think this problem came about? The scare, the concern-- You've got a pretty close ear on State government. Can you add anything?

MR. DRESSEL: I really can't, Mr. Chairman, other than what I have read in the newspaper and what I have heard. I have had conversations, basically, with Barry Skokowski and Commissioner Primas. Barry Skokowski, I think, accurately reflected that there had been some discussions, but no layoff notices had been sent. As you know, with the Civil Service regulations, they would have had to have been in the mail by now.

SENATOR STOCKMAN: Sure. All right. Thank you.

SENATOR EWING: Question?

SENATOR STOCKMAN: Oh, I'm sorry.

SENATOR EWING: On the town fees that are being held back, the $30 million-- Will they also go for rehab, or just for new construction?

MR. SCHMIERER: Oh, no. No. They will go for rehab; anything that you can use Affordable Housing money for. And it's important to hang onto that money, sure.

SENATOR EWING: Then who audits the rehab?

MR. SCHMIERER: Pardon me?

SENATOR EWING: Does DCA audit it, or do they do all the auditing to make sure the money has been spent where it is meant to go?

MR. SCHMIERER: Well, that's in flux. I mean, one of the proposals that we made to COAH was that the towns that collect this money would have an affordable housing plan that COAH would monitor. DCA wouldn't monitor it; COAH would monitor it. We would check in through the masters that the towns would pay -- not COAH, but the towns would pay -- and report on how we're doing -- rehabilitating, doing RCAs, or building new units. But that would be a function of what the COAH folks would do.

And if they are in a slight ebb right now in terms of development being off and so on-- If this gets on-line and they can attract a number of these communities which are not in court and not in COAH to come forward with these ordinances, they are going to be one busy organization.

SENATOR STOCKMAN: Okay. Thank you very much. Is John Eppling here? Have we lost John?

UNIDENTIFIED SPEAKER FROM AUDIENCE: Oh, he's in the hall.

SENATOR STOCKMAN: Thank you for keeping your promise.

Thank you, John, for accommodating us, and welcome.

MR. DRESSEL: Thank you, John.

MR. EPPLING: Thank you, Senator, and members of the Committee. My remarks will be very, very short. I'm not sure what I can contribute to the discussion.

I will say, however, that the staffs of the Office of State Planning and the Council on Affordable Housing have been cooperating over the last four years in the development of housing policies for the State Plan, and in devising a State Plan that would allow COAH to meet its obligations in terms of their reallocations in 1993.

The studies of my office indicate that there is a very close relationship between maintaining affordable housing and continued economic growth and development in the various regions of the State. It's important, therefore, that the issue of affordable housing be maintained as a high priority in public policy, if we expect the State to continue growing into the 21st century. Because one of the goals of the State Planning Act is to develop a State Plan that assures adequate housing at a reasonable cost, it's very important, I feel, that the function and the work of COAH be continued.

SENATOR LIPMAN: That was short.

SENATOR STOCKMAN: Senator Lipman, do you have any questions of this witness?

SENATOR LIPMAN: Not really.

SENATOR STOCKMAN: I think your remarks are understandable, and we appreciate your coming here and sharing them with us.

MR. EPPLING: All right. Thank you, sir.

SENATOR STOCKMAN: John Payne, Professor of Law, Rutgers Law School?

P R O F E S S O R J O H N M. P A Y N E: I have a statement which I will leave with you.

SENATOR STOCKMAN: Thank you.

PROFESSOR PAYNE: Good morning, Senators. At this point in the morning I expect almost everything that needs to be said, has already been said. I won't read my statement. Let me just hit a couple of high points.

I'm the President of the Alliance for Affordable Housing, which is a group of some 60 statewide and local organizations that are concerned about housing. Frankly, our members are of very different minds about this proposal. There is a high degree of frustration out there in the housing community with COAH, and some of my members said, "Well, maybe a change would be good. It would shake them up a little bit, see what it would accomplish."

Others, and I think I would put myself personally in this camp, feel that there is a high value on the autonomy of COAH's decision-making process, and that losing that would be a high price to pay. Still others express a sort of frustrated indifference and say, "Well, the process isn't working very well. Rearranging the furniture isn't going to accomplish anything other than kidding ourselves that we have done something, and so it really doesn't matter one way or the other."

I think there are some things, however, that we can agree on in this often fractious and ungovernable housing community. As I indicated, we are disappointed with the progress that has been made to date, and we lay some of the blame at COAH's feet. The regulations seem designed to move housing numbers downward rather than upward, and we find the process somewhat bureaucratic, and at times getting away from the constitutional mandate of assuring that it is a realistic opportunity, rather than simply a number on paper.

That said, however, I think we all feel that the statute -- the Fair Housing Act -- from which COAH takes its mandate, is seriously flawed. We would like, in some perfect world, to see substantial revisions to it. The voluntary premise of the Act has not worked.

I think it is also fair to say that there is a great deal of frustration in the housing community that the membership of COAH itself is so tilted toward municipal dominance, that it's almost inevitable that the rules tend in that direction.

SENATOR STOCKMAN: Is that more true with the overwhelming number of new appointees, or less true, from your perspective?

PROFESSOR PAYNE: I don't make that point personally about any of the members. The members before, the members now, I think are, individually, very fine, decent people. I think

they work to carry out their mandate. I'm speaking more structurally that there has never been a member of COAH, from the time of its inception, who actually came from the advocacy, low-income community. I would think that one out of nine would not overbalance the process.

And there has been irritation since day one that the Act describes the interests of low-income people as being represented by a profit-motivated builder and ex officio, HMFA. Those people have a perspective on affordable housing, but they don't necessarily have the perspective of the roots and the community--

SENATOR STOCKMAN: Did the Alliance attempt to get a member, or some members, on COAH?

PROFESSOR PAYNE: Yes, sir.

SENATOR STOCKMAN: With this administration?

PROFESSOR PAYNE: We have been advised that we are too one-sided in our views. I find that somewhat difficult to accept.

SENATOR LIPMAN: May I ask--

SENATOR STOCKMAN: Yes.

SENATOR LIPMAN: I hate to interrupt you, but the Council pointed out to the Legislature that the Act was not very voluntary; that the waiting period was too long. We made a movement to reduce the waiting time. Did this improve the functioning of the Council?

PROFESSOR PAYNE: It's certainly a step in the right direction, Senator. I believe you were instrumental in that.

SENATOR LIPMAN: We did that, right.

PROFESSOR PAYNE: One of the serious flaws in the Act is the ability of a municipality to file a plan with the Council, but not petition for substantive certification. However, so long as that plan is before the Council, any litigation that might thereafter be brought will ultimately trigger COAH activity. That's kind of a fail-safe for the

municipality. They don't have to implement the plan, but they are protected against going to court if they don't want to.

Pushing down that period to two years, as I believe the new legislation does, as I say, is a step in the right direction.

It's a brand new piece of legislation. COAH is just still in the process of deciding exactly how far--

SENATOR LIPMAN: To implement it.

PROFESSOR PAYNE: --to implement that. I don't think there are any results from that, as yet, that we can speak to.

However, there have been a number of municipalities that have decided not to participate in the COAH process, at all. That has to be of concern.

The third point echoes what others have said. The rumors and uncertainty is morale killing in the COAH staff. It's understaffed. It has virtually no monitoring capacity at its present staff level, and monitoring is absolutely essential if these paper plans are to be made reality.

Fourth, I think -- despite what I've said about COAH and about the Act-- On balance, I think we would come down saying that if the Act were approved, and if COAH were staffed and had regulations that were truly effective, then autonomy is a major value.

COAH is an alternative to the courts. Like the courts, it has to be perceived as legitimate in its decision making, and in order to have that legitimacy, it has to have a certain separation from the day-to-day, hurly-burly of administration and of politics.

Finally, let me simply argue, as others have, that reorganization by itself doesn't amount to anything. Indeed, COAH has been under threats of one sort or another virtually from the day it was organized. The constant battle fighting is disruptive in the sense that one doesn't get anywhere. You

spend all of your energies trying to prevent losing ground, rather than going forward.

A rearrangement of the furniture at this point would take a lot of time, would take a lot of energy, and we would still be left with an inadequate piece of legislation.

So, our suggestion to you -- and I think it's the one you've heard from virtually everyone this morning, except perhaps DCA -- is that we leave the status quo. There don't seem to be any advantages to the merger with DCA, and this Committee, and the Legislature as a whole, ought to concentrate its attention on trying to make the Act itself a better piece of work. If and when we get to that point, then I think we might ask ourselves, "Well, is COAH the best place to be doing this? Are there advantages to having a new agency, a different agency?" But doing that without it being part of a general thinking through of the problems of affordable housing, I think is just an empty gesture.

Thank you.

SENATOR STOCKMAN: Thank you, Professor Payne.

Any further questions?

SENATOR LIPMAN: No.

SENATOR STOCKMAN: Senator Ewing?

SENATOR EWING: None.

SENATOR STOCKMAN: Thank you very much for a thoughtful statement. It will be part of the record of the Committee.

Peter O'Connor, from the NAACP?

P E T E R J. O' C O N N O R, ESQ.: I'm the attorney that filed the first Mount Laurel suit, and actually, May 1 will be our 20th anniversary. I've been involved representing the plaintiff since then, and have worked with DCA since its inception, with Commissioner Ylvisaker, through Primas, and have worked on the legislation of the Fair Housing Act. I think you have heard all of the arguments, so most of my notes

are just superfluous, except I think there is one point, a new point, that the Committee should be aware of.

What I think is going to happen here, after hearing the testimony and the responses this morning, is that we are going to win the battle -- which is rescinding the layoff notices -- but lose the war, because when the budget process goes through, the same people whose notices have been rescinded are going to be wiped out through the budget cuts.

So, I think we have a two-pronged concern here. I'd like to just bring to your attention that we need at least 25 people at COAH to do the functions that they are mandated to do. We've gone down from 19 to 16 to 13, with eight on hold due to the rescission of the layoff notices, and when the budget cuts come through, maybe all eight won't go, but we'll go from 13 maybe to nine. That puts people like myself -- who are out there as advocates viewing the system -- left with a situation where I don't think the COAH setup can work, and I think it's incumbent upon us to go back to the courts.

I have been before the courts in May of '71, '72, '75, and '83, and in most of the other major cases, I have been playing some role in. I have been before COAH on the Cherry Hill case we have, which is the only town which was in court. We sued them, went to COAH and lost, couldn't comply, are back in court now before Judge Gibson, and, you know, it's a very frustrating process. But to try to hold COAH up with eight or nine employees as something that is going to comply with the Mount Laurel cases or the Fair Housing Act, is really a joke.

I think that what really needs to be done are two things: This Committee needs to, one, get written rescission of the layoffs, but more importantly, put a freeze on the reductions because they should get credit for the reductions that have already been made. Otherwise, I think the alternative is that it is going to be viewed as a paper tiger, not able to carry out the court and legislative mandates.

Then what we should do is go back to court and put COAH on trial. I think that's where we are headed because of a number of things which really aren't pertinent this morning, like the voluntary nature of the Act and filing but not following through, and then you immunize developers and municipalities from lawsuits, and a whole list of other things.

But, the only other point that I would like to mention-- Senator Ewing raised the point of, what does DCA do and what does COAH do? I've worked with both agencies -- COAH since it started and DCA since it started, over 20 years ago -- and DCA, to make it simple, in the area of housing, really acts as an administrator of the State Balanced Housing Program, giving out grants and loans, and as the conduit for the Federal system of moneys to various projects. Most of those projects are not municipal. Most of the projects are private development projects. They do not perform any of the functions and have no experience in any of the functions that COAH has been involved in at all.

So, what we're going to wind up with is housing inspectors mediating plans. We're going to wind up with people who have no background at all in this, and I think make it just a--

SENATOR STOCKMAN: Bigger mess than it is?

MR. O'CONNOR: Yeah. And it's really-- And the irony of the whole thing, is that I get calls from all over the country thinking that New Jersey is the leader in affordable housing in the whole nation. The further irony is, it is. (laughter)

That's how bad a posture the nation is in on affordable housing, if what we're talking about here, debating whether we should have 13 people handling the whole statewide system, and that's in the leadership of the whole nation.

SENATOR LIPMAN: Right.

MR. O'CONNOR: So, Mount Laurel has put us in the leadership, in the forefront, according to "Fortune" magazine and all other articles that come out periodically on affordable housing, but we have not given the system the tools to implement it.

This opportunity to bring this to your attention, I think, is important. I really see you getting the letter, but the letter is almost meaningless at this point, given the budget process, and in the process, doing the same thing, or close to the same thing.

So, I hope that-- And I think the Committee, from your questions this morning-- I've been here since the beginning, when Barry was here. I think the reason that he was a little silent is that it really doesn't matter for him to say anything, because you'll get the letter, you'll lean on the Personnel people, and in another couple of months Doug will appear, give a bunch of testimony, and a worse result will occur.

They won't move it over to DCA temporarily. They'll set up a system, maybe, to do that over the long haul, and in the meantime, they will emasculate the staff. No one can work under those conditions, not knowing if you even have a job. With all the municipalities--

What is happening now, with the 70 or so municipalities that are in court-- On our Cherry Hill case alone, just on one case, almost every time we are before Judge Gibson, the issue is, should the court act independently or should it follow COAH? The Judge, in every instance, says, "Let me get a brief. Let's bring COAH in." How can you do that with one DAG, with motions pending before the Office of Legislative Hearings and administrative law judges, with cases continuing, with the COAH cases-- So, I think where we are heading for is really kind of a wipeout and a return,

ultimately, to the court, unless we put a stop to these administrative emasculations.

Thank you.

SENATOR STOCKMAN: Thank you, Mr. O'Connor. We may have some questions of you. We appreciate your coming in and we appreciate your advocacy and understand, maybe a little bit, your frustration.

Senator Lipman?

SENATOR LIPMAN: I just didn't want Mr. O'Connor to feel so frustrated about what this Oversight Committee can do. We are oversight; we are not the budget. However, we have the Vice-Chairman of the Appropriations Committee here, and we have the leader of the Minority here, and I'm sure that your little talk is not falling on deaf ears.

SENATOR EWING: And you're a member. Come on, don't leave--

SENATOR LIPMAN: Yeah, I'm a member, too. But I just want to say that, although this is not the budget committee, that we do hear you.

MR. O'CONNOR: I know that. I think you really need to put the other hat on though, on this issue, because the first hat, I don't see as much of a problem. Although it was--

SENATOR STOCKMAN: Well, the other hat is quite a hat.

Senator Ewing?

SENATOR EWING: No questions, thank you.

SENATOR STOCKMAN: Mr. O'Connor, maybe you can't answer this, but putting aside your understandable frustration with what Doug Opalski acknowledges is a further falling behind on this issue of housing, what, from your perspective, is the performance of COAH and its staff? Do they give you the impression that given the flawed law that they have to work under, given the market problems that have exacerbated the problem, given all these other things-- Can you give some indication as to how they are functioning within all that?

MR. O'CONNOR: I would separate my response into two parts: As far as Doug and individual staff members, most of whom I know, I think they are professionals. I think they are committed to the goals of Mount Laurel, and I think they do a good job. I think the problem is, as Professor Payne has pointed out, there is no real balance on the Board that presents the needs of poor people. So what happens is, it turns out to be a political debate between a developer -- and Hovnanian is on the Board, and is very influential -- and municipal interests. That third interest, of poor people, is never put into the mix because there really is no advocacy on that. Consequently, many of the decisions that have been made, although well meaning by the staff and others, sort of tend to slant in the direction of municipal interests, or what I would call "pre-Mount Laurel interests," and perpetuate the status quo.

SENATOR STOCKMAN: COAH is a -- in your view and perspective -- nonrepresentative group. It is not a group that has a cross section--

MR. O'CONNOR: I think it has some cross sections. I think the municipalities are well represented. I think the developers are well represented. I think the point is that the interests of the beneficiaries of Mount Laurel are not represented, and consequently, what never gets fully debated on these issues is the specific needs of, whether it's the young couple buying a house or the poor couple that can't afford home ownership and needs rental. That interest is not present in a knowledgeable way, or in any way, in the mix.

SENATOR STOCKMAN: You suggested that the people of New Jersey, through their representatives, have not shown enough interest in, concern about, and commitment to, the problem of dealing with housing for low- and moderate-income people, correct?

SENATOR LIPMAN: He says the members of the Council--

MR. O'CONNOR: I would say they have shown close to nothing.

SENATOR STOCKMAN: And you say that the people of America, in other states, have shown no more, indeed arguably less, of a sensitivity and appreciation, a commitment to dealing with the problem of low- and moderate-income housing, correct?

MR. O'CONNOR: With the possible exception of Massachusetts and California. But, yes, I think as a generalization, you are correct.

SENATOR STOCKMAN: Do you think either or both of those states have, in fact, met and shown that responsibility?

MR. O'CONNOR: No. I think they are the other two states that are in the process, along with New Jersey. And New Jersey, because of Mount Laurel, because of the statute, and because of COAH, is viewed as the one furthest along with a structured system to address the need.

SENATOR STOCKMAN: Why do you think that is? Do you think it's a matter of a failing on the part of leadership people in government -- people like ourselves -- to educate, to lead, to articulate in ways that bring the public to an understanding, an appreciation, a concurrence, and a support, and therefore a vote for -- through us for it? Or, do you think it goes to the nature of the people?

MR. O'CONNOR: I think there are three reasons why the country as a whole, and in particular New Jersey, has not effectively addressed this issue:

One is, there is a lack of recognition that Mount Laurel speaks to 40% of the State's population as beneficiaries. If you were to check the income eligibility, we are talking about people from welfare, making about $6000 a year, up to people into the low $40,000s. I think the perception is low-income, so I think there is a lack of an

educational program across-the-board, by both the Legislature and the executive and COAH.

The second problem, I think, is one of politics. In that mix, I think there is a racial discrimination that prevails. The perception is that most of the beneficiaries are minorities. Most of the beneficiaries are inner-city people. The RCA would be an example of a negative response to that situation. By enabling suburbs to transfer units to the cities, it perpetuates the status quo racially and economically. It may be a good economic tool, but it still maintains a pre-Mount Laurel situation. What happens in most of the towns, is that they would rather go to court. Moorestown would rather spend $650,000 instead of $52,000 in COAH. Why? Because they will get reelected. They'll get reelected by wasting the taxpayers' money, but looking like they are protecting their interests. I think that, consequently, the voluntary aspect of the Act needs to be made mandatory, or else it's a serious flaw.

The third is, obviously, the funding crisis at the Federal and State levels. Since we've been in Mount Laurel, there has been a 70% to 75% cutback over the last 15 years in Federal housing funds. The State does not even have a program by way of appropriation. There is no housing program in the State of New Jersey. The Realty Transfer Tax Program is the only program that exists to provide funds, other than being a conduit for Federal funds.

So, when you were asking Doug-- I have all those statistics. We went as high as $28 million, and this year we're down to about maybe $12 million or $13 million. At the same time, the application process has gone up to about over $100 million. So the program is totally insignificant in addressing the program. There is nothing in the budget in the State of New Jersey that provides funds for housing. Our response is realty transfer dependent upon the economy, and

real estate closings, and over on the other hand, bond issues for home ownership. But the vast majority of the 40% of people need rental housing, and there is not one program in the State of New Jersey to address that need.

Consequently, to come before COAH -- to do what? You can get a certified program, but can you implement it? I'm sorry to go on so long, but I was trying to be--

SENATOR STOCKMAN: That's all right.

SENATOR EWING: One question: The 40% that need rental housing, or the big part of them: Why, because they are transients? They are moving throughout the State, or what?

MR. O'CONNOR: No. In Camden, as an example, the cost, simply of real estate taxes, the cost of water, sewer, regional sewer, and insurance-- Those five functions, if you owned a house that you wanted to rent to this poor person or family, that family could not afford to pay you a rent that covers those five elements, and we haven't even gotten into the cost of the landlord's mortgage, profit, management, and repairs.

I mean, if people can pay-- I have developed over 600 homes. We have over 2000 tenants in Gloucester, Salem, and Camden Counties. We now own 132 acres in Mount Laurel to implement the decision in Mount Laurel, and we have people who pay at the elderly level, $27 a month, as 30% of their income, and we have families that are paying $100 to $200 a month. Now, I don't care what type of house you have or where it exists, those families cannot afford home ownership. The bond issue, although it's good, only addresses a small segment of the Mount Laurel need, and the Realty Transfer Tax, given the recession, is very insignificant.

That's the other side of the coin, but to emasculate the structure is what you are addressing today, and I think that that's important, first, to put in place, but we need funding.

SENATOR EWING: You said, "We." Do you mean the NAACP owns 132 acres, or whatever it is?

MR. O'CONNOR: Well, we set up a separate nonprofit, yes, to implement the case.

SENATOR EWING: Thank you.

SENATOR STOCKMAN: It sounds like it is not the time to shrink our State tax base. Would you agree with me? (no response) So we better go slowly in rescinding any taxes.

SENATOR LIPMAN: All right. I hear you, Jerry.

SENATOR EWING: We agree on that, Jerry.

MR. O'CONNOR: Thank you.

