

Committee Meeting

NJ
10
4842
1992g

before

ASSEMBLY HOUSING COMMITTEE

ASSEMBLY BILL No. 1489 and SENATE BILL No. 858 2R

(Provide for adjustment of municipal fair share obligations under the "Fair Housing Act")

"In addition, the Committee heard testimony from officials of the Council on Affordable Housing (COAH) and other interested parties regarding the formulation of new 'fair-share' standards and formulas for the six-year cycle beginning in 1993"

LOCATION: Committee Room 6
Legislative Office Building
Trenton, New Jersey

DATE: November 23, 1992
2:25 p.m.

MEMBERS OF COMMITTEE PRESENT:

Assemblyman John V. Kelly, Chairman
Assemblyman Jose F. Sosa, Vice Chairman
Assemblyman Steve Corodemus
Assemblyman John F. Gaffney
Assemblyman John Hartmann
Assemblyman Jerry Green



ALSO PRESENT:

John B. Lee
Office of Legislative Services
Aide, Assembly Housing Committee

New Jersey State Library

Hearing Recorded and Transcribed by

The Office of Legislative Services, Public Information Office,
Hearing Unit, 162 W. State St., CN 068, Trenton, New Jersey 08625-0068

JOHN V. KELLY
Chairman
JOSE F. SOSA
Vice Chairman
STEVE CORODEMUS
JOHN F. GAFFNEY
JOHN HARTMANN
JERRY GREEN
JIMMY ZANGARI



New Jersey State Legislature

ASSEMBLY HOUSING COMMITTEE
LEGISLATIVE OFFICE BUILDING, CN-068
TRENTON, NEW JERSEY 08625-0068
(609) 984-0231

REVISED

COMMITTEE NOTICE

TO: MEMBERS OF THE ASSEMBLY HOUSING COMMITTEE
FROM: ASSEMBLYMAN JOHN V. KELLY, CHAIRMAN
SUBJECT: COMMITTEE MEETING - November 23, 1992

The public may address comments and questions to John B. Lee, Committee Aide, or make bill status and scheduling inquiries to Norma Morales, secretary, at (609) 984-0231.

The Assembly Housing Committee will meet on Monday, November 23, 1992 at 2:00 P.M. in Committee Room 6, Legislative Office Building, Trenton, N.J.

The following bills will be considered:

A-1489	
Azzolina/Wolfe	Provides for adjustment of municipal
S-858 2R	fair share obligations under the "Fair
Kyrillos/Dorsey	Housing Act."

In addition, the committee will hear testimony from officials of the Council on Affordable Housing (COAH) and other interested parties regarding the formulation of new "fair-share" standards and formulas for the six-year cycle beginning in 1993.

Issued 11/17/92.
Revised 11/19/92 - Committee Room changed from Room 11 to Room 6.

STATE OF NEW JERSEY

INTRODUCED MAY 28, 1992

By Assemblymen AZZOLINA, WOLFE. Assemblywomen Haines,
Farragher. Assemblyman Amone. Assemblywoman
J. Smith and Assemblyman Corodemus

1 AN ACT concerning municipal fair share obligations under the
2 "Fair Housing Act," amending P.L.1985, c.222, and repealing
3 section 23 of P.L.1985, c.222.

4

5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
8 read as follows:

9 7. It shall be the duty of the council, seven months after the
10 confirmation of the last member initially appointed to the
11 council, or January 1, 1986, whichever is earlier, and from time
12 to time thereafter, to:

- 13 a. Determine housing regions of the State;
14 b. Estimate the present and prospective need for low and
15 moderate income housing at the State and regional levels.
16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair
18 share of the housing need in a given region. Municipal fair share
19 shall be determined after crediting on a one-to-one basis each
20 current unit of low and moderate income housing of adequate
21 standard, including any such housing constructed or acquired as
22 part of a housing program specifically intended to provide housing
23 for low and moderate income households:

24 (2) Municipal adjustment of the present and prospective fair
25 share based upon available vacant and developable land,
26 infrastructure considerations or environmental or historic
27 preservation factors and adjustments shall be made whenever:

28 (a) The preservation of historically or important architecture
29 and sites and their environs or environmentally sensitive lands
30 may be jeopardized.

31 (b) The established pattern of development in the community
32 would be drastically altered.

33 (c) Adequate land for recreational, conservation or
34 agricultural and farmland preservation purposes would not be
35 provided.

36 (d) Adequate open space would not be provided.

37 (e) The pattern of development is contrary to the planning
38 designations in the State Development and Redevelopment Plan
39 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
40 (C.52:18A-196 et seq.),

41 (f) Vacant and developable land is not available in the
42 municipality, and

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 (g) Adequate public facilities and infrastructure capacities are
2 not available, or would result in costs prohibitive to the public if
3 provided; and

4 (3) [Phasing of present and prospective fair share housing
5 requirements pursuant to section 23 of this act] (Deleted by
6 amendment, P.L. c.) (now pending before the
7 Legislature as this bill);

8 d. Provide population and household projections for the State
9 and housing regions:

10 e. [May in its discretion, place a limit, based on a percentage
11 of existing housing stock in a municipality and any other criteria
12 including employment opportunities which the council deems
13 appropriate, upon the aggregate number of units which may be
14 allocated to a municipality as its fair share of the region's
15 present and prospective need for low and moderate income
16 housing] No municipality shall be required to address within any
17 given six year period a fair share beyond 50 percent of the fair
18 share assigned by the council for that six year period, unless it is
19 demonstrated, following objection by an interested party and an
20 evidentiary hearing, that based upon the facts and circumstances
21 of the affected municipality it is likely that the municipality
22 through its zoning powers can create a realistic opportunity for
23 more than 50 percent of its fair share within that six year
24 period. In any event, no municipality shall be required to address
25 a fair share beyond 1000 units within any given six year period,
26 unless it is demonstrated, following objection by an interested
27 party and an evidentiary hearing, based upon the facts and
28 circumstances of the affected municipality that it is likely that
29 the municipality through its zoning powers could create a
30 realistic opportunity for more than 1000 low and moderate
31 income units within that six year period. The facts and
32 circumstances sufficient to require a municipality to provide a
33 number of units greater than the number derived under these
34 limitations would be proof that the municipality can create a
35 realistic opportunity within that six year period for at least five
36 times the number of units so derived, based upon the past
37 residential building permit activity in the municipality.

38 In carrying out the above duties, including, but not limited to,
39 present and prospective need estimations the council shall give
40 appropriate weight to pertinent research studies, government
41 reports, decisions of other branches of government,
42 implementation of the State Development and Redevelopment
43 Plan prepared pursuant to sections 1 through 12 of P.L.1985,
44 c.398 and public comment. To assist the council, the State
45 Planning Commission established under that act shall provide the
46 council annually with economic growth, development and decline
47 projections for each housing region for the next six years. The
48 council shall develop procedures for periodically adjusting
49 regional need based upon the low and moderate income housing
50 that is provided in the region through any federal, State,
51 municipal or private housing program.

52 (cf: P.L.1985, c.222, s.7)

53 2. Section 23 of P.L.1985, c.222 (C.52:27D-323) is repealed.

54 3. This act shall take effect immediately.

STATEMENT

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

Experience with the compliance mechanisms established by the "Fair Housing Act," P.L.1985, c.222 (C.52:27D-301 et seq.) demonstrates that the act places considerable planning and financial burdens upon municipalities and requires them to zone lands that will not result in the creation of additional affordable housing because the market cannot reasonably absorb all the housing needed to produce the additional affordable housing. The Council on Affordable Housing sought to avoid the imposition of onerous burdens on municipalities by adopting a regulation capping the fair share of each municipality at 1000. The courts declared the regulation illegal because it imposed a cap that was not based upon the facts and circumstances of the municipality. This bill seeks to establish a cap directly related to the facts and circumstances of the municipality. The legislation would also eliminate the potential for temporary taking claims under the phasing provisions of section 23 of P.L.1985, c.222 (C.52:27D-323) pursuant to which a municipality could zone a parcel for inclusionary development, but bar the owner from developing the parcel consistent with the inclusionary rezoning for some set period of time. That section of law is therefore repealed.

Provides for adjustment of municipal fair share obligations under the "Fair Housing Act."

STATE OF NEW JERSEY

INTRODUCED MAY 18, 1992

By Senators KYRILLOS, DORSEY, Corman, Inverso,
Dimon, Haines, Connors and Adler

1 AN ACT concerning municipal fair share obligations under the
2 "Fair Housing Act," amending P.L.1985, c.222, and repealing
3 section 23 of P.L.1985, c.222.

4
5 BE IT ENACTED by the Senate and General Assembly of the
6 State of New Jersey:

7 1. Section 7 of P.L.1985, c.222 (C.52:27D-307) is amended to
8 read as follows:

9 7. It shall be the duty of the council, seven months after the
10 confirmation of the last member initially appointed to the
11 council, or January 1, 1986, whichever is earlier, and from time
12 to time thereafter, to:

13 a. Determine housing regions of the State:

14 b. Estimate the present and prospective need for low and
15 moderate income housing at the State and regional levels;

16 c. Adopt criteria and guidelines for:

17 (1) Municipal determination of its present and prospective fair
18 share of the housing need in a given region. Municipal fair share
19 shall be determined after crediting on a one-to-one basis each
20 current unit of low and moderate income housing of adequate
21 standard, including any such housing constructed or acquired as
22 part of a housing program specifically intended to provide housing
23 for low and moderate income households;

24 (2) Municipal adjustment of the present and prospective fair
25 share based upon available vacant and developable land,
26 infrastructure considerations or environmental or historic
27 preservation factors and adjustments shall be made whenever:

28 (a) The preservation of historically or important architecture
29 and sites and their environs or environmentally sensitive lands
30 may be jeopardized,

31 (b) The established pattern of development in the community
32 would be drastically altered.

33 (c) Adequate land for recreational, conservation or
34 agricultural and farmland preservation purposes would not be
35 provided.

36 (d) Adequate open space would not be provided.

37 (e) The pattern of development is contrary to the planning
38 designations in the State Development and Redevelopment Plan
39 prepared pursuant to sections 1 through 12 of P.L.1985, c.398
40 (C.52:18A-196 et seq.),

41 (f) Vacant and developable land is not available in the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹ Senate SCO committee amendments adopted October 1, 1992.

² Senate floor amendments adopted October 15, 1992.

1 municipality, and
2 (g) Adequate public facilities and infrastructure capacities are
3 not available, or would result in costs prohibitive to the public if
4 provided; and

5 (3) [Phasing of present and prospective fair share housing
6 requirements pursuant to section 23 of this act] (Deleted by
7 amendment, P.L. . c.) (now pending before the Legislature as
8 this bill);

9 d. Provide population and household projections for the State
10 and housing regions;

11 e. [May in its discretion, place a limit, based on a percentage
12 of existing housing stock in a municipality and any other criteria
13 including employment opportunities which the council deems
14 appropriate, upon the aggregate number of units which may be
15 allocated to a municipality as its fair share of the region's
16 present and prospective need for low and moderate income
17 housing] 2In its discretion, place a limit, based on a percentage
18 of existing housing stock in a municipality and any other criteria
19 including employment opportunities which the council deems
20 appropriate, upon the aggregate number of units which may be
21 allocated to a municipality as its fair share of the region's
22 present and prospective need for low and moderate income
23 housing.2 No 1[municipality shall be required to address within
24 any given six year period a fair share beyond 50 percent of the
25 fair share assigned by the council for that six year period, unless
26 it is demonstrated, following objection by an interested party and
27 an evidentiary hearing, that based upon the facts and
28 circumstances of the affected municipality it is likely that the
29 municipality through its zoning powers can create a realistic
30 opportunity for more than 50 percent of its fair share within that
31 six year period. In any event, no]1 municipality shall be required
32 to address a fair share beyond 1000 units within 1[any given]1 six
33 1[year period] years from the grant of substantive certification1,
34 unless it is demonstrated, following objection by an interested
35 party and an evidentiary hearing, based upon the facts and
36 circumstances of the affected municipality that it is likely that
37 the municipality through its zoning powers could create a
38 realistic opportunity for more than 1000 low and moderate
39 income units within that six year period. 1[The facts and
40 circumstances sufficient to require a municipality to provide a
41 number of units greater than the number derived under these
42 limitations would be proof that the municipality can create a
43 realistic opportunity within that six year period for at least five
44 times the number of units so derived, based upon the past
45 residential building permit activity in the municipality.] For the
46 purposes of this section, the facts and circumstances which shall
47 determine whether a municipality's fair share shall exceed 1,000
48 units, as provided above, shall be a finding that the municipality
49 has issued more than 5,000 certificates of occupancy for
50 residential units in the six-year period preceding the petition for
51 substantive certification in connection with which the objection
52 was filed.1

53 In carrying out the above duties, including, but not limited to,
54 present and prospective need estimations the council shall give

1 appropriate weight to pertinent research studies, government
 2 reports, decisions of other branches of government,
 3 implementation of the State Development and Redevelopment
 4 Plan prepared pursuant to sections 1 through 12 of P.L.1985,
 5 c.398 and public comment. To assist the council, the State
 6 Planning Commission established under that act shall provide the
 7 council annually with economic growth, development and decline
 8 projections for each housing region for the next six years. The
 9 council shall develop procedures for periodically adjusting
 10 regional need based upon the low and moderate income housing
 11 that is provided in the region through any federal, State,
 12 municipal or private housing program.

13 (cf: P.L.1985, c.222, s.7)

14 2. Section 23 of P.L.1985, c.222 (C.52:27D-323) is repealed.

15 3. This act shall take effect immediately.

16
 17
 18
 19
 20 Provides for adjustment of municipal fair share obligations under
 21 the "Fair Housing Act."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85
86
87
88
89
90
91
92
93
94
95
96
97
98
99
100

TABLE OF CONTENTS

	<u>Page</u>
Joseph Azzolina Former Assemblyman	1
Assemblyman David W. Wolfe District 10	3
Rosemary Peters Mayor Middletown Township, New Jersey	4
Newton E. Miller Former Assemblyman, and Mayor Wayne Township, New Jersey	8
Rich Sauer Executive Director Affordable Housing Network in New Jersey	10
Jeffrey R. Surenian, Esq. Lomell Muccifori Adler Ravaschiere Amabile & Pehlivanian	10
Paul Matacera Mayor North Brunswick, New Jersey, Past President New Jersey State League of Municipalities, and Member Council on Affordable Housing (COAH)	11
Art Bernard Deputy Executive Director Council on Affordable Housing (COAH)	11
Ara Hovnanian Member Council on Affordable Housing (COAH)	14

TABLE OF CONTENTS (continued)

	<u>Page</u>
Douglas Opalski Executive Director Council on Affordable Housing (COAH)	20
Dr. Robert Burchell Center for Urban Policy Research Rutgers, The State University, and Consultant Council on Affordable Housing (COAH)	36
Peter A. Buchsbaum, Esq. Sterns Herbert Weinroth & Petrino	62
Elizabeth C. McKenzie Planning Consultant	64
Philip B. Caton Consulting Planner Clarke & Caton	66

APPENDIX:

Letter addressed to the Members of the Committee from William G. Dressel, Jr. Assistant Executive Director New Jersey State League of Municipalities submitted by Mayor Rosemary Peters	1x
"Report on Impact of 1000 Unit Cap Legislation on Middletown Township" prepared by Anthony P. Mercantante, PP, AICP Planning Director Middletown Township, New Jersey	2x
Statement plus attachment submitted by Art Bernard	6x
Testimony submitted by Rick Sauer	25x

TABLE OF CONTENTS (continued)

APPENDIX (continued):

	<u>Page</u>
Letter addressed to Assemblyman John V. Kelly from John J. Lynch, PP, AICP Queale & Lynch Incorporated	28x
Additional report plus attachments submitted by Anthony P. Mercantante, PP, AICP	30x

mjz: 1-74

* * * * *

New Jersey State Library

TABLE OF CONTENTS (continued)

APPENDIX (continued)

Page

28x

30x

Letter of Request to
Assessors John V. Kelly
from John J. Lynch, Sr., A
Questor of the Incorporated

Additional Report plus
statements submitted by
Anthony B. Merchante

mta

New Jersey

ASSEMBLYMAN JOHN V. KELLY (Chairman): I am going to call the meeting to order. We are going to discuss Senate Bill No. 858 and Assembly Bill No. 1489. Do you want to read the intent of the legislation, Mr. Lee?

MR. LEE (Committee Aide): Which one are we going to take up first?

ASSEMBLYMAN KELLY: I don't care, whichever one you want to.

MR. LEE: Okay.

ASSEMBLYMAN KELLY: The Assembly one, because he is here.

J O S E P H A Z Z O L I N A: It was my bill originally five years ago.

MR. LEE: The bills, of course, are intended to be identical. There is an amendment in here to make 1489 identical as amended -- assuming that it is amended -- identical to S-858.

This bill would require that no allocation of more than 1000 units be assigned to any municipality as its fair share of affordable housing unless it is demonstrated that a greater goal is realistically feasible. As a criterion for such determination, the bill provides for a determination of whether the municipality has, during the six years preceding its application for substantive certification, issued more than 5000 residential certificates of occupancy.

This bill would also repeal section 23 of the Fair Housing Act, which allows municipalities to phase in their fair share obligations over a period of time. It is intended to eliminate the potential for a temporary taking of the property whereby the municipality after zoning a parcel for inclusionary development could thereafter bar the owner from developing the parcel consistent with inclusionary rezoning for some set period of time.

So it is our intention, again, to meet the spirit of the law -- the Mount Laurel decision -- but also to provide for inadequate means for those municipalities that have been listed in this particular bill, to meet the legislation, and also to face up to the fact that there may be some regional issues that may be pertaining only to specific municipalities, which the current legislation does not answer, nor do the courts consider.

Thank you.

MR. AZZOLINA: Now I would like to call on Mayor Peters, Mayor of the largest municipality in the county, over 70,000 people. They have been trying diligently to work out the problem with the 1000 units through various methods allowed them by law. Mayor Peters?

MAYOR ROSEMARY PETERS: Gentlemen, thank you for allowing me the opportunity to speak to you today. Middletown, I think, was probably uniquely affected by the Fair Housing Act and the subsequent quotas that came out, because I don't believe that towns like Middletown were ever really the target of the Mount Laurel I and Mount Laurel II decisions, which dealt with exclusionary zoning as a bar to the provision of affordable housing. As a matter of fact, in the 1980 census figures which were used to develop the quotas, one-third of Middletown's population was of low or moderate income and would have qualified for Mount Laurel. So I don't think that anyone can suggest that Middletown has not afforded opportunities for low- and moderate-income people to own their own homes.

Unfortunately, when the quotas were developed, the methodology didn't take into account the previous zoning history. It didn't take into account the number of units in a town that were occupied by low- and moderate-income people. It didn't take into account some of the affirmative action that towns like Middletown had taken to provide housing to low- and moderate-income people. Before the Fair Housing Act and before the Mount Laurel Court decision, Middletown had built almost

and went back to 1850 for my own particular town, which I speak of. What this bill basically does-- It reduces the number again to 1000 by law.

I would like to call on-- Well, first, there have only been, what, 14,000 Mount Laurel units in the whole State in the last six or seven years that we have been in operation. What's happening is, there are so many condos not being sold at all. What we are doing, overburdening the towns with these units, the Builders' Remedy, or the money you have to pay out of the towns-- We are hurting a lot of the young people who are trying to buy affordable housing today. We are making the young people that won't qualify under the units through their Builders' Remedy-- They would have to pay, probably, another 20 percent for homes that they can't afford anyway. So, through this system we are really hurting everybody.

I would like to call on Dave for a few comments from Brick. Assemblyman Dave Wolfe.

A S S E M B L Y M A N D A V I D W . W O L F E: Thank you, Assemblyman.

Assembly members, I thank you very much, and Mr. Chairman. It is not the intent of us, as sponsors, to deny the obligation of communities to provide for affordable housing under the regular legislation. However, we are very concerned, as Assemblyman Azzolina has already stated. The original intent has been circumvented, and it is our purpose, through this legislation, to place a cap which would include all the towns which you have listed, to meet their obligations. It also takes into account certain regional factors that may, at times, be included, that may necessitate that that may go above 1000, or else may go below 1000.

I know Assemblyman Azzolina has mentioned frequently, as many of you are aware, that certain communities have a military base in their areas, and those sometimes are included in the calculations for that particular reason.

from a quality of life standpoint, and from a fiscal perspective.

A third of our residents are Mount Laurel qualified. These are the taxpayers on whose backs the expense is balanced. We had 1000 units planned in COAH moving toward certification. At the time the 1000 cap was struck down, we shot up to 1850 units. We figured that that 1000 unit plan was going to cost us between \$10 million and \$12 million, which we budgeted over a six-year period. That is about a third of our capital budget every year that goes to pay for Mount Laurel. That is how it is impacting Middletown taxpayers, and we're struggling. We're really struggling to do what's right. We have a plan that is very, very close to certification right now, and this cap would certainly help us. It would help the taxpayers and the home owners of Middletown.

I would like to add at the end of this that I have a statement here from Bill Dressel of the League of Municipalities. The League of Municipalities is in support of this legislation. We would appreciate your approval in moving it on to fruition.

MR. AZZOLINA: One other comment: What bothered me, even with the Mount Laurel and COAH and these housing programs started six or seven years ago, was that towns like Middletown, Dover, Brick Township, Cherry Hill, and others-- Drove of people moved to these communities, before this time, because housing was affordable, and a lot of senior citizens still lived in their own homes. The more pressure we put on with this Mount Laurel -- with this type of housing-- It creates a burden on their senior citizens and on those young people who moved down here from other areas to find reasonable housing. In all our towns nearby we have zoning from 10,000 square feet up to maybe an acre-and-a-half. There are a few three acres. But there are other towns nearby that have three-, four-, and five-acre zones, and they get away scot-free.

600 units of subsidized senior citizen housing, through HUD financing primarily. It also had a model single-family program through which single-family homes were built on township-owned lots and were sold to low- and moderate-income families with no down payment loans through the HMFA. We have a very active Community Development Department. We do a lot of rehabs in substandard units, and all of this preceded the whole Mount Laurel situation.

Unfortunately, because of the way the formula was developed, Middletown really got socked with high numbers. As a matter of fact, our initial quota was 1850 units. In the Fair Housing Act there is a provision that no municipality shall have to expend any municipal funds in order to provide affordable housing. Well, with a quota of 1850 units, if we chose that approach, the only way to do it without spending municipal funds would be through a Builders' Remedy. That means that you take that quota and you multiply it times five and you get over 9000 housing units out of that quota. In Middletown, it has taken over 300 years to reach about 22,000 housing units. So through this quota system, in a very, very short period of time, Middletown would have had to increase its housing stock by about 40 percent. There is no way you can tell me that that wouldn't cost the taxpayers a tremendous amount of money just to provide the infrastructure, the schools, etc.

What I am suggesting is that somewhere from the Court decision to the Fair Housing Act to the regulatory system something went awry, and it is time for a correction to be made in that direction. That is really why we're here today, and that is really why we are asking you to take a hard look at the numbers, because the numbers were not realistic. There is no way that any municipality can provide that quantity of housing in a short period of time without devastating the town both

ASSEMBLYMAN KELLY: We are now going to listen to Mr. Newt Miller. He is a Mayor of one of the towns.

MAYOR NEWTON E. MILLER: Thank you, Mr. Chairman, for giving me the opportunity to come before you today and relate what Mount Laurel has done to my town.

Let me start off by saying, back in 1984 -- and I happen to have a clipping here -- Assemblyman Zecker and I sought to overturn the Mount Laurel decision. Well, as you can see, that didn't work very well, John.

ASSEMBLYMAN KELLY: I know.

MAYOR MILLER: But I think the comments made at that time are apropos for today also.

ASSEMBLYMAN KELLY: How does this bill affect your town?

MAYOR MILLER: This bill affects my town in this fashion: We were given a quota of 1564 units. COAH came out with the 1000 cap. We are in the courts over this. We have all the pieces put together. We had to give Paterson \$9 million -- bond \$9 million for the RCAs. We have senior citizen projects involved. Everything is put together. It has been put to bed. It is now waiting for the judge and the master to review this, and everything looks like we are ready to go.

However, we also have immunity, so you can't use the Builders' Remedy to come in and upset us. However, we have JF in town. They are now coming in. They would like to build on their property, their 50 acres. Now, we may have the immunity on the Builders' Remedy, but they can still intervene on the basis of the 1000 cap being wrong. It should be the 1564.

Now, of course, the judge is going by the COAH ruling. Now the COAH ruling has been overturned. How JF would prevail in court remains to be seen, where this bill would prevent that from happening.

ASSEMBLYMAN KELLY: All right. Any questions from any member of the Committee? (no response) Mr. Green, do you have a question?

ASSEMBLYMAN GREEN: No.

ASSEMBLYMAN KELLY: I have one: Mr. Wolfe, you said that military establishments were included in COAH. Now, what happens when--

MR. AZZOLINA: They're not. He made a mistake. We were trying to get them to count.

ASSEMBLYMAN KELLY: Okay. I thought you said that.

MR. AZZOLINA: No. We had Hudak put a bill in. We got it through the Assembly. We are trying to get--

ASSEMBLYMAN KELLY: I do listen.

MR. AZZOLINA: Yeah. No, we are trying to get military housing to count as a quota also--

ASSEMBLYMAN KELLY: Okay.

MR. AZZOLINA: --because there are a lot of low-income sailors or soldiers who live in these homes. Some of them have to go on food stamps.

ASSEMBLYMAN KELLY: And their children go to your schools?

MR. AZZOLINA: And the children go to our schools, right.

ASSEMBLYMAN WOLFE: I think you're correct. Perhaps the way I stated it was backwards. This is an example of what we would like to be included in the legislation, which right now is not included. This particular legislation would permit that.

ASSEMBLYMAN KELLY: Okay. I have no further questions.

MR. AZZOLINA: That's it?

ASSEMBLYMAN KELLY: Yes. Thank you for your testimony.

MR. AZZOLINA: Thank you.

ASSEMBLYMAN WOLFE: Thank you.

just doesn't seem to be any end to this in our attempts to satisfy that which the Court has ruled on.

ASSEMBLYMAN KELLY: So you support this legislation?

MAYOR MILLER: I support this legislation, right.

ASSEMBLYMAN KELLY: The six-year review-- We can't do anything about that in this legislation. That will be something separate.

MAYOR MILLER: I understand that, John. As you told me with one of those other bills, "Come on back and amend it." That was what, eight years ago? I'm still waiting here to amend it, John.

Thank you. Thank you.

ASSEMBLYMAN KELLY: Mr. Dressel, did that lady testify for you? (no response) He left? Good. He's finished. He is not going to testify. How about Rick Sauer? (no response) If I call your name and you're not here, I am not going to recall it.

R I C K S A U E R: (speaking from audience) I was going to testify on the latter issue.

ASSEMBLYMAN KELLY: Oh, you're not on this one, okay. Jeff Surenian.

J E F F R E Y R. S U R E N I A N, E S Q.: I just have a few brief comments. I am in support of the legislation. I think there is a need for reasonable limitations. I represent a number of municipalities across the State with fair shares over 1000. Once the numbers start getting so large, it does a lot of things that are deleterious to the process. It takes forever to get together a plan, because it is very hard to get together large plans. It generally forces municipalities to dig in their heels, because there is a limit as to what municipalities can deal with.

I think it makes a lot more sense to impose reasonable limits, allow municipalities to get together, and get behind a

As I say, I, personally, do not like it, but the law is the law and you have to abide by it. The great white fathers in the Supreme Court have issued this edict. They put it in the tablets as the 11th commandment, so we are stuck with it. So, we are living up to it. I just think enough is enough, and we should hold at the cap.

There are a couple of other things I think should happen here. I don't know, I guess you can't do them on this bill. The things I would like to see happen are: The six-year review-- When you come back in for the six-year review, I don't believe that any town that has complied, or is complying with their requirements should be reviewed until after everybody else has been reviewed. When I say everybody, I mean those who have not complied, those who have not been affected by this Mount Laurel decision in the entire State. Once everybody has complied and they are in the courts over it, or they are going along in a positive fashion, then come back in and make your review.

In my town, under Green Acres, we are just picking up some 1200 to 1500 acres of ground on the side of a mountain, setting that aside. Well, you know, that looks like open acreage as far as building is concerned, but it really isn't. You could also challenge the 64.9 percent for the Hudson, Bergen, and Passaic County requirements. I don't know how they came up with that percentage, but it's there. Did that include the 1500 acres as far as our town is concerned?

I guess the bottom line I'm saying to you is, what we've got to do, I think, is to hold this where it is. Keep it at the 1000 cap. When everybody else has fulfilled their commitments, then come back in and review to see what the change has been as far as population and the availability of property are concerned.

In Wayne, as I said, it has cost us a half a million dollars for legal fees so far, and we're still at it. There

MR. LEE: We need a motion first on the amendments, as they were described.

ASSEMBLYMAN KELLY: Who is making the motion, you, Mr. Hartmann?

ASSEMBLYMAN HARTMANN: I am.

ASSEMBLYMAN KELLY: He made the motion. Who seconds it?

ASSEMBLYMAN GAFFNEY: Second.

ASSEMBLYMAN KELLY: Do you have that?

MR. LEE: I have it. The motion to amend: Mr. Green?

ASSEMBLYMAN GREEN: You know the answer. Everybody says, "Aye." Aye.

MR. LEE: Mr. Hartmann?

ASSEMBLYMAN HARTMANN: Yes.

UNIDENTIFIED MEMBER OF COMMITTEE: Mr. Lee is a stickler.

MR. LEE: Mr. Gaffney?

ASSEMBLYMAN GAFFNEY: Si. Aye.

MR. LEE: Mr. Corodemus?

ASSEMBLYMAN HARTMANN: He is in caucusing.

MR. LEE: Okay.

ASSEMBLYMAN KELLY: He voted; yes, he voted.

ASSEMBLYMAN HARTMANN: Yes, he voted "Yes" on the amendments.

MR. LEE: And Mr. Kelly?

ASSEMBLYMAN KELLY: Yes.

MR. LEE: On the bill?

ASSEMBLYMAN KELLY: Is that where we go next, the bill?

MR. LEE: On the motion to release the bill as amended: Mr. Green?

ASSEMBLYMAN GREEN: Yes.

MR. LEE: Mr. Hartmann?

ASSEMBLYMAN HARTMANN: Yes.

MR. LEE: Mr. Corodemus?

real plan for 1000, rather than expecting the world of them and leaving them no choice but to fight.

I also think that the bill is favorable because it addresses the concerns that were raised by the Court when it struck the 1000 unit cap regulation adopted by the Council on Affordable Housing. It eliminates any question as to whether the Legislature intended to permit municipalities to limit their fair share at 1000. In addition to that, it makes it clear that the limit is related to the facts and circumstances. It has language in the legislation such that if someone came in and proved that based upon past activities the number could go beyond 1000, that a municipality under that limited circumstances might be subjected to a greater number. So it addresses the concerns raised by the Court, and I think in a legally defensible way.

Thank you.

ASSEMBLYMAN KELLY: Who else? Paul Matarera, do you want to testify on this bill, or on the rules?

M A Y O R P A U L M A T A C E R A: (speaking from audience) On the rules, sir.

ASSEMBLYMAN KELLY: Okay.

MAYOR MATAcera: But I can tell you this, as Past President of the League-- Dressel just told me that the League supports the bill, sir.

ASSEMBLYMAN KELLY: Oh, good. All right. Art. Bernard, do you want to testify?

A R T B E R N A R D: Well, I'm here along with Paul.

ASSEMBLYMAN KELLY: Just for the rules?

MR. BERNARD: Yes.

ASSEMBLYMAN KELLY: That's it.

ASSEMBLYMAN GREEN: Mr. Chairman, do we have anybody in opposition on this particular bill?

ASSEMBLYMAN KELLY: No, nobody wants to testify against the bill. All right, what are the amendments? Let's get the amendments straight. Let's get going here.

MR. LEE: Mr. Kelly?

ASSEMBLYMAN KELLY: Yes.

We are going to go into the rules. Are we ready?
(affirmative response) Okay. Who wants to testify first? How about Art Bernard?

MAYOR MATAcera: There are four of us here from the Council on Affordable Housing. We all have kind of small statements, and then Art and Doug Opalski can do a lot of-- We'll bring up some chairs.

What I would like to do is introduce, if I may, the four people who will be here. Assemblyman, they are: Ara Hovnanian, who is one of the charter members of COAH; myself, as a member -- a recent member; Doug Opalski, Executive Director; and Art Bernard, the Deputy Director.

ASSEMBLYMAN KELLY: You have the floor. Go ahead.

MAYOR MATAcera: I am going to let Ara speak first, Assemblyman.

ASSEMBLYMAN KELLY: I'm easy.

MAYOR MATAcera: We know.

A R A H O V N A N I A N: As the Mayor indicated, I am one of the original COAH members. I guess I have had the honor of going through the process six or seven years ago for the first time from scratch, then having to live with it for the next six years as we reviewed plans that were given to us in accordance with our first methodology.

The Council members, although they have been changing through the years, have been a very diverse group. We are composed of Republicans and Democrats. We have representation from nonprofit-- Excuse me. We have representation from the cities, from the suburbs, and from the rural areas. We have representation from the northern part of the State, the southern part, the eastern and the western parts of the State. We have representatives from municipally elected positions, from county elected positions. We have had State government

ASSEMBLYMAN CORODEMUS: Yes.

MR. LEE: Mr. Gaffney?

ASSEMBLYMAN GAFFNEY: Yes.

MR. LEE: Mr. Kelly?

ASSEMBLYMAN KELLY: Yes.

MS. SMARTH (Assembly Majority Staff): Everything is taken care of, right?

MR. LEE: Well, you have the Senate bill.

ASSEMBLYMAN KELLY: Okay, let's get the Senate bill out. It is the same identical bill.

MR. LEE: Identical. Does not have to be amended, so we can go straight to the--

ASSEMBLYMAN GAFFNEY: I move the Senate bill, I guess. Why do we have to move the Senate bill?

UNIDENTIFIED MEMBER OF COMMITTEE: Mr. Chairman, what are we doing with the Senate bill?

ASSEMBLYMAN KELLY: It is the same identical bill. (several members of the Committee speaking at once; indiscernible to transcriber)

UNIDENTIFIED MEMBER OF COMMITTEE: Can't they be merged?

MR. LEE: I understand that they will be merged on the floor, since they are identical.

ASSEMBLYMAN GAFFNEY: Okay. I move the bill.

ASSEMBLYMAN CORODEMUS: Second.

MR. LEE: On the motion to release favorably: Mr. Green?

ASSEMBLYMAN GREEN: Yes.

MR. LEE: Mr. Hartmann?

ASSEMBLYMAN HARTMANN: Yes.

MR. LEE: Mr. Gaffney?

ASSEMBLYMAN GAFFNEY: Yes.

MR. LEE: Mr. Corodemus?

ASSEMBLYMAN CORODEMUS: Yes.

employment growth, vacant land, and, of course, based on some of the benefits of our experience over the few years. Again, you will hear more about the details of that in just a minute.

I am not going to say our proposed methodology, or as we are discussing it now, is perfect. There clearly is no such thing when you are dealing with such diverse interest groups as we have to deal with here. To try to achieve some improvements upon it would take so many more dollars and so much more time than we have, that it wouldn't be viable. I think what we are discussing right now is an excellent overall plan.

I feel reasonably good because we have gotten comments from the three diverse groups, again, the housing advocates, the municipalities, and the developers. We know we are doing a good job if none of them are entirely happy, and that is generally the case.

I can say that it is a methodology which our group -- which, again, is composed of three different people, including: the Past President of the League of Municipalities, an additional Mayor from another town, a home builder, a director of the HMFA, a planner from the three county -- a nonprofit planner from -- a director of a planning agency from three counties, and a member of a nonprofit housing advocacy group-- We have jointly agreed that the methodology we are currently embarking upon is a fair way to accomplish our constitutional obligations.

With that, I would like to turn it over to the Mayor to go a little bit more into detail.

MAYOR MATAcera: Thank you. Assemblyman Kelly -- Mr. Chairman -- thank you very much for the opportunity to be here -- and also the other members of the Committee.

Assemblyman Kelly knows me -- I have testified here before -- and knows of my involvement. I would just like to bring you up-to-date as to how I got to COAH in the first place. Ara alluded to it. It is amazing how fast you become a

appointees, since by statute the Director of MHFA is on our Board, and we have representation, as I was saying earlier, from the nonprofit organizations, from various planning advocates, and I, myself, am the lone representative of the building industry on the Council.

What has been amazing, I think, is that when the Council members have gotten together, coming from such diverse backgrounds, when we have been given all of the information -- and there has been a lot of information; I think we have had close to 50 meetings in the last year alone -- they almost always come to unanimous conclusions on almost every issue that is before us, including the issues of the methodologies. I think that is an amazing statement for such a diverse group of interests as our Council is composed of.

Our task, essentially, is to accomplish our constitutional mandate, while balancing the needs of housing advocates, municipalities, and the development community, to make it all happen. Believe me, balancing the needs of those three diverse groups is no easy challenge.

The new methodology we are talking about -- and you are going to hear a little bit more about it in just a moment -- is different from the current one in three basic ways:

- 1) It depends, and is based upon the new State Plan, which is quite different from the old one -- and that obviously has its repercussions on our plan -- and it does so by statute, by the way.

- 2) We have to take into account actions that were precipitated by the previous methodology. Obviously, our current methodology didn't have to have that factor taken into account, since there was no previous methodology to our current one.

- 3) Finally, the current one has refined the methodology based on the new information from the most recent census data, based on newer and better ways to measure

I looked at it from the standpoint of the entire State as League President, as an immediate Past President, and as an advocate of the League of Municipalities, which I always will be, in no matter what I ever do. I also knew that I had to represent the urban and the rural perspectives on this Council as to what the fair housing needs are going to be as we develop in our State.

There were several things that I believe were critical to my support of the COAH numbers and procedures, and this is what we have been talking about over the last few months. One would be that the municipal allocation for 1993 through 1999 must be reasonable. In our efforts to address the housing needs of lower income households, we cannot choke municipalities by overwhelming their infrastructure capacity and drastically altering the character of the community. If the resultant allocations are not reasonable, then our chances of getting municipal cooperation are totally reduced. So, reasonableness of the numbers is my first concern.

Another concern as a Mayor who has chosen to meet his allocation through a combination of inclusionary housing developments and municipal construction of senior citizen housing projects, and as an immediate Past President of the League, it is critical to me that the municipality be given great flexibility and choice on how to address its needs. The numbers must factor in the amount of vacant land in a municipality, so that the numbers reflect the municipality's realistic capacity to absorb new housing construction. Information on vacant land has been gathered through the use of satellite photos, and was a key factor utilized in allocating the perspective housing need within each region.

The fourth item is something that I think is also critical. It is critical to the municipalities that complied with COAH by adopting housing elements and zoning ordinances, and received full credit for their actions, regardless of

Past President. But, last year, I was honored to be the President of the New Jersey State League of Municipalities. I serve now as the immediate Past President. I am also the Mayor of North Brunswick Township, which is what one would consider a developing suburban community in the central part of the State.