SENATOR STOCKMAN: Next we have the distinguished former Mayor of the great city of Newark, Kenneth Gibson. Mr. Gibson, do you want to come up?

F O R M E R M A Y O R K E N N E T H A. G I B S O N: Mr. Chairman, and members -- my Senator, Senator Lipman: I want first of all to say I will be brief. Most of what needs to be said today has been said very well by previous speakers. I just wanted to give a perspective as a former member of the Council on Affordable Housing. I was an original member of the Council.

I think that this Committee needs to know that those early deliberations were trying for everyone. We spent a lot of time -- public hearings around the State -- a great deal of time, staff time of all concerned individuals, consultants, housing experts from this State and some people who contributed from outside the State, in developing the procedures and rules and regulations by which we were going to function.

That experience is invaluable. Some of those staff members were there at the very beginning. I say, frankly, I think it is one of the finest groups of people -- both original members, present members, and staff people -- that exists in the State.

I don't think anyone is very happy with the extent of actual housing produced, to date. At least, I don't think any of our staff people are, and I don't think any of the members are satisfied. But at the same time, it is better than where we were when we started the process. I think therein lies the difference.

Presently, most of the members of the Council are new. To consider new members of the Council and new staff people -- whether they have qualifications as planners or not at DCA -- I think would be a tragedy; a disaster, in fact. To consider the fact that new members have to learn from whatever old members are left -- I think there are only two -- and the staff in order to make this work as best it can under present legislation, is the way the process has to proceed. Any new member who goes on that Council now has to gain from that staff, has to be taught by that staff, has to be taught by the older members, in order to be effective.

The reason I'm here, really, is not to criticize DCA certainly, or anyone in the State, but just to give you the benefit of that experience. If that experience is lost, then whatever we do, even with amended legislation, I think will suffer.

That's my position.

SENATOR LIPMAN: May I just--

SENATOR STOCKMAN: Yes.

SENATOR LIPMAN: We have heard at least two or three times that the interests of low-income housing are not well represented on this Council. What would your answer be to that?

MR. GIBSON: I would agree with that. I'll give you a little experience on that: Those of us who are public officials, or have been public officials, always feel, obviously, that we have been elected and therefore we represent all of the people, the constituency, and we do. But at the same time, the perception that exists in the community out

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there is, as has been expressed to you-- I would think that if there are going to be changes, that would be one that should be considered.

SENATOR STOCKMAN: Any questions, Senator? (no response) I have none. Thank you very much.

MR. GIBSON: Thank you very much.

SENATOR STOCKMAN: I appreciate your coming.

I'm trying to get a sense-- I don't want to necessarily recess if we can avoid it. Let me go over the names of a few more witnesses. I'd like to very much finish, if we can, without a lunch break, but I don't want to go too far on that score.

We have Philip Paley, Peter Buchsbaum-- I don't see Peter here.

UNIDENTIFIED SPEAKER FROM AUDIENCE: Peter is not here.

SENATOR STOCKMAN: Dr. Steinberg is here. Bob Burchell, okay, and Henry Hill. Henry is not here. And Anita Ashkinazy--

SENATOR LIPMAN: She's here.

SENATOR STOCKMAN: Okay. So, we have four more witnesses, and what I'd like to try to do-- If we can limit each of you to 10 minutes, we ought to be able to finish this hearing by 1:00, or just a little bit after, rather than take a break. So, let's take a shot at trying to do that.

Mr. Paley?

P H I L I P P. P A L E Y, ESQ.: Good afternoon, Senators, and thank you very much for this opportunity.

My name is Philip Paley. I am an attorney. I am the Director of Law and Township Attorney for Piscataway Township, and have been for the last 11 years. I served as trial counsel during the 30-day trial before Judge Serpentelli, representing the interests of the Township of Piscataway, and the 15 or 20 days of trial that followed the first 30 in order to deal explicitly with Piscataway Township. I'm a veteran of two

appearances before the New Jersey Supreme Court on Mount Laurel related issues. I have also participated in two mediations before the Council on Affordable Housing, both involving Piscataway Township. I have the responsibility, now, of preparing ordinances and resolutions, and reviewing the housing element, Fair Share Plan, and Housing Rehabilitation Program that the Township of Piscataway has adopted in order to implement our fair share of affordable housing and to meet our commitment under the substantive certification that we have received from COAH.

Someone used the term "irony" before. The fact that I am here in defense of the positions taken by COAH, given all of this history and my involvement before COAH, is somewhat ironic in and of itself. I think my credibility on the point is demonstrated by the fact that Piscataway Township, at the present time, having been given the number of 911 units to meet as its Fair Share number, has 550, or thereabouts, either underway or completed, including senior citizen housing, the Housing Rehabilitation Program, and several four-for-one developments.

SENATOR STOCKMAN: What's the population of Piscataway?

MR. PALEY: I believe it's 46,000, under the 1990 census.

Now, I think that Senator Stockman's comments at the very outset of this meeting were very helpful, because he suggested that some of the witnesses try and go back in time, so to speak, and return us to those days of yesteryear, pre-COAH, and to explain exactly what the position was.

Henry Hill was quoted in the newspapers, back pre-1983, suggesting that the municipalities were the baby harp seals of the affordable housing situation; that there we were, defenseless political entities, being kind of clubbed, and kicked, dragging and screaming, into the 20th century of affordable housing. I'm sure that many of you Senators will

remember that at least one of your number, who was a mayor of a Middlesex County community, was continuously in the newspapers threatening to go to jail, rather than to adopt the rulings that Judge Serpentelli was making. I'm sure there were more. I'm just familiar--

SENATOR STOCKMAN: It's interesting. He's no longer with us.

MR. PALEY: That's correct; that's correct. At that time, the organized municipal representatives, such as the League of Municipalities, were, by and large, silent. And one can hardly blame them because they were faced with the Supreme Court of New Jersey taking a very strong position, legislators taking very strong positions in the opposite direction, and who knew what was going to happen. What we had was something very close to, and akin to, a constitutional crisis.

That was produced in large measure by the fact that -- as Mr. Skokowski said earlier -- a few professional people in the housing area produced numbers of housing units which terrified everybody.

I'll give you an example of the kinds of numbers that were produced as far as Piscataway was concerned. We were using 1980 census figures. At that time, Piscataway's population was 43,000. At that time, we had 12,300 housing units. Under the formula that was first adopted by Judge Serpentelli and by the three Mount Laurel judges, we would have been compelled to approve the construction of 21,000 housing units. Our number -- our fair share number -- was 4192.

Now, that's one little town--

SENATOR STOCKMAN: You said 24,000 units?

MR. PALEY: Twenty-one thousand total housing units, of which 4192 were to be affordable.

SENATOR STOCKMAN: Oh, okay.

SENATOR EWING: Four for one.

MR. PALEY: Four for one, that's exactly right.

Piscataway was not alone in this, although perhaps the numbers were somewhat la ge because of the businesses that had located along Route 287, and so forth. But in any event, other towns started to see what could happen. If it could happen in Piscataway, it could happen in other towns and in other areas of the State, and you had, as I say, some political turmoil.

Along comes the Fair Housing Act, and no one would testify here that that is a perfect Act, but it created the Council, and it created a highly professional staff. I think what COAH did was really remarkable, in the past five or six years.

COAH responded to the need to compromise. It represented the needs of lower-income people. I would respectfully differ from those witnesses who say that lower-income people are not represented on the Council; they are, and aggressively so. But so are the developers and so are the municipalities.

The COAH staff created rules and regulations which created a practical opportunity for the construction of lower-income housing. Just merely having something called "phasing," which said that no more than 1000 affordable housing units would be built in any six-year period, demonstrated to the municipalities that they had friends in high places; that their towns were not going to be turned upside down in any one year or in any one period.

The Council staff understood the need for mutual participation among all groups. Mediation processes-- In Piscataway's case, for example, we had one mediation process in which the Civic League of Greater New Brunswick, at least four of five developers, and the Township participated, and each one had counsel and each one had other representatives around the table -- not very dissimilar from this one -- and each one had the opportunity to funnel its ideas or its perceptions into the system.

Most important, what COAH did was, and what the COAH staff did, was to ignore the doctrinaire approach, either the approach that said, "We want to be number one in the United States, and we want to cram affordable housing down the throats of the existing populace," or the opposite way, which said, "Home rule, home rule, home rule. No affordable housing. Zoning stops at the municipal boundary."

Now, the way I view the results that have happened is: Homes were built, but they were built in a responsible way without destroying towns. Litigation was reduced. The cost of litigation, which you have heard alluded to, is phenomenal. If you have a 30-, 35-, 40-, and 60-day trial, I leave it to your imagination -- and I'm sure you can ask your own attorneys and staff -- how much that costs, because not only do the advocates for lower-income housing need counsel, the towns need counsel. Developers have counsel. It is a waste of resources.

What the COAH staff did was to merge disciplines of constitutional law, statutory law, legislative interpretation, eminent domain, questions of the taking of property, and the Municipal Land Use Law, in a way that nobody else has done nationally, as some of the witnesses have pointed out.

SENATOR STOCKMAN: So, you are supportive of the work of COAH, and are unenthused about seeing it surrendered into the Department of Community Affairs?

MR. PALEY: Absolutely.

SENATOR STOCKMAN: All right.

MR. PALEY: I believe that what they have done is to fulfill their constitutional imperative, and I am afraid that if their staff is cut, where we will find ourselves is in the position that we were in 10 years ago, where we had advocates for both sides taking staunch positions and producing nothing except a lot of hot air -- if you'll forgive me. I think that's unproductive and sterile, and so I would urge this

Committee to heed all of the testimony from the differing sides that you have heard this morning, and to act on them.

SENATOR STOCKMAN: Mr. Paley, do you accept the contention that we have slipped further behind in this area of providing low- and moderate-income housing for citizens over this span -- the life of COAH?

MR. PALEY: No. I think that Mayor Gibson was directly on point. Whatever we have now is far more than we would have gotten without COAH.

SENATOR STOCKMAN: But don't you see that as a separate issue?

MR. PALEY: My own view is this.

SENATOR STOCKMAN: Maybe you don't, but you've seen that we're on-- You know, when you answered me, I thought of that-- Did you ever see the picture of the two train tracks? I mean, that we are producing more low- and moderate-income housing over this span because of COAH, than if we just stood pat. I don't think anybody quarrels with that; certainly Senator Lipman, who voted against the Act. I would certainly. I'm sure my colleagues would.

So that we are doing better than we would have, no one would quarrel with, but there is another very blunt, very unequivocal statement made by more than one wi ness before this Committee, and I'm wondering whether you agree with it or not -- that we have actually slipped further behind?

MR. PALEY: I can't really answer that question, because I'm not familiar with the statistics for the whole State.

SENATOR STOCKMAN: All right.

MR. PALEY: If indeed we have, Senator, one of the reasons may be that because of the voluntary nature of COAH, that is to say, COAH cannot compel municipalities to submit the plans and the housing elements, and those municipalities which have done so have done so voluntarily. That would suggest that

the COAH staff should be enlarged, rather than reduced. If there were a compulsory nature to the Fair Housing Act, then the numbers might even be fairer for each specific municipality.

SENATOR STOCKMAN: Thank you. Do you have any questions?

SENATOR EWING: I have a question: Who are the members on the Council representing those who need the housing? You said--

MR. PALEY: My answer to that is the following: I can't identify members by name. There is, certainly, no one representing lower-income people to the same extent as, say, Mr. Hovnanian represents the developers. There is no question about that. However, it is certainly inaccurate to contend that COAH is a municipal agency; that COAH does nothing more than mirror the municipal perception of what its position should be. That is simply not true.

SENATOR EWING: Thank you.

SENATOR STOCKMAN: Thank you, Senator.

Thank you very much.

MR. PALEY: Thank you.

SENATOR STOCKMAN: Dr. Steinberg?

We are going pretty well. I know we are going to--

SENATOR EWING: We're doing all right. Let's keep going.

SENATOR STOCKMAN: Dr. Steinberg.

M A R C I A K. S T E I N B E R G, Ph.D.: My name is Dr. Marcia Steinberg, and I'm a sociologist -- sort of a departure from the members of the administration that you have had so far. I have a doctorate in sociology from the City University of New York. I have been a faculty member in the Department of Sociology at Rider College in Lawrence Township for the last 14 years. Previous to that I taught at Rutgers, at William Paterson College, and at Hunter College in New York.

The observations I am presenting to you are derived from extensive research that I have done on the Mount Laurel process, conducted as an academic and as a consultant, published in the academic press and in the media.

There is a letter from me to Doug Opalski that should be available to you. Rather than just read that, a couple of points I'll pull from that and some comments relevant to what we have been hearing this morning.

Under COAH's direction, affordable housing has been built in municipalities that previously resisted doing that in the State. That whole history -- and we just heard of the great opposition to the Mount Laurel decisions -- is reflected in that resistance. We had a Mount Laurel decision because municipalities didn't want to do exactly what the decision says they ought to do. So you have COAH, now, as the agency to try and push those municipalities along.

I'm the author of the study that Diane Brake described earlier this morning of progress in Mount Laurel housing in central New Jersey. In that study I looked at the COAH certified municipalities, and compared what was happening in those municipalities with other types of locations in central New Jersey -- unfortunately excluding Monmouth.

SENATOR BENNETT: So it's north, so south.

DR. STEINBERG: In the COAH certified municipalities, more than 100% of the required units for those municipalities are either built or in the approval process, and that's a far better record than any other type of municipality, including those that are supervised by the courts.

Rental housing came up earlier this morning. Under COAH regulations, there are bonuses given to municipalities if they have rental units. That has some controversial aspect to it. It diminishes the total number of units produced, but it has brought about more rental housing.

In the report-- In the totality of the report for MSM, I point out that 34% of the units in central New Jersey that are planned or built are rental units, and the majority of the rental units are targeted for lower-income segments of the population. In other words, the Mount Laurel units can be for lower- or moderate-income households within that 80% of the median figure. Most of the rental units are for households at the lower-income end. So, those regulations are supportive of rental housing for the population that really particularly needs it.

The first published study that I did on Mount Laurel was published by the Lincoln Institute of Land Policy, in Cambridge, Massachusetts, which is a national--

SENATOR STOCKMAN: Dr. Steinberg, I don't want to rush you, but I am going to rush you.

DR. STEINBERG: All right, okay.

SENATOR STOCKMAN: We don't want to get into that much detail. I think your basic position, you could summarize for us.

DR. STEINBERG: Sure. That COAH has been successful, that it carries out a court mandate for a constitutionally required program-- If that's folded under DCA, then that focus becomes blurred and the kind of sharp responsibility that COAH has, I think, gets blurred.

Thank you.

SENATOR STOCKMAN: Okay. I think your statement, which will be made a part of the record, and which I have scanned, goes to that point.

DR. STEINBERG: Yes, it does. Exactly.

SENATOR STOCKMAN: I think you are growing out of an increasing number of witnesses here who feel that it would be a mistake to absorb COAH into DCA, and I think it is a growing consensus of the Committee.

We thank you and appreciate it. I don't mean to rush you too much, but--

Okay. Professor Burchell, of Rutgers University?

SENATOR BENNETT: Mr. Chairman, while he comes up, is there any way we could have someone from the administration -- who came up with this idea of saying that it should go -- come in front of us?

SENATOR STOCKMAN: Well, I don't think today.

SENATOR BENNETT: No, not today necessarily, but--

SENATOR STOCKMAN: Let's talk about that.

SENATOR BENNETT: Okay.

SENATOR STOCKMAN: I mean, it's a fair inquiry.

SENATOR EWING: There might not be any need.

SENATOR STOCKMAN: Maybe not. We might be able to get our message across.

Yes, Professor?

R O B E R T W. B U R C H E L L, Ph.D.: Hi, Senator. My name is Robert Burchell, and I am Professor of Urban Planning at Rutgers University, and have been a professor in housing and land use at Rutgers for 20 years. I have been the research counsel to the Council on Affordable Housing for a period of five years, and I developed and created the methodology of housing need, which allocates housing need to individual municipalities within the State of New Jersey.

So I have been associated with COAH and the COAH staff for a period of five years, and am well familiar with both their strengths and their limitations.

My position here is very clear. It is a very, very strong group of very specialized talents in terms of implementing a mandate that has been implemented only in the State of New Jersey. There is no peer state nationally that has done the kinds of things that we are doing.

I think that when we get together and we talk about what is going on in the State, we become very self-critical.

New Jersey is the only state that has ever defined what affordable housing is. We have set the national definition of affordable housing. In addition to that, we have accepted national procedures which define a target area and a population to be served. We have accepted procedures that develop methods to calculate affordable housing needs. We provide standards for implementation and prescribe fair share responsibilities. We established queuing rights for selection procedures for prospective tenants, and we established affordability controls, which hold the housing below the market once that housing is developed. It is unheard of nationally.

So when we talk about what we are doing and what we have been able to accomplish in New Jersey, I think we understate a great deal, in terms of our own reputation, and how other people perceive us.

I would mention in terms of a concluding remark, when I get to the concluding remark, that I think that DCA is very, very, shortsighted in its view of COAH in terms of the new comprehensive affordable housing strategy which is being prepared by the government for distribution to states and municipalities within the states.

COAH is the darling of HUD, and our competitive position in New Jersey is clearly related to the retention of COAH, and to conveying to HUD that a strong Council on Affordable Housing exists within the State and is performing its functions adequately.

Now let me just talk to you, very briefly, about what COAH has been able to accomplish. If COAH is only half successful in meeting that 70,000 units that it's prescribed-- And don't forget, I think the important thing to understand is that housing authorizations are as important as housing units built. It means that when the market comes back, you can build housing. That's the same, essentially, as a building permit. That means if that developer goes forward and builds market

housing, they ultimately have, in the pursuit of those "N" number of units that will deliver those 70,000 units, they have to build the 70,000 units in the process.

If we are only half successful on the 145,000 units that have been prescribed-- In other words, if we are able to provide authorization or to build out those 70,000 units, we will have built half the housing in six years that we have built in publicly assisted housing in the State of New Jersey in 60 years. We will have built 10 times the most famous program that exists nationally, which is the Bridge Program in San Francisco. We will have provided more affordable housing than any other state in the Union, including Massachusetts, California, New York, Virginia, Maryland, and Florida.

There is, additionally, something that is going on right now. I'm a private consultant and represent developers in the development process. There is no housing development in excess of 200 to 300 units now going before any planning board in New Jersey that does not have an affordable housing component as part of that development application. That means that even though those municipalities are not before COAH, those municipalities are asking consultants to provide -- in some cases along the Hudson River waterfront -- affordable housing need for the period 2005 to 2011. If you can imagine that, that there is a gray market for affordable housing that municipalities feel they must ask of developers when giving 20- to 30-year development permissions for large numbers of units that those municipalities cannot report to COAH because they are not before it.

So even the official estimates of what has been able to be done, it would be my position that there is a significant amount done, even they are small to what potentially lies underneath the surface in terms of potential delivery, solely as a result of this program.

My position is that this is affordable housing in New Jersey. There is no peer, and we have garnered national attention for this particular program. And this program is overseen by a group of professionals with extraordinary talent in the following areas:

They understand the overriding guidance and principles of the Mount Laurel decisions. Those talents do not exist in DCA in the way that they exist here. The first speaker today listed a number of activities that DCA people do. They are none of the activities -- I would certainly agree with Mr. O'Connor about that -- that the people of COAH do.

The people of COAH understand the procedural rules and regulations and how those rules and regulations have evolved over time. That is not a talent that is found in DCA. This is a group in COAH that has participated in discussions of rule changes that may be necessary as the second round of affordable housing approaches. One forgets that we ultimately, now, are moving with the census to a new round, in 1993, of COAH numbers. Where are we going to go if we lose the talent that knows how all of those numbers and all of the procedures were arrived at when that first round, essentially, was developed?

I would also make the point-- I wish, Senator Stockman, that you had asked me the question, "Have we slipped behind, in terms of providing affordable housing?" One of the things that we were able to do, and when we finally take a look at the 1990 census, we are going to see that we have built 375,000 housing units over this decade, from 1980 to 1990, in New Jersey.

SENATOR STOCKMAN: Three-hundred-and-ninety-five thousand?

DR. BURCHELL: Three-hundred-and-seventy-five thousand, and our households have only increased by 250,000. We have built one-and-a-half housing units for every household form, which means that in every jurisdiction in the State, we

have increased the vacancy rate. So, we are a housing machine that links with affordable housing in a way no other state in the Union links. A lot of the inability to meet demand is a simple market function that demand is not necessarily created without supply. Housing supply also creates housing demand. And so to the degree that housing supply is triggered, that means two in every 10 units that are developed for the private market, will be built for affordable housing. And that exists nowhere else.

Let me just conclude with a couple of remarks:

The staff also has served as negotiators and mediators in individual municipal settlements. They know the details of every one of those specific settlements. They have provided the substantive briefs for all of the defenses of the COAH methodology in the courts, and I would point out to you that every single time, save one, that a COAH rule or regulation has gone to the courts as a result of the staff work provided by COAH, those rules have been upheld.

As an agency carrying out its mission, the only--

SENATOR STOCKMAN: How many tests were there, roughly?