The Governor appointed me toward the latter part of last year, and the Senate confirmed it in the early part of this year, and I began sitting on COAH as a Mayor who had complied. However, I had to comply in the courts, because there was no COAH and no Fair Housing Act back in 1984 when we had some litigations in our town, which I have created under the old Builders' Remedy. We were looking at a 2000-unit, lower income scenario, which equated to about a 10,000-unit situation in our community. So, we would have doubled the size of our town prior to COAH, under the old Builders' Remedy litigations of Mount Laurel II.

We decided to then settle with the lawsuits and we settled, we thought, in a real good way. We were able to get a reasonable number. We were also able to put in some nonresidential. So it gives you some background as to who Paul Matacera is, and one of the reasons why, I guess, the Governor and the Legislature, in their wisdom, appointed me, nominated me, and confirmed me to sit on COAH.

When I got to COAH in the earlier part of this year, COAH had already begun the public hearings and a lot of the methodology programming, so I did a lot of catch-up in the last 11 months. I participated in the task force that had begun doing some things. In doing that, with the support of the League being one of the reasons why I was appointed to COAH, I knew that I had a responsibility to look at, and to participate in, putting forward the municipal perspective. I believe I have done that.

But, I also looked at it not only from North Brunswick's standpoint as a developing suburban community, but

These are just some brief comments and some ideas on where I am coming from representing the municipal perspective on the Council on Affordable Housing.

Chairman, with your permission, I would like to turn it over to Doug Opalski, who is our Executive Director.

D O U G L A S O P A L S K I: Thank you, Mr. Chairman. If the Committee would like, I would like to--

UNIDENTIFIED MEMBER OF COMMITTEE: This is being recorded to be transcribed. You will have to slide the microphone over.

MR. OPALSKI: I see. Thank you.

ASSEMBLYMAN KELLY: See, we want to get this on paper, so we know what we are talking about.

MR. OPALSKI: I would like to bring you up to speed as to how we got to the stage we are at, and do that very quickly so that we can spend the rest of the time going over a framework that you, Mr. Chairman, wanted for discussion purposes. Art Bernard will give us that framework, the details that Paul alluded to, as a point of departure.

I thank you for this opportunity. We would like to briefly describe to you an intensive public relations process in order to bring forward the best input we could get so that the rules that are emerging would be balanced, would be workable, would be more realistic than we have seen in the past. Given the market shifts that have occurred, we felt it was important to extend this process and dialogue. So, in January of 1991, we came forward with what Ara has alluded to as an "Issue Paper." What this Issue Paper did was to identify the options in all of the policy areas in our method and in the way in which the fair share may be derived from the calculated need.

This Issue Paper was distributed to each and every municipal representative, all of the towns, all of the major stakeholders who are part of our process. It was distributed

whether any low-income housing was actually constructed within their borders; in other words, municipalities that had the guts to step up to the plate and comply with COAH. Those requirements must get a full one-to-one credit for every lower income housing unit that they made possible, and cannot be penalized for the failure of the private sector to actually construct the units. Anything less than a full one-to-one credit would discourage further compliance.

We have been talking about other incentives; about other ways of looking to substantiate and facilitate RCAs so that we can do that. We are looking at how the regions have been set up and are able to facilitate RCAs. These are all mechanisms and ways by which municipalities can feel comfortable that they can come to COAH and be able to look at the flexibility involved -- if there is a case-by-case issue that needs to be discussed, we will discuss it -- to be able to look at where we have to go and, in the words of a former President, we want to be a kinder, gentler COAH. (laughter)

UNIDENTIFIED MEMBER OF COMMITTEE: Still President.

MAYOR MATAcera: Still President. Pardon me.

All kidding aside, COAH has received a bad rap for not having those types of flexibilities. I think they are necessary. Reasonableness of numbers is important. I think we have to be able to facilitate reasons why municipalities would want to come and step forward. The main reason, as someone pointed out earlier, that a lot of units have not been built, is because we have been locked into the process of either the courts or the mediation process. Then again, if we did not have COAH or the Fair Housing Act, we would all be in the courts at this point in time, rather than being in an agency that can help to adjudicate and mediate and be able to get to some reasonableness of numbers using some of the criteria that I have put forward.

Technically defensible, I believe that what we are doing is arriving at a series of need numbers that will be a very positive approach to this need in New Jersey, and will allow us to continue from the method that we are moving from.

The full Council needs to decide those guidelines. That has not been done as yet. The Council, as a whole, a quorum, has yet to decide on methodology. What we would like to do is present to you the directions that that methodology is taking in more detail, and give you a basis to raise concerns that we can take back to the full Council.

For that purpose, I would like to turn it over to Art Bernard, our Deputy Director, to walk us through this.

ASSEMBLYMAN KELLY: Is this what you are going to read? (holding up copy of written statement)

MR. BERNARD: I am not going to read anything.

ASSEMBLYMAN KELLY: Oh, okay.

MR. BERNARD: I'm going to talk.

ASSEMBLYMAN KELLY: You may talk. You've got the floor.

MR. BERNARD: What I would like to do is pass out these handouts which might help you to go through some things which, quite frankly, are technical no matter how I try to simplify them.

While you are passing that out, I would just like to-- Doug talked about the working group and all the public input that went into all the rules the Council is considering, including the numbers. I just want to emphasize how helpful that input was and how grateful we all are for the time and effort people gave us.

I think that when one starts to talk about the numbers, you know, we have to be mindful that all this is based in some Court decisions, and I think I have to establish some principles that came out of the Court system, and also define

to each and every legislator. We wanted to be able to get your reaction to it. Following that, two months later, we had three public meetings. At those public meetings we received input, and then we kept the record open for another month and we received additional written input from the public at large. That led us to the formulation of a working group that was composed of: the League of Municipalities, the Federation of Planning Officials, the Alliance for Affordable Housing, consulting planners, those people who consult with you and your municipalities, the court masters, the Civic League of Greater New Brunswick, the Affordable Housing Network of New Jersey, the nonprofit sponsors, the Association of Environmental Commissions, the New Jersey Home Builders Association, the Center for Urban Policy Research at Rutgers University, and a number of other major State departments which have a stake in the work of COAH; that is, DCA, HMFA, the Department of Commerce, the Department of Environmental Protection, and the State Planning Commission.

We went through a process of about 18 meetings with that working group to narrow the options down and to digest the input we had gotten from the public through our public hearings and the written input.

In August of '91, all of that boiled down option and refined input was provided to the task force that Paul was talking about, which is a subgroup of the Council. We work very closely together with the Center for Urban Policy Research, our consultant in this process, to, in fact, take these refined options and put them into a format that is interlocking, that is mutually supportive, that yields the kind of method that we believe would meet the tests that Paul put on the table. They would be reasonable; they would be doable. These numbers would be digestible from a municipal point of view, and, in fact, they could be achieved.

else's responsibility." What the Court did was say, "Some of this housing remains the responsibility of the municipality where poor are in substandard housing," and that part of the need was called "indigenous need." The part that became someone else's responsibility was thrown into a housing region and was called "reallocated present need." Okay? You're looking at me like you're--

MR. CIFELLI (Assembly Minority Staff): No, I'm with you.

MR. BERNARD: Okay. So, you are looking at the two building blocks of need. The Court sets up indigenous need and reallocated present need, and both of those are a function of what the census shows.

The third building block of need is called "prospective need." Prospective need, to put it simply, is a projection. Population projections are converted into household projections. If you think about who we are serving here, we are serving low- and moderate-income people; people who earn 80 percent of median. Well, median means that half of the people earn more and half of the people earn less. We are talking about people who are 80 percent of median, so when we are doing this household projection, almost by definition 40 percent of our projection is for low- and moderate-income people. Okay?

ASSEMBLYMAN CORODEMUS: May I ask you a question--

MR. BERNARD: Sure.

ASSEMBLYMAN CORODEMUS: --about the prospective need? How are you calculating that? It is not based on an increase in population. It is not based on an assumption that income levels will be declining. How do you calculate that?

MR. BERNARD: Well, we might be able to go into that in more detail a little bit later with Bob Burchell, but I may be able to satisfy you. Basically, we took a projection of

some terms. If we are going to understand this at all, we have to understand what some terms mean.

After the Mount Laurel II decision, there were basic components of need, I guess, that the Court established. The Court said that every municipality in the State is responsible for substandard units occupied by low- and moderate-income households. So the first step in determining the municipal obligation is coming up with estimates of deteriorated units occupied by low- and moderate-income households by each municipality. We do that through the use of the census.

Having done that, the Court went further, and said that some communities had accepted more of the poor than others, and therefore they limited the responsibility of municipalities that had high levels of substandard units occupied by the poor. They limited the responsibility based on a regional standard. Now, in the handout I gave you, in Exhibit A, you see how the Court defined this regional standard. What the Court did, for each municipality and for each housing region, was come up with a ratio that is defined by the substandard units occupied by the poor, and they divided that by the total occupied housing stock. That came to some sort of percentage. Let's say 5 percent of the region's housing stock was occupied by the poor in substandard housing. That became a regional standard.

So, to the extent that a municipality had people in substandard housing, they were responsible for that obligation up to the regional standard. Now, there are places, typically the urban centers -- and let's use Newark as an example -- that because they had accepted a lot of the poor, have a lot of poor in substandard housing. If one does that ratio for Newark, it is much higher than 5 percent. All right?

What the Court did was limit towns like Newark to that 5 percent, and say: "If you have poor who are living in substandard units above that 5 percent, that becomes someone

went to places called "growth areas" in the State Development Guide Plan. This time, most of it will go into areas with infrastructure, if you are familiar with the State Plan planning areas 1 and 2. But every area is expected to accept some of the regional need as it grows.

Another goal we had -- and you have probably heard about this -- is, we wanted to have a better fit between the need that we assigned and the municipal capacity to absorb that need, if we were going to define "capacity" in terms of land. So, what we wanted to hear-- We wanted numbers which were more sensitive to the amount of land in the community, and also the goals that the State Planning Commission had for that community as the community had developed itself through the State Planning Commission's process, and of course we wanted every community to get a one-to-one credit for what they did.

So, let's go back and take a look at these numbers on Exhibit D that add up to 199,966 units. That was an expression of need. Up to that point what the Council had done was not all that different from what the courts that had preceded the Council had done. The Council recognized that the private market can accommodate some of that need. They recognized that sound units change hands and become available to low- and moderate-income households. This is called "filtering." I'm sure some of you have heard of it. Communities that had accepted a lot of garden apartments, that accepted a lot of poor in the past, did get a substantial credit and continued to get a substantial credit as a result of filtering.

Conversions take place over time that benefit low- and moderate-income households. Unsound units that are occupied by the poor are fixed up over time, perhaps by a landlord. What the Council was able to do, through its consultant and looking at all the census information, was to not only project growth in households, but project how much of the need the private sector would be able to accommodate. As a result of that

population over time, and we converted that into a projection of households.

ASSEMBLYMAN CORODEMUS: Assuming a statewide increase in population?

MR. BERNARD: Regionwide increases in-- Yes; to make it simple, yes. Okay?

MR. HOVNANIAN: That is not a projection that was made by the staff. That was made by the State.

MR. BERNARD: By the Department of Labor. All right? So, if you look at what the Council did between 1987 and 1993 in Exhibit B, we've got these three building blocks of need that are quantified. The census showed that there was an indigenous need of 85,134. The census showed that there was a reallocated present need of 34,411. We projected a need of 80,421 households in the future. That came up with a total statewide need of almost 200,000 units. Okay? So that is where we were in '93. I just want to emphasize again that as complicated as this may seem, you know, that two of the building blocks are just a function of what the census shows, and the third building block is just a function of the projections that were used at the time.

Now, in getting ready for this round of numbers-- You know, Paul alluded to some of the goals that the Council had. He talked about how important it should be for them to be reasonable. One of the things that is built into the Mount Laurel decision, is that the allocation of numbers should be directed by a State Plan. This State Plan is clearly a growth management document that encourages development in areas that have the capacity to handle it; places with infrastructure. But clearly also, in this State Plan there is language that says, "Every municipality will grow, and as it grows it should accept a portion of the region's housing need." There was, the last time, this regional need. Regional need is the reallocated present need and the prospective need. It only

growth in New Jersey. It didn't happen. So, the approach to the Council's considering-- The Council figured, "Well, if we projected all this growth from '87 to '93 and it didn't happen, then municipalities shouldn't be responsible for it." So we are scaling it back -- that '87 to '93 need -- based on what actually happened. A little more than half of it happened.

To that number we are adding a projection of '93 to '99 need, which is based on the more conservative projections that are part of the State Planning Commission's plan; also, the same projections have been folded into the Department of Community Affairs' Community Housing Assistance Strategy.

So the results of what we are considering doing are '87 to '99 estimates of need, which again would be tempered by the Council's estimate of the private sector's ability to respond to some of that need. If the Council is looking at an '87 to '99 need, then it seems to make sense that every community should get credit for what they did. So, that one-to-one credit that Paul was talking about--

I would suggest to you that, in general, those communities that did a lot last time will have much less to do this time, because the estimates of substandard housing are less; the '87 to '93 projections are scaled back; and the '93 to '99 projections are much more reasonable. Those communities that chose not to participate may have more reasonable numbers for the same reasons, but they will have relatively more to do because they won't have the one-to-one credits available to the communities that stepped forward and addressed the Mount Laurel obligation.

That is a basic discussion of establishing this regional need, which the Legislature defined as-- Well, to make the definition simpler, no less than two, nor more than four contiguous counties. Then you have to bring that need down to the municipal level. In terms of indigenous need, we can do that with the census, but in terms of the reallocated

census analysis, the Council said that over 54,000 units of that need could be addressed by the private sector, and what was left, that 145,707 number, was the municipal obligation.

Take a look at that 145,000 number, and it is still broken down into those three building blocks we started with. Some of it is indigenous need; some of it is reallocated present need; and some of it is prospective need. Again, two of those building blocks are based on the census. The indigenous need and the reallocated present need were estimated using the census variables that were available at the time, which you see in Exhibit C.

We are at a point now where we don't have to rely on the 1980 census anymore. The 1990 census is out, and the Council has reason to believe that if communities are going to be responsible for estimates of substandard housing, they should be responsible for those estimates that are based on the best and the most recent data available -- the 1990 census. So, the 1990 estimates of substandard units which form the basis of the indigenous need calculation and the reallocated present need calculation will replace the 1980 estimates.

Now, I am not exactly sure why. I know that the census isn't collecting quite the same indicators of substandard housing as they were in 1980. Now, whether it is because of that, or whether it is because we have had some substantial rehabilitation activity during the '80s, or whether it is because demolitions have done away with the worst of our housing stock, the estimates of substandard housing that become the basis of the indigenous need and the reallocated present need are lower.

The third building block of need is prospective need. When you get up to that 199,000, 80,000 of it was a projection of growth from '87 to '93. That projection was done by the Department of Labor. Even using the most conservative projections around at the time, we were projecting tremendous

the Department of Labor to the central office, even though a lot of it is in the branches. Sometimes we don't even get the address of the employer; we get the address of the accounting firm that filled out the form.

So, as a result of this, there were errors that resulted in unfair allocations to communities, which we tried to correct once we got into the process. But it took a lot of time; it cost people money; and we thought maybe we could do this a better way. It was suggested that maybe, instead of using covered jobs, when we are not sure if we have the right address, we use nonresidential ratables -- equalized nonresidential ratables. It was suggested that that would maintain a strong link between jobs and housing, which the Court said was important, and would also reinforce the link between accepting ratables and the responsibility for housing the poor.

Now, there was some resistance to this because the Court had singled out jobs as something the Council should allocate need by. But it was suggested by the same people that if there is a strong link between nonresidential ratables and jobs, it would certainly be appropriate to make that switch. There is a strong link, and the Council is strongly considering making that shift to nonresidential ratables.

The income factor: Again, it is aggregate per capita income. This was to be a measure of the municipal capacity to accept the need, and it was thought that the wealthier communities had more of a responsibility and a greater capacity to accept the poor. But this aggregate income factor was a function of population, as well as wealth, so some communities that had perhaps housed a lot of people, that had accepted a great diversity of housing types, got higher allocations because they had done so, so that is clearly not what the Council intended. So, what we are thinking about now is allocating need more on differences in wealth; differences

present need and the prospective-- These two pools have to be allocated down to the municipal level. We had to come up with a way to do that. The last time we distributed that need based on -- if you go to Exhibit D, and again I have simplified this somewhat-- We took this regional need and we distributed it to municipalities based on regional shares of covered employment, land and growth area -- that's that old State Development Guide Plan term -- and a factor called "aggregate per capita income," which is defined as per capita income times the population. Okay?

Now, I have given you an example of what a regional share is. For example, if a community had 50 jobs in its borders, or 100 jobs in its borders, and there were 1000 jobs in the region, then that municipality had a tenth of the jobs in the region, so that was its regional share of jobs. Jobs were important because the Court had said how important the link between jobs and housing was. All right? So what we did was take a regional share of each of these factors, averaged them up, came up with one regional share, and multiplied that average regional share times these regional pools of need, to come up with a need at the municipal level. And, it worked. Basically I think the Council felt it was sound. When it was appealed to the Appellate Division and higher, the Court upheld all of this. But that doesn't mean that there weren't problems; it doesn't mean that the Council can't do it better.

So, we took a look at each of those factors. For example, the covered employment factor. Covered employment data is collected by the Department of Labor for insurance reasons. They are not terribly concerned with the precise address of the employer. Sometimes they don't get the right address, because an employer likes to use a prestigious address, or the employer is in a township and gets its mail at a post office box, or because the employer has a central office and a bunch of branches and he assigns all the employment for

When we looked at alternatives in putting together a data base of undeveloped land around the State, we first thought about piecing together municipal existing land use maps, but we realized that the municipal existing land use-- Some municipalities classify land somewhat differently. We just didn't have the staff to do -- to complete the job in a timely manner. We thought about interpreting aerials, and we realized we didn't have the staff to do that in a timely manner. We thought about using tax records, and we realized that even if we could get them, they are not available by State Planning Commission planning area.

Then we looked at the existing geographic information system. DEPE has a great one. They have about five counties done. But, unfortunately, it is going to be at least five more years, if they can finish this job. So that wasn't available to us either. It was at that point that we looked at land satellite imagery. This is something that I became aware of years ago. There is a satellite that is capable of taking a complete picture of New Jersey every nine days. It has been used primarily for agricultural purposes. It can tell the difference between corn and soybeans. It can tell the difference between a pine tree and a deciduous tree. It has been used to map the spread of gypsy moth defoliation around the country. We figured that if it can do that, it ought to be able to tell us if land is developed or not, and that is all we asked it to do.

We commissioned Cook College to do a demonstration. We checked it out empirically with aerials, and we found that it classified most land correctly. Where we found that it had trouble was in some mature residential areas where trees had formed a canopy over the houses, and rather than coming up developed, it was coming up as forested area. What we were able to do was merge the census information with the satellite

between a specific community's median income and the median income of the poorest community in the housing region.

Then there was the growth area factor. As I discussed before, it was land in the growth area that was important. We actually measured it with a planimeter. It wasn't the amount of undeveloped land in the community.

You're looking at me. Do you want me to speed this up?

ASSEMBLYMAN KELLY: No, no, no. I'm listening very carefully to what you're saying.

MR. BERNARD: Okay, okay. It was not the amount of undeveloped--

MAYOR MATAcera: If the Assemblyman wanted you to speed it up, he would let you know.