DR. BURCHELL: There were probably at least a dozen; at least a dozen involving multiple issues, including very sophisticated issues. And the only one that fell was the 1000-unit cap, because that was not backed up with procedure. They have done, and they have provided the procedure on all of the rules that have been tested, and none of them, basically, have failed.

Finally, again, I would point out that in terms of DCA-- DCA is currently providing an application for this CHAS funding -- Comprehensive Housing Assistance Strategy. That is money from HUD that will come to the State. It will then go to counties and then to selected municipalities. They are going to emphasize, during the course of that application, all of the accomplishments of COAH. So, they can't take with one hand and

give with the other. What we have to do is, we have to maintain a strong COAH in order to present a very, very strong front in terms of garnering our share of those Federal moneys.

It's the first new housing program that has come on in the street in a decade-and-a-half, and we certainly want our share of it, and our share of that money is linked with a strong COAH.

SENATOR STOCKMAN: What's the range of what we could get? I know that it hasn't been fixed, but what are you talking about, this new Federal money? Anywhere from what to what?

DR. BURCHELL: We're talking about $100 million for the State of New Jersey.

SENATOR EWING: Over how many years?

DR. BURCHELL: That's a one-year allocation that's potentially renewable on an annual base. There are enormous funds.

Let me point out just one other thing: Everybody decries the regional contribution agreement. The regional contribution agreement essentially said that the suburbs can sell back a certain share of their units to the inner cities. Don't forget the affordable housing number, based on pure need, for Newark, was 15,000. Newark's affordable housing number was only 5000. Ten thousand units in our program were cast out into the suburbs, because we didn't want to reconcentrate them in Newark. What we are saying to those municipalities is, "If you want to sell back half of those, rebuild them in Newark. Rebuild them in Newark; they came from Newark anyway."

If you do that, you create a dedicated-- If we pursued all of our affordable housing regional contribution agreements, we would create a dedicated urban fund for housing that is 10 times the budget of the Department of Community Affairs. So we have taken what we call suburban greed, and we

have allowed that to use it as an urban housing fund to build housing in those urban areas.

And are those urban mayors being snookered? Absolutely not, because when they go to have their housing need calculated in the next round, there is the housing that will be rehabilitated, and the housing that was not rehabilitated will still remain in the other locations that didn't do it.

So, we have a program of checks and balances that is overseen by a professional staff that is the envy of what is going on nationally. People say to us, when we go to a national forum, "I can't believe you're doing those kinds of things in New Jersey." That's the reputation we have, and again, that's the reputation that will be taken into this new round of funding.

Thank you.

SENATOR STOCKMAN: Senator Ewing?

SENATOR EWING: No questions.

SENATOR STOCKMAN: Senator Lipman?

SENATOR LIPMAN: I wasn't here, but I did read your letter that you wrote to us. Thank you very much.

DR. BURCHELL: Thank you.

SENATOR STOCKMAN: Professor, let me ask you a couple of questions. I don't have any difference of opinion with you about the basic dedication, high professionalism, commitment of the staff of COAH, nor, at this point, have I seen any evidence that begins to persuade me that collapsing it into the Department of Community Affairs would be a wise or practical policy. You touch on those things, so I think we are in absolute agreement on that.

I am interested in what I think you would agree is a different perspective on evaluation or position in terms of how we're doing and where we're going, as compared to some of the earlier speakers. Let me ask you the question you have heard me ask other witnesses, and that is-- Perhaps this is too

logical or too something of a question, but my mind asks me whether we have low- or moderate-income housing needs, as we in New Jersey have interpreted them to be in 1985, existing out there? There are low- and moderate-income housing needs existing in New Jersey today. And using the same criteria or test, do you agree with earlier speakers that we have actually fallen further behind, notwithstanding the professionalism and the outstanding effort that Doug Opalski and his staff have made? Do you agree with that?

DR. BURCHELL: I do agree with that, but let me explain what I mean by that.

SENATOR STOCKMAN: Sure, sure.

DR. BURCHELL: We are falling significantly behind in terms of housing everybody, and we are falling less behind in terms of housing low- and moderate-income families. So, yes, we, as a result of not building, are now getting into a situation in which households--

For the first time in the 1993 and 1994 annual housing survey, there is going to be a measure of privacy. That's the new issue in housing. It's no longer crowding and it's no longer adequate structures, but it's the number of small, usually broken households that are poor that have to live together, even though they are not living together under officially determined crowded conditions.

That's the problem, but that amount of persons and the salaries associated with those persons are very, very necessary for urban housing markets. So we have to be very, very careful that we don't throw the ball too far ahead in terms of providing for the poor when the market is not responding. Because when we studied abandonment at Rutgers and we looked at all of the characteristics that were associated for why people abandon buildings in cities -- white owners, black tenants; other abandoned housing on the block; areas such as commercial dwellings that served as gathering places that might take down

neighborhoods, etc. -- the overriding criteria of why houses were abandoned in central cities was that there were large amounts of private housing produced in the suburbs. So there is a very, very significant relationship between supply and demand, and we must never get into a situation where we are putting too much forward in one sector, without the market moving forward as a whole. Because we could easily get into a position in which we are providing too much housing for one particular income.

SENATOR STOCKMAN: Why are we falling behind, overall?

DR. BURCHELL: We're falling behind overall because probably, right now, we're not building enough housing. We're not building enough housing to provide for the middle-class and the moderate- to middle-income families who would disassociate themselves from either their parents' households or other communal relationships and seek individual housing.

SENATOR STOCKMAN: Why is that?

DR. BURCHELL: Because right now, we can't afford to. Right now, developers are not given the financing and, right now, we're in a recession in which the market is viewing people's ability to buy at possibly a more restricted view than actuality.

SENATOR STOCKMAN: The market has fallen in the last year or two, or the economy?

DR. BURCHELL: The market has fallen primarily since 1987.

SENATOR STOCKMAN: Oh, that far back?

DR. BURCHELL: 1987 was the biggest building year.

SENATOR STOCKMAN: But did we fall behind in '85, and '86, and '87, with regard to low- and moderate-income housing needs and supplies?

DR. BURCHELL: Again, it's difficult to say, simply because you can't put a unit up the minute it's authorized,

okay? But in terms of authorizations, we are way ahead of where we could possibly be; way ahead of where we could possibly be. Again, the only thing that has to respond-- The market has to respond, and we can build that housing.

Right now, there isn't enough housing for a lot of young households that are seeking housing, and when that market responds, there are 70,000 authorizations which will provide housing for low- and moderate-income families.

Again, if you take a look at that number, that 70,000 -- and it may not take place in six years, but let's assume that it does -- is half of all of the units that we have built for public and publicly assisted housing in the last 60 years.

SENATOR STOCKMAN: Are you familiar with this Alliance for Affordable Housing?

DR. BURCHELL: Yes.

SENATOR STOCKMAN: Have you participated at all with them?

DR. BURCHELL: I know that they are out there.

SENATOR STOCKMAN: Are they a representative group of those interested in the housing issue?

DR. BURCHELL: They are a representative group of an advocacy group in support of low- and moderate-income housing. They are very representative of an advocacy group.

SENATOR STOCKMAN: Thank you very much. Very interesting.

We have two more speakers, or one.

Anita Ashkinazy, a very patient, last witness.

A N I T A A S H K I N A Z Y: This is a very brief statement.

My name is Anita Ashkinazy. I am a staff representative of the Communications Workers of America, Local No. 1039. I am here not representing housing, affordable or moderate, although it is certainly within the purview of this union to be in favor of it, and we are, because many of our members cannot afford decent housing. I am here to make a

statement strictly about the staff, that comes within the purview of our contract.

CWA Local No. 1039 represents the majority of employees in four bargaining units within the Department of Community Affairs. This includes the classified career service employees and the unclassified career service employees. We are, therefore, recognized as the union that represents the unclassified career service employees as stipulated in N.J.S.A. etc., commonly known as the Fair Housing Act. The Fair Housing Act establishes the Council on Affordable Housing, in, but not of, the Department of Community Affairs. The Council is a separate entity from the Department and is responsible for determining the hiring of personnel.

Since early March of 1991, the bargaining unit employees have been in jeopardy of losing their jobs, and there are rumors afoot that the Council will become part of the Department of Community Affairs and that classified employees will perform their duties. In order for the above conditions to become legal mandates, the legislation must be changed. Based on its legitimate separateness, the Council and its employees have gained respect throughout the community they serve. It would be anathema to this community to lay off the dedicated bargaining unit employees. Enforcement of the Fair Housing Act would become ineffectual, and the Mount Laurel decisions would again be back in the courts, while all the good works of this small body of employees would be thrown into chaos as they stand on the unemployment line.

CWA Local No. 1039 will not stand idly by the sidelines if the bargaining unit employees are laid off. We are as dedicated to them as they are to the duties and responsibilities required of them by this legislation, and we will only -- only -- support a change in legislation to the classified service if these individual employees are grandfathered into the legislation. Otherwise, we oppose any

change which would deter the Council from carrying out its mission. This mission can only be accomplished by keeping its staff intact.

I can answer questions regarding Civil Service matters and who is responsible for laying off whom, etc.

SENATOR STOCKMAN: Any questions?

SENATOR LIPMAN: Yes. I congratulate the stand that you are taking in this matter. I thought that you would be saying that the employees would definitely have to be classified if CWA was going to protect them. But I see that this is a switch, and may I say, I am glad to see you acting in this way.

Thank you.

SENATOR STOCKMAN: May I ask, is that a switch? Is Senator Lipman correct in that regard?

SENATOR LIPMAN: It's a switch from-- Wait just a second.

In my Committee -- State Government -- everybody must be classified according to the representatives of CWA--

SENATOR STOCKMAN: That's what I'm trying to get at.

SENATOR LIPMAN: --or they want them to be fired. That's not what she is saying.

MS. ASHKINAZY: The thing is, people really don't quite understand what unclassified is. When I say unclassified bargaining unit, I mean that there are workers within the Council on Affordable Housing who are in a bargaining unit that we represent, and there is a stipulation in the Fair Housing Act that says that they are the career service or that they will be in the Civil Service and have a Civil Service title, however, they shall be unclassified.

Then there is another area that we can talk about, and that is unclassified. Unclassified is a project specialist. A project specialist does not have any rights, and, therefore, when we start arguing about unclassified, we have to define it

and define it into two separate categories. That is why I can come before you and say I represent the workers in the Council on Affordable Housing, except for the staff that are in management titles. We certainly cannot represent the Director of the Council on Affordable Housing, but we represent the planners, and we represent the secretarial staff. We represent the professional staff, and we represent the secretarial staff.

The unclassified career service people do not have the same rights -- the same bumping rights -- as the classified service people.

SENATOR LIPMAN: Career people, right.

MS. ASHKINAZY: Again, we get a little more complicated and people just turn off.

SENATOR LIPMAN: You sure are complicated.

MS. ASHKINAZY: They don't want to listen because their minds begin to buzz and they say, "I can't understand this" or, "I know what unclassified means. I know exactly what the definition means."

Furthermore, I would really welcome some questions about who is responsible for laying off the people whom we represent, because I can tell you.

SENATOR LIPMAN: Do you want me to ask you? I'll ask you.

MS. ASHKINAZY: Ask me, Wynona. Yes, ask me.

SENATOR LIPMAN: Go ahead, answer.

MS. ASHKINAZY: The people who are responsible are within the Department of Community Affairs. In essence, it is not the responsibility of Mr. Scheuer. Mr. Scheuer listens to whoever is telling him what should be done with certain numbers of people.

For example, the Department of Community Affairs called this union into their offices on April 3 and said, "We will lay off 45 classified people. We are going to be laying off your people." And they said, "We will then inform the

directors that we will be laying off these people, and they have to give us the names."

So, the controlling aspect of it is within the Department of Community Affairs, and even though the Council is separate, that's where the controlling aspect is.

SENATOR LIPMAN: That's the problem.

MS. ASHKINAZY: I was not here in time to hear what Mr. Skokowski had to say, but I can tell you that what I heard is that he said that he is not responsible. Barry is responsible -- definitely responsible. I don't care what he says.

SENATOR EWING: That's the boy.

MS. ASHKINAZY: I have already talked to Bill Scheuer about this, and I have talked to him twice. Bill Scheuer guaranteed me once that they were not going to be laid off, "they" meaning the people we represent. And then I heard that the people we represent will be laid off on July 1. I called Bill back, and then--

SENATOR STOCKMAN: Excuse me. Is this in COAH?

MS. ASHKINAZY: Bill Scheuer.

SENATOR STOCKMAN: No, no.

MS. ASHKINAZY: Bill Scheuer--

SENATOR STOCKMAN: The people who are going to be laid off? You said the people in COAH.

MS. ASHKINAZY: Yes, in COAH; in COAH.

I called Bill back and I said, "What is happening with this rumor?" And Bill said, "I'm embarrassed because I don't know what to say, because I just promised you that they wouldn't be laid off." He never got back to me.

SENATOR STOCKMAN: When was that exchange, April 3?

MS. ASHKINAZY: No. That exchange was sometime in March. On April 3, the Department of Community Affairs called this union into their office and said, "We will lay off 45 classified workers." I was just giving you an example, and I'm

saying that the responsibility lays in the Department of Community Affairs.

SENATOR STOCKMAN: Can you give us, and you may not have this--

MS. ASHKINAZY: I don't care what they say to you.

SENATOR STOCKMAN: No, no. Just--

MS. ASHKINAZY: I'm sorry, Senator.

SENATOR STOCKMAN: Can you give us some authority for that, legal authority? We'll look into that.

MS. ASHKINAZY: No.

SENATOR STOCKMAN: Because it seems to conflict with the information I have been provided by staff--

MS. ASHKINAZY: No.

SENATOR STOCKMAN: --with regard to what the legal responsiblity in this area is.

MS. ASHKINAZY: Of course. The legal responsibility lays in the Governor's Office. There's no question--

SENATOR STOCKMAN: Well, lays in COAH under the Executive Director, as the statute reads.

MS. ASHKINAZY: But the Executive Director does not have that power, believe me. If the Executive Director had it, and if the Council had it, I wouldn't be here testifying.

SENATOR STOCKMAN: Do you--

MS. ASHKINAZY: I just know how the system works. I have been around for a long time.

SENATOR STOCKMAN: Wynona, do you have a question?

SENATOR LIPMAN: I have done my little duty here.

MS. ASHKINAZY: As Senator Lipman knows and as Senator Bennett knows, I am very direct.

SENATOR LIPMAN: Yes, you are.

MS. ASHKINAZY: And I do not lie.

SENATOR EWING: And we know, now, too.

SENATOR LIPMAN: We understand.

SENATOR STOCKMAN: Well, I hope-- I don't have the sense that anybody who appeared before this Committee today lied, and they were pretty direct.

SENATOR EWING: Question?

SENATOR STOCKMAN: Yes.

SENATOR EWING: You said something about the Federal law says that certain people will be career employees, or something.

MS. ASHKINAZY: No. That's not the Federal law. I was just trying to define different categories within the State of New Jersey.

There is a separate category for unclassified workers. One set of unclassified workers is represented by this union, and there is a stipulation in the Fair Housing Act that states that they shall be in the classified service, which then means that they fall into a bargaining unit, and if they fall into a bargaining unit, this union represents them.

Another category is unclassified, and that can be defined as a project specialist. They do not have any rights.

SENATOR EWING: Those are the eight, aren't they -- aren't they unclassified -- that were listed?

MS. ASHKINAZY: Yes.

SENATOR STOCKMAN: But they're not project specialists, are they? That's what you are saying?

MS. ASHKINAZY: No, they are not.

SENATOR EWING: No. One was a secretary, and--

SENATOR BENNETT: They're in your unit.

MS. ASHKINAZY: They are in our unit. They are in three bargaining units.

SENATOR STOCKMAN: I think, Senator, this came up, because in Senator Lipman's Committee -- as I understand it, and also publicly, and I've heard it and read it -- CWA is taking the position that if there are going to be layoffs, the

first layoffs ought to be project specialists who are unclassified, noncareer service people, and that's, I think, the discussion.

SENATOR LIPMAN: And they also will be--

SENATOR STOCKMAN: And at first it sounded like there might be a conflict in the position of CWA in that regard, coming in here and championing the protection of these employees. But these are not project specialists, and I think the witness has made that clear to me.

SENATOR BENNETT: What's the status, as far as you know, right now?

MS. ASHKINAZY: As far as I know right now, they will be laid off on July 1.

SENATOR LIPMAN: Really?

MS. ASHKINAZY: Yes. And everybody will deny that. I have heard a lot of statements here, and it's been fascinating to learn more and more about housing and affordable housing and etc., but that is not why we are here today. We are here because we do not want these workers to be laid off based on the kind of work that they perform.

SENATOR STOCKMAN: Ms. Ashkinazy, you're referring to CWA? Why CWA is here?

MS. ASHKINAZY: Yes.

SENATOR STOCKMAN: All right. I think why the Committee is here-- I think each member of the Committee understands why they are here.

MS. ASHKINAZY: Okay, fine.

SENATOR STOCKMAN: I respect that.

Let me ask you this, if I may?

MS. ASHKINAZY: Sure.

SENATOR STOCKMAN: I have a few questions. You tell us that as of July 1, these people are going to be laid off? You're right, the impression I got was directly to the contrary.

Can you tell us where you get this information?

MS. ASHKINAZY: I don't have it in writing, but I was assured in the middle of March by Bill Scheuer that they would not be laid off. I was then informed -- and I hate to say this because it sounds so underhanded, in a sense -- through very good sources, that they would be laid off on July 1.

SENATOR STOCKMAN: Ms. Ashkinazy, who are the very good sources?

MS. ASHKINAZY: I can't say.

SENATOR STOCKMAN: Why not?

SENATOR EWING: Well, to protect her sources.

SENATOR STOCKMAN: Well, we're not interested-- We're interested in information, not protecting sources.

MS. ASHKINAZY: I understand, Senator.

SENATOR STOCKMAN: Let me say, Ms. Ashkinazy, if you can't tell us--

SENATOR BENNETT: But we can--

SENATOR STOCKMAN: Just a moment; just a moment, I'm speaking. I will take this up with the Committee, and I don't certainly suggest that we're going to try to disgorge it from you through some legal procedure, which arguably we could do if it was the spirit of the Committee, but I don't think that's-- At least that's not my inclination at this point, but I want to think about it.

But I want to suggest to you that it is a very difficult position, it seems, that you have put this Committee in, to say -- and I assume, since this is a public hearing, the media may pick it up -- that you have information that these people will be laid off July 1; that it's very good and sound. It is information that you would put to this Committee, that you would put to the world. I assume that it may well be publicized.

It creates a very difficult problem for this Committee. It seems to me it creates a problem for the administration, who we are going to be dealing with further on

this. And it also creates a problem for the staff and for people in COAH, because when we get to this question of morale-- If I were one of those people and heard someone, not under oath, but who took the seriousness of time to be before this Committee and who represents a legitimately recognized and accepted bargaining union -- CWA Local No. 1039 -- that would be very disquieting to me.

Now, I can't make you, at this point, and I don't think the Committee wants to make you--

MS. ASHKINAZY: It is disquieting to me, too.

SENATOR STOCKMAN: --but I, at least, want to share with you that I am very uncomfortable when you come before the Committee and make a statement like that, and then suggest, "Well, I can't tell you who." That's not very helpful to me.

But if you stand on that position, certainly, here today, we will have to accept that. I want to talk to my colleagues on the Committee about it and that may be the end of it.

You're the first witness, of course, to have said that, and so-- But I guess that's it. You're telling me you will not share who that source is?

MS. ASHKINAZY: No. I really can't at this time. I--

SENATOR STOCKMAN: Can you share with us whether it is somebody who works in the administration?

MS. ASHKINAZY: No. Not in the administration.

SENATOR STOCKMAN: Any other questions?

SENATOR EWING: Jerry, the proof of the pudding will be when you talk to Shurer or Scheuer, or whatever his name is, and he gives the letter rebutting the other letter.

SENATOR STOCKMAN: Well, Senator, that may-- I don't know what you mean by "the proof of the pudding"? If I get that assurance, if we get that as a Committee, and I think it's your sense, and it's kind of my sense, that we ought to try to get such a letter--

SENATOR EWING: Definitely.

SENATOR STOCKMAN: But I'm not sure that will altogether answer the suggestion by this witness -- presumably made sincerely, presumably made on the basis of credible and responsible people, obviously made in an open public forum -- that these people were going to be laid off July 1, or whatever--

SENATOR EWING: Yeah, but if he says they are not in his letter, then she doesn't have that much to worry about.

MS. ASHKINAZY: That's correct, Senator.

SENATOR STOCKMAN: Who doesn't have that much to worry about?

SENATOR EWING: Anita.

SENATOR STOCKMAN: I don't think this witness has anything to worry about in terms of this layoff, personally. I think there are people at COAH--

SENATOR BENNETT: She's not testifying personally.

SENATOR EWING: I'm talking about her unit, that she represents.

SENATOR STOCKMAN: Okay, okay. But I thought she was representing herself.

MS. ASHKINAZY: That's correct, Senator Ewing.