MR. BERNARD: It wasn't the amount of undeveloped land in the community; it was just the amount of land. It didn't make any difference if it was developed or not. There was a good reason for that: There is just no data base statewide on undeveloped land that we could take a regional share of. As we began thinking about this, maybe three years ago, we realized there was still no such data base, and we thought about creating our own. We realized we had certain things that we had to get out of the data base. The land had to be classified consistently so that we could develop regional shares for each community. We had to get the data available. We had to get it in time to run a number, which was not easy. And we also needed not only undeveloped land, but it had to be sensitive to the State Planning Commission's goals for each planning area. So we had to have undeveloped land by State Planning Commission planning area. If you think about that, most of the undeveloped land is in planning areas 4 and 5 that the State wants to preserve. The Planning Commission wants to preserve farmland and protect environmentally sensitive areas, so, you know, it is very important to know what planning area the undeveloped land is in.

To summarize this approach we are considering very quickly, we are looking at a methodology that builds off what the Council did between '87 and '93. We are thinking about replacing the indigenous need estimates and the reallocated present need estimates that were based on the '80 census with '90 census information. We are talking about scaling back these '87 to '93 projections based on the growth that actually occurred, and adding to that a projection of '93 to '99 need that may be more conservative and consistent with the State Plan and the State's CHAS -- the State's Comprehensive Housing Affordability Strategy. It also provides a one-to-one credit for everything the communities have done, and allocates need based on equalized nonresidential ratables, income differences, and undeveloped land by municipality and planning area.

ASSEMBLYMAN KELLY: Anybody else? Are you finished, all of you?

MAYOR MATAcera: Assemblyman, at this time we would just like to say thank you.

Art will answer questions; we will answer questions. We will take as much time as you would like. I know this is kind of a lot of feeding of information to get at one shot. We would like to make our staff open to your staff and yourself--

ASSEMBLYMAN KELLY: That's fine.

MAYOR MATAcera: --and we will go on from there, sir.

ASSEMBLYMAN KELLY: That's excellent.

MR. BERNARD: We also have Dr. Burchell from the Center for Urban Policy Research, our consultant, if need be to help us with the questions.

ASSEMBLYMAN KELLY: Anybody can help. This is not a crucifixion, or, you know, whatever you want to call it -- an interrogation, whatever.

Your need in 1987 to '93 was 199,000. That is what you have here.

MR. BERNARD: Yes.

imagery. Where the census said it was developed, we just let the census override the satellite.

What emerged from that were consistent estimates of undeveloped land by municipality. When the State Planning Commission finished their job and actually digitized the planning areas, we were able to merge that with the data we had, and then we had undeveloped land by municipality by planning area. What this allowed us to do was be sensitive to the goals of the State Planning Commission, which again was saying that every municipality shall grow, or can grow, and as it grows it should accept some of this regional need. But most of it should go into areas that either have infrastructure or can have its infrastructure extended.

So, we weighted undeveloped land based on the planning area. If we had undeveloped land in planning areas 1 and 2, areas with infrastructure, we weighted it by a factor of one. If we had undeveloped land in planning area 3, which by definition infrastructure can be extended from planning area 2, we weighted it by a factor of a half, and if we had undeveloped land in planning areas 4 and 5, we discounted it. We multiplied it by zero. That way, municipalities that have planning areas 4 and 5 would only get a need to the extent that they had accepted ratables, or as a function of their wealth, and they should get very small shares of need, which makes sense because there isn't the infrastructure in place right now.

We think that as a result of what we have done, we have developed an ability to be more sensitive to the municipal capacity in a way that is also sensitive to the State Plan. But we know this thing isn't perfect. We know that the land satellite overstates the amount of land in a given municipality. The things it does, it does the same in every community, so we believe we have come up with consistent regional shares of undeveloped land.

MR. BERNARD: Well, when we come back in six years, let's see how--

MAYOR MATAcera: Mr. Chairman, I think you have seen now where there is some data base to what we are trying to do versus in 1987, when you were told by the courts, and then by the Legislature, to create something and take some data base on the 1980 census, which is halfway eligible. We were all looking at estimates of housing and other things through the boom of the '80s. I think we have a better data base now, and a lot more personal, or practical involvement in what has been going on over the last six years, to be able to come up with these numbers.

MR. HOVNANIAN: I think it is important to keep in mind the ratios that Art is talking about with the old numbers and the new numbers. They do not necessarily play across evenly in every municipality. That varies tremendously depending upon a lot of factors, including, again, where it lies in the State Development Guide Plan.

ASSEMBLYMAN KELLY: Could I ask you what population indication you are going to use for that growth, or you don't have that yet?

MR. HOVNANIAN: I think Bob is probably the best person-- Can you help us?

MAYOR MATAcera: Why don't you slide up, Bob?

ASSEMBLYMAN KELLY: The population growth-- What base line are you going to use?

DR. ROBERT BURCHELL: Well, they are using the State Department of Labor's projection.

ASSEMBLYMAN KELLY: Well, their projections the last time were pretty outlandish.

DR. BURCHELL: Right, but one learns as a result of hindsight. You're absolutely right. Indeed, you have the 1990 census to calibrate your projection methodologies even more. As a result of that you can get a much more accurate

ASSEMBLYMAN KELLY: Now, what have you changed? You changed the prospective need, the indigenous need to come up with final figures.

MR. BERNARD: Well, actually--

ASSEMBLYMAN KELLY: Do you have figures that we can talk about, or you don't have that yet?

MR. BERNARD: We don't have the final figures yet.

ASSEMBLYMAN KELLY: When will we get them?

MR. BERNARD: I would hope within two months.

MS. SMARTH: Will the-- I'm sorry, Mr. Chairman.

ASSEMBLYMAN KELLY: Go ahead. Anybody can ask questions. If they can ask questions, we can ask questions.

MS. SMARTH: Will the overall-- Even though you don't have the specific numbers, based on the parameters you have established in your testimony, the total number for the housing need for the new cycle, '93 to '99-- Do you anticipate that that will be below 199,000? If so, in what range?

MR. BERNARD: I would be surprised if the total municipal obligation is above 95,000.

MS. SMARTH: Okay.

ASSEMBLYMAN KELLY: Would you say your experience-- Hindsight is always the most beautiful vision. We all know that. Would you say your experience for the projections made for '87 to '93 have tempered your projections for the next seven years, or whatever it is?

MR. BERNARD: Well, I think it has tempered the entire State's projections. I mean, again, we did not make up those projections. Those were the projections that every State agency was using at the time. The projections we are using now are much lower. They are also the same projections that virtually every State agency is using.

ASSEMBLYMAN KELLY: Would I be fair in saying maybe they are more practical than they were in the past? Again, hindsight is the best vision. I know that.

going to be paying more for housing. You know, over the past 20, 30 years, the populations have come in in droves from New York and from North Jersey to South and Central Jersey. The growth is slowing down now.

Where do you see all this going? I don't think the population is going to grow in New Jersey at all.

MAYOR MATAcera: Assemblyman, I think through some of our methodology -- and I think Bob and Art can answer that more technically than I-- That was one of my concerns, to see where the population was being shifted. That is one of the reasons why we have taken that into consideration, and we have also looked at a State average, rather than doing other regional type approaches to be able to see how we can evaluate it. Bob can probably answer from a more technical standpoint.

DR. BURCHELL: Mr. Mayor, I share your concern. Indeed, I think that everybody who has been involved in population projections is concerned with over projection at a time when we are in a recession and are coming out of that recession very slowly. As a result of that, the population projections are conservative. They are some of the most conservative population projections we have ever used. Indeed, that is taken care of fully in the methodology, as well as redirection with regard to the State Plan back into the more urban, as opposed to the suburban areas.

So, all of those kinds of considerations with regard to not using overgenerous, or what we call Chamber of Commerce population projections, but very realistic population projections, taking into account where that population is going and where we would like to see it go-- That has all been taken into account in the methodology. That is used in the CHAS; it is used in the Department of Transportation projections for road funding; and also in the State Plan. So, a lot of coordination has gone into making these projections.

MR. AZZOLINA: If I may continue?

projection. So, they are using their models, and you are projecting it for the share of that model that is below 80 percent of income. So it is the same model that was used for the CHAS; the same model that was used for the State Plan; the same model that the State Department of Transportation is using for its urban supplement. It is a very conservative model. I think it represents very adequately what the growth will be in the future, reflecting the recession we just had, which we are not out of yet.

ASSEMBLYMAN KELLY: Do you have the projected figure, or will we get that later?

DR. BURCHELL: We will get that later.

ASSEMBLYMAN KELLY: You had your hand raised, Mr. Azzolina?

MR. AZZOLINA: (speaking from audience) May I ask a question?

ASSEMBLYMAN KELLY: Sure. Sit up here. You were an Assemblyman; get up here.

MR. AZZOLINA: What I am concerned about is, we have seen in New Jersey that the population is not growing, or is declining. The whole Northeast is on the decline now -- population-wise, jobs-wise. Jobs are moving out of the State. Industry is closing down. What you are finding is a shift, probably more shifts from the cities to the suburbs. Newark, I see, came below 300,000. The State Plan, I believe, recommended trying to get people back to the cities. If you don't refurbish the cities, you are not going to get them back there.

So all we are doing is shifting our population around, and the suburbs are going to take the burden of all this. I don't think that is fair. I don't think it is fair -- like I said before, and you may have heard me -- that young people have such a tough job buying homes. When you start adding additional costs to take care of subsidized housing, they are

a vacant land adjustment, and there will be a much more streamlined way for them to get certification in the future.

MR. AZZOLINA: Middletown, years ago-- I lived in the whole area all my life, just about, so I have seen it go from 16,000 to 30,000 in about 30 years or less, and now it is about 70-some thousand. I have seen apartments come in. I have seen small development. First there used to be summer communities. Then they had the summer homes on 10,000 square feet, and at Woods Horizon they live there year-round. Then they put apartments in. Then K. Hovnanian built excellent housing, provided 1000 units. Shadow Lake-- You know, we all thought it was great -- the Township Committee -- and they provided adult communities at very low cost. People could afford the higher level. Then they built a lower level, Shady Oaks, 600 or 700 acres -- units -- and they provided that type of housing.

Then Middletown provided 600 senior citizen housing units. Never any credit, so they did what other towns didn't do. Without naming names, there are other communities nearby -- not only in our county, but in other counties -- that have three- and five-acre zoning, huge homes, and lots of empty land, and yet we got socked with this 1850 before, because we built the sewers to take care of our towns and the roads and so forth. But other towns never got hit like we did. That wasn't fair. That is why I am glad to hear now that Middletown may be spared. It is not only Middletown. I am using that as an example. There are other towns. These were the growth towns. These were the towns that provided the housing for people of moderate and low income at the time, the young people coming up. We had droves of young people.

MAYOR MATAcera: Assemblyman, that is exactly the perspective I took from a municipal point of view; to say, "Hey, we have had some of the zoning that has been put into place, and there are other communities that have not put any zoning in place." I can agree with you that the Hovnanian

ASSEMBLYMAN KELLY: You may go right ahead.

MR. AZZOLINA: Take my own town, where I live, Mayor Peters' place -- 40 square miles. They have taken aerial views. There are certain sections set aside for parks. Now, the town has a composite of 10,000 square foot lots, all the way up to maybe -- what is it? -- three acres, five acres, whatever it is in the River Road area. So in that general area you are going to see big, blank spots. Then you are going to see other areas really condensed. Just because you see that empty land there, that doesn't mean we are going to fill it in either, because our town happens to be a composite of the whole county, from the lowest level to the highest level of income, and everything in between. So you can't take an aerial view of a town like that and say, "Let's fill it in."

MR. BERNARD: It is not the intent to take an aerial and say, "Fill it in." The intent is, if we have this need that is measured out here as a matter of projections, let's get it to places that are more likely to be able to get it built based on infrastructure and capacity.

Now, in the case of Middletown, Middletown has gone through a very difficult process, as I know very well having been involved with it as a mediator several times. But Middletown is going to get what is called a "vacant land adjustment" this time, which means that we have determined that when we take into consideration the parkland, the wetlands, the other environmentally sensitive areas, we have said, "Middletown has handled about all the inclusionary development it can handle."

Now, Middletown has chosen to not go the inclusionary development way and do some RCAs, which are fine. But we have said that they have done what they were supposed to do, and as a result they are not going to get a number per se anymore. Communities like Middletown will have on record that they have

new homes, condos, but we need to do-- The infrastructure is in the cities. People do like to live in the cities. There are a lot of them who like to live there, but they are afraid to live there. That is the problem.

That's it. Thank you.

ASSEMBLYMAN KELLY: Okay. Thank you. Did you have some questions, Mr. Gaffney?

ASSEMBLYMAN GAFFNEY: Yes.

ASSEMBLYMAN KELLY: You have the floor.

ASSEMBLYMAN GAFFNEY: I haven't seen a soap opera in a long time, and the Middletown story has touched me deeply. It really has. Just so we all know where we are coming from -- not from Middletown -- I have some pointed questions that I have been making notes on.

But, before I ask them, I just want to let you know that for the past 18 years I have been a Councilman and a Mayor and a Freeholder. I represent Atlantic County, obviously, but I am also Past President of the South Jersey Freeholders Association, all eight southern counties.

ASSEMBLYMAN KELLY: Are you looking for a position on COAH? Is that what you're doing? (laughter)

ASSEMBLYMAN GAFFNEY: As such, the South Jersey Freeholders Association has consistently opposed the State Plan because of our large amount of undeveloped agricultural land. So I have some problems with the State Plan, as you can imagine. But I want you to know that I appreciate it. I know all the time and effort you have put into it. But it is my impression that the State Plan has always intended to be -- was never intended to be mandatory. That is my impression, certainly from South Jersey. But evidently your agency is placing a real hard emphasis on determining where housing is built on the basis of the State Plan.

So I guess my first question is: Can you tell the Committee what steps you plan on taking in your dealings with

people have built a great product. They built two projects in our community that we are very, very pleased with, and we solved that need. I agree wholeheartedly with you--

MR. AZZOLINA: Yes, great, they build a great home. They took care of the need for a lot of young people. I wish there were more units like that.

MAYOR MATAcera: Absolutely. So what we have to do here is be able to understand.

Getting back to your original question, some of that thought process over the last couple of months has been applied very hard into the methodology to understand where we're going. That is one of the reasons why we looked at the State average and understood where the shifts in population were occurring; not to penalize suburbia, but then again, not to put everything back into the cities where the population was diminishing.

Bob Burchell has worked on a number of reasons. Again, they are a lot more technical than I, but I am satisfied, as a Mayor, to say that I believe we are going in the right direction when it comes to the reasonableness of numbers. Okay? We've got some work to do. There was some thought process, Mr. Chairman, that we may have been out a lot sooner. Over the last six or eight weeks, we have taken some hard looks into different areas. To be quite honest with you, maybe we are a little bit late with our numbers, but I would certainly rather be late with a program like this and be damned right when we do come out, rather than come out and have something wrong over the next six years.

MR. AZZOLINA: People I know in Philadelphia, and other places, just rebuilt some old buildings. The buildings were solid. I don't know whether there are a lot of vacant buildings in cities; I assume there are. Also, they took an area, I guess, that was condemned, tore it down, and built some nice houses. I assume it is still nice housing, but those are

ASSEMBLYMAN GAFFNEY: You are going to have to make adjustments in what sense, by taking them to court?

MR. BERNARD: We don't take communities to court. All we do is review plans. We are just looking for realistic plans. So, if communities-- Communities have all kinds of options. Under the process, they can transfer some of the obligation under an RCA -- a Regional Contribution Agreement. They can rehabilitate their housing stock. If they are looking for a site in town to produce housing, we are just looking for a realistic site; a site that has infrastructure.

MR. OPALSKI: (speaking off-mike) We wouldn't fight the towns that go forward with those designated centers that they feel comfortable with; that their planning boards have deliberated over, and they feel are the most appropriate locations for new growth to occur.

MAYOR MATAcera: I think we want to maintain some of the things I spoke about earlier, Assemblyman, as the flexibility-- My criteria and one of the things that I looked at with substantive concern, was to maintain a municipality's flexibility. That is what I think we are trying to build into the rules; that flexibility to come back and say, "Hey, we don't have the ability to do it," or, "We do have the ability to do it," and be able to come through our process and be able to adjudicate it there, rather than go to the courts, where we were back in the early '80s, when we had no ability to get out of it. I think this is the thing we are looking at at this point in time.

ASSEMBLYMAN KELLY: For my edification, what do you mean by infrastructure, just so we all vote for the same thing?

MAYOR MATAcera: From my classification, I look at infrastructure as things like: sewer, water. I also consider looking at school facilities--

ASSEMBLYMAN KELLY: Well, I was going to ask that question.

municipalities to reach that goal, that goal being the State Plan? What steps do you intend to take in your dealings with the municipalities to reach the goals of the State Plan?

MR. BERNARD: Well, we have a mandate under Mount Laurel and in our statute to direct housing need based on the goals of the State Plan, but having done that--

MR. HOVNANIAN: Just on that point--

MR. BERNARD: Go ahead. I'm sorry.

MR. HOVNANIAN: That does make us different than other agencies, specifically in the Fair Housing Act, which was the enabling legislation creating COAH. It is quite specific that our plan and distribution shall be made, in large part, based on the State Plan. Many other agencies do not have that, but in our particular case that was part of the enabling legislation.

ASSEMBLYMAN GREEN: So, if a municipality then, acting on its own zoning or home rule, proposed a forward housing plan which may fall outside your parameters, you know, what would be your response?

MR. BERNARD: Well, I think, you know, what the State Plan has done in terms of housing aid-- There is actually a certain amount of sense there, because if we are talking about where housing is going to be created, or could be, we are going to be looking at sites with infrastructure. If you cut through all the planning area jargon and what they are trying to accomplish, they are basically trying to concentrate development in areas where there is infrastructure or where infrastructure can be extended.

That goal is quite consistent with providing affordable housing. So I think, you know, when municipalities come in with their plans, we are going to be looking for sites that either have infrastructure or to which infrastructure can be extended. If there are no such sites available, then we are going to have to make adjustments.

MAYOR MATAcera: The problem with the schools, in a sense, Assemblyman, is that we would also have to look at the land use ordinances in the State statutes on land use. We cannot preclude a development right now in the land use statutes because of the need for schools; okay, education. If you look at your land use statutes now -- okay? -- and we look at land use planning-- I would like to be able to say to someone, "I am going to exclude your zoning," or, "I am going to exclude your housing development because you are going to add an impact to my schools." We cannot do that legally at a municipal level. So I don't believe COAH-- That is for any housing, let alone Mount Laurel. I don't believe COAH can make that, but we can look at it as something that is part of--

ASSEMBLYMAN KELLY: Do you think legislation should be introduced to have that part of the consideration?

MAYOR MATAcera: I would say let's look at it. I would probably say no, but I think that is a consensus if we can find the right language and the right legislation. Any legislation can be looked at.

MR. HOVNANIAN: I think part of the problem is, you will find in many instances, with many types of development, that development generates school children. There is just no two ways about it, other than office buildings, and maybe that is part of the root of the problem; or, senior housing, which anybody is more free to build and zone for. Everybody is hesitant to zone for family housing because there is a cost associated with it, where there isn't with seniors and office buildings.

Part of the problem is, many municipalities were quick to zone for the office buildings because of their good ratables, creating job demand, and not doing their fair share of the housing, which created some of the imbalance.

But, to the earlier point, any kind of housing is going to generate a demand for school children, other than age

MAYOR MATAcera: I'm talking as a Mayor, Mayor. To me, that is infrastructure. To me, school facilities and schools are infrastructure. To me, road networks are infrastructure; all site improvements are infrastructure. These are things, I think, that we have to begin taking into consideration. Can we build a unit? If we can't build a unit, then we have to see how we can build a unit.

ASSEMBLYMAN KELLY: But those are the things that COAH includes in their infrastructure?

MAYOR MATAcera: To me, that is my interpretation.

ASSEMBLYMAN KELLY: You said, "yours."

MAYOR MATAcera: We are still discussing all of those things.

ASSEMBLYMAN KELLY: Oh, you mean it is not included, then? All those-- I don't want to just hear about plumbing, electrical, and gas lines. Schooling, to me, is very important. Safety is very important. Those things all have to be taken into this plan, or am I just dreaming?

MAYOR MATAcera: I personally believe that, as Mayor.

ASSEMBLYMAN KELLY: Okay.

MAYOR MATAcera: Now, I will let the fellows answer as to what we have as far as where we're going.

ASSEMBLYMAN KELLY: Okay. You've got the floor.

MR. BERNARD: Well, when we are looking at sites, we just look at some very basic planning principles that I think anyone looks at. We are looking at: Does it have water? Does it have sewers? Is it surrounded by compatible land uses? Does it have access to an existing street? I mean, the goal really isn't just to jam as much housing in an area as we can. We are trying to do something with some planning sense, and still meet the housing need.

ASSEMBLYMAN KELLY: Do you include schooling in that? Do they have good schools, bad schools, lousy schools?

And I am not talking about Newark; I am talking about any school system that is judged insufficient, or below average.

To me, that is important. If I want to tell a young person to buy or live in an area, I know the first thing they are going to ask is, "How is the school system?" They're not asking about the taxes. They're talking about, "Is the school system good?"

MAYOR MATAcera: At this point--

MR. HOVNANIAN: I want to make just one point before you start. We have not had a real problem when affordable housing units have been built in towns-- We have not really had a problem selling them. We are certainly not selling them because -- when I say "we," it is not just Hovnanian, but the overall industry -- they were built in a poor school system. These are people who are desperate for housing of any type; people who have been so far out of the marketplace that it has been an unreal possibility for them. If any opportunity is created, it has been quick to be taken advantage of.

MAYOR MATAcera: I think, Assemblyman Kelly, the thing we have to look at-- I think with the makeup of COAH, we can look at a certain application. If a town were to make representation to us because they are saying they don't have the infrastructure, the water, the sewer, yes, we have this piece of vacant land-- If we look at it, and they come in to us on a case-by-case basis that is established under our existing rules, with the flexibility we might be able to generate in some of the newer rules-- When they come in they can make that case to say, "This infrastructure needed, including that possible school--" I don't know how you could legislate it. It would be very difficult. But I think we can certainly do it through rules that can be promulgated to be able to look at and maintain that flexibility. That is what I talk highly of. That is why I say, when they come in with something, whatever community it might be--

restricted senior housing. That goes for low- and moderate-income housing and market rate housing. To say that developments shall be required to not have that -- or that no development shall occur that generates school children, is obviously, I think, an all new burden. To say that a school must have vacant excess capacity is a difficult one, because there are-- Certainly in any municipalities, on an ongoing basis, they have to develop schools as they grow. Much of the Mount Laurel activity is certainly where the market is greedy growth for these municipalities.

ASSEMBLYMAN KELLY: Well, that is not my point. I am not talking about generating schools. I am talking about, is the school system a good school system? How can you tell people to go into an area where the school system is awful? That is my point. Are they going to consider that?

MR. HOVNANIAN: Right now, the level of the education, whether it is a good school or a bad one-- For example, we don't preclude Mount Laurel housing in Newark because it has a difficult, or not as good a school system as a more prestigious town, and then tell a more prestigious town we want more housing there. It is really not this-- I don't think in any affordable housing program across the entire country -- and there are many of them-- I don't think the level of the school, or the quality of the school is a factor in allocating housing.

ASSEMBLYMAN KELLY: And you don't think it should be?

MR. HOVNANIAN: I think it is a very difficult one. Again, using the Newark example, I think it would be difficult to say: "Newark, you have a terrible school system. Therefore, you are not going to get any Mount Laurel housing."

ASSEMBLYMAN KELLY: I'm not picking on Newark now, but maybe that will wake some of these towns-- Exclude Newark. Maybe if such a statement was made, maybe it would make the towns wake up that they better improve their school systems.

How would this plan-- Before I finish my question, there is some question about the validity of the census there. I know there are many people in Long Branch who would question the census numbers that were taken in 1990, whether they are truly accurate. Some people say it cuts them short by about 20 percent. I don't know that that is not uncommon, or perhaps an uncommon criticism throughout the State in the urban areas.

Listening to that factor that you have utilized in your different scales, I think most of them are planning error. I have been the Vice Chairman of the County Planning Board for the last six years in Monmouth, and I know a little bit about the State Plan. Listening to your factors there, you say that using a factor of one now in towns such as mine-- What would you expect of the 22 towns to comply with the COAH rules under your scenario?

MR. BERNARD: Well, I think what I am hearing from you is that in most of these communities there is very little land.

ASSEMBLYMAN CORODEMUS: None.

MR. BERNARD: So, no matter what number we came up with for your communities, you would probably say, "Well, that's fine, but where is it going to go?" Even though we have the satellite that gives us a better fit between need and land, if there is some need there, it is probably more than they could handle in terms of the amount of available land, from what you're saying. I think the Legislature anticipated that in '86 when it passed the Fair Housing Act, because it said, "The Council shall do adjustments for vacant land." That is part of the Act. We have an adjustment process that will allow those communities to show us what they can do and what they can't do. I would like to think it is more flexible than the one we had before. We have some tools available that were not available six years ago; for example, development fees.

So, for example, these communities might be able to get certification by agreeing to capture something for low- and

In Assemblyman Gaffney's situation, where the plan may exclude-- They can come in and demonstrate that there is a lack of that type of "infrastructure." Okay? Then I think it becomes a reasonable program to say-- It is not for COAH to say that it is not, or the Legislature to say it is not something in a statute.

MR. HOVNANIAN: Do you know where we are kind of driving from, Assemblyman?

ASSEMBLYMAN GAFFNEY: Yes, I do.

ASSEMBLYMAN KELLY: Do you have a question, Mr. Corodemus?

ASSEMBLYMAN CORODEMUS: Yes. I found your explanations in a very difficult area very lucid. Like Assemblyman Azzolina, perhaps you can tell me, from a conceptual standpoint and apply it directly to my legislative district as best you can, how these rules might affect my district. My district is a coastal district in Monmouth County. It starts from Sandy Hook and goes down to Brielle; includes Asbury Park, Long Branch, the Neptune area. Most of the 22 towns--

MAYOR MATAcera: Spring Lake.

ASSEMBLYMAN CORODEMUS: It stops just north of there.

MAYOR MATAcera: Okay, so Belmar.

ASSEMBLYMAN CORODEMUS: That is excluded.

MR. HOVNANIAN: Up to Sea Bright, right.

ASSEMBLYMAN CORODEMUS: Most of the towns are 95 percent to 100 percent built out. The amount of vacant lots in any one town you can count on one hand. Let's take Asbury Park. Asbury Park, if you talk about infrastructure, had been dumping raw sewage into the ocean until a few years ago, and under DEP order they went to a secondary system. I think they are at capacity, even with their new plant. Take Long Branch. They are at capacity. Their school systems are deteriorated. There is no vital retail shopping areas in those towns.

there. How intrusive are your surveys to see that Long Branch and Asbury actually have the capacity in their infrastructures? Put aside the school districts for now. Let's just take water, sewer, electricity, surface transportation. I don't know what you would do about job availability. What do you do in those situations? How intrusive do you get there?

MR. HOVNANIAN: Let me try to address that, if I may. I mentioned earlier that the process is by no means a perfect one. You could always get improvement. It would take significantly greater dollars than what we have. As an example, it would be ideal, from our perspective, to know every acre of every one of the 567 municipalities, account for them, know whether there are environmental constraints, know whether there is a Green Acres Fund, know if they can be billed, if they are available for sale. That is impossible. The financial burden is really impossible to comprehend.

Nevertheless, we have some tools to give us a better picture than we had before. The satellite is an example of that. But, based on the satellite pictures -- and there are a lot of other factors -- we issue a preliminary number. That number is subject to the municipality giving us more updated information that will provide a clearer picture of that one town, because we simply, as a State agency, cannot know every single one of the 567 municipalities sufficiently enough to render the exact number.

In fact, under the current program, we have, on that very basis, done a significant number of adjustments; in fact, in many cases bringing a town to a zero obligation -- a zero obligation -- because we found that, yes, we had a number based on the methodology with the best information we knew, but we didn't know that a particular town just didn't have a financially feasible way, a source of information to tell us that their community, like some of your communities -- and I

moderate-income housing as development and redevelopment takes place. So, for example, as development and redevelopment takes place, they might impose a development fee. That is the kind of thing where the Council could say, "Well, realistically, that is what we can expect out of those communities," and go from there.

ASSEMBLYMAN CORODEMUS: When you say "development and redevelopment," are you taking Asbury and Long Branch saying those towns assessing a development and redevelopment fee on developers within those cities' boundaries?

MR. BERNARD: That is a possibility, yes.

ASSEMBLYMAN CORODEMUS: They are not building there.

MR. BERNARD: Okay. That may not be a good one for those communities.

DR. BURCHELL: Most of the needs for Asbury and Long Branch and what have you are rehab needs.

ASSEMBLYMAN CORODEMUS: Exactly.

DR. BURCHELL: That is factored into the formula, so they get none at all, in many of these cases, perspective need or future need, which is new housing only to the degree that they want to buy that on a regional contribution agreement from someone else. But most of the need that is specified for urban areas like that is rehab housing without any additional demand on sewers, water, etc. So that is already factored into the formula.

ASSEMBLYMAN CORODEMUS: I don't mean to be combative, because you are just implementing the State statutes. I have some real reservations about the actual policy in the enabling statutes. Take a district like Joe's, and the other more suburban/rural areas that border my legislative district-- Your plan and the State Plan attempt to cram that development into a district such as mine.

Now, I think that is even an attempt-- Let's take your scenario where you are rehabbing existing housing stock

Housing Program within the Department of Community Affairs, primarily to urban centers for affordable housing. So, the Regional Contribution Agreement is one of the major parts of the Act, and is really benefiting communities like Asbury Park and Long Branch, to that extent anyway.

MR. OPALSKI: (speaking off mike) One of the points that Ara, I think, was putting forward was, the numbers are not quoted, but they are points of departure. Towns know best what's within their borders. We have our adjustment and/or remediation process to invert the calculated need into a fair share. A fair share can only be derived after we know all the factors that you were suggesting.

ASSEMBLYMAN CORODEMUS: Sure.

MR. OPALSKI: How much vacant land; how much supportable -- how much can be done? In fact, the census data-- It may well be that there are errors in that, and that a town could come forward and from an exterior survey say, "Look, I don't believe those units are here. Here is what our building inspector believes are here, and here are standards that we would put forward that are accepted by the industry to help identify by exterior survey how many units there are."

So even there, when the census is the hardest and best data and the latest data, what we would do would be open to a more flexible approach for a town to come forward and justify a number that is realistic, what is actually there.

MR. HOVNANIAN: Assemblyman, if I could put on my other hat just for a moment as a developer in some of those areas -- and in our case we develop in Newark, Jersey City, and we are about to begin one in Atlantic City -- I can wholeheartedly agree with, I think, the direction you are going in; that is, to say these areas do need significant dollars to help them, not just with low- and moderate-income housing, but in their general market rate rehabilitation efforts, both residential and commercial. To that extent, I endorse the

happen to live near your area, so I am quite familiar with it -- has no vacant land available. We have gone methodically-- We probably have 20 or 30 towns which have gone through and had their numbers adjusted almost to zero because of that factor.

But we cannot do that in the first go-around with the numbers. We assign a number based on a standard methodology getting the best picture that we have available. Then we leave it up to the towns to supply us with the information to fine-tune it. We have done that in the past; we will do that even more vigorously in the future.

ASSEMBLYMAN CORODEMUS: I would like to ask just one more follow-up question. By my statements before I didn't mean to imply that towns like Asbury and Long Branch wouldn't invite rehabilitation of their deteriorated housing stock, revitalization of their retail shopping areas, more recreation that they need, and perhaps even better school systems, but in this mix where you are moving development back into those planning areas 1 and 2, such as the towns I have highlighted, where are the dollars to augment, perhaps, a deteriorated infrastructure system, to make a town receptive to redevelopment? Is there something-- I understand a little bit about how these credits are given and such, but what moneys go to the towns to beef up their water and sewer, their streets, their transportation?

MR. BERNARD: If I may, we don't have any money for that. We don't have any money at all, as a matter of fact. The one vehicle we have to help communities rehab their housing stock, and some of it can go for infrastructure improvements that lead to affordable housing, is the Regional Contribution Agreement. For example, two of the communities you are talking about -- Long Branch and Asbury Park -- have agreed to accept units from Middletown for a RCA, and they are getting a substantial amount of money to help to rehabilitate their housing stock. There is also available money from the Balanced

ASSEMBLYMAN KELLY: Do you have a question, Mr. Hartmann?

ASSEMBLYMAN HARTMANN: Yes, Mr. Chairman. Getting back to the State Plan, it seems to place a lot of emphasis now on rebuilding the cities, as you were just talking about, and you mentioned some things COAH had done, perhaps expanding the RCA, or maybe just changing -- I don't like to use the word "quota," but changing the requirements that other towns have and putting more in the cities. Again, in response to this State Plan trying to rebuild the cities, both economically, as well as in affordable housing. That is where the real problem is. You're not just actually rebuilding -- doing more housing, you're just rehabilitating the housing.

I represent the City of Trenton. Just going door-to-door in those areas, quite a few houses on the block seem to have no one living in them. These houses are ideal candidates for rehabilitation. I have never been inside them. Maybe COAH should be placing more of an emphasis on rehabilitation, instead of building in the suburbs.

MR. OPALSKI: I was born and raised in Trenton, Assemblyman, and I know the city's housing stock very well. It is as you describe it. That is a funding problem, not a zoning problem. What we are charged to do is-- It leans toward the zoning end, which is through land use regulations, and the statute says it. Through the land development ordinances a town addresses its fair share. With a city like Trenton we would certainly invite a developer to come in and put in as much inclusionary housing as they possibly could. We would certainly encourage that; and encourage the RCAs and try to work with the city in trying to induce more of that.

ASSEMBLYMAN HARTMANN: Is it 50 percent RCAs? Is that the--

MR. OPALSKI: Fifty percent is the limit. The reality is that about 8 percent of all of the fair shares before us in the courts are covered by the RCAs.

thought wholeheartedly, and would urge the Assembly to consider some general funding for urban areas to help them on an overall basis with all types of development, including, but not limited to helping on this. Our urban areas have been severely neglected in all respects, and I think that is an area that has to be addressed.

ASSEMBLYMAN KELLY: I would like to come up with the money for that, but, unfortunately--

MAYOR MATAcera: I was just going to say that with the budgetary problems the State is undergoing, we may not be able to see that, so I think we have to collectively work toward those things, and we will be happy to.

MR. CIFELLI: Pardon my ignorance in this question, but does COAH get information from the municipalities before allocating their fair shares? In other words, do they go to an Asbury Park and say, "What have you done over the last six years, and what do you think your fair share should be?" before they go out and say, "Asbury Park--" And if not, why not?

MR. OPALSKI: The Act requires us to come up with estimates of State and regional need and criteria by which municipalities may calculate their need on a fair basis. Art pointed to the principles that are embedded in the litigation in Supreme Court decisions that become foundations for that.

When we enter into it, we enter into it when a town submits a plan and begins to justify the numbers they believe represent what can be done -- the doable numbers. From that point, if you can supplant -- if my town or your town can supplant the information that COAH has, that it is mandated to deliver by statute and by Supreme Court decision, then that is considered in the adjustment and remediation process.

So, the leadership would come from the Council, but those in no way, shape, or form are quotas. They are points of departure. They represent calculated need, and need to be turned into a fair share with the help of the towns.

well, because not every town-- It is wrong to assume that they automatically don't want it done in their town. If they must do it, many towns want some component of it at least built in the town.

ASSEMBLYMAN HARTMANN: You mentioned earlier the weighting process in the five different regions.

MR. BERNARD: The State Planning Commission planning areas?

ASSEMBLYMAN HARTMANN: Yes, weighting how much affordable housing has to be placed in each area. Could you go over that for me one more time? Tell me the five different regions and how they are weighted.

MR. BERNARD: All right. What we did was-- We have this regional need that has to be assigned to communities, and we are trying to get that need to communities in areas where it can get built; in areas that have available land, and to areas that have infrastructure first, because that is where the State Planning Commission wants it. So, we have five planning areas in the State Plan. Planning area 1 is an urban center; planning area 2 is like a suburban area with infrastructure; planning area 3 is like a suburban area that doesn't have infrastructure yet, but it is close; planning area 4 is an area where I think it is fair to say that one of the overriding goals is to preserve State farmland; and planning area 5 is an area where the State Planning Commission has said, I guess, that the overriding goal is to preserve environmentally sensitive areas.

So, planning areas 1 and 2 have infrastructure; planning area 3 doesn't, but could soon; and planning areas 4 and 5, the goals of the State Planning Commission are more to preserve what's there, rather than induce more development. So we try to take this undeveloped land and weigh it to be consistent with the State Plan. That is why we scouted all the undeveloped land in planning areas 4 and 5, to make sure that

ASSEMBLYMAN HARTMANN: Okay.

MR. HOVNANIAN: But a lot of the need is based on the indigenous current housing which is dilapidated, which needs to be rehabilitated. Over a third is of that caliber.

MR. OPALSKI: Only 8 percent of the fair shares certified by the Council and the courts together are covering RCAs. There are about 3200 units.

ASSEMBLYMAN HARTMANN: But in the absence of the 50 percent--

MR. OPALSKI: Yes?

ASSEMBLYMAN HARTMANN: Is there any way we can try to place more emphasis on the RCAs, in light of the--

MR. HOVNANIAN: That is up to the individual municipality, really, to do what it deems the best. In Middletown's case, it is going almost exclusively to RCAs. In other municipalities, if they have to have an obligation, they would rather have it in their towns. It is really up to each individual town.

ASSEMBLYMAN HARTMANN: I was thinking -- and I might be way off in this -- that the towns would want to use RCAs to the fullest extent possible.

MR. BERNARD: Well, some do, and some don't.

ASSEMBLYMAN HARTMANN: Why wouldn't they?

MR. BERNARD: Well, some towns believe, when it gets down to it, you know-- They realize there is a need for low- and moderate-income housing within their borders. Even if they don't. RCAs cost money. Some of them would rather the development in town, than spend the money to transfer it elsewhere.

MR. HOVNANIAN: Keep in mind that the municipalities are allowed to earmark 50 percent of the affordable units for people who work or live in the town, and a lot of the people who work in the town need housing in the town: the policemen, the teachers, the firemen, etc. That is the attractive part as

and my town -- West Windsor and Plainsboro. That also reflects the ability to support low- and moderate-income housing because of that ratable base relative to other areas. So that factor comes into play in this process as well.

One of the things the Council is sensitive to is trying to get a relationship so that the numbers become fair, and also realize that those numbers can result from zoning changes that would occur in these areas.

ASSEMBLYMAN HARTMANN: Who determines what's fair?

MR. OPALSKI: Well, the factors we are using are those factors and principles that the courts have enunciated over the decades. They are reflected in two statutes. It is not just the Fair Housing Act, but also they are acknowledged in the State Planning Act. The business of the relationship was employment; one that both levels of government -- the judiciary and the Legislature -- agreed to as significant in this process, in the allocation process. It is one of three factors used to help determine that.

ASSEMBLYMAN HARTMANN: Our next President always likes to use the words, "people paying their fair share," and I am wondering how we can play fair.

MS. SMARTH: I have a question for you -- for Art. I read over your testimony when you sent it over. It seemed pretty detailed in terms of outlining the factors that you were going to be considering in coming up with these new numbers for the various fair share municipal obligations. But, I am wondering if you can shed some light with regard to how you intend to use the factors and equate-- I mean, how are you going to weight them in order to come out with the specific numbers? Can you just give us any kind of general overtone to that?