SENATOR STOCKMAN: All right.

MS. ASHKINAZY: No, no, no. I do not come here representing myself. I come here representing the workers.

SENATOR STOCKMAN: I understand that, but I thought your last statement was in reference to yourself, not to your members.

MS. ASHKINAZY: Well, Senator, I'm sure that you have private sources that you don't reveal at certain times.

SENATOR STOCKMAN: No, as a matter of fact. If we want to get into that, I can't recall where I've ever appeared before a legislative committee, shared an opinion or

information, and suggested, "But I'm not going to tell you my source." That's not my style.

At any rate, I don't want to get any further into a personal exchange with you, but if you raise that suggestion, that is not my style; that is not my approach.

Thank you very much. We appreciate you coming in and sharing your testimony.

MS. ASHKINAZY: Let me just say, Senator Stockman, the only interest we have is to keep the workers who we represent in the Council on Affordable Housing.

SENATOR STOCKMAN: I understand.

MS. ASHKINAZY: If you can achieve that, that's fine.

SENATOR STOCKMAN: I understand. Thank you very much.

I think that's it. We will adjourn the hearing.

That completes the hearing. I would appreciate an opportunity for the Committee to meet, right here, itself, privately for a few minutes.

(HEARING CONCLUDED)

APPENDIX

BACKGROUND PAPER ON COAH
Prepared by the Office of Legislative Services

The Council on Affordable Housing (COAH) was created by the "Fair Housing Act," P.L. 1985, c.222. This act embodies the legislative response to the judicial doctrine stated in the Mount Laurel I and Mount Laurel II cases that municipalities are obligated constitutionally to provide a realistic opportunity for a fair share of the present and prospective needs for housing of low and moderate income families. The legislative intent of the act is to provide an administrative and planning mechanism under which municipalities may meet this constitutional obligation, which substitutes for the judicial mechanism and remedies being used prior to enactment. The act accords COAH "primary jurisdiction for the administration of housing obligations in accordance with sound regional planning considerations in this State." (N.J.S.A. 52:27D-304) COAH is established in, but not of, the Department of Community Affairs (DCA) (N.J.S.A. 52:27D-305). This language is used legally to denote that an entity of State government retains autonomy within a principal department, while complying with the constitutional requirement that all executive and administrative offices be placed "within not more than twenty principal departments" (Article V, Sec. IV, par. 1). The language denotes that the agency allocated to the department shall, nevertheless, be independent of any supervision or control by the department or by any board or officer thereof.

The legislative intent that COAH is to conduct its responsibilities independent of the department and to supervise and control its own organization and employees is reinforced in N.J.S.A 52:27D-306:

> "a. The council may establish, and from time to time alter, such plan of organization as it may deem expedient...
>
> b. ...
>
> c. The council shall appoint and fix the salary of an executive director who shall serve at its pleasure. The council may employ such other personnel as it deems necessary...."

At no point in the legislative history of the "Fair Housing Act" did the bill reflect an intent to place the staffing of COAH with DCA, or to make that staff subject to the supervision and control of the Commissioner or any director of the department. Rather that supervision and control is placed firmly with a council, which the legislative history shows to have been deliberately and intricately balanced in its membership. The Commissioner and directors of DCA are not even made members of COAH, although the Executive Director of another independent agency of DCA, the New Jersey Mortgage and Finance Agency, is. The obvious intent of the act is to avoid DCA involvement in the internal organization and control of COAH.

This can be contrasted with the provisions for structuring the State Planning Commission under P.L. 1985, c. 398, which was under legislative consideration at the same time. The commission is established, definitely, in the Department of the Treasury. The membership of that commission includes the State Treasurer and four other cabinet officers. The staffing of the commission is to be done by the Office of State Planning created in Treasury, whose director is to serve as secretary and principal executive officer of the commission.

A comparison of the two laws enacted at approximately the same time demonstrates a manifest legislative intent that one be subject to departmental supervision and control and the other not. This legislative intent can be understood only in the context of the constitutional crisis which the "Fair Housing Act" and the creation of COAH were meant to address.

The Legislature's actions in the act recognized the history of the involvement of DCA in the establishment of housing needs and allocations. In 1976, pursuant to Executive Order 35, a state-wide study of housing needs was undertaken by DCA, and a draft Housing Allocation Report (HAR) was produced. In the same year, however, the report was recommitted by Executive Order 46 to the department for a further year of study. All of this coincided with the 1977 gubernatorial election campaign. The report was never officially promulgated by the executive. In 1982, Governor Kean by Executive Order 6 rescinded the report altogether. In the same year, the then Commissioner of Community Affairs abolished the Division of State and Regional Planning which had prepared the HAR. This history made clear that any agency which dealt with the politically charged issue of housing allocations was at risk of losing its organizational existence, if subject to the supervision and control of a cabinet officer.

The nature of the duties imposed on COAH under the statutory scheme of the "Fair Housing Act" demand a degree of continuous planning and administrative effort, stability and political independence which would not exist if the history of the Division of State and Regional Planning and HAR were repeated. Moreover, COAH functions under the act not only as a planning and administrative agency, but as a quasi-judicial body. COAH's actions can accord a strong presumption of legal validity to a municipality's efforts to meet its constitutional obligation. The legislative scheme assumes that the independence and stability of COAH is necessary to maintain the credibility with the Judiciary of the compliance mechanism established by the "Fair Housing Act." Given the history of DCA's involvement with housing allocations, that credibility would have been significantly undermined if the organization, operations and staffing of COAH were subject to the supervision and control of the DCA commissioner or a director of the department.

4/12/91

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OUTLINE OF
REMARKS BY CHUCK GRIFFITHS
CHAIRMAN, COAH, FOR
SENATE OVERSIGHT COMMITTEE,
MONDAY, APRIL 15, 1991, ROOM 334,
STATE HOUSE ANNEX, TRENTON

I) COAH was created as an alternative to court ordered compliance. However it has been frustrated and continues to be compromised.

A. There was a deep sense of local violation and outrage that come with court ordered builders remedies after Mount Laurel II in 1983. This led to the Fair Housing Act of 1985, which created COAH;

B. As you are well aware, the basic thrust of COAH was to induce voluntary local compliance with the Mount Laurel Doctrine. The courts were already performing as an effective hammer. COAH was expected to provide alternatives to the heavy handed fashioning of housing elements, where an unelected judiciary was pounding out local land use and development patterns, and impacting communities;

C. However, from the very start, COAH was hampered in its mission.

(1) First the market started to soften just as the Council opened its doors. This meant that the threat of litigation and builders remedies did not loom as large. Non-compliance was less threatening. Some towns chose to take their chances with the cost and acrimony of exclusionary litigation rather than run the risks of addressing their fair shares voluntarily.

(2) Next, the courts adapted to COAHs lower housing need estimates and basic guidelines and standards as a point of departure. What really separated COAH from the courts then was the loss of initiative for and control over site selection, and the methods chosen to meet the need. Generally there was either the imposition of large inclusionary sites in court or municipally sponsored and smaller developments at COAH;

(3) Then, the courts began to alter COAHs procedures and processes, making them more akin to the "discovery" game used in litigation. In effect, the courts said that any unresolved objections to a municipal housing element had to be transferred to the Office of Administrative Law (OAL) for an evidentiary hearing. For its part, OAL was seeking to hear the entire housing element and not just the issues in dispute. As a result, costs were rising for municipalities and participants at COAH. The costs for voluntary compliance at COAH versus being in the court process were starting to converge. As this began

to happen more and more towns began to opt for intransigence;

(4) Then the judiciary appointed 17 new judges to hear Mount Laurel cases. Without being well grounded in COAHs guidelines, the new justices were viewed by some as susceptible to compromise and exceptions to uniform standards for affordable housing. COAH began to witness with alarm what appeared to be a generous granting of credits and waivers beyond what the Council had entertained. In effect, some judges were preceived to be lowering statewide standards, and thus, further discouraging voluntary compliance in their viscinages;

(5) Balanced housing subsidies under the Fair Housing Act, which the legislature linked to COAH certification, court ordered compliance, a regional contribution agreement, and with a slant toward urban aid municipalities, was drying up as the market continued to soften. This source of funding comes from the realty transfer tax. As a result, one of the precious few inducments left for voluntary compliance was disappearing. On top of that you now have before you a departmental budget recommendation that these funds be completely separated from the access qualifications you placed upon them in the Fair Housing Act, and that COAH ratified as you directed.

(6) In addition, most of COAH's shrinking but experienced staff has been fingered suddenly and unexpectedly for lay-offs, without any assurances whatsoever that the Council's heavy and growing workload can and will be absorbed and dispatched. Rather, COAH and its staff are left hanging, and along with us, municipalities and stakeholders who may well entrench further rather than come forward voluntarily. With a judiciary poised to re-enter the exclusionary zoning field in a major way, this can not be what the legislature intended.

II) <u>All this has undermined seriously the mission of COAH to induce voluntary compliance as an alternative to the cost and acrimony of exclusionary litigation</u>.

We are being taken "back to the future" by all this. The turmoil of 1974-1985 is likely if New Jersey defaults on meeting all the statutory responsibilities assigned COAH under the Fair Housing Act;

III) <u>In the final analysis, the ability of municipalities to control their own destinies is at stake</u>.

A weakened COAH and a strengthened Mount Laurel judiciary does not bode well for local management as the market returns, and affordable housing is again driven by builders remedies rather than

a replenished menu of state aid and inducements under a Fair Housing Act. As far as that goes there are certain fundamental principles in the Act concerning COAH and its staff management that you created, and that need to be strengthened.

IV) The New Jersey Legislature was wise in creating COAH "in but not of," and with staff directly accountable to the council. You should vouchsafe the following principles:

A. COAH must be accountable directly to the legislature and Governor to achieve the difficult, sensitive and focused mission of the Fair Housing Act;

B. The Council must be able to balance and reconcile diverse interests of major housing stakeholders, i.e., developers; judiciary; advocates; non-profits; utilities; municipalities; etc. As an impartial alternative to litigation it must function with a broad spectrum of affordable housing stakeholders, including municipalities. COAH must have with credibility if the Fair Housing Act is to work;

C. COAH can control its low and moderate housing policy directly, only if its staff is directly and immediately accountable to the Council. The current staff is not protected and independent as it would tend to be under the protective mantle of civil service;

D. The sensitive low and moderate income housing policy area must not be entangled with other diverse missions of any department, or subject to related compromises and disruptive politicising with successive changes in cabinet officers and administrations. COAH terms are overlapping for six years and this helps assure policy continuity and certainty;

E. A creditable COAH must be able to relate easily with the judiciary, so comity and fair shares are achieved between council and court towns in substance. Indeed the courts uphold COAH most of the time against appeals; and the courts tend to use the Council's guidelines and standards. However, the court and COAH must be sufficiently different by streamlining and expediting compliance at COAH relative to the courts and OAL. A set of procedural inducements are necessary, such as allowing voluntary participants to opt for mediation rather than being required to resolve the concern of every objector;

Finally, COAH and its staff are similar to other sensitive policy bodies created by the legislature, i.e., HMFA, OSP, etc. Why treat COAH any differently now? Indeed, it is time to reinstate the Council to a position where it can carry out the heavy duties and mission you assigned it.

SUMMARY AND HIGHLIGHTS
DOUGLAS OPALSKI
EXECUTIVE DIRECTOR, COAH, FOR
SENATE OVERSIGHT COMMITTEE,
MONDAY, 4/15/91, ROOM 334,
STATE HOUSE ANNEX, TRENTON

I) Brief Status of COAH's Work

A. To date 217 municipalities are under COAH's jurisdiction. They represent the potential for over 45,500 low and moderate income units.

B. Together with 71 towns in court, over half the state's municipalities are somewhere in the compliance pipeline, that we're aware of. These towns represent the overall potential for 70,800 affordable units;

C. To date $60 million has been firmly committed for the provision of 3,100 units through regional contribution agreements (RCAs) in towns such as Newark and New Brunswick. Another 10 RCA agreements are being negotiated by such towns as Trenton. Some of the sending communities include: Bernardsville, Hillsborough, Franklin, and Warren;

D. The 3,100 RCA units represent only 9% of established fair share plans, whereas the Fair Housing Act allows up to 50% to be transferred;

E. Overall production of low and moderate income units is anywhere between 7,600 and 12,000, with another 8,800 units estimated as credit worthy under the Act. An accurate court monitoring is necessary to help pin down overall production.

F. Nevertheless, let me put the available data in perspective:

(1) Units are running at an annual rate of about 5,800. This is five fold the historic provision of price and deed restricted housing in New Jersey, which was about 1,200 units per year from 1938 through 1980;

(2) If every town in the state had come to COAH and been certified by mid-1987, and every housing development included a share of low and moderate income units, then the market could only have resulted in about 6,400 low and moderate income units per year. The reason for this is two fold: 1) residential building permits began to plummet as soon as COAH opened its doors; and 2) the available amount of public subsidies under the Act are miniscule relative to the need. This was compounded by the massive withdrawal of federal housing subsidies.

(3) Further, the Act fundamentally allows for voluntary participation. Towns can come forward anytime for certification. Despite the fact that 58% of this first six year period of certification has expired, 51% of the state's towns are in the pipeline;

(4) A substantial portion of the need is represented by unsound units that already exist and are occupied. This is over 80,600 units, three quarters of which are, in fact, found in 36 urban aid cities, or 60,600 units. This portion of the need fell into disrepair over decades. It will take decades to redress. We need to make a long term commitment to the State's urban areas, and then realistically scale our expectations to our fiscal resources;

(5) 250 municipalities are covered by DEP sewer bans. In the order of $3 billion is necessary to redress this problem. Without sewer service, zoning for affordable units is just a necessary precondition, and not an assurance that shelter will emerge immediately. This problem transcends COAH and the Fair Housing Act. Nevertheless we're doing all that's asked of us to spur compliance, including advocating permits and regulatory streamlining.

(6) However, New Jersey continues in the national forefront of efforts to address low and moderate income housing according to such national housing experts as Professor Norman Williams, Dr. Michael Stegman, and Mr. Edward Logue.

II) <u>WHAT'S SO UNIQUE ABOUT SERVICING MUNICIPALITIES WITH COAH'S CURRENT STAFF?</u>

A. Virtually all of COAHs professional staff are licensed and experienced planners, conversant with: how local planning, zoning and housing works; water quality and sewer service management; wetland and floodplain regulations; and knowledgable of the Pinelands, CAFRA and HMDC regions. Many have worked on exclusionary litigation, fair share plans, comprehensive master plans and zoning ordinances, CDBG programs, and the NJ Model Development Ordinance. Much of this would be lost if this staff is dismantled. Indeed one must ask what will happen to the 217 municipal housing elements and 28 RCAs at COAH if this professional staff is suddenly supplanted with inexperienced and/or unlicensed staff.

B. Mediation is required by the Fair Housing Act. All the COAH professional staff are trained mediators with up to five years of dispute resolution experience. As a result, 70% of all disputes are successfully resolved. This is better than twice the national success rate of mediation. Approximately 40% of COAH's case load involves objector-litigants. To date the 47 resolved mediations at COAH account for over 12,600 affordable units, or nearly 80% of the affordable units certified by the Council. Mediation is the heart and soul of the COAHs affordable

unit progress. This would be severely imperiled if the staff is dismantled;

C. If a COAH planning guideline, standard, rule, municipal housing element or RCA is appealed, as often happens, the Council's staff works closely with the Attorney General's Office to devise an effective defense. There are nine major appeals facing COAH at this time and the Council faces motions monthly, which it must dispose of as a quasi-judicial body. While seven of COAH's nine members are recent gubnatorial appointments, its staff is conversant with the history, precedents and criteria imbedded in the 147 previous Council decisions. One must ask how COAH will be able to handle all the appeals and motions that confront it regularly if the technical base of its staff is gutted;

D. How will a new and inexperienced COAH staff be able to insure that all the Council's guidelines and rules are revisited properly and result in related housing obligation, and by the middle of next year? What about the development fee rule? The inducement of 60 more petitions among filed towns? The maintenance and meaning of the COAH files and data base?;

E. Developer litigants will not wait for a new and inexperienced COAH staff to be trained and primed. Indeed if the Council loses its technical expertise and credibility and/or the very tight time requirements of the Fair Housing Act are violated, we can expect exclusionary litigation to characterize affordable housing in New Jersey again, with all the cost, confrontation and delay that entails, rather than an administrative remedy at COAH? Many housing stakeholders in New Jersey believe the Fair Housing Act will be set back at least two years;

F. The state's national reputation in the forefront of affordable housing would be discredited, if not lost. Those looking to New Jersey for leadership may well become reticent and let their own initiatives slide;

G. But the real losers of delay would be 40% of our population that constitute low and moderate income households and would remain relegated to overcrowded and/or unsound shelter.

III) <u>COAH understands and is sensitive to the state's budget crisis, and has done more than its proportional share to economize. Any further cuts or disruptions now runs the risk of default on statutory duties and a major re-entry of the courts into exclusionary litigation. In effect, New Jersey could be driven back into the turmoil of 1974-1985 municipal-developer-interest group confrontations</u>.

A. Our recommended FY '92 budget of $1.35 million is 16% lower than our FY'90 budget, or $260,000 less. This is twice the 8% target cut of the administration;

B. We've been prevented from filling seven vacancies. This is more than a third of our staffing level. We are now operating with less than half our required staff;

C. Yet we've had to take on three new and challenging responsibilities:

(1) Implement a recent amendment to Fair Housing Act that you passed and the Governor signed 11/30/90. This amendment could induce 60 more towns to seek certification, and result in over 12,000 more units. Our staff is now attempting to draft rules that implement your amendment;

(2) Promulgate a development fee rule. This could assist municipalities and businesses with the funding and production of thousands of units that otherwise would be covered only by zoning potential; and

(3) Revisit all our substantive and procedural guidelines and precredited need estimates by 7/1/92. This must carefully build upon: broad public input (now underway); the latest and best data (1990 census, satellite generated vacant land estimates, etc); and an adopted SDRP. All this is well underway and should not be disrupted if we hope to give our municipalities sufficient and necessary time to address the next period of certifications, beginning 7/1/93.

D. The courts now have 71 or less than a third of COAH's case load of 217 municipalities, yet they have over three times our personnel at their disposal (80 vs. 23). Yet they and their court masters now contact our staff weekly for a review of compliance reports and issues, as 17 of the justices are new and our staff is fully conversant with COAH guidelines;

F. Based on an analysis of COAH launched affordable housing, and using the NJ Dept. of Commerce's input/output model, our staff estimates that we've triggered a positive cash flow to the NJ Treasury. For every dollar required to run COAH, about $5.50 has been returned to the State Treasury. In effect COAH is a revenue center and not a cost center for state government. Moreover, without this affordable shelter, it is likely that many more firms with jobs and income flows would have located outside our state in chase of their required labor force. Governor Florio is deeply concerned about steming this with constructive housing, that COAH helps make possible. Thus, COAH is part of a sound and positive economic policy for New Jersey, in addition to being a social cornerstone and foundation for constitutional rights.

IV) <u>I urge you to safeguard the COAH you created, its mission and remaining but valuable staff</u>

D0858r

Logue Boston

Edward J. Logue
Chief Executive Officer

February 21, 1990

Mr. Douglas V. Opalski
Executive Director
New Jersey Council on
Affordable Housing
CN 813
Trenton, NJ 08625-0813

Dear Mr. Opalski:

Thank you very much indeed for sending the material on the New Jersey Mt. Laurel programs.

Fifteen years ago I thought we were doing pretty well in New York State with the UDC's 5,000 suburban units in five years, but this is clearly a great improvement. It shows how far an otherwise progressive progam in Massachusetts has to go.

Thank you again for taking the trouble to be so helpful.

My very best wishes.

Sincerely,

ED Logue

RECEIVED
FEB 26 1990
COUNCIL ON AFFORDABLE HOUSING

Logue Boston Limited Partnership
Ten Winthrop Square • Boston, Massachusetts 02110 • 617-451-1904

10X

STATE OF NEW JERSEY
DEPARTMENT OF PERSONNEL
WILLIAM G. SCHEUER, ACTING COMMISSIONER
CN 317
TRENTON, N.J. 08625

February 28, 1991

Mr. Robert Pursell
New Jersey Area Director
Communications Workers of America
10 Rutgers Place
Trenton, New Jersey 08618

Dear Mr. Pursell:

At the request of the Governor's Office, I am transmitting herewith a listing of non-permanent employees, in your bargaining unit, who have been or will be notified of separation.

I note that some of these employees may be in confidential positions within the unit title.