MR. OPALSKI: Sure. These three factors that Art described-- Let me just review them for you again so we are clear about them: The equalized assessed value of

they got low numbers. Okay? Then, planning areas 1 and 2 where they have the infrastructure, almost the same as the old State Planning Commission growth areas, we took that undeveloped land and weighed it as one, and then the areas in planning area 3 that do not have the infrastructure yet, but looks like it is heading there, either the private sector can bring it there or municipalities can extend it from planning area 2, we weighed it as a half. That was just a way, again, to get a better link between the need assigned to a community and the municipal ability to respond as measured both in available land and infrastructure, which the State Planning Commission agreed was consistent with their goals.

ASSEMBLYMAN HARTMANN: Just one more question. It is more asking your opinion. Mount Laurel came out in the mid-'70s. It seemed, among other things, to recognize the fact that a lot of the growth was coming from the cities and into the suburbs, just recognizing the fact that businesses were building up. West Windsor, my hometown, is a perfect example. But then the Plan seems to want to try to go against the whole Mount Laurel and then what followed from it about building affordable housing in the suburban areas and tries to push it back into the urban areas.

Do you see a potential conflict doing that -- that is my first question -- increasing housing in the urban areas? It seems we are trying to push it back despite the free market, people living where they want to live -- trying to build up the market in the cities. There seems to be a conflict between the two.

MR. OPALSKI: That would be one way to view it, Assemblyman, but vacant land weighted for classification from the State Plan is one of three factors that relate to the allocation. One of the other ones happens to be equalized assessed valuations on nonresidential developments, which reflects the jobs that are currently in places like your town

I don't mean to-- Believe me, your information has been very interesting; extremely interesting. I can see we are going to have a better COAH in the future, it seems. You have some real things to deal with.

Let's see. Jeff Surenian, are you in the audience? (affirmative response) Do you want to make some comments, or do you want to wait? What's going on here?

MR. SURENIAN: Let me ask you--

ASSEMBLYMAN KELLY: Ask me? I am the inquisitor.

MR. SURENIAN: Is the Assembly going to be reconvening after the Council on Affordable Housing proposes regulations?

ASSEMBLYMAN KELLY: Oh, sure. We can reconvene any time.

MR. SURENIAN: What my thought would be is, rather than me speaking to this Subcommittee, I have spoken to the Council on Affordable Housing staff, and I will be appearing in front of the Council on Affordable Housing making recommendations to them as to how they can improve those standards. Rather than putting them in an awkward position, I would rather reserve comment until after they have something.

ASSEMBLYMAN KELLY: That's fine. Okay.

Peter Buchsbaum. Did I pronounce that correctly?

P E T E R A. B U C H S B A U M, E S Q . : Buchsbaum. That's close enough.

ASSEMBLYMAN KELLY: Do you want to make some comments?

MR. BUCHSBAUM: Yes, just briefly, because I know you have had a lot of speakers, and you will have more.

ASSEMBLYMAN KELLY: Go ahead.

MR. BUCHSBAUM: The Committee has covered a lot of material, and I can see it takes awhile to digest all of it. Several of us in the audience here have been involved with affordable housing through the Mount Laurel decision and through the COAH statute. I have also spoken to your colleague, Assemblyman Corodemus on several occasions about the

nonresidential ratables is one of three factors; the vacant land weighted for vacancy by municipality and by State Planning classification is another; and the third is the relative wealth of a community as measured by the difference between the median of income versus the lowest category in that particular housing region. These are treated equally. So the municipal share of its region's base of that would represent-- For example, Art used the example of 100 jobs when we were using covered employment versus 1000 -- 100 over 1000, yes, so it became 1 percent of the amount for that factor. Then the averages were taken for the other two factors, and then those three averages were averaged yet again. So each was treated equally with the others.

MS. SMARTH: Okay. Maybe I am a little bit-- Maybe I should have studied this more, but essentially the weight you are giving to these three categories that you just mentioned-- Is it different? Is this basically different from what you were doing in the first six-year cycle, or is it the same thing?

MR. OPALSKI: The Council treated all the factors equally the last time around as well.

MS. SMARTH: Okay. It is just that these new figures based on the census are going to change--

MR. OPALSKI: They are more accurate, yes. That's right. More current, accurate, and, we would hope, representative.

MS. SMARTH: Okay.

ASSEMBLYMAN KELLY: Are you finished?

MS. SMARTH: Yes, I think so.

ASSEMBLYMAN KELLY: May I suspend your testimony? I just want to get some input from the members of the public out there. Then we will get back to you. If it is too late, then we will suspend it, and we will come back for another meeting. But I do want to get to some individuals who have been sitting out there very patiently.

MR. BUCHSBAUM: Well, we have been doing that.

ASSEMBLYMAN KELLY: Oh, good.

MR. BUCHSBAUM: I know you are asking questions here and getting answers. I am just saying, if there are some things we can do in addition to COAH-- Believe me, I will be at the COAH hearings--

ASSEMBLYMAN KELLY: Okay, thank you.

MR. BUCHSBAUM: --but if in addition there is something we can do, we would be glad to.

ASSEMBLYMAN KELLY: I'm not bashful. I'll ask you questions if I think we need you.

MR. BUCHSBAUM: Thanks.

ASSEMBLYMAN KELLY: Elizabeth C. McKenzie. Go ahead, you have the floor.

E L I Z A B E T H C. M C K E N Z I E: Mr. Chairman and members of the Committee: I heard you say that you are going to end this meeting quickly, so I'll talk fast.

ASSEMBLYMAN KELLY: No, no, you say what you have to say.

MS. MCKENZIE: I am a Planning Consultant. I have done planning work both with municipalities, in helping them to prepare their housing elements to comply with COAH's regulations, and I have also been a court-appointed master in several Mount Laurel cases, so I come at this from both sides. I have also represented developers who are in Mount Laurel suits against municipalities.

Obviously, none of us have had the advantage of having the full set of revised rules in front of us, but I have been following COAH's processes in terms of coming up with this revised approach. I think that, in general, recognizing what Ara Hovnanian said to you, that nothing is perfect in terms of a formula-- I think this formula is as fair a formula as it is possible to devise at this point.

State Plan. Really, rather than make any specific comments, I will just generally say two things:

One, COAH is aware, I think, of the difficulties you have been talking about, and has made, especially -- partly with Paul and Ara's leadership, is making a reasonable effort to accommodate the constitutional requirements that exist in Mount Laurel, with the realities, Assemblyman, that you have been talking about. I am confident over the next year, as the numbers develop, that you will find a receptive ear in COAH to work with you. That is one thing I wanted to say, just to get across that this is a dialogue that has been in existence for awhile. This is the first time this Majority has had a chance to really grapple with it because of the new numbers, and I think you will find it a productive dialogue. I think you have started that today. I commend you for your effort in starting it.

The second thing -- and I just want to make this offer-- I am an attorney. I have represented municipal governments and the private sector. Speaking for myself, and probably for some of the others who will come after me, if there is anything we can do as far as working with the Committee, the Committee staff, Ms. Smarth, or any of the Committee members to advance the process, to answer questions in an informal way, I know I would be glad to help out in that regard, and I guess Steve can talk to that. I'm sure some of the others would as well, because we want to make your job as easy as possible, and help you, by giving you as much information as possible.

ASSEMBLYMAN KELLY: My advice would be to go to their public hearings and tell them what you think they should do. It would make more sense, really, than telling us to do something after the cat is out of the barn, or whatever the hell that expression is.

credibility. There is the link between nonresidential ratables and affordable housing. I think this is important, as opposed to using covered employment numbers, which are faulty, and which do have to be reexamined when a municipality is looking at its fair share obligation under the current methodology. It eliminates the penalty to high population municipalities in terms of the per capital income, which I think is important. I think, again, that the one-to-one credit for efforts that have been made in the past is extremely important.

I think there is going to be an improvement -- it looks like -- in the accuracy of the methodology based on the availability of up-to-date numbers, and also better sources of information that are being relied on. So I think, in general, I, as a planner, am supportive of what is being presented to you. Obviously, we all need to look more specifically at what comes out of COAH in terms of the formal rules, but the overall approach, I think, is a good one, given the fact that we all have to work with the legislative mandate, and the judicial mandate that preceded that, to provide affordable housing.

ASSEMBLYMAN KELLY: Thank you.

MS. MCKENZIE: You're welcome.

ASSEMBLYMAN KELLY: Any questions? (no response)

Okay, thank you.

Philip B. Caton.

P H I L I P B. C A T O N: Thank you, Assemblyman. I appreciate the opportunity to speak to you today. I feel a little bit like being asked what I think of a piece of art after hearing the artist describe what inspired him when he painted it. You really won't know until you actually see the picture. But I would like to say that the process that COAH has proceeded through has been a very inclusive one.

I am a practicing consulting planner. I have served on both sides -- the municipal and the developer sides -- as well as being a master for the Court in about 25 different

I sat in on some earlier Subcommittee meetings, speaking with Art Bernard and other COAH staffers to try to devise approaches for the next round of fair share allocations. We talked about things like a growth share approach and a number of other things. Some of those might be doable in the future. I think that for the time being the approach that has been devised so far -- and obviously everything waits until we see how the final rules come out-- But the approach so far has the advantage of being consistent with the State Plan goals, which I think is important; consistent, obviously, with the judicial and legislative mandates that COAH has to work with; and consistent with the projections that are being used by other agencies in terms of coming up with the housing needs. So we are all working on the same wavelength at the State level, and I think that is important.

It also, I think, has the advantage of political acceptability, because the numbers generally are going to be lower, and because towns are going to be given credit for what they have done. I think this is the first time that the towns that have tried honestly to comply with previous phases of whatever their affordable housing requirements have been, are going to be given credit for that. Certainly, towns that thought they were complying with Mount Laurel I and towns that thought they were complying with the Oakland/Madison decision and all of the other earlier requirements of the Court, suddenly, when they were faced with Mount Laurel II and then with the Fair Housing Act, were left holding the bag with large numbers that they were assigned to, and lots of multiple-family housing already within their borders. At least now towns are being given honest credit for what they did to comply with the first round of fair share numbers.

Thirdly, I think that the new methodology that is being talked about has the advantage of fairness and

being the idea of establishing nodes where development can occur, even in rural areas.

There are a lot of complexities to that notion and, in fact, many planners think that it won't really be until transfer development rights is statutorily enacted that the center's concept will really blossom. So I think it is going to be a long time before any units actually occur in those areas.

My final point is, there has been a lot of talk about crediting towns on a one-to-one basis for fair share compliance in the prior round. I certainly endorse that notion. In fact, we have urged that the Council go even further in crediting towns on more than a one-to-one basis for affordable housing units that are actually produced and occupied as of 1993 or 1994, whenever the compliance term starts; that is, to acknowledge the strain on infrastructure that the Mount Laurel units and the market units which come with them encompass. Towns like Tinton Falls, for instance, have 139 units actually built. They have another 1300 market units that came along with those affordable units. They have done a survey of school children, and have found that, on average, each unit brings with it half a school child in the K through eighth grade. So, you can compute the cost of these.

Now, I don't think that-- I think that is a cost that municipalities are used to bearing, and it is proper that they do so. But I do think that as we look for ways of bringing municipalities voluntarily into compliance, it is important to use as many carrots as possible. When the Fair Housing Act went into effect and the Mount Laurel II decision, there was a stick, and the stick was the builders' suit. Well, builders are not suing anymore because of the status of the housing market, so we need more carrots. One carrot might be for those towns that complied and actually have accommodated new units at

towns. COAH has reached out to all segments of the planning and municipal communities, and I think that some of the testimony you heard today reflects that.

I will be very brief with my comments on the plan as it is emerging. One of the pressure points here has to do with the indigenous need numbers which Art Bernard described earlier. He indicated that the numbers were going to be substantially reduced. The short form of this is that the indigenous need comprises 80 percent of the State's fair share need. So if you substantially reduce that number based on the 1990 census data, that has a dramatic impact on the statewide fair share. That may be fully justified by the 1990 census, but I think-- We don't know what the term "substantial" means yet, because we haven't seen the numbers. But I do think it is important that COAH go to some lengths to identify why the indigenous need is going to come out at whatever level it is. I think they've got the data from the 1990 census, and all of the records of rehabilitation that has been accomplished in the various towns across the State, and the demolitions, to do that.

The allocation process, considering the vacant land factor that was described today, is eminently fairer than the prior process under which the fair share was allocated. There is one caveat, though, that I would like to make; that is, with regard to planning areas 4 and 5. These are in the rural and agricultural and environmentally sensitive parts of the State. If you remove the vacant land-- If you remove that factor from the equation and multiply it by zero, as they plan to do, there will still be an allocation made to those communities because of the other two factors: wealth and nonresidential ratables. So there will be an allocation of fair share units to those towns and, in fact, there will be some growth in those towns. The success of accomplishing any affordable housing in those towns, though, is going to be largely dependent on the success of the center's concept in the State Plan; the center's concept:

to address affordable housing needs. This process can drive the development of programs and the allocation of resources along that line.

While we understand that there is a lower prospective need for new units that seems to be coming up since growth rates are going to be reduced, one area we have a concern about is the need for affordable housing for the State's current residents, or what has been referred to as an "indigenous need." In reality, it might be much greater than what is going to be projected in this plan, because in large part it is based on the number of substandard units; households living in substandard housing around the State. One thing it doesn't appear to take into account are households that are paying too much income -- too much of their income toward housing costs. So, for instance, in the State CHAS that was developed recently, they estimated that, I believe, 620,000 low- and moderate-income households in the State spend more than 30 percent of their income on housing costs. In addition, over 300,000 of those households -- nearly half of them -- actually pay in excess of 50 percent of their income on housing costs. So it is an important area that needs to be addressed.

Another major point that I think has to be made that came up in a number of people's comments, is that as a result of relying on the private, for-profit sector to develop many of these affordable housing units around the State, in many cases it has led to the production of a great number of units. In order to get one affordable housing unit, they have produced five units overall. That has placed an enormous burden on many municipalities, both on their infrastructure and on their ability to absorb that many more households and housing units.

One thing I think it is important to note, is that if increased reliance was focused on allowing the nonprofit sector municipalities through quasi-public entities and through public housing authorities to address housing needs, the total number

this point in time, give them more than one-to-one credit for the units that actually exist.

Thank you.

ASSEMBLYMAN KELLY: Thank you. Any questions? (no response) No? Thank you for your input.

MR. CATON: Thank you.

ASSEMBLYMAN KELLY: Rick Sauer, do you want to testify? (affirmative response from audience) Come on up.

MR. SAUER: I have some written testimony that I will just pass out, and then I will make a couple of real brief comments so as not to take too much time.

ASSEMBLYMAN KELLY: You have the floor.

MR. SAUER: As you already know, I am Rick Sauer. I am with the Affordable Housing Network. It is a statewide association of over 145 nonprofit developers and supporters of their work, working throughout New Jersey to create affordable housing opportunities.

I think it is important to note the existence of COAH and the Fair Housing Act has led to increased action on the part of municipalities to plan for, and meet, the affordable housing needs in their communities and their regions. That is an important step forward.

A couple of things I would like to note in particular, though: I think it is important to realize that in the absence of a State housing policy, the fair share numbers that COAH does develop for the upcoming six years, to a large extent, sort of sets the target of what we are aiming at to meet the affordable housing needs of residents here in the State. It is important to keep that in mind both because we need to adequately address the overall need, and we need to be able to have a benchmark against which we can judge what we are accomplishing. In addition, these obligations certainly do lead to increased willingness in the municipalities to continue

demand is that we really take a creative approach to developing some programs and developing resources both at the Federal and the State levels, as well as the municipal level, to move towards addressing those goals. Now, we might not create 30,000 units next year, but we need to move in the direction to increase our capacity to do that.

ASSEMBLYMAN KELLY: I don't disagree with you.

It is 20 to five. Is there anyone else who would like to testify? (no response) Okay. Does anyone have any questions of Mr. Sauer? (no response)

You can come on up (speaking to representatives from COAH). First, I want to thank you. Your testimony was enlightening. You didn't hold back any punches. I don't think we really ran a bad meeting. I didn't crucify anybody. This was not like an inquisition. I think the information you gave us was enlightening.

I just want to summarize. You did say that you are going to come up with figures, like, in two months.

MR. BERNARD: Within two months. We hope so.

ASSEMBLYMAN KELLY: You hope so. Well, two, two-and-a-half. I am not going to hold you to that. You are going to give one-to-one recognition for those who have already done their job as far as meeting their quota?

MAYOR MATAcera: If I may?

ASSEMBLYMAN KELLY: You may.

MAYOR MATAcera: I think that is something that is already in place, yes, sir. I mean it hasn't been finally promulgated, but I think there is consensus on the Council to offer that to the Council as being part of the criteria.

ASSEMBLYMAN KELLY: What else do I want? I think that is about it.

Usually this has to go through the "Register," right? Could we see your plan, at least that, before it gets to the "Register," so we could at least get some input to you before

it becomes a-- Sometimes it is 45 days, 30 days, whatever the hell the "Register" does.

MS. SMARTH: There is a comment period.

ASSEMBLYMAN KELLY: The comment period. Is that possible?

UNIDENTIFIED WITNESS: I don't see why not. I think so.

MAYOR MATAcera: We would like very much to work with your Committee, Assemblyman, because it is important to us to be able to disseminate that information. I had a meeting with Senator DiFrancesco at the League of Municipalities Conference, and the Senate is looking for something like that. I mentioned it to Art down there. We would like to be able to do that. We would like to work with the two Houses and the administration to make sure that we are all going in the same direction. We are not concerned about that. We would very much like to do that.

ASSEMBLYMAN KELLY: All right. Now, can I have the same five individuals come to another hearing before we do get this final-- You know, I would like to go over it with you in detail.

MAYOR MATAcera: Yes, sir.

ASSEMBLYMAN KELLY: Is that fair? I am not out to crucify you. I don't think I have; none of us have, really.

MS. SMARTH: Why do you use that word?

ASSEMBLYMAN KELLY: Well, sometimes I am accused of doing that, but I didn't do it today.

ASSEMBLYMAN GREEN: Mr. Chairman?

ASSEMBLYMAN KELLY: Go ahead.

ASSEMBLYMAN GREEN: I would like the Mayors to know that this is a kind and a very gentle Committee. (laughter) So I have no problems at all with my Chairman.

ASSEMBLYMAN KELLY: I want to thank you, really. I do thank you for your input.

it becomes a-- some... whatever the...
hall the "Register" does...

MR. SMARTH: The... comment...
MR. EMBLYMAN: The... comment... that

UNIDENTIFIED: I don't see why... think

MAJOR MATCERA: ...like very much...
Assembly... its...
disseminate...
of Municipal...
is looking...
down there...
to work with...
that we are...
concerned about... we would very much like to do

MR. EMBLYMAN: ...right...
...another...
...like to go over... you in

MAJOR MATCERA: ...
MR. EMBLYMAN: ...
...I don't think...
MR. SMARTH: Why... use that word

MR. EMBLYMAN: ...
...but I didn't... today...
MR. SMARTH: ...

MR. EMBLYMAN: ...
...is a kind...
...no problem...
MR. EMBLYMAN: ...
...your input

of units overall that need to be developed in order to meet those affordable housing needs would be much lower.

Along that line, many of these entities also focus much more on producing rental housing and targeting units towards meeting the housing needs of very low-income households. A vast majority of the units that have been produced through the development of housing through the Builders' Remedy process really have produced home-owner units that are targeted toward meeting the housing needs of people at the top of the low- and moderate-income spectrums. So they haven't gone down far enough to subsidize really low-income households, and they really have not met the need for the development of affordable rental housing in this State, which are two important areas that we need to look at.