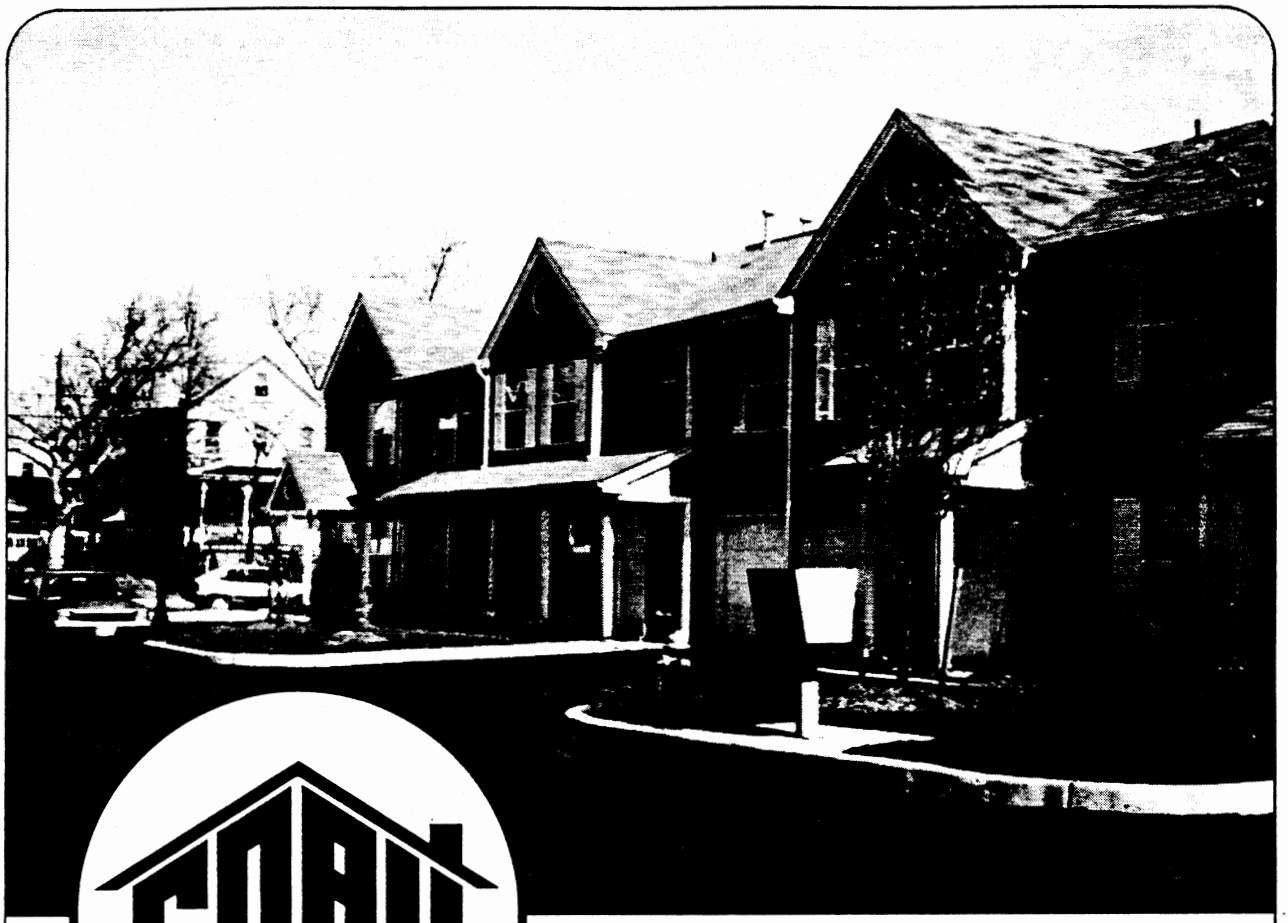
Sincerely,

William G. Scheuer

William G. Scheuer
Acting Commissioner

11X

New Jersey State Library



COAH

NEW JERSEY COUNCIL ON AFFORDABLE HOUSING

Established 1985

Annual Report 1989

State of New Jersey
Jim Florio, Governor

Department of Community Affairs
Melvin R. Primas Jr., Commissioner

12x

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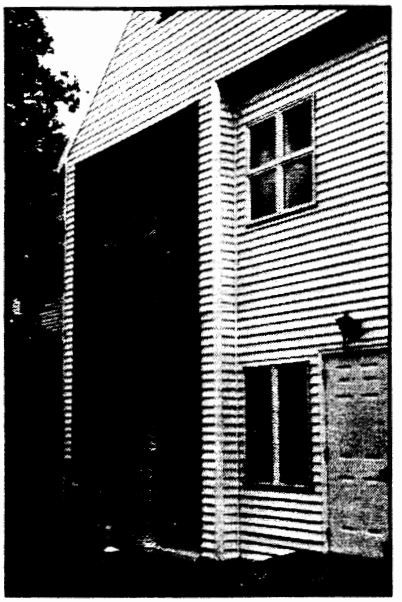

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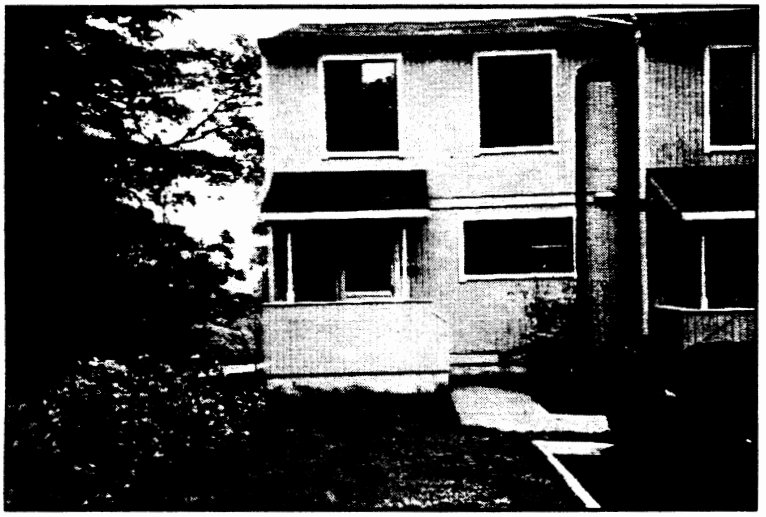
11C Princess Road
Lawrenceville, New Jersey 08648
(609) 530-6663
(609) 530-6373 (fax)

Photos, above, St. Luke's Village, Peapack/Gladstone, Somerset County; below, left, Masonicus Run, Ramsey, Bergen County; right, Society Hill, Galloway Township, Atlantic County; cover : Delavan Court, New Brunswick, Middlesex County.

Sidna B. Mitchell, Editor
Lawrence E. Silver, Writer
Deborah Fernandez, Editorial Assistant





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Executive Director's Message



Douglas V. Opalski

During 1989, the Council on Affordable Housing (COAH) initiated three major thrusts: (1) strengthening intergovernmental relations, especially with the judiciary and other state agencies directly impacting housing delivery; (2) reviewing our substantive rules and method of determining local needs; and (3) examining COAH's resources, organization and direction.

When the Supreme Court upheld the constitutionality of the Fair Housing Act (P.L. 1985, Chapter 222), it found that a comprehensive statewide approach as fashioned by the legislature has "...a potential of being significantly more effective than case-by-case judicial disposition." Thus, the court called the judiciary to conformance, wherever possible, to the decisions, criteria and guidelines of COAH. The court also acknowledged that it was no longer alone in this endeavor. Given the comprehensive rules and method of COAH and the fact that more than 70 municipalities are still facing allegations of exclusionary zoning in court, it is vital that the courts have the full benefits of the act as implemented by COAH.

The achievement of statewide fair shares hinges on a consistency in the application of the Fair Housing Act and thorough understanding between the judiciary and COAH. During 1989 we attempted to foster such an understanding. A meeting was held between the newly appointed judges assigned exclusionary zoning litigation and the COAH staff.

There is a also need for more statewide coordination with other state agencies to insure that COAH housing policies are shared and implemented, especially once a town has achieved certification at COAH or received a judgment of compliance through the courts. It is vital that the emerging State Development and Redevelopment Plan (SDRP) reflects municipally adopted housing elements fully, particularly since much local time and effort is spent developing each housing element.

The actual production of low- and moderate-income units is dependent upon thorough and expedient review by all state and local regulatory agencies. We look forward to an ongoing and constructive dialogue with other state agencies toward that end.

By July 1991, COAH's procedural and substantive rules must be repromulgated. COAH will review its rules to better achieve its objectives and mission. A COAH task force is looking into this now. In the fall of 1990, various refinements may be advanced for public input.

Once detailed 1990 census data are available and the state has a negotiated, cross-accepted and adopted SDRP, COAH will be in position to have precredited needs established for the next period of certification (mid-1993 to 1999). To accomplish this, as well as refine its approach to fair shares, COAH has contracted with nationally recognized housing experts to examine some critical areas of calculating precredited need, such as filtering, conversions and the overall approach to estimating need in the context of New Jersey development patterns.

COAH sought input from major housing stakeholders throughout the state during 1989 as we continued to look for better ways to help municipalities fulfill their constitutional obligation to provide low- and moderate-income housing. The lack of affordable housing is a growing social and economic issue with deep consequences for municipalities and the state. It deserves priority attention by all of us.

Municipalities that Petitioned

Atlantic County

- ✓ Galloway Twp.

Bergen County

- Closter Boro
- Hasbrouck Heights
- Haworth Boro
- Old Tappan
- ✓ Paramus
- ✓ Ramsey
- ✓ Ridgefield Park
- Rockleigh Boro
- ✓ Teterboro

Burlington County

- ✓ Bordentown Twp.
- ✓ Burlington City
- Cinnaminson
- Florence Twp.
- ✓ Moorestown
- ✓ Mt. Holly
- ✓ New Hanover
- ✓ Southampton

Camden County

- ✓ Brooklawn Boro
- ✓ Gibbsboro
- ✓ Gloucester Twp.
- ✓ Haddonfield Boro
- ✓ Haddon Heights Boro
- Lawnside
- ✓ Winslow Twp.

Mercer County

- ✓ Lawrence Twp.
- ✓ Washington Twp.

Middlesex County

- ✓ Cranbury
- Edison
- ✓ Monroe Twp.
- ✓ Old Bridge
- ✓ Piscataway
- ✓ South Brunswick
- ✓ South Plainfield

Monmouth County

- ✓ Bradley Beach
- ✓ Freehold Twp.
- ✓ Holmdel Twp.
- ✓ Howell Twp.
- Middleton
- ✓ Millstone Twp.
- ✓ Red Bank

Morris County

- Boonton
- ✓ Chatham Boro
- ✓ Chester Boro
- ✓ Denville
- ✓ Kinnelon
- ✓ Mendham Boro
- Parsippany/Troy Hills
- ✓ Passiac Twp.
- ✓ Randolph Twp.
- ✓ Washington Twp.

Sussex County

- ✓ Hopatcong
- Newton
- Sparta
- ✓ Stillwater
- ✓ Wantage

Union County

- Fanwood
- ✓ New Providence
- ✓ City of Plainfield
- Scotch Plains
- ✓ Union Twp.

Warren County

- ✓ Franklin Twp.
- Greenwich Twp.
- Harmony Twp.
- ✓ Independence
- ✓ Washington Boro

15X

for Substantive Certification*

Cape May County

✓ Cape May City

Essex County

✓ Bloomfield
✓ Cedar Grove
Essex Fells
✓ Glen Ridge
✓ Roseland

Gloucester County

✓ Deptford Twp.
Harrison Twp.
✓ West Deptford
✓ Woodbury City

Hunterdon County

Clinton Twp.
✓ Delaware Twp.
✓ East Amwell
✓ Franklin Twp.
✓ Frenchtown
✓ High Bridge Boro
✓ Lebanon Twp.
✓ Raritan Twp.

Ocean County

Barnegat Twp.
Stafford Twp.

Passaic County

✓ Bloomingdale
Passaic City
✓ Ringwood Boro

Salem County

✓ Salem City
✓ Woodstown

Somerset County

✓ Bernards Twp.
✓ Bernardsville
Branchburg
✓ Franklin Twp.
✓ Green Brook
✓ Hillsborough
✓ North Plainfield
✓ Peapack/Gladstone
Somerville
✓ Warren Twp.
✓ Watchung

*As of December 31, 1989

✓ Received Substantive Certification (78 municipalities)

16X

Profiles of Affordable Housing Residents

Housing prices in the United States increased by 21.4 percent between 1980 and 1985. In New Jersey during this period, housing prices increased more than 46 percent.

From 1985 to 1988, housing prices in the nation increased 18.3 percent; in New Jersey prices increased 68.9 percent. The median sales price of a home in New Jersey increased from $84,000 to $141,900 during this three-year period.*

Although there are large regional differences in housing prices around the state, even the older deteriorated cities have not been spared rising housing costs.

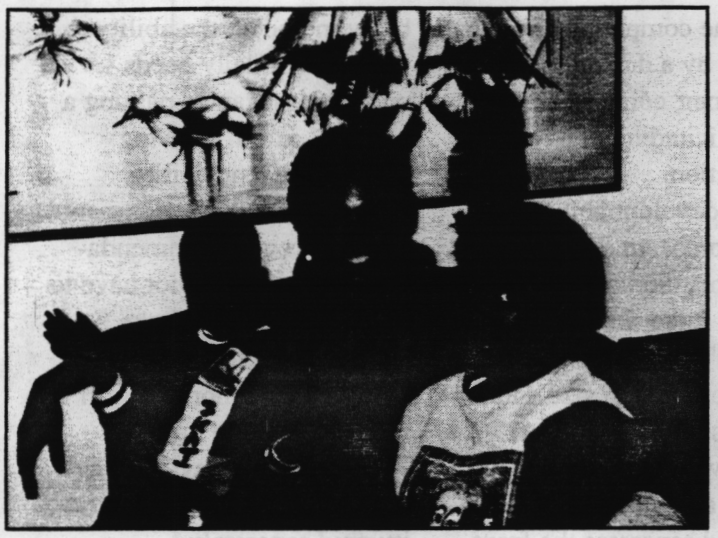
Less than one in seven homes sold today is affordable to median income families. The affordability gap -- the difference between the cost of an average priced home and the cost of a home a median income family can afford -- continues to increase around the state.

The Mount Laurel affordable housing program has created thousands of low- and moderate-income rental and sales units for New Jersey residents who would not otherwise have been able to find affordable housing.

Here are profiles of five families who have benefitted from the program.

**George Sternlieb and James W. Hughes, Rutgers Regional Report: Volume II: New Jersey Homes Prices, 1990.*

The Smith Family



The Smiths (left to right, Kenny, Mary Ann and Dana) relax in their Lawrence Square Village home.

A number of inclusionary developments have been built in Lawrence Township (Mercer County) to satisfy its affordable housing obligation. One of these developments is Lawrence Square Village. There are 820 units, 160 of them affordable, in Sections I and II.

Mary Ann Smith, a single mother, lives in a two-bedroom affordable unit with her 10-year-old daughter, Dana, and five-year-old grandson, Kenny. "I wanted to move out of Trenton," said Ms. Smith, who works as a clerk in the admissions office at Rider College in Lawrenceville. "The problem was finding something affordable and close to my job."

A friend had told Ms. Smith about the affordable housing being developed in Lawrence Township in January 1987. In February 1987, she submitted a lengthy application with income documentation. In June of the same year, Ms. Smith received notification that her name had been picked in a lottery. She was offered a choice of units and selected one on the third floor. It took until December to obtain a mortgage.

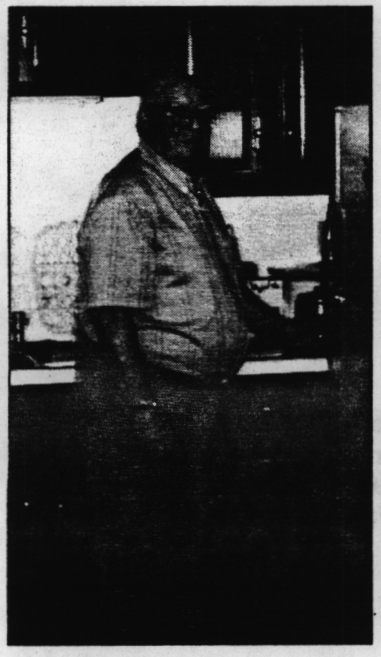
The condominium cost approximately $30,000, with a $6,000 downpayment. Her monthly payments (for mortgage, interest and taxes) are $390 and the quarterly condominium fee is $91.

Each unit comes with a stove, wall-to-wall carpeting and hookups for washer/dryer and central air conditioning. The affordable units are mixed in with the market ones.

"I am very friendly with my neighbors," said Ms. Smith. "There really is a sense of community here."

18X

The Terry Family



Percy Terry enjoys the convenience of his St. Luke's Village apartment.

St. Luke's Village is an eight-unit senior citizen apartment complex located in the Borough of Peapack/ Gladstone in northern Somerset County, on the border of Morris County. The municipality had a population of 2,038 in 1980.

As part of its obligation to provide low- and moderate-income housing, the borough requested credits for the St. Luke's Village units to be applied to its inclusionary need. The complex was made possible by a donation from a parishioner; contributions were solicited to pay for construction.

The development is located on Main Street in Gladstone, directly across from St. Luke's Episcopal Church. The apartments are 600 square feet in size and contain such amenities as wall-to-wall carpeting, porches and washer/dryers. A courtyard separates the front four apartments from the rear four.

In addition to the eight apartments, there is a common house; the first floor is used as congregate space, and on the second floor is a caretaker's apartment. The maintenance crew from the church is also available to provide assistance.

Residents Percy Terry and his wife, Beatrice, moved into their apartment in the spring of 1987. He is 81 years old and a long-time resident of the borough. The application process took about six months from initial application to approval.

Some of the criteria that were used to determine eligibility included: the ability to take care of daily needs without assistance, passing a physical exam, showing financial responsibility, meeting income requirements and letters of recommendation. Residents do not have to be members of St. Luke's Church, but are required to post a $15,000 bond, which is refundable upon moving.

The Terrys pay $340 a month for rent, with electricity paid separately.

"The residents are friendly and help one another. There really is a feeling of community here," Mr. Terry said.

The development enabled him and other local residents to remain close to family and friends. A bus is provided, through the county, for shopping and recreational trips. Activities such as bingo are provided on site for the residents.

St. Luke's Housing Committee oversees the administration, finances and maintenance. Comprised of parishioners of St. Luke's Church, the committee includes the Reverend John T. Morrow, rector of the church.

The Franco Family



The Franco family (front, Ryan and Jimmy; back, Debra and Jim) found affordable housing at Masonicus Run in Bergen County's Ramsey Borough.

Jim Franco, his wife, Debra, and their sons, Jimmy and Ryan, are very happy in their three-bedroom townhouse in Ramsey, located in Bergen County, on the New York State border.

"We wanted to stay in Bergen County," said Jim Franco. "The problem was finding something to buy that was affordable."

Masonicus Run is a 48-unit project developed by the Bergen County Housing Authority; 36 units are condominiums and 12 are rental. The development helped to satisfy part of Ramsey's requirement to provide low- and moderate-income housing.

Debra Franco had heard from an acquaintance that the Borough of Ramsey would be developing affordable housing. She contacted the Bergen County Housing Authority, the Borough of Ramsey and the builder, leaving her name with each one.

In October 1987, she saw an ad in the Bergen Record for affordable housing and called for an application. The family submitted a lengthy application with income documentation. The Francos were notified of their eligibility and the availability of units in December 1987.

The family selected a corner unit and closed on it in September 1988. The townhouse cost $52,000 and required a 10 percent downpayment. The monthly fee, including mortgage, taxes and condominium fee, is $548.

Jim Franco works for a envelope manufacturer in South Hackensack.

"It takes about 20 minutes to get to work down Route 17," he said.

Each unit comes with carpeting, a deck and a storage shed, as well as hookups for dishwasher and washer/dryer. Residents have the option of providing central or unit air conditioning. Appliances, such as refrigerators and ovens, may be purchased through the housing authority.

Mr. Franco is vice president of the condominium association.

"It is a very active group of people and has been able to address many of the problems that have come up," he said.

Although initially the Bergen County Housing Authority was very involved with the condominium units, it gradually let the condominium association take a more active role and now manages only the rental units.

20X

The Babineau Family

Christine Babineau, a single mother with a daughter, eight, and a son, five, lives in a two-bedroom, affordable unit in Society Hill III in Atlantic County's Galloway Township. The Society Hill developments were constructed as part of the township's affordable housing obligation.

Galloway Township is located north of Atlantic City in the northeastern section of the county. The population in 1980 was 12,176.

Ms. Babineau is a secretary with the U.S. District Court Probationary Office. She had previously lived in Ventnor, just south of Atlantic City, and was looking to purchase rather than rent.

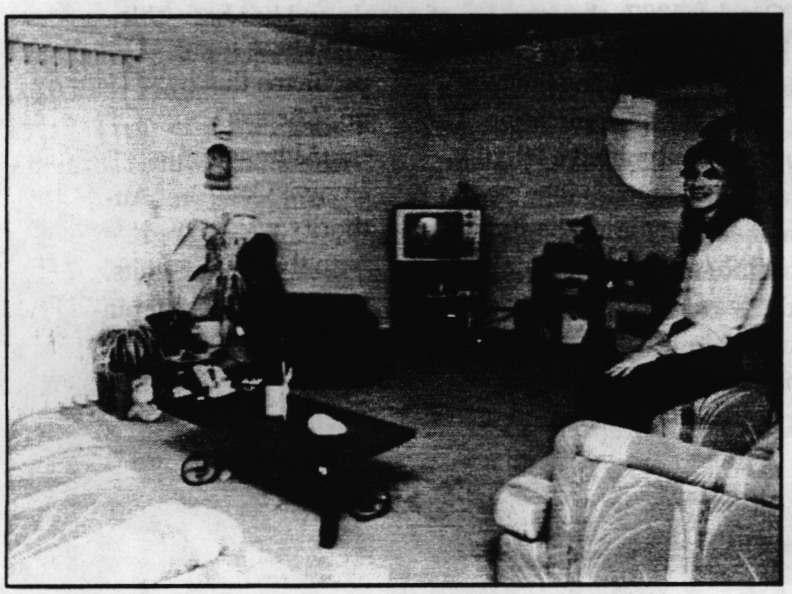
After reading an advertisement for affordable housing in the Atlantic City Press in August 1988, she called Galloway Township for an application. About a month after Ms. Babineau's application and necessary support documentation were submitted, K. Hovnanian Enterprises determined her eligible and scheduled an appointment.

She was offered a choice of three different units and selected one on the first floor. After obtaining a mortgage, Ms. Babineau closed on her unit in June 1989.

Her condominium cost $35,000 with a 20 percent downpayment. It came with carpeting, a stove, a patio and a hookup for washer/dryer. The monthly fee, which includes mortgage and taxes, is $350 a month. The quarterly condominium fee is $104.

The inner 12 units of two of the buildings in the development are low/moderate while the outside units are market rate units. The residents are from all over New Jersey. Most of them are in their 30s.

"I like having woods in the back and being close to the swimming pool," said Ms. Babineau. "It really is a great place to raise my children."



Christine Babineau is pleased with her Society Hill condominium in Galloway Township.

2/X

The Morales Family

Warren Township in Somerset County transferred 167 units of its 367-unit affordable housing obligation to New Brunswick in Middlesex County. Under this regional contribution agreement (RCA), the sending municipality will pay $4,499,000 to the City of New Brunswick, the receiving municipality, for the development of low/moderate income housing.

Seventy sales units are located in Hampton Club and 52 others are to be owner-occupied scattered site rehabilitation units. The remaining units are in Delavan Court, a 44-unit for-sale project that has four one-bedroom units, 34 two-bedrooms and six three-bedrooms.

Jose Morales, his wife, Maria Julia, and their three children moved into their three-bedroom townhouse in Delavan Court in August 1989.

Mr. Morales is an assistant professor and acting chairperson of the Puerto Rican and Hispanic Caribbean Studies Department at Rutgers University. Since the university does not provide housing for Morales and his family, they first lived in a townhouse, paying $1,000 per month in rent.

Subsequently, Mr. Morales noticed an advertisement in the local paper for affordable housing and requested information. After filing an application and meeting eligibility requirements, their name was placed on a waiting list.

When a unit became available in Hampton Club, the family was contacted. However, they turned down the unit because it was on the third floor, a large downpayment was required and the closing fees were too high. Their name remained on the waiting list.



The Morales family (left to right, Sonia, Alejandro, Jose, Maria Julia and Melissa) found friendly neighbors at Delavan Court in New Brunswick.

The Morales family was notified of a townhouse in Delavan Court in February 1989. Within two months, a credit check was completed and Midlantic Bank offered them a mortgage. The family moved into their new home in August 1989.

The unit cost $55,000 with a $2,500 downpayment and monthly condominium fee of $80.

"We now pay under $600 a month on housing," said Mrs. Morales. "This is quite a change from our old apartment where we paid $1,000 a month."

Each unit comes with a garage, dishwasher, stove, carpeting and hookup for a washing machine. According to the Morales family, the maintenance is very good and the neighbors are friendly. Overall, the family is quite pleased with their residence.

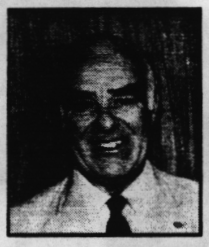
"One of the best things about living in Delavan Court," commented Professor Morales, "is that I am close enough to walk to Rutgers."

22X

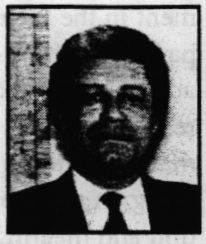
Council Members



Arthur J. Maurice



William A. Angus Jr.



Aldrage B. Cooper Jr.



Kenneth Gibson

Under the Fair Housing Act, the membership of the Council on Affordable Housing (COAH) is a careful balance of urban and suburban, Democratic and Republican, governmental and nongovernmental interests. All nine members are appointed by the Governor with the advice and consent of the Senate.

The 1989 members were as follows:

Chairman Arthur J. Maurice of West Windsor (Mercer County), Republican, ex officio member as executive director of New Jersey Housing and Mortgage Finance Agency (HMFA), representative of low- and moderate-income households;

Vice Chairman William A. Angus Jr. of Moorestown (Burlington County), Republican, representative of the public interest;

Treasurer Aldrage B. Cooper Jr. of New Brunswick (Middlesex County), Democrat, representative of the public interest;

Kenneth Gibson of Newark (Essex County), Democrat, representative of local government and urban areas;

Charles Griffiths of Vineland (Cumberland County), Democrat, representative of local government;

Ara K. Hovnanian of Middletown (Monmouth County), Independent, representative of builders and low- and moderate-income households;

Roderick D. MacDougall of New Vernon (Morris County), Republican, representative of the public interest; and

Carol J. Rufener of Mountain Lakes (Morris County), Republican, representative of local government.

There was one vacancy on the council, a position formerly held by Robert Jackson of Montclair (Essex County), Democrat, representative of local government.



Charles Griffiths



Ara K. Hovnanian



Roderick D. MacDougall



Carol J. Rufener

23X

Changes in Council Membership

Arthur J. Maurice of West Windsor was named chairman of the Council on Affordable Housing (COAH) by Governor Thomas Kean on August 7, 1989. Maurice was earlier appointed by the Governor to replace James L. Logue III as executive director of New Jersey Housing and Mortgage Finance Agency (HMFA).

Logue resigned his COAH chairmanship and his position at HMFA after being named deputy assistant secretary for multi-family housing in the Department of Housing and Urban Development (HUD) in Washington, D.C., by HUD Secretary Jack Kemp on June 2.

From August 1988 until his appointment as executive director of HMFA, Maurice served as deputy commissioner in the Department of Community Affairs. Previously, from 1984 to 1988, he was director of policy and planning for the General Assembly Majority Office. Maurice also served as legislative tax analyst for the Office of Legislative Services and as a researcher at Princeton University's Woodrow Wilson School of Public and International Affairs.

A graduate of Salem (Mass.) State College, Maurice also has a master's degree, summa cum laude, in public administration from Arizona State University.

COAH Staff

Executive Director:	Douglas V. Opalski
Deputy Director:	Art Bernard
Assistant Director:	Shirley M. Bishop
Executive Assistant:	LaVerne A. Watkins
Administrative Secretary:	Renee R. Reiss
Supervising Planner:	Audrey Winkler
Principal Planners:	James N. Bell
	James E. Cordingley
	Denton S. Layman
	Susan MacDonnell
	Preston Pinkett III
	Annemarie Uebbing
Housing Secretaries:	Pam Yallowitz
	Kathleen L. McGlinchy
Director of Communications:	Sidna B. Mitchell
Planner/Writer:	Lawrence E. Silver
Public Information Secretary:	Deborah Fernandez

24X

1989 Regional Contribution Agreements

Three regional contribution agreements (RCAs) were approved by COAH in 1989. (According to the Fair Housing Act of July 2, 1989, a municipality may transfer up to 50 percent of its fair share housing obligation to a willing municipality within its housing region for a negotiated price of not less than $10,000 per unit. This transfer is known as a regional contribution agreement.)

The first 1989-approved RCA was between Middletown and Asbury Park, both in Monmouth County, on January 9, 1989. Middletown transferred 180 units, all to be rehabilitated, to Asbury Park at a cost of $19,500 per unit for a total cost of $3,510,000.

Ramsey (Bergen County) will transfer 43 units of its obligation to Jersey City (Hudson County) under an agreement approved on April 3, 1989. The agreement was set at $20,000 per unit for a total cost of $860,000, all scattered-site rehabilitation.

On April 24, 1989, COAH approved an RCA between Cranbury and Perth Amboy, both in Middlesex County. This agreement involves the transfer of 76 units, all scattered-site rehabilitation, at a cost of $25,000 per unit for a total cost of $1,900,000.

Regional Contribution Agreements (RCAs)

Sending Municipality/County	Receiving Municipality/County	Date Approved	Units	Cost per unit	Total Cost	Rehabilitated Units	New Construction
Middletown (Monmouth)	Asbury Park (Monmouth)	1/9/89	180	$19,500	$3,510,000	180	0
Ramsey (Bergen)	Jersey City (Hudson)	4/3/89	43	$20,000	$ 860,000	43	0
Cranbury (Middlesex)	Perth Amboy (Middlesex)	4/24/89	76	$25,000	$1,900,000	76	0

25X

COAH Budget

	Budget	Expenditures
Salaries (Including 25% fringe benefits)	$1,070,000.00	$1,030,000.00
Professional Services	126,000.00	1,095.00
Office Equipment	15,000.00	3,557.46
Maintenance/Equipment	12,000.00	1,406.75
Rent	12,000.00	1,352.00
Telephone	46,000.00	53,000.00
Printing/Office Supplies	78,000.00	36,798.02
Other Supplies	4,000.00	729.00
Household and Clothing	4,000.00	910.25
Employee Travel	24,000.00	15,511.85
Postage	18,000.00	19,967.60
Data Processing	74,000.00	48,347.27
Other Services	108,000.00	314,280.20
Vehicle Maintenance	9,000.00	8,560.00
Total	$1,600,000.00	$1,535,515.40

The Council on Affordable Housing Regions

Region 1—
Northeast

Bergen
Hudson
Passaic

Region 2—
Northwest

Essex
Morris
Sussex
Union

Region 3—
West Central

Hunterdon
Middlesex
Somerset
Warren

Region 4—
East Central

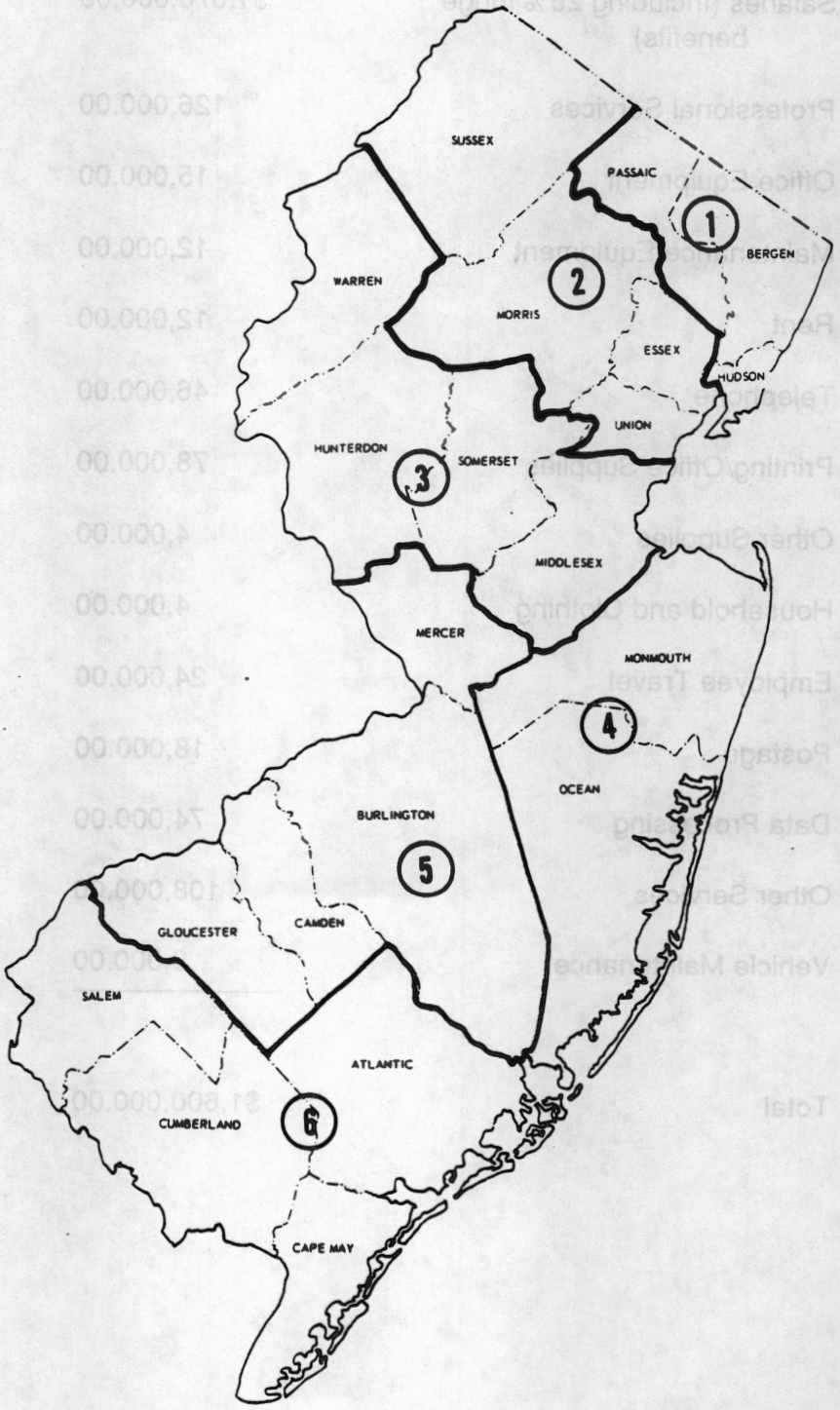
Monmouth
Ocean

Region 5—
Southwest

Burlington
Camden
Gloucester
Mercer

Region 6—
South-Southwest

Atlantic
Cape May
Cumberland
Salem



Legislative Viewpoint

NEW JERSEY STATE LEAGUE OF MUNICIPALITIES
407 W. STATE ST., TRENTON, NJ 08618
609-695-3481 FAX 609-695-0151

JOHN E. TRAFFORD, Executive Director
WILLIAM G. DRESSEL, JR., Asst. Executive Director
JON R. MORAN, Senior Legislative Analyst
CHRISTOPHER CAREW, Legislative Analyst
HELEN YELDELL, Legislative Analyst

STATEMENT OF WILLIAM G. DRESSEL, JR.
ASSISTANT EXECUTIVE DIRECTOR
STATE LEAGUE OF MUNICIPALITIES
BEFORE A PUBLIC HEARING OF
THE SENATE LEGISLATIVE OVERSIGHT COMMITTEE ON
STATUS OF THE COUNCIL ON AFFORDABLE HOUSING PERSONNEL
MONDAY, APRIL 15, 1991 AT 10:00 A.M.
ROOM 334
STATE HOUSE ANNEX
TRENTON, NEW JERSEY

THANK YOU FOR THE OPPORTUNITY TO APPEAR BEFORE YOU TO PRESENT THE LEAGUE'S POINT OF VIEW ON THIS TIMELY MATTER.

ED SCHMIERER, ESQ., TOWNSHIP ATTORNEY FOR PRINCETON JOINS ME HERE TODAY. FOLLOWING MY COMMENTS ED WILL FURTHER ELABORATE ON HIS EXPERIENCES WITH COAH.

WE RECENTLY READ WITH CONSIDERABLE ALARM NEWS ARTICLES (COPIES ATTACHED) ON THE ADMINISTRATION'S PROPOSAL TO ELIMINATE SOME EIGHT STAFF EMPLOYEES IN THE COUNCIL ON AFFORDABLE HOUSING.

THIS DECISION COULD NOT COME AT A WORSE POSSIBLE TIME, GIVEN THE SUPREME COURT'S RECENT DECISION WHICH DIRECTED THE COUNCIL ON AFFORDABLE HOUSING TO PROMULGATE A DEVELOPMENT FEE REGULATION THAT MUNICIPALITIES CAN USE TO COLLECT MONEY FOR LOW AND MODERATE INCOME

HOUSING. ADDITIONALLY, THERE IS AN IMMEDIATE NEED FOR MORE TECHNICAL AND PLANNING STAFF SUPPORT IN THE LOW AND MODERATE INCOME HOUSING AREA WHICH WILL HELP LOCAL GOVERNMENTS AND THE STATE OF NEW JERSEY ACCOMPLISH THE GOAL OF PROVIDING HOUSING FOR THOSE THAT NEED IT. GIVEN THE HUGE CUTS IN PERSONNEL THAT THE DEPARTMENT OF COMMUNITY AFFAIRS HAS ALREADY EXPERIENCED, WE QUESTION WHETHER OR NOT THE DIVISION OF HOUSING, OR ANY OTHER AGENCY WITHIN THE DEPARTMENT OF COMMUNITY AFFAIRS, CAN ABSORB THESE ADDITIONAL RESPONSIBILITIES. WE ALSO FEAR THAT COAH WOULD LOSE A DEGREE IF INDEPENDENCE IN DECISION-MAKING AUTHORITY THAT IT PRESENTLY ENJOY IF IT IS ENVELOPED WITHIN ANOTHER DIVISION OR AGENCY OF STATE GOVERNMENT. AT PRESENT COAH IS INVOLVED IN AN AMBITIOUS PROJECT OF SELF-EVALUATION AND ISSUES EXAMINATION. THE LEAGUE OF MUNICIPALITIES IS AN ACTIVE PARTICIPANT IN THIS PROCESS AND WE ARE HOPEFUL THAT THIS WILL RESULT IN MEANFUL CHANGES. THE COUNCIL ON AFFORDABLE HOUSING IS NOT PERFECT -- WE BELIEVE THERE IS ROOM FOR IMPROVEMENT. HOWEVER, WE STRONGLY BELIEVE THAT COAH SHOULD BE AN INTEGRAL PART OF OUR STATE'S EFFORTS TO DEVELOP A MEANFUL HOUSING POLICY AT A TIME WHEN WE NEED IT MOST.

AT THIS TIME, I WOULD LIKE TO INTRODUCE ED SCHMIERER, WHO SERVES AS BOTH COUNSEL TO PRINCETON TOWNSHIP AND IS A MEMBER OF THE LEAGUE'S AFFORDABLE HOUSING COMMITTEE, WHO WILL AMPLIFY ON THIS.

THE STAR-LEDGER, Thursday, March 7, 1991

Layoff debate swirls at housing council

By RICHARD S. REMINGTON

Florio administration officials were forced yesterday to interrupt a weeklong tour of the state touting new housing programs to deny reports they were laying off the entire support staff of the Council on Affordable Housing.

During a COAH meeting in Hamilton, the council's staff presented a Feb. 28 letter from acting Personnel Commissioner William Scheuer listing eight COAH staffers "who have been, or will be, notified of separation."

The council angrily responded by demanding a meeting with Department of Community Affairs (DCA) Commissioner Randy Primas. The council falls under the DCA for budget purposes.

"This layoff would eliminate all our planners and all our secretarial help, so essentially the council would not be able to function," said COAH Chairman Charles Griffiths.

Newark Mayor Sharpe James, a council member, said, "I just can't believe that (Primas) is aware of this recommendation."

Later in the day, Gov. Jim Florio's press office issued a statement denying the layoffs and said the fate of the COAH employees was tied to a long-range proposal to have DCA take over the council's staff work.

"It would be intended to eliminate duplication of effort and would be in keeping with the Governor's goal of making government smaller," said Nancy Kearney, Florio's deputy press secretary.

The COAH employees apparently were included inadvertently on the Department of Personnel list as part of ongoing layoffs to help address the state budget crisis, officials said. The fate of the COAH staffers will be tied to the DCA plan and would require legislation.

COAH officials, however, were kept in the dark about the plans.

Griffiths and Douglas Opalski, executive director, said they first learned of the move from the staffers who obtained the layoff list from their union.

"What's really shocking to me is that this flies in the face of everything else I've ever heard about this," Opalski said in reference to the layoffs.

A management audit study by the Governor's Office concluded COAH should continue and DCA policy representatives made "no recommendations that further cuts be made of COAH," Opalski said.

"They agreed that our budget should remain stable," he said. COAH is operating with only half the needed staff, he added.

The move would require the Legislature to amend the 1985 Fair Housing Act which created COAH. The council certifies municipal compliance with the state Supreme Court's Mt. Laurel doctrine requiring each town to allow for a fair share of lower-income housing.

Senate President John Lynch (D-Middlesex), who sponsored the Fair Housing Act, said he would have to review any such legislation to insure that the DCA addresses the public policy concerns of the program.

The incident marred Florio's "Housing Ownership Opportunities Week," a statewide tour involving the Governor and his top aides to promote new administration initiatives to boost housing.

"There may have been a better way to celebrate it," Opalski said.

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The Times

MONDAY

APRIL 1, 1991

Consolidation rumored for state COAH

By ELLEN LOVEJOY
Staff Writer

TRENTON — The future of the state Council on Affordable Housing is uncertain, and municipal officials and affordable housing advocates fear that transferring the council's duties to another agency would rob towns and builders of COAH's expertise on low- and moderate-income housing.