Along this line, I think it points-- If we are serious about creating a significant number of increased units, we really need to look at the allocation of resources and what programs are out there that can currently address those needs. We should support the increase of support for nonprofit developers, housing authorities, and municipal agencies in order to address that need in a better manner.

I am open to questions if you have any.

ASSEMBLYMAN KELLY: Well, I think you will have to agree that unless the Federal government gets back big time into subsidies, the State can't possibly accommodate the needs you are talking about.

MR. SAUER: I would certainly agree with that. I was actually just down in Washington this last weekend. We are involved in a national project to work on that effort. Certainly, if the housing needs are set in the State, whether it is 95,000, what they may be thinking about now, or what was said over the last six-year period of 145,000 units, it is not realistic to expect, with the current resources and programs out there, that it is going to be met. I think what it does

MAYOR MATAcera: Thank you, Chairman Kelly; thank you, Committee members. Do me a favor. I was going to thank Assemblyman Azzolina for being the extended family of this Committee and for participating.

ASSEMBLYMAN KELLY: The meeting is adjourned.

(MEETING CONCLUDED)

APPENDIX

APPENDIX

Legislative Viewpoint



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

November 23, 1992

Re: A-1489/ S-858, as amended on
the "Fair Housing Act"

Dear Member of the Assembly Housing Committee:

The League Legislative Committee supports A-1489/S-858, as amended, a bill which provides for a "fair" adjustment of municipal fair share obligations under the "Fair Housing Act."

The difficulty with which many municipalities are able to meet their fair share obligations, is well known. COAH has recognized the myriad problems associated with compliance with the Fair Housing Act, and responded by placing a cap on the number of units for which a municipality would be obligated as their fair share. Unfortunately, the courts invalidated COAH's efforts.

This bill addresses the illegality of COAH's past, well-intended attempt to bring some reason into the implementation of the Fair Housing Act. We, therefore, urge favorable action on A-1489/S-858.

Very truly yours,

William G. Dressel, Jr.

William G. Dressel, Jr.
Assistant Executive Director

WGD:jg

Introduction

It is news to no one that the past decade has been one of turmoil and controversy with regard to providing State Mandated Affordable Housing in New Jersey. The municipal obligations established by the Council on Affordable Housing in 1986 were considered excessive by most communities. The result has been a great deal of resistance and conflict instead of compliance. To date of the 567 municipalities in New Jersey, only 136 or 24% have certified housing plans. The 1000 unit CAP legislation proposed is one step in the direction of trying to keep the numbers established by COAH at reasonable levels.

Calculating A Municipal Fair Share

In order to better understand passage of the 1000 unit cap legislation, a basic awareness of how the original obligations were calculated is important.

The initial part of the fair share obligation number is known as indigenous need. This component is the estimate of existing substandard units (actual deteriorated units) occupied in the municipality by low and moderate income families. These units may be rehabilitated by a town to meet that part of its obligation.

If a municipality is located in a designated growth area of the state it is responsible for the regional need (present and prospective need) as well. The present need is a reallocation of excess substandard units in the region and the prospective need is determined by projections of low and moderate income population within the region. This component of the obligation can only be satisfied by the creation of new housing units for low and moderate income households. The regional need is allocated to communities based on their share of the region's growth area; covered employment, covered employment growth and per-capita income.

The sum of the indigenous need and regional need is modified by a series of secondary sources of supply and demand in the housing market. COAH estimated how these secondary sources would effect each municipality. One of the sources is spontaneous rehabilitation, the private market reduction of housing need through rehabilitation of substandard units by existing owners. It is subtracted from the initial indigenous need (actual deteriorated units) figure to obtain the final number to be rehabilitated by a municipality.

The other secondary sources are demolitions residential units torn down within the fair share study period; conversions-residential units converted to other uses during the study period; and filtering-residential unit formerly occupied by higher income sectors of the housing market estimated to have become available to low and moderate income households during the study period.

The secondary sources are subtracted from the regional need to obtain the final fair share estimate for a municipality. It is important to note that the regional need is also referred to as the new construction component. This figure is also the only component of the obligation be adjusted. An example is as follows:

MIDDLETOWN TOWNSHIP/MONMOUTH COUNTY
COAH PRE-CREDITED NEED: 1987-1993

	<u>Total Need</u>	<u>Pre credited Need</u>
Actual Deteriorated Units:	308	
Less: Spontaneous Rehabilitation Indigenous Need	<u>22</u>	286
Regional Need		
Re-Allocated Present Need	59	
Prospective Need:	<u>1677</u>	
Subtotal:	2022	
Plus: Demolitions:	11	
Less: Filtering:	-167	
Less: Conversions:	- 16	
Regional Need:		<u>1564</u>
Total Pre-credited Need:		1850 units

Source: "Municipal Present, Prospective, and Pre-credited Need" published by COAH, dated may 21, 1986.

Impact On Middletown Township

Based upon the preceding, Middletown Township was given a Fair Share obligation of 1850. Of that number 1564 was the new construction obligation. According to COAH rules, a municipality cannot be required to expend funds in order to achieve their obligation. In other words, utilizing such approaches as regional contribution Agreements (RCA's) or building public housing projects is a local option. Therefore, the number is supposed to be

achievable via inclusionary development within the municipality. Inclusionary development typically means that one unit of affordable housing is built by a developer for every four market rate units built. This means that Middletown was expected to zone for and absorb 7820 new dwelling units (1564 X5) a six year period. Middletown Township presently has 22,000 housing units. It has taken Middletown over 300 years to get to 22,000. Therefore, it is apparent on its face that to expect the Township to absorb 7820 dwelling units, over six years is simply unreasonable. This growth would require the issuance of 1303 residential building permits a year. Throughout the 1981-1991 decade, a period of significant growth due to the economic climate, Middletown only issued an average of 327 such permits per year.

Comparison To Previous CAP Regulation

COAH's prior 1000 unit CAP rule was overturned by the Appellate Court. The primary reason was that the regulations imposed the 1000 unit CAP without regard to the facts and circumstances of the municipality. As such, it was deemed an unreasonable exercise of COAH's authority under the Fair Housing Act. The legislation currently being considered (S.858) differs substantially in that it clearly establishes a criteria whereby anyone wishing to can cause a municipality to have an obligation in excess of 1000. However, in order to do so, it must be demonstrated that the particular municipality has established a growth rate of over 833 residential building permits per year over the prior six years ($5000 - 6 = 833$). This approach ensures that no municipality will be expected to experience a sudden dramatic increase in growth. It should be noted that in the case of Middletown, a 1000 unit obligation is still high given our natural rate of growth. Over the past six years Middletown has averaged 104 residential building permits. A 1000 unit obligation could mean having to issue 833 permits a year.

Conclusion

The proposed legislation limiting municipal obligations to no more than 100 units, unless a greater number can be demonstrated to be reasonable represents a fair and logical approach to preventing severe obligations being imposed upon municipalities. Further, the legislation will have limited effect. Whereas the prior form of the legislation would have CAP all municipal fair shares at 50 percent of the number assigned by COAH, a 1000 unit standard will impact on only a small number of municipalities. Indeed, only 13 suburban municipalities have fair shares in excess of 1000. Let us also not forget that we are about to enter the next round of the Mount Laurel process. COAH will be releasing the new municipal obligations any time now. This legislation could help protect many municipalities from very high obligations and a great deal of local distress.

d:coah.hou

5X

Thank you for allowing the Council on Affordable Housing to appear before you and discuss an approach that COAH is considering for determining State, regional and municipal need. The approach that we are about to discuss is the result of a great deal of input from all the parties involved in the process you established in passing the Fair Housing Act of 1985. The process employed by COAH in developing all of its rules began with an analysis of issues that COAH's staff felt should be considered by COAH. This analysis took the form of an issue paper which was widely circulated throughout the State.

COAH then conducted three public hearings on the issue papers. All of the public's input was then organized into an agenda and discussed by a working group at weekly meetings. The working group consisted of representatives from: The League of Municipalities; The Federation of Planning Officials; The Alliance on Affordable Housing; The Consulting Planners of New Jersey; The New Jersey Builders Association; The Court Masters; The New Jersey Housing and Mortgage Finance Agency; The Department of Community Affairs; The Civic League of Greater New Brunswick; The State Planning Commission; The Affordable Housing Network of New Jersey; The Association of New Jersey Environmental Commissions; and The Rutgers Center for Urban Policy Research.

From week to week, professionals with specific areas of expertise were asked to join the working group in order to enhance the quality of the input. The recommendations of the working group were very important to COAH in considering various changes to all of its rules, including the estimates of low and moderate income housing need.

After listening to all this input, COAH emerged with some basic goals in developing the estimates of low and moderate income housing need. Some of the more important goals include:

1. The numbers should be reasonable. They should not overwhelm municipalities. However, they should respond to the needs of the poor.

2. They should be directed by the State Plan. The State Plan is clearly a growth management document that encourages most development in areas with the capacity to absorb it (i.e. areas with infrastructure). However, one of the basic tenants of the State Plan is that every municipality can grow and as it grows it should accept a portion of the housing region's need.

3. There should be a better fit between need and the amount of undeveloped land remaining in New Jersey's municipalities. Thus, the municipal housing need should be sensitive to undeveloped land and the State Planning Commission planning areas.

4. Municipalities that have addressed their Mount Laurel obligations from the previous cycle should receive credit for what they did.

COAH was also cognizant of some basic Mount Laurel principles in developing its methodology. The court system, in issuing the Mount Laurel opinions and in implementing these decisions, had established basic components of housing need.

The court stated that every municipality in New Jersey is responsible for at least some portion of its substandard housing stock inhabited by low and moderate income households. Therefore, COAH estimated the number of deteriorated units occupied by low and moderate income households in every municipality. This estimate was made using the U.S. Census.

The court said that some communities had accepted a disproportionate share of the poor. Therefore, the court limited the responsibility of municipalities that had high levels of substandard units occupied by the poor by a regional standard. The regional standard was determined by dividing the number of substandard units occupied by the poor by the total occupied housing stock within a given region. The same ratio was calculated for each municipality within the housing region. If a municipality had an excess of substandard housing occupied by the poor, the excess went into a regional pool for distribution to other municipalities within the housing region.

The portion of substandard units occupied by the poor that remained the municipal obligation was called the indigenous need. The portion above the regional standard that was distributed to other municipalities within the housing region was called reallocated present need. It should be clear that both are a function of census estimates of substandard housing.

The third basic component of need was called prospective need. It is a projection of low and moderate income households. Population

projections are converted into projections of households. By definition approximately 40 percent of the projected households are likely to qualify as low and moderate income. (Moderate income is 80 percent of median income. Median income means that 50 percent of the households earn more and 50 percent earn less. Eighty percent of 50 percent is 40 percent.)

In projecting its 1987-1993 projections of need, the Council employed the concepts of indigenous need, reallocated present need and prospective need. These components of need were quantified as follows:

Indigenous Need	85,134
Reallocated Present Need	34,411
Prospective Need	80,421
Total Need	196,966

In accepting these basic concepts, COAH's methodology was similar to the one employed by the courts. However, COAH recognized that the private market would probably respond to some of this need. In using the census, COAH recognized that sound market units change hands and become available to low and moderate income households (filtering). Conversions take place and result in a new unit in an existing structure. These also benefit the poor. Also, to a limited extent, substandard units occupied by the poor are "brought up to code."

COAH projected that the private sector would satisfy the needs of 54,259 households during the 1987-1993 period of need. Therefore, the municipal responsibility was limited to 145,707 units.

The 145,707 units were divided into indigenous need, reallocated present need and prospective need. The indigenous and reallocated present need was a function of the 1980 census. COAH has reasoned that if municipalities are going to be responsible for estimates of substandard housing, those estimates should reflect the best and the most recent data available. Therefore, the estimates based on the 1990 census should replace the estimates that resulted from the 1980 census.

Between 1980 and 1990 the census decided to collect different information on housing. Thus, not all the census surrogates for substandard housing that were available in 1980 are available in 1990. Perhaps because of the changes wrought by the U.S. Census Bureau, the estimates of substandard housing occupied by the poor are less than when COAH originally estimated need.

The third basic component of need is prospective need, which is a function of growth projections produced by The New Jersey Department of Labor. In 1986, when COAH projected need, even the most conservative projections available forecast tremendous growth in New Jersey. It did not happen.

As COAH deliberated on the relationship between the previous and future estimates of need, it did not make sense for municipalities to be

responsible for projected growth that did not occur. So, with the advantage of being almost through the 1987-1993 projection period, COAH feels it can adjust the 1987-1993 prospective need based on the growth that actually occurred. Therefore, under the approach considered by COAH, 1987-1993 housing need will be reduced.

To the reduced 1987-1993, COAH will add a projection of 1993-1999 need that reflects the best projections available at this point in time. The projection is more conservative and is the same projection used by the State Planning Commission in developing the State Plan and by the Department of Community Affairs in developing the Comprehensive Housing Assistance Strategy.

Therefore, the approach being considered by COAH results in 1987-1999 estimates of housing need. If the Council adopts such an approach, it seems only fair to provide municipalities with a one to one credit for the realistic opportunity they have created.

I would suggest to you that, in general, municipalities that addressed their fair share last time will have much less to do this time. This is because the estimates of substandard housing are less; the 1987-1993 prospective need would be reduced; and the 1993-1999 projections are lower. Those communities that chose not to address their fair share may still have more reasonable obligations because of the same reasons enumerated above. However, these municipalities will probably have relatively more to do because they would not receive the credits available to the communities who developed plans with COAH or the court.

Thus far, I have focused on some general concepts for estimating need. However, the Fair Housing Act requires this need to be distributed to individual municipalities. Indigenous need is estimated at the municipal level using the census. However, there are regional pools of reallocated present need and prospective need that must be distributed to the municipal level

When COAH allocated the 1987-1993 reallocated present and prospective need, it utilized regional shares of covered employment, covered employment growth, land in the growth area (as measured in acres in The State Development Guide Plan) and aggregate per capita income (municipal per capita income multiplied by the municipal population). For example, if a community had 50 covered jobs and a housing region had 1000 covered jobs, then the municipality had a regional share of .005 for covered jobs. Similar regional shares were computed for each factor. The regional shares were summed and one average regional share was computed for each municipality. The average municipal share was multiplied by the regional pool of need to determine the municipal share of reallocated present and prospective need.

COAH is considering changes in the factors used to distribute need. One change being considered involves the use of covered employment. This is an important factor because the Supreme Court has indicated that it would favor formulae that recognized the link between accepting jobs and the need to provide housing. However, COAH has found problems with using covered employment data.

It should be emphasized that covered employment data is collected by

the Department of Labor for insurance reasons. The precise location of employers is not particularly important to the Department of Labor. Therefore, it is not unusual for covered employment to be assigned to the wrong municipality. The errors implicit in this data base result in unfair allocations that COAH has successfully corrected once a municipality enters its process. However, it is time consuming to correct unfair allocations and COAH has been looking to an improved data base.

It has been suggested to COAH that it might use non-residential rateables as a replacement for covered jobs data. In response to this suggestion, people experienced with the Mount Laurel doctrine expressed some reservations with such a change unless COAH found a strong relationship between covered jobs and non-residential rateables. COAH performed an analysis and found a very strong relationship between the two. Therefore, COAH believes that such a change would preserve the strong link between jobs and housing and reinforce the link between accepting rateables and the responsibility for housing the poor.

In 1986, COAH used aggregate per capita income as a factor in distributing need to municipalities. This factor was used as a measure of the municipal capacity to accept need. Consistent with the court's direction, it was believed that wealthier communities had greater resources and more responsibility in housing the poor.

The aggregate per capita income factor had one flaw that COAH is trying to correct. Since it is the result of multiplying population times per capita income, it is a function of population as well as

wealth. Some communities that had accepted a great deal of multi-family and small lot single family development were heavily impacted by this factor. These municipalities received larger housing obligations because they had accepted large numbers of households. The municipalities discussed above are not necessarily wealthy municipalities.

Therefore, COAH is looking at a factor that will not be viewed as penalizing towns that had accepted a diversity of housing types. It is examining a factor based on the differences between a specific municipality's median income and the median income of the poorest municipality in the housing region.

In 1986, COAH allocated need to municipalities based, in part, on regional shares of growth area depicted in the State Development Guide Plan (SDGP). COAH calculated the amount of land in the growth area for each municipality and divided the resulting acreage by the amount of growth area in the housing region.

The growth area factor did not consider the amount of undeveloped land available because no such data base was available. This resulted in some allocations that had little relationship with the remaining undeveloped land within a municipality. Although the legislature anticipated such an occurrence by requiring COAH to develop procedures to adjust the municipal housing obligation due to the availability of vacant land, COAH thought it would be desirable to develop a better relationship between need and the availability of vacant land.

Unfortunately, as COAH began addressing this problem, there was still no consistent data base of undeveloped land for New Jersey. AS COAH began considering creating such a data base, it was clear that COAH had several requirements for any municipal inventory of undeveloped land:

1. The data must be available in time to calculate the municipal housing obligations;

2. The data must be available at a price that was within COAH's budget;

3. Land must be classified consistently so as to result in consistent regional shares of undeveloped land within the housing region;

4. The undeveloped land must be available by State Planning Commission planning area so that COAH could allocate need in a manner that is consistent with the State Plan.

COAH examined its alternatives. For example, we considered trying to collect and computerize municipal existing land use maps. However, we realized that different municipalities might classify land somewhat differently and different classification systems could result in unfair allocations. We also realized that we did not have the staff to complete such a task in a timely manner.

Similarly, COAH considered interpreting aerials. However, completing aerial interpretation in a timely manner was also not feasible.

COAH considered using tax records. However, it was not clear that we could obtain the tax records from the Department of Treasury. Having examined these records, we also realized that the records were not available in a format to merge with the State Planning Commission planning areas.

The Department of Environmental Protection and Energy (DEPE) has begun a marvelous geographic information system. DEPE has completed approximately five counties. It is estimated that DEPE may complete its mapping of ground cover in New Jersey in five years.

Having exhausted several alternatives, COAH began examining the possibilities of land satellite imagery. There is a satellite that maps ground cover that is capable of taking a complete picture of New Jersey every nine days. Thus, the satellite was capable of delivering a very recent picture of New Jersey.

The satellite has been used a great deal for agricultural purposes. It can differentiate between corn and soy bean crops. It can differentiate between a pine tree and deciduous trees. It has been used to map the spread of gypsy moth defoliation. COAH believed that, if it was capable of such sophisticated mapping, it should be able to differentiate between developed and undeveloped land.

COAH commissioned Cook College to demonstrate the land satellite's ability to differentiate between developed and undeveloped land. After checking the results against aeriels, we found that it classified most land correctly. It had problems in residential areas where mature trees

formed a canopy, shielding homes from the satellite's view. In these areas, the satellite "saw" forest and classified the land as undeveloped.

To correct this problem, we were able to merge census data with the land satellite data. Where the census information demonstrated that land was clearly developed, COAH considered the land developed.

As a result of this effort, COAH developed a consistent data base that allowed COAH to estimate undeveloped land by municipality. When we digitized the State Planning Commission's planning areas and merged them with the satellite image, COAH was able to develop estimates of undeveloped land by municipality and planning area.

This ability to estimate undeveloped land by municipality and planning area allowed COAH to be sensitive to the goals of the State Planning Commission. In meetings with the State Planning Commission, COAH developed an understanding that every municipality can grow and, as it grows, should accept a share of the regional need for low and moderate income housing. However, most of the need should go to area with infrastructure or to areas where infrastructure can be extended.

Based on the State Planning Commission's goals for each planning area, it was clear that the undeveloped land estimates should be weighted by planning area. Most of the undeveloped land in the state is in areas where the State Plan is trying to encourage the preservation of farmland and environmentally sensitive areas. Most of these areas lack the infrastructure to accept higher density development.