Rumors of the possible abolishment of COAH, which oversees municipalities' plans to provide low- and moderate-income housing, were fanned recently when the Council Workers of America claimed that Gov. Jim Florio's administration was gutting affordable housing efforts by firing eight COAH employees.

The eight employees are still on the job, but Florio spokeswoman Nancy Kearney confirmed that the administration is considering consolidating COAH with the Division of Housing within the state Department of Community Affairs.

Kearney stressed that Florio was not backing away from his commitment to affordable housing, but said that the administration's consideration of consolidating

• see COAH, A6

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William Dressel
. . . League of Municipalities

COAH

• continued from A1

COAH is part of the governor's overall attempt to streamline state government.

"It is still under review," Florio's press secretary, Emma Byrne, said Friday.

Meanwhile, supporters and even sometime-critics of COAH are urging Florio to allow the council to remain and expand its authority, and COAH itself is working in a "disturbing, insecure, and disruptive" milieu during a time when it is establishing new guidelines with about two-thirds of the number of employees it started with five years ago.

"We continue to do our job under these severe handicaps. We were shocked. We were never consulted. We're doing the best we can and hoping that this is all premature," said COAH Executive Director Douglas Opalski. "This was a surprise to us because the governor's office previously concluded that COAH should remain. No one's directly told me otherwise."

"I hope they look at the wisdom of why COAH was set up as it was by the Legislature and decide not to consolidate or downsize us," Opalski said. "If I were a municipality, I would want to submit my housing plan to the council rather than to some bureaucracy."

ALTHOUGH Opalski said he has a "great deal of respect" for DCA Commissioner Randy Primas, he said, "I'm just not sure they have the same expertise that we have."

"It took a while for us to build up our expertise. We've learned a lot in the five years since we were created. I'd hate for everyone to loose that knowledge," Opalski said.

Municipalities also are fearful that eliminating COAH would cost them needed expertise and objectivity, according to William Dressel, assistant executive director of the state League of Municipalities.

"The current staff at DCA does not have the same expertise as COAH," said Dressel, who said the league wrote Primas to protest the possible consolidation of COAH.

"At a time when there is such a dire need for low- and moderate-income housing, COAH needs more staff and authority, not less," Dressel said. "COAH has an independent relationship with all parties they deal with. The council is not pro-builders or pro-municipalities, which is appropriate. I fear it would be too bureaucratic if it were under DCA."

Peter O'Connor, executive director of the affordable housing group Fair Share Housing, said he sometimes disagrees with COAH decisions but wants to see the council continue to exist. He called the decision to consider abolishing it "short-sighted."

"I'm preparing a letter to the governor and Primas right now to recommend that COAH remain a separate entity, with a separate board and a sufficient staff," O'Connor said.

"It should give the appearance of being as free from political influence as possible. It would loose that appearance and its autonomy (if consolidated)," he said.

O'Connor also said that COAH's expertise could not be duplicated in the DCA.

"It's a very complicated and difficult job and needs the people who have been working on it," he said. "The (DCA's) existing housing program isn't sufficient now, if COAH goes into the department, affordable housing would be a total farce, a political football."

Opalski said the rumors of abolishment are particularly troublesome because COAH is in the midst of examining how it can revamp its guidelines to improve its functions and the entire compliance process.

"I would hope all of this is resolved soon so we can clearly see what the story is and so no one is left hanging," Opalski said.



Randy Primas
. . . DCA commissioner



STATEMENT OF JOHN M. PAYNE
PRESIDENT, ALLIANCE FOR AFFORDABLE HOUSING

April 15, 1991

Good morning. My name is John M. Payne. I am President of the Alliance for Affordable Housing and a Professor of Law at Rutgers Law School in Newark. The Alliance is a coalition of some sixty New Jersey organizations concerned about low and moderate income housing, including statewide religious and civic groups, labor unions, landlords and tenants organizations, builders and providers of housing, local and regional groups, and individuals such as myself. A current membership list is attached.

This has been a busy season for rumors about COAH. First, there was the leaked list showing that all of the staff was to be dismissed. Then there was the rumor about the shift from an unclassified staff to civil service. Now we hear, apparently with a greater degree of seriousness, that thought is being given to moving the entire COAH operation into DCA, with staff consequences as yet unknown.

Our members are of several different minds about this proposal. Some worry about the loss of COAH's independence that would result from absorption within DCA. Others welcome it for exactly that reason, seeing the move as an opportunity to shake COAH out of its lethargy; still others are indifferent, because they feel that COAH has become irrelevant to the affordable housing problem, however it is organized. There are, however, some points on which we all agree, and I would like to present these to you this morning because they are relevant to whatever action you take, and I will follow them up with a modest recommendation.

First, I think it is fair to say that virtually the entire low income housing community is disappointed with the progress that has been made to date, and COAH has become part of the problem. Its calculation of housing need rigorously minimizes the number of low and moderate income units that it thinks need to be built. Its fair share regulations relentlessly offer municipalities ways to cut their number, it gives housing advocates virtually no opportunity to argue for upward adjustments, and it refuses to put units lost in one town's calculation back into the need base for redistribution to other municipalities in the region.

Most sadly, COAH has allowed itself to become bureaucratic. It emphasizes mechanical application of its rules in a fruitless quest for certainty of outcome. It has allowed certification to become an end in itself, a measure of its success as an agency, with too little regard for whether the certified plans actually accomplish as much as could be accomplished. It too often loses sight of the "realistic opportunity" standard that is required by the constitution as interpreted in Mount Laurel I and II.

Our **second** point of agreement flows from the first. In fairness to COAH, we would all agree that COAH has been given a very flawed statute from which to take its mandate. Simply put, voluntarism has not worked. If one goes behind COAH's participation claims and subtracts the cases that came over from the courts, the towns with miniscule fair shares, and the towns that have filed without moving for substantive certification, there isn't much left. This conceptual flaw is compounded by the law's structural bias in favor of municipalities, who are guaranteed at least four of the nine seats on the Council. No public interest housing advocate has *ever* sat on the Council on Affordable Housing; indeed, we are told that our perspective is too "one-sided" for that

to be politically acceptable. This approach virtually insures that COAH's regulations will tilt towards municipal interests.

A **third** point on which there is consensus is that COAH has been inadequately staffed and funded for it to have any kind of meaningful policy-making role. It has little data-gathering capacity and virtually no ability to monitor the plans that it certifies. In the difficult field of affordable housing, reactive administration is inevitably ineffective administration. To this I would add that the recent season of leaks and rumors has been terribly demoralizing to the COAH staff. They are a hardworking and very decent group of people and they deserve better.

A **fourth** point on which we agree is that, *if* COAH were given an improved statutory scheme, and *if* COAH developed effective means of implementing such a statute, it would probably be preferable to maintain COAH's autonomy. Like the courts for which COAH is an alternative, COAH requires legitimacy if its mediation and dispute-resolution efforts are to be accepted, and legitimacy requires a certain distancing from the day-to-day workings of government and politics. Implicit in the structure of the Fair Housing Act as it now stands is a legislative mandate of autonomy; I frankly don't know whether the Governor has legal authority to merge COAH into DCA, but I am quite sure that doing so is inconsistent with the spirit of the Fair Housing Act.

Finally a **fifth** point on which there would be general agreement. Reorganization itself is disruptive, as new physical arrangements and new lines of command and control are worked out. COAH has been beset by what can charitably be called mischievous threats to its jurisdiction virtually from the day it came into being, of which the recent staff rumors are only the latest. Reorganization should not be undertaken unless there is a clear gain in doing so and we have not seen that case made. In these times, perhaps the best argument would be that a COAH/DCA merger would save a lot of money. That seems unlikely, unless the plan is to save the cost of the COAH staff by abolishing it, which would totally eliminate COAH's independence and very likely its remaining effectiveness as well.

This, then, bring me to the Alliance's modest recommendation. A reorganized COAH within DCA *might* have benefits, but only as a part of a rigorous rethinking of the Fair Housing Act and a renewed (many would say first-ever) commitment on the part of the state to *mandate* affordable housing, rather than relying on the spurious voluntarism of the present law. The Alliance firmly believes that rethinking the Fair Housing Act is called for, although we do not detect much movement in that direction; when and if that rethinking occurs will be time enough to decide whether COAH's role can be usefully revised. Until there is such a careful study, however, the status quo is preferable to a distracting rearrangement of the bureaucratic furniture that will require a lot of effort and still leave us with the inadequacies of the present law.

This Committee should state its opposition to a hasty merger of COAH into DCA, and should direct its oversight towards making the act and the agency work better than they now do.

Alliance for Affordable Housing, Inc.

402 Main Street, Suite 200
Metuchen, New Jersey 08840
(201) 906-0022

STATEMENT OF PURPOSE

The Alliance for Affordable Housing, established in 1986, is a statewide coalition of over 50 business, community, civic and housing advocacy groups which have joined together to further the vital initiatives which New Jersey has been taking in providing low and moderate income housing under the Mount Laurel doctrine. The Alliance has worked with the Council on Affordable Housing to help implement the Mount Laurel doctrine, has opposed legislative attempts to undermine the Mount Laurel process and has worked with the press, political leaders and the general public to develop a better understanding of affordable housing policy and issues. The Alliance for Affordable Housing has established a not-for-profit Education Fund to further its mission of conducting research and collecting and disseminating reliable and useful information about affordable housing issues.

MEMBERS AND SUPPORTERS

Statewide Organizations

American Association of Retired Persons
American Federation of State, County and Municipal Employees, Council 1
Association of Black Women Lawyers
Black Issues Convention (BIC)
Business and Services Registry of America
Church Women United
Communication Workers of America, District 1
Council for Human Services in New Jersey
County Welfare Directors Association of New Jersey
Garden State Bar Association
Gerontological Society of New Jersey
Institue of Multi-Family Housing
International Federation of Professional & Technical Employees, Local 195
League of Women Voters of New Jersey
Lutheran Social Services of New Jersey, Task Force on Affordable Housing
National Housing Institute
National Organization for Women, New Jersey
New Jersey Americans for Democratic Action
New Jersey Builders Association
New Jersey Business and Industry Association
New Jersey Chapter, American Civil Liberties Union

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New Jersey Chapter, National Association of Housing and Redevelopment Officials
New Jersey Citizen Action
New Jersey Council of Churches
New Jersey Council of the Multi-Housing Industry
New Jersey Council of Urban League Executives
New Jersey Friends Council
Mew Jersey Industrial Union Council, AFL-CIO
New Jersey Manufactured Housing Association
New Jersey Tenants Organization
Right to Housing
Volunteers of America

LOCAL ORGANIZATIONS

Algieri Institute for Family Preservation and Human Development
Camden Shelter Coalition
Catholic Charities--Diocese of Metuchen
Civic League of New Brunswick
Community Services Council of Hunterdon County, Inc.
Elizabeth Coalition to House the Homeless
Fair Housing Council of Northern New Jersey
Garden State Cooperative Housing Association, Inc.
Housing Coalition of Middlesex County
Housing Task Force of the Ethical Cultural Society
Inner City Christian Action
Interfaith Council for the Homeless of Union County
ISLES, Inc.
Middlesex County Economic Opportunity Corporation
Monmouth County Coalition for the Homeless
Morris County Fair Housing Council
Newark Coalition for Neighborhoods
North Hudson Community Action Corporation
Plowshares Press
Puerto Rican Association for Human Development
Puertorriquenos Asociados for Community Organization
Senior Citizens Housing Coalition of Rockaway Township
Somerset County Chamber of Commerce
Task Force to Aid the Homeless of Burlington County
The Salt and Light Company Inc.
Women Infiltrators of Poverty, Inc.

Marcia K. Steinberg, Ph.D.

(609) 896-2470

161 Franklin Corner Road, Bldg. C-2
Lawrenceville, New Jersey 08648

April 1, 1991

Mr. Douglas Opalski
Executive Director
Council on Affordable Housing
CN 813
Trenton, New Jersey
08625-0813

Dear Director Opalski:

Utilizing scientific procedure as well as a predilection that supports the policies laid down in the Mount Laurel Supreme Court decisions, I offer you a few of my thoughts on the State's current proposal to transfer the work of the Council to the Department of Community Affairs and to eliminate half of its staff.

These thoughts emanate from my extensive research on affordable housing and the performance of COAH, published in both the academic press and in the media. If you find this letter sympathetic to your own outlook on proposed COAH restructuring, please feel free to transmit a copy of it to whomever you communicate with on this matter.

It is plain that under the Council's purposeful direction, municipalities have mobilized talent and resources to re-design local planning rules and practices. Affordable housing has been built and approved that would not otherwise be in existence. In Central New Jersey COAH-certified municipalities as a group have a better record of compliance with the Mount Laurel II decision than the remainder of other municipalities in that region; indeed, more than 100% of the required obligation of the COAH-certified municipalities is now built, approved, or under review by local planning boards. Vigorous central regulation is still required to see these through to completion.

It is significant that COAH stands as a separate unit in, but not of, the Department of Community Affairs. Its sole focus is to carry out a court mandate grounded in the state constitution. COAH's work with developers, municipalities, lawyers, planners, and public interest groups is directed to this single goal and moves forward unfettered by commitments, concerns, and contacts on other aspects of housing and community life. Under the present arrangement the Council is under direct, perceptible, and conspicuous court scrutiny to ensure that the Mount Laurel II mandate is followed.

If COAH is entirely assimilated into the Department of Community Affairs it is reasonable to expect, on the one hand, that the sharp profile of responsibility will become blurred, and on the other, that the entire department will become accountable to the courts on the issue. It seems

to me that neither outcome is salubrious for affordable housing or for DCA itself, either in its wish to advance this housing or to retain its own organizational clarity. Ofcourse, this assessment is no detraction from the capabilites or resolution of DCA; rather, it flows from the particular determinants of the objective situation.

Tied to COAH's unique positioning within government is the unusual degree of reliance and credibility it receives, even for creative salients it devises in order to fulfill its difficult mission. For example, I note that just last week the COAH moratorium on development of some vacant sites in Cherry Hill was affirmed by the state's high court. The previous week, the concept and practice of Regional Contribution Agreements received judicial approval.

Again because of its high and singular profile, COAH evidences unusual willingness for assessment by the constituencies it serves. This quality is exemplified in the recent publication by COAH of papers laying bare the 20 chief issues COAH believes it, and its constituents, ought to address precedent and auxiliary to an official revision by COAH of its rules. This demonstrates a healthy organization capable of reflection and change.

These considerations lead me to support COAH's present status. Improved operation is not incompatible with its form, should any improvements be deemed necessary by the state Administration. Additional cooperative arrangements between COAH and DCA, and between COAH and other agencies such as the NJHMFA, could be explored respecting coordination of services, review of applications, specialized staff assistance, cost efficiencies, and so forth. For the above reasons and others akin to them I believe that the optimum efficacy for moving Mount Laurel housing forward lies with the continued operations of COAH in its present organizational form.

Yours truly,

Marcia K. Steinberg

Marcia K. Steinberg, Ph.D.

— SUMMARY OF TESTIMONY —

ROBERT W. BURCHELL, Ph.D.
Distinguished Professor
Rutgers University
Center for Urban Policy Research
New Brunswick, New Jersey

ON

STATUS OF AFFORDABLE HOUSING PERSONNEL

BEFORE THE

NEW JERSEY STATE LEGISLATURE
SENATE LEGISLATIVE OVERSIGHT COMMITTEE

GERALD R. STOCKMAN, CHAIRMAN
JOHN H. EWING, MEMBER
WYNONA M. LIPMAN, MEMBER

TRENTON, NEW JERSEY
STATE HOUSE ANNEX, ROOM 334

APRIL 15, 1991—10:00 A.M.

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HIGHLIGHTS OF TESTIMONY

ROBERT W. BURCHELL, Ph.D.

- The New Jersey Council on Affordable Housing (COAH) has been actively providing below-market housing in the state of New Jersey for a period of four years.

- This group of highly and specifically skilled leaders and professionals has developed a set of procedures and rules and regulations that alert each community to its affordable housing responsibility.

- The affordable housing program in New Jersey is held in high regard by housing advocates nationally. The program encompasses targets, objectives, structure, definitions, rewards, sanctions, and equity. The program was recently featured in a seminar held by the Urban Land Institute in Washington, D.C. and has been the subject of similar seminars and workshops throughout the country.

- The professional staff is both the moving force behind COAH and the resource group for Council members. The staff is composed of people who have had specific training in mediation and who have successfully brought together the groups attempting to provide affordable housing throughout the state of New Jersey.

  Members of the COAH staff:

  - understand the overriding guidance and principles of the *Mount Laurel* decisions and how they have influenced current practice.
  - understand current procedural rules and regulations and how and why these have evolved over time.
  - have participated in professional discussions of rule changes and modifications that may be necessary as the second round of affordable housing obligations moves to center stage in 1993.

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HIGHLIGHTS OF TESTIMONY

ROBERT W. BURCHELL, Ph.D.

- have served as negotiators and mediators in numerous individual municipal settlements.
- have prepared the substantive briefs for the defense of COAH procedures and methodology in various court challenges.
- are intimately familiar with the variation in and subtleties of affordable housing need in the six COAH housing regions throughout the state.
- have explained COAH procedure and practice in public sessions, open meetings, and judicial chambers throughout the state.
- have been active participants in ensuring that the transition from the New Jersey State Development Guide Plan (1978) to the New Jersey State Interim Development and Redevelopment Plan (1991) will be a smooth and housing-productive one.

- ❐ Many of these personnel may not survive a reorganizational classification that brings this function operationally within the confines of the New Jersey Department of Community Affairs.

- ❐ Such a move would be counterproductive and cost-inducing to the state of New Jersey in the long run. The skills and knowledge of the professional staff cannot be replicated easily, and it is critical that this intellectual capital remains present as the second round of affordable housing numbers is drawn.

- ❐ Replacing the COAH professional staff at this time could be injurious to the statewide affordable housing effort and, by direct result, injurious to the people of New Jersey.

- ❐ The Governor's Office should reconsider this act for the continuity of the affordable housing program and New Jersey's stature as a leader in affordable housing efforts nationally.

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HILL WALLACK

ATTORNEYS AT LAW

210 CARNEGIE CENTER

PRINCETON, NEW JERSEY 08543-5226

(609) 924-0808

TELECOPIER: (609) 452-1888
(609) 987-2455

HENRY A. HILL
MICHAEL D. MASANOFF
ALAN M. WALLACK
GERARD H. HANSON
ROBERT W. BACSO, JR.
THOMAS JAY HALL
ROCKY L. PETERSON
SUSAN HOWARD*
MICHAEL S. SIMON
MICHAEL J. FEEHAN
KAREN E. BEZNER
LIONEL J. FRANK
THEODORE R. MONICA, JR.
JOSEPH A. VALES
THOMAS F. CARROLL, III
JAMES G. O'DONOHUE
JEFFREY L. SHANABERGER

L. STEPHEN PASTOR
MICHAEL KAHME
VALERIE K. BOLLHEIMER
JACKIL KOLPEN
GARY E. COPLEIN
LAWRENCE PROWEBS
BRUCE R. DEMETER
JAMES M. McCARTHY
MICHAEL P. WEINER
LIN A. JOHNSON
JAMES F. SCHWERIN
VERONICA L. CURVY
MICHAEL J. SHAVEL
SHARON A. WEST

*N.Y. BAR ONLY

OFFICE OF
LEGISLATIVE SERVICES

FILE NO.

April 8, 1991

Marvin W. Jiggetts,
Senate Legislative Oversight
Committee Aide
New Jersey State Legislature
Senate Legislative Oversight Committee
State House Annex
CN-068
Trenton, NJ 08625-0068

RE: Status of COAH Personnel

Dear Mr. Jiggetts:

I am enclosing, for your information, a copy of a letter dated March 14, 1991 which I sent to Governor Florio, together with a copy of a letter which I received from Charles A. Richman, Assistant Commissioner to the DCA dated March 20, 1991 and my letter of March 26, 1991 to Mr. Richmond responding to same.

As this correspondence indicates, and for the reasons stated, I believe that the balance and integrity of the COAH process would be adversely affected by the proposed changes in personnel and a great deal of momentum would be lost should the existing COAH staff be fired.

My opinions in this matter are contained in the enclosed correspondence and I do not request permission to testify unless the Committee would like further amplification of my views.

Very truly yours,

Henry A. Hill

HAH:klc

Enclosures

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HILL WALLACK

ATTORNEYS AT LAW

210 CARNEGIE CENTER

PRINCETON, NEW JERSEY 08543-5226

(609) 924-0808

TELECOPIER (609) 452-1888
(609) 987-2455

HENRY A HILL
MICHAEL D MASANOFF
ALAN M WALLACK
GERARD H HANSON
ROBERT W BACSO JR
THOMAS JAY HALL
ROCKY L PETERSON
SUSAN HOWARD*
MICHAEL S SIMON
MICHAEL J FEEHAN
KAREN E BEZNER
LIONEL J FRANK
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JOSEPH A VALES
THOMAS F CARROLL, III
JAMES G O'DONOHUE
JEFFREY L SHANABERGER

L STEPHEN PASTOR
MICHAEL KAMME
VALERIE K BOLLHEIMER
JACK L KOLPEN
GAIL E COPLEIN
LAWRENCE P POWERS
BRUCE R DEMETER
JAMES M McCARTHY
MICHAEL P WEINER
LIN A JOHNSON
JAMES F SCHWERIN
VERONICA L CURVY
MICHAEL J SHAVEL
SHARON A WEST

*NY BAR ONLY

March 14, 1991

FILE NO

Honorable James J. Florio
Governor, State of New Jersey
Executive Department
State House
CN-001
Trenton, NJ 08625

Dear Governor Florio:

I understand from a Star Ledger article dated March 7, 1991 and a subsequent telephone conversation with the Council on Affordable Housing staff, ("COAH") that the Department of Personnel has decided to lay-off virtually the entire COAH staff. According to the article, your office is proposing to eliminate COAH as a separate agency and have the staff's present work taken over by the Department of Community Affairs ("DCA").

As I am sure you are aware, the New Jersey Supreme Court, in the recent Holmdel decision, delegated to COAH considerable responsibility with respect to the promulgation of regulations regarding municipal linkage fees to assist in the funding of affordable housing. In addition, COAH is involved in reviewing the plans of numerous municipalities which have sought substantive certification under the Fair Housing Act.

I was the attorney who brought the Holmdel case on behalf of the New Jersey Builder's Association, the National Association of Industrial Office Parks, New Jersey Chaper, the Holmdel Builders Association and Calton Homes, who are the four plaintiffs in the consolidated case. I also have considerable experience representing developers before COAH. In my personal view, the proposed lay-offs will be extremely disruptive to the process of bringing this State into even partial compliance with the Mount Laurel doctrine and will considerably delay implementation of the Constitutional mandate. The Council staff has acquired, over the past five years, considerable expertise and has functioned as a constructive buffer between the often exclusionary goals of the various municipalities and the financial interests of the development community resulting in considerable progress towards compliance with the Constitutional mandate. Unfortunately, the housing market over the past several years has slowed considerably resulting in some delay in production and occupancy of lower income units.

In my opinion, the integrity and momentum will be adversely affected by massive personnel changes. If the new staff is drawn from the DCA, an agency which has been traditionally close to the League of Municipalities and sympathetic to exclusionary sentiments of suburban towns, the balance and integrity of the process will be affected. In addition, the process before COAH is relatively esoteric and understood by only a relatively small portion of the legal and planning community who have witnessed and participated in the dialogue leading to COAH's massive regulatory structure. I believe that the experience which the present staff has gained would take at least two years to replicate resulting in the systems failure to deliver thousands of lower income units.

Finally, I would like to state, since I am most sympathetic to the Administration's goals of creating a smaller more efficient Government, that I believe, based on anecdotal evidence, that there could be massive lay-offs within the DCA, particularly within those Divisions whose function is to inspect new development, approve Public Offering Statements under the Planned Development Full Disclosure Act and otherwise regulate the development community. That staff is presently grossly underworked. It appears to me the DCA is the only agency which has not noticed that housing starts in this State are lower than has been experienced since the Second World War and that new office construction has ground virtually to a halt. I am informed that DCA today has more housing inspectors and more persons to review real estate Public Offering Statements than were employed by the State in 1986, when development was at its peak, that these regulators spend much of their time in their offices in Trenton reading the newspaper, since they have no work to do. I am sure that a review of this over-staffing could result in savings many times greater than those that would be realized if the COAH staff were discharged. I understand that the DCA is overstaffed, but hardly think the solution is to put out-of-work plumbing and electrical inspectors to do work which they are untrained for, such as the review of municipal housing elements and the conduct of mediation.

You may recall that we met at Joel Stern's office while you were still in Congress and had, I believe, a construction conversation with respect to the affordable housing issue. You asked me at that time to let you know if I had any constructive suggestions with respect to the process. I hope you will forgive me in taking so long to respond.

Respectfully yours,

Henry A. Hill

Henry A. Hill

HAH:klc

CC: Honorable Melvin R. Primas, Commissioner, DCA

State of New Jersey

DEPARTMENT OF COMMUNITY AFFAIRS

JIM FLORIO
GOVERNOR

LOCATION:
WILLIAM ASHBY COMMUNITY AFFAIRS BUILDING
101 SOUTH BROAD STREET
TRENTON, NEW JERSEY

MELVIN R. PRIMAS, JR.
COMMISSIONER

MAILING ADDRESS:
CN 800
TRENTON, N. J. 08625-0800

March 20, 1991

Henry A. Hill, Esq.
210 Carnegie Center
Princeton, New Jersey 08543-5226

Dear Henry,

Though it is not my intention to respond to each point of your letter to Governor Florio of March 14, I must express my dismay with your statement that the department "has been traditionally close to the League of Municipalities and sympathetic to exclusionary sentiments of suburban towns,..." I do not believe you can point to any statement, policy or record either issued by the Department or announced by any of its personnel to support your statement.

Rather then contributing to a meaningful dialogue, such statements only serve to foster continued distrust amongst individuals who ought to be working together to provide affordable housing.

Very truly yours,

Charles A. Richman

Charles A. Richman
Assistant Commissioner

NEW JERSEY IS AN EQUAL OPPORTUNITY EMPLOYER

45X

to: Doug Opalski
Jeff Horn

MAR 26 '91 16:40 P.1

HILL WALLACK

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210 CARNEGIE CENTER
PRINCETON, NEW JERSEY 08543-5226
(609) 924-0808

TELECOPIER: (609) 452-1888
(609) 987-2455

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*N.Y. BAR ONLY

FILE NO.

March 26, 1991

Charles A. Richman
Assistant Commissioner
Department of Community Affairs
State of New Jersey
CN-800
Trenton, NJ 08625-0800

Dear Chuck:

Thank you for your letter of March 20, 1991 commenting on my letter to Governor Florio of March 14, 1991.

As my letter indicated, I am distressed that the State is contemplating staffing COAH with employees of the DCA and do believe that this would detrementally affect the balance and inregrity of the COAH process. The DCA has, in my experience, traditionally been close to the League of Municipalities, except for a period of time under Commissioner Villane when the Department temporarily desisted from its traditional practice of clearing with the League all regulations affecting municipalities. In fact, N.J.S.A. 52:27D-1 et seq., the statute creating the Department of Community Affairs. at N.J.S.A. 52:27D-9(d) states that a statutory function of DCA is to "assist local government in the solution of its problems ..." . This statutory duty has apparently been interpreted to include assisting municipalities in the evasion of their Mount Laurel responsibilities. Under this Administration, the DCA has sided with the League with respect to all policy issues which have come before it regarding the implementation of the Mount Laurel doctrine. I would like to give you two specific examples where the DCA has recently backed policies which demonstrate their sympathy to the exclusionary sentiments of suburban towns:

a. At recent meetings of the Plan Implementation Committee of the State Planning Commission, the representatives from the DCA have supported a policy which would condone and excuse past exclusionary practices of suburban municipalities by seeking to have the State Plan revisions revised in six year increments rather than annually.

b. At the COAH work sessions with respect to the implementation of the Holmdel decision, the DCA has clearly supported the League's position that municipalities should not have to come in for

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substantive certification in order to have their Mount Laurel linkage fee ordinances approved. This policy would allow municipalities such as Middletown, whose compliance plan has been specifically rejected as a sham and which evidence no intention of providing for low income housing, to nonetheless charge developers linkage fees to support purely administrative processes. This position undermines the implementation of the Mount Laurel doctrine.

The DCA was originally created, at the request of the League of Municipalities, to support municipal interests within state government, just as the Public Advocate was created to represent the interests of the poor and underrepresented. It has traditionally functioned, except for a short period of time under Commissioner Villane, when the DCA greatly angered the League by acting indepentently, as an advocate of "home rule" and has supported virtually all of the League's policies. I do not have a problem with DCA's "home rule" orientation unless DCA is to be given some responsibility with respect to the implementation of the Mount Laurel doctrine, which has been an anathma to most suburban municipalities.

I also oppose putting the fox in charge of the henhouse, or allowing inmate committees of the State's penal institutions to determine correctional policy.

Very truly yours,

Henry A. Hill

HAH:klc

that the average price of the market units would decline to $220.00 per square foot if the number of lower income units disbersed with the market units were to be increased to 20%, rendering the project economically infeasible. They believe that the dispersal of such units would impact adversely on the luxurious character the project and impact on potential purchasers' perception of future resale values. They also believe that the effect of such a dispersal would tend to increase common element charges and affect future buyers' perceptions with respect to the stability of those changes due to the fact that they would be shared by people whose ability to absorb and promptly pay such charges would be impacted by their personal circumstances. Robert Hirsch and Toru Nagayama, therefore, conclude that the numbers contained in the Reading Concept Pro forma for dispersed development are reasonable if not overly optimistic. They, therefore, concluded that a luxury development at that location would not be marketable at prices affording a reasonable return on their investment if dispersal is required.

The project costs contained elsewhere in the pro forma and projected revenues represent the Company's best estimates as indicated above and the expert opinion of Messrs. Nagayama and Hirsch as well as that of Reading.

Richard Reading independently believes that all estimates are reasonable and that the Company's projected actual costs or basis is reasonable.

I am asking Don Miller to consider this letter as a supplement to his Interrogatory #38 and Robert T. Regan to consider same as a supplement to his Interrogatory #12(a) and (b), all of which have been previously answered.

I hope that you will find this letter to be satisfactory and that you will refrain from further spurious attempts to delay this trial.

Very truly yours,

Henry A. Hill

HAH:klc

CC: All on attached list

Regional Plan Association
New Jersey

60 Park Place
Suite 1603
Newark, NJ 07102-1357

Tel 201 623-1133
Fax 201 623-1606

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APR 10 3 [illegible] '91



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April 9, 1991

Mr. Marvin W. Jiggetts, Aide
Senate Legislative Oversight Committee
New Jersey State Legislature
State House Annex
CN 068
Trenton, NJ 08625-0068

Dear Mr. Jiggetts:

Attached please find a letter from Richard T. Anderson to Governor Florio regarding Council on Affordable Housing Personnel.

While we will not be able to testify at your hearing on April 15, we would like to submit this letter as our testimony.

Thank you very much.

Sincerely,

Janet D. Lussenhop
Director

JDL/rms
Attachment

49X

Regional Plan Association

1040 Avenue of the Americas
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New York, NY 10018-3797

Tel 212 398-1140
Fax 212 768-9136

March 21, 1991

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*member of
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The Hon. Jim Florio
Governor, State of New Jersey
State House
Trenton, New Jersey 08625

Dear Governor:

We urge your administration to approach impending staff reductions at the Council on Affordable Housing with caution. The Council has a most important role in addressing New Jersey's critical housing needs.

By severely reducing the staff of COAH, the Council's effectiveness is placed in jeopardy. The Council was set up to manage a court-mandated process to facilitate the development of affordable housing. It also performs a unique function in a new and difficult policy area.

We are well-aware of the State's need to reduce expenditures and achieve economies in every way possible. The purpose of this letter is not to evaluate the steps you must take. Rather, it is to stress the importance of the role of the Council on Affordable Housing and to encourage you to make every effort to preserve its capacity and effectiveness.

I appreciate your consideration.

Sincerely,

Richard T. Anderson
President

RTA/lc608
cc: The Hon. Melvin R. Primas

50X

GREENBERG MARGOLIS
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
THREE A. D. P. BOULEVARD
ROSELAND, N. J. 07068
(201) 992-3700

PHILLIP LEWIS PALEY
(201) 533-7236

TELECOPIER
(201) 992-7945

OFFICE OF
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APR 10 11 ?? AM '91

April 5, 1991

New Jersey State Legislature
Senate Legislative Oversight Committee
State House Annex CN 068
Trenton, New Jersey 08625-0068

Attention: Honorable Marvin W. Jiggetts,
Aide to the Committee

Dear Mr. Jiggetts:

This will confirm our brief telephone conversation this day.

Please be advised that I serve as Director of Law and Township Attorney for the Township of Piscataway. For the past eighteen (18) years, Piscataway has been in the forefront of the issue of housing affordable to lower income households as to litigation as well as to the administrative process. Piscataway's experience in these matters been profound.

I understand that a proposal has been discussed to eliminate the staff of the New Jersey State Council on Affordable Housing and to rely on employees of the Department of Community Affairs for staff support. Most respectfully, I suggest that this proposal does not conform to the public interest.

First, the Mount Laurel cases clearly require that affordable housing is a matter of constitutional imperative, not merely a question of statutory interpretation. This suggests that greater, not less, emphasis should be placed upon the administration of that imperative.

Second, having been directly involved in litigation, mediation, negotiation, and administration of complex public issue, COAH's staff has developed considerable expertise. To discard that expertise is, put simply, folly.

Third, the COAH staff has developed not only substantive experience but a certain degree of practical wisdom. More often than not, the staff's recommendations are founded in practical

reason. The proof of that pudding is found in the limited number of lawsuits produced by recommendations, directives or mandates emanating from COAH.

This is not to say that Piscataway has always agreed with the Council. Hair-splitting debates and candid exchanges of ideas characterize the interaction between Piscataway and COAH's staff, as often as not. Notwithstanding those disagreements, Piscataway firmly believes that the public interest would be strongly disserved by dissolving COAH's staff.

I sincerely hope that these comments will be considered before any action is taken which may return us to the pre-COAH thicket of largely impractical, uninformed and mis-directed effots. I am grateful for your consideration in that regard.

Respectfully and sincerely yours,

PHILLIP LEWIS PALEY

PLP:gm

52X

College of Law

THE UNIVERSITY OF
ARIZONA
TUCSON ARIZONA

Tucson, Arizona 85721
(602) 621-1373
FAX (602) 621-9140

April 11, 1991

Governor James Florio
New Jersey State House
State Street
Trenton, NJ 08608

Dear Governor:

I am writing to urge you to support both the continued independent status of the Council on Affordable Housing and its present level of staffing. The Council has done a remarkable job, under very difficult circumstances, pioneering nation-wide on one of our most important problems, and deserves your full support. Nobody anywhere else is doing comparable work.

I write as a long-time resident of Princeton (and member of the Planning Board there), now retired to my ancestral home in Vermont, and as an enthusiastic supporter of your courageous tax and school financing program, which is the other thing your Administration has a right to be proud of; other states will have to be following soon. I myself am proud of the fact that I helped prepare, and actually argued, the Mount-Laurel case. Only this month, I received the American Planning Association's award for "distinguished leadership", in large part because of my Mount-Laurel work - which shows how the trend of thought is beginning to run nationally.

Visiting Professor of Law

Norman Williams

Norman Williams
Visiting Professor of Law

cc: Mr. John Lynch, 176 W. 8th St., Trenton, NJ 08608
Mr. Gerald Stockman, 176 W. 8th St., Trenton, NJ 08608

53X

BISGAIER & PANCOTTO
ATTORNEYS AT LAW
30 WASHINGTON AVENUE, ENTRY B
HADDONFIELD, NEW JERSEY 08033

CARL S. BISGAIER
LINDA PANCOTTO

TELEPHONE
(609) 354-7077

OFFICE OF
LEGISLATIVE SERVICES

APR 12 11 33 AM '91

April 10, 1991

Honorable Gerald R. Stockman, Chairman
Senate Legislative Oversight Committee
State House Annex
CN 068
Trenton, New Jersey 08625-0068

Re: Status of Council on Affordable Housing Personnel

Dear Senator Stockman:

I am writing to express my strong opposition to any diminution in the funding or change in the staffing of the Council on Affordable Housing. I understand that a public hearing will be held by the Senate Legislative Oversight Committee on this matter on April 15, 1991. I will be unable to attend the hearing and ask that you accept this letter in lieu of an oral presentation.

In 1970 I began representation of the Mt. Laurel plaintiffs and instituted that litigation in 1971. As Director of Camden Regional Legal Services and the Division of Public Interest Advocacy of the New Jersey Department of the Public Advocate I was personally involved in much of the land use litigation, legislative initiatives and administrative actions which culminated in the adoption of the Fair Housing Act in 1985. Since leaving state government in 1982 I have worked in the private sector almost exclusively on affordable housing matters. As a result, I have had the opportunity to experience the "before and after" of the Fair Housing Act and the impact of COAH on the provision of affordable housing. As an advocate for the poor while a governmental employee and as one still deeply concerned with affordable housing issues, I am extremely distressed that any consideration is even being given to the dismantling of COAH. I believe it would be an extraordinary step backward in the movement to create a climate in which we can succeed in the provision of a realistic housing opportunity for the poor.

While I have taken issue with aspects of the Fair Housing Act and some of the regulations adopted by COAH, I (and everyone with whom I am familiar who cares about the provision of

affordable housing) have the greatest respect for the COAH staff. Furthermore, it is clear that given their difficult task and the need to develop and maintain a high level of skill in a complex, specialized area, the staff, and COAH itself, must be as independent and focused a possible.

One major thrust of the effort to provide affordable housing in the context of municipal action has been to streamline the process and to create specialized bodies to regulate, mediate, review and pass upon local compliance. Even the Supreme Court has taken the relatively unprecedented step of selecting special judges to handle affordable housing litigation. The Legislature was wise to create and designate a special agency of state government to undertake this task administratively. Having done so, it would be an incredible step in the wrong direction now to reverse that policy. Certainly nothing in our experience in the last six years would warrant such a change. If done, it is guaranteed to dilute and pervert a process which is, by its very nature, fraught with political pressure and attack.

Only an independent, well-staffed entity can maintain the effort undertaken by COAH. I urge you and the committee to recommend that it be continued in tact so that its work may continue unabated.

Respectfully,

Carl S. Bisgaier

CSB/scs

cc: Hon. James J. Florio
Hon. John H. Ewing
Hon. Wynona M. Lipman
Hon. Andrew Weber
Mr. Marvin W. Jiggetts, Legislative Aide

New Jersey Chapter
American Planning Association

Please reply to:
Patricia S. Clark AICP/PP
Director of Policy Management
P. O. Box 3000
Somerville, NJ 08876

April 12, 1991

Hon. Gerald R. Stockman, Chairman
Senate Legislative Oversight Committee
State House Annex, CN 068
Trenton, NJ 08625-0068

Dear Senator Stockman:

I am writing to you regarding the proposal to eliminate the Council on Affordable Housing staff. On behalf of the 700 members of the New Jersey Chapter of the American Planning Association, I ask that you carefully consider the message that such a move would send. Despite whatever differences of opinion exist regarding COAH, its stature as an independent agency signals the importance of affordable housing to the State of New Jersey.

Secondly, I want to underscore the importance of planning, carried out by licensed professionals, to the affordable housing process. As we all know, affordable housing is a complex issue which requires balancing of various interests - a skill which professional planners possess.

I am well aware of the budgetary constraints facing the State. What I ask is that you consider impacts other than financial ones in this decision.

Senator Stockman, I know that you have always been a champion of sound planning interests. I trust that you will continue to promote good planning in New Jersey.

Sincerely,

Patricia S. Clark AICP/PP
Chapter President

PSC/me

56 X

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66 MORRIS AVENUE
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SPRINGFIELD
NEW JERSEY
07081
☎ 201 379 1100
FAX. 201 379 6507

April 11, 1991

Honorable Gerald R. Stockman
Chairman Senate Legislative
Oversight Committee
State House Annex, CN 068
Trenton NJ 08625-0068

Dear Senator Stockman:

The New Jersey Federation of Planning Officials supports maintaining the current status of the Council on Affordable Housing. A major change could prove disruptive to the process and will not enhance or hasten the process of achieving fair and equitable housing for New Jersey citizens.

COAH is a unique agency with a unique mission. Its personnel and expertise are sensitive toward objectives mandated by the courts and State Legislature.

The specific aim of COAH, we believe, is more appropriately focused independently, not within an agency structured toward broader objectives.

COAH serves on the front lines, facing the task (and often, wrath) of dealing with municipalities on affordable housing issues. It has been the state's trail blazer, familiar with the politics, nuances and attitudes toward the issue in each community.

In the name of saving taxpayers' money, it seems senseless to waste COAH's inestimable value of experience and re-invent the wheel to arrive at the same place.

Sincerely,

Joseph E. Doyle

Joseph E. Doyle
President

JED/fm

Planning for a better New Jersey
A Non-Profit, Tax-Exempt Corporation

57 X

April 11, 1991

Honorable Gerald R. Stockman
Chairman Senate Legislative
Oversight Committee
State House Annex, CN 068
Trenton NJ 08625-0068

Dear Senator Stockman:

The New Jersey Federation of Planning Officials supports maintaining the current status of the Council on Affordable Housing. A major change could prove disruptive to the process and will not enhance or hasten the process of achieving fair and equitable housing for New Jersey citizens.

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The specific aim of COAH, we believe, is more appropriately focused independently, not within an agency structured toward broader objectives.

COAH serves on the front lines, facing the task (and often, wrath) of dealing with municipalities on affordable housing issues. It has been the state's trial blazer, familiar with the politics, nuances and attitudes toward the issue in each community.

In the name of saving taxpayers' money, it seems senseless to waste COAH's invaluable value of experience and re-invent the wheel to arrive at the same place.

Sincerely,

JED\fm

Joseph E. Doyle
President

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