Thus, COAH has devised a weighting system with the State Planning Commission. Undeveloped land in planning areas 1 and 2 (areas with infrastructure) is multiplied by a factor of 1. Undeveloped land in planning area 3 (where infrastructure can be extended) is multiplied by .5. Undeveloped land in planning areas 4 and 5 (areas lacking infrastructure) is discounted (multiplied by 0). This method of allocating need and several other areas of mutual interest have taken the form of a memorandum of understanding that has been adopted by the State Planning Commission and COAH.

I think it is apparent that as a result of this weighting system, areas of the State that have been mapped as planning areas 4 or 5 will not receive a housing allocation based on undeveloped land. Any allocation in these areas would be based on the municipal wealth and acceptance of rateables.

As a result of the land satellite, COAH believes it has developed the ability to be more sensitive to municipal capacity and the State Plan. We know that the land satellite image is not perfect. We know that it overstates the amount of undeveloped land in the State. However, it interprets New Jersey's ground cover consistently. It classifies what it "sees" in every municipality the same way. Therefore it yields acceptable regional shares of undeveloped land for each municipality in the State.

SUMMARY

COAH is considering a methodology that yields 1987-1999 estimates of need. It replaces indigenous and reallocated present need estimates based on the 1980 census with estimates based on the 1990 census. It reduces 1987-1993 prospective need based on the growth that actually occurred. It includes a projection of 1993-1999 prospective need based on projections utilized in developing the State Development and Redevelopment Plan and the State's Comprehensive Housing Assistance Strategy. The resulting municipal obligations would be tempered by a projection of the private sector's ability to respond to the need. In addition, all municipalities would receive a one to one credit for addressing their previous Mount Laurel obligation.

COAH is also considering changes in the factors used to distribute need to the municipal level. COAH is considering using regional shares of non-residential rateables, a factor based on differences in municipal income and undeveloped land by municipality and State Planning Commission planning area.

d0510W

EXHIBIT A: REGIONAL STANDARD

EXHIBIT B: 1987 - 1993 HOUSING NEED

EXHIBIT C: 1980 SURROGATES OF SUBSTANDARD HOUSING

EXHIBIT D: 1987 - 1993 ALLOCATION FACTORS

REGIONAL STANDARD

Substandard Units Occupied by Poor
Total Occupied Housing Stock

1987 - 1993 HOUSING NEED

Indigenous Need	85,134
Reallocated Present Need	34,411
Prospective Need	<u>80,421</u>
Total	199,966
Private Market Ability to Respond	<u>- 54,259</u>
Municipal Obligation	145,707

1980 SURROGATES OF SUBSTANDARD HOUSING

1. Age of structure
2. Lack of complete plumbing
3. Lack of complete kitchen facilities
4. Lack of central heating
5. Overcrowding
6. Lack of elevator (4 stories)
7. lack of private access

1987 - 1993 ALLOCATION FACTORS

1. Covered employment
2. Land in growth area
3. Aggregate per capita income

REGIONAL SHARE EXAMPLE

Jobs in Municipality
Jobs in Housing Region

Assembly Housing Committee
Testimony on COAH's Fair Share Allocations
November 23, 1992

Thank you Chairman Kelly and members of the Committee for providing an opportunity to comment on the formulation of the Council on Affordable Housing's new fair share numbers for the six year cycle beginning in 1993. As you know, my name is Rick Sauer and I am the Assistant Director of the Non-Profit Affordable Housing Network of New Jersey. The Network now represents over 145 non-profit housing development corporations and their supporters, who are working in communities throughout New Jersey to produce affordable housing and revitalize neighborhoods.

I would like to preface my comments by noting that the existence of the Council on Affordable Housing and the Fair Housing Act has led to increased action on the part of municipalities throughout the state to develop plans for addressing the affordable housing needs that exist in their communities and their regions. Without COAH, it is doubtful whether many suburban municipalities would currently be taking such steps. The Fair Housing Act also created new resources not previously available for affordable housing, and this has been an invaluable contribution.

As we all know, the need for affordable housing in New Jersey is immense. The State's Comprehensive Housing Affordability Strategy (CHAS) estimates that 675,000 low- and moderate-income households

currently have housing problems. COAH's response in their first round (1986-1992) was to develop a goal of 145,000 units needed, a very modest target considering the need.

In the absence of a state housing policy, the fair share numbers that COAH develops, to a large extent set the target against which efforts to meet the affordable housing needs of the state's low- and moderate-income residents are judged. To a large extent, these obligations lead to an increased willingness of municipalities to address their affordable housing needs, and should continue to drive the development of programs and the allocation of resources to address these needs.

We would like to emphasize that COAH's new fair share numbers should accurately reflect the real need for affordable housing in New Jersey. While we understand that there may be a lower prospective need for new units, due to lower growth rates than expected, the need for affordable housing for the state's current residents (or indigenous need) is much greater than has previously been acknowledged by COAH, and should be accurately estimated.

Indigenous need should not only be based on the number of households currently living in substandard housing, but should also include households who are paying too much of their income toward housing costs. The state's CHAS estimates that 620,000 lower-income households are cost-burdened, that is they pay more than 30 percent of their income toward housing expenses. In addition, 300,000 of these households are seriously cost-burdened -- they pay more than 50

percent of their income toward housing. It is important that the housing needs of these households are acknowledged and addressed.

One major impediment to increased production of affordable housing, has been the over reliance on the private for-profit sector to develop these units. Not only is the development of affordable housing not an attractive option for most for-profit developers, often time it leads to the development of an enormous number of market rate units in order to obtain a small number of units that are affordable to low- and moderate-income households. In addition, most of the affordable units developed by the for-profit sector have been for-sale units accessible to only those earning at the top of the low- and moderate-income categories. For all practical purposes, the need for rental housing and the development of units that are truly affordable to lower income households has not been achieved by private developers.

If we are serious about developing a significant number of housing units that are affordable to New Jersey's low- and moderate-income households, there needs to be an increased reliance on, and support of, the non-profit sector, municipalities, and public housing authorities. In large part this is a matter of allocating adequate resources to increase production and providing technical assistance to those who need it.

In other words, we need more creative policies to solve the severe housing problems in our state. Reducing the estimates of need and lowering COAH's goals will give a false picture of reality and will hamper, not help, efforts to address the state's housing crisis.

QUEALE & LYNCH

INCORPORATED

PROFESSIONAL PLANNERS AND HOUSING CONSULTANTS

FAX # 215-493-0332

JOHN J. LYNCH, PP, AICP
WILLIAM QUEALE, JR., PP, AICP

November 20, 1992

2210 YARDLEY ROAD
YARDLEY, PA 19067
215-493-6070Assemblyman John V. Kelly
Assembly Republican Office
State House, CN 098
Trenton, NJ 08625P.O. BOX 2324
TRENTON, NJ 08607
609-392-2324

Re: COAH Methodology

Dear Assemblyman Kelly:

I am a licensed consulting planner in New Jersey. As you can see from my attached Summary of Background and Experience, I have a great deal of experience in addressing low and moderate income housing allocations from a number of perspectives. I was one of the professional planners who worked at the Superior Court level with Judge Eugene Serpentelli in developing a methodology for determining municipal fair share. I have worked with many municipalities in developing master plan housing elements which respond to their low and moderate income housing obligations and I have come to know first hand the practical problems encountered in interpreting and implementing the Mount Laurel doctrine at the local level. I have also served as a court-appointed Master in low and moderate income housing cases that have remained in court and were not transferred to the Council on Affordable Housing.

After hearing a presentation from Art Bernard on the proposed COAH methodology for the next round of allocations covering the period through 1999, I would like to share some observations with you and the members of your committee.

The general approach being considered by COAH to estimate housing need seems to be moving in a sensible direction. The idea of substituting 1990 estimates of substandard housing for the 1980 estimates is unquestionably appropriate since we should encourage the use of the most current data available. In addition, the 1987-1993 projections of growth statewide did not materialize, and for that reason it is logical to reduce the 1987-1993 Prospective Need to more closely reflect the growth which has taken place. These modified elements of need, when considered along with the projections of 1993-1999 need and the use of more appropriate allocation factors, should result in a reasonable methodology which can withstand challenge.

The proposal to provide a one-to-one credit for municipalities which have responded by rezoning to meet their Mount Laurel obligation is a definite advantage in the methodology and one that is totally consistent with COAH's approach of presenting numbers which cover the period from 1987 through 1999. By continuing to recognize the need which was identified for 1987-1993, albeit in a modified way reflective of lower growth statewide, the formula provides a basis for assigning credit resulting in what should be a more favorable allocation result for those municipalities which have made provision in their ordinances for low and moderate income housing. This approach should also serve as a needed incentive for communities to provide for affordable housing rather than to attempt to avoid their statutory obligation.

28X

215 493 0332

11-20-92 04:50PM P001 #13

Assemblyman Kelly, p.2
November 20, 1992

Even for those municipalities that chose not to produce affordable housing, the overall effect of the numbers may be reasonable because the estimates of substandard units in 1990 are lower than in 1980, and the 1987-1993 projections are adjusted downward reflecting better estimates of the population growth that has actually occurred over the past five years.

I also believe the changes COAH is contemplating in the factors used to allocate need from the regional to the municipal level are an improvement. The replacement of aggregate per capita income is most welcome since that factor tended to penalize blue collar towns that had accepted large numbers of people in a diversity of housing types since this factor was more sensitive to total population than it was to the relative household income in a community.

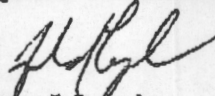
The use of an undeveloped land factor for each municipality that is sensitive to the State Development and Redevelopment Plan is equally sound. Its use of the LANDSAT satellite is a practical and laudable approach to a better fit between housing need, the goals of the State Plan, and available undeveloped land. I have witnessed the capabilities of the satellite data in mapping municipal ground cover. I have examined its results in municipalities I know, and I have been impressed with its utility and relative accuracy.

Finally, I think COAH has wisely created some continuity between the 1987-1993 numbers and this allocation of numbers. As a planner with a number of municipal clients, I view this sense of continuity as essential in developing long-term plans for my clients. As the formula has evolved into one which uses more appropriate and equitable allocation and crediting methodology, it will be that much easier to encourage and secure voluntary compliance at the municipal level.

I am sorry that I will not be able to attend your November 23rd hearing. I will be away for the entire week. However, if I can be of further service to your committee, I would be happy to help.

Very truly yours,

QUEALE & LYNCH, INC.



John J. Lynch

Encl.

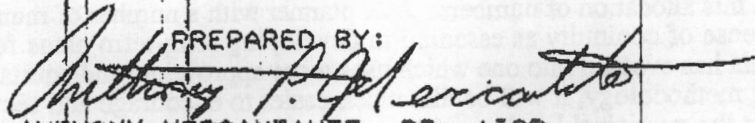
THE ORIGINAL OF THIS DOCUMENT HAS BEEN FILED AND SEALED IN ACCORDANCE WITH N.J.S.A. 17:27 AND N.J.S.A. 17:28, ADOPTED BY THE NEW JERSEY STATE BOARD OF PROFESSIONAL PLANNERS

REPORT IN SUPPORT OF A-1489

PREPARED FOR:
ASSEMBLY HOUSING COMMITTEE
NEW JERSEY GENERAL ASSEMBLY
JOHN V. KELLY, CHAIRMAN

DECEMBER 1, 1992

PREPARED BY:



ANTHONY MERCANTANTE, PP, AICP

N.J. LICENSED PROFESSIONAL PLANNER NO. 48R1

THE ORIGINAL OF THIS DOCUMENT WAS SIGNED AND SEALED IN ACCORDANCE
WITH N.J.S.A. 45:14A-12 AND N.J.S.C. B:41-1.3 ADOPTED BY THE NEW
JERSEY STATE BOARD OF PROFESSIONAL PLANNERS



30X

1 908 349 6917

12-04-92 05:06PM P003 #10

INTRODUCTION AND BACKGROUND

On behalf of the Township of Middletown, please accept this report in support of Assembly Bill 1489. It is respectfully submitted that the proposed legislation imposes a reasonable fair share limitation for the following reasons:

1. The market for multifamily housing ultimately plays the primary role in determining the ability of a municipality to create affordable housing. Since municipalities rarely have capacity to absorb the 5,000 townhouses and condominiums within any given six year period that would be necessary to create 1000 affordable units via standard inclusionary zoning, placing a 1,000 unit fair share limit will not, as a practical matter, result in the provision of fewer affordable units.

2. To the extent a municipality does have the capacity based on past experience to provide for more than 5,000 units, the Legislation provides a means for an objector to prove this fact and thereby compel the municipality to provide more affordable units.

3. The Legislation addresses the concerns expressed by the Court in the case of Calton Homes, Inc. v. Council on Affordable Housing by having a cap that is legislatively authorized and that is related to the facts and circumstances of the municipality.

4. Requiring a municipality to provide for more than 1000 units tends to force the municipality to "dig in its heels." Thus, by capping fair shares at 1,000, the Legislature can redirect municipalities that might otherwise struggle indefinitely to reduce their responsibilities to support and implement a 1000 unit plan. The low and moderate income households of this state are far better served by having a limited number of municipalities address and implement 1000 unit plans rather than forcing these limited number of municipalities into a lengthy adversarial process.

5. While the 1,000 unit limit will greatly improve the fairness and reasonableness of the Fair Housing Act to a limited number of municipalities, it will not -- as a practical matter -- significantly impact on the number of affordable units that municipalities would otherwise produce.

The report that follows will elaborate on each of the above points.

Criteria for 1000 Cap Under A-1489

The Legislation squarely addresses the Court's concern that the cap relate to the facts and circumstances of the municipality. Specifically, the Legislation recognizes the importance of reviewing the extent of growth within the municipality during the six years prior to petition to determine the likely potential for future growth. If a municipality had issued less than 5,000 certificates of occupancy in the 6 year period prior to the petition for substantive certification a cap would be applied because it would be unlikely that greater absorption of new housing units would occur during the next six years, making planning for more than 1000 units a purely academic exercise unlikely to produce real housing within that time frame. If a municipality had issued more than 5,000 certificates of occupancy, a cap would not be applied.

Statewide Municipal Impact :

While A-1489 promises to make the Fair Housing Act operate in a fair and reasonable way to a limited number of municipalities, it will have minimal, if any, impact on the number of affordable units that would otherwise be produced. The Council on Affordable Housing (COAH) has assigned a fair share of more than 1000 to only 23 of 567 municipalities -- a mere four percent of the municipalities in the State. Of these 23, ten municipalities are urban areas where the obligation represents no more than its indigenous need, or estimate of substandard units within each city. An obligation to construct new, affordable units was not attributed to these cities.

An examination of the majority of the remaining thirteen municipalities reveals that A-1489 will have a negligible impact on the number of affordable units that would otherwise be produced. For example, COAH certified the plans of Paramus (Bergen County) and Parsippany-Troy Hills (Morris County) prior to the Calton Homes decision striking COAH's cap regulation. COAH did not reopen the certified plans. Thus, the adoption of A-1489 will have no impact on the number of affordable units these municipalities will produce. The Courts are in various stages of approving 1000 unit plans of Dover Township (Ocean County) and Wayne Township (Passaic County). Thus, the adoption of A-1489 will not result in the creation of plans for fewer affordable units there.

Furthermore, while COAH assigned Brick Township (Ocean County), Cherry Hill (Camden County), Edison (Middlesex County) and Woodbridge (Middlesex County) fair shares beyond 1,000, the municipalities have secured or are in the process of securing substantial reductions. COAH issued a Mediation Report in response to Brick's petition for substantive certification revealing Brick's entitlement to credits that would bring its fair share well below 1,000 units. Also, in Edison, although COAH assigned the Township a fair share of 1111, COAH reduced its fair share to 325 as a result of credits. Similarly, in the

Cherry Hill case over which Judge Gibson presides, the Court appointed master has responded favorably to the Township's application for a vacant land adjustment and preliminarily recommended that the Court reduce its fair share from 2295 to 1082 units. Finally, in the Woodbridge case, which is also in Court jurisdiction, the municipality is in the process of pursuing a vacant land adjustment that could very well reduce its fair share to a number well below 1,000 units.

Middletown, of all of the municipalities before COAH, has been hardest hit by the lifting of the 1000 unit cap. The Township, which was in the COAH process when the Calton Homes decision was rendered, had its capped Mount Laurel obligation increase from 1000 to 1850 units. While Middletown would expect to secure a vacant land adjustment even in the absence of the enactment of A-1489, the Legislation would facilitate an expeditious resolution of the COAH process thereby enabling it to immediately commence implementation of its plan and to use municipal funds for building housing. In this regard, Middletown brought a motion to COAH requesting that it be permitted to commence implementation of regional contribution agreements for some 500 units. COAH denied the motion thereby delaying implementation until its process concluded.

As shown in this analysis, almost all of the non-urban municipalities examined -- which is the majority of the municipalities in this classification -- would not provide fewer units as a result of the enactment of A-1489. Without the adoption of this legislation, however, there remains an unfair and onerous burden placed on at least Middletown.

The Rationale for a 1,000 Cap

The burden a 1000 unit fair share places on a municipality is so great that requiring a municipality to provide more would be onerous. To illustrate, pursuant to applicable COAH standards, a municipality is free to satisfy its entire fair share through inclusionary zoning. In fact, COAH permits a municipality to address that portion of its fair share represented by its indigenous component through inclusionary zoning instead of a rehabilitation program. Thus, a municipality could address a 1,000 unit fair share by rezoning for 5,000 condominiums and by imposing a 20 percent set aside. In order for Middletown to produce the 5000 units necessary to deliver 1000 affordable units in the next six years via standard inclusionary zoning, it would have to issue 833 certificates of occupancy per year. Middletown has not issued 833 building permits in any year in the last 20 years -- even in the highest boom year. See Chart II. Indeed, an examination of the chart reveals that in no six year period during this 20 year period of the greatest growth within the Township did the total even approach 5000 units. Therefore, there is no basis to project that market forces will support the provision within six years of more than the 5000 total units which inclusionary zoning for 1000 units will generate.

As a practical matter, it is extremely unlikely that any community could absorb 5,000 units in any given six year period. A striking example of this fact emerged in the Cherry Hill case. In that case, the Township was required to consider rezoning a parcel known as Sergei Farm to permit the construction of 2,200 townhouses -- less than half the 5,000 units necessary to produce 1,000 affordable units. The owner of the parcel vigorously objected to the proposal that his land be rezoned in this way. In fact, the owner produced an expert report substantiating that it would take 26.19 years to construct, market and sell 2,200 townhouses -- well in excess of the six year compliance period. The Court did not require the inclusionary rezoning.

The population of any municipality would be dramatically increased by the construction of more than 5000 housing units. Using a persons per household figure of 2.95 to reflect the trend toward smaller household size, the new units would increase a population by 14,750 persons over a six year period. While even this population growth is excessive, it is certainly unrealistic to expect a municipality to provide an increase in excess of 14,750 persons in such a time period. This rate of growth is far too great for any community.

While the precise extent of the improvements to the existing infrastructure and addition of municipal services required by meeting an obligation of more than 1000 units cannot be quantified without an approved housing compliance plan, the surge in construction and burgeoning population would clearly present overwhelming new demands within a relatively short time period. The mandatory set-aside, often involves large-scale construction creating stress on existing infrastructure. Further, the administrative burdens on the municipality in terms of processing a surge of applications for development as well as performing all necessary oversight on the project create a strain. Also, a municipality must participate in the design, engineering and construction of the infrastructure required by the project, as well as provide the additional fire and police protection and other municipal services demanded by the influx of residents.

The cost of education and health services to a municipality would easily increase per year, with a portion of that additional annual cost not covered by the new property taxes generated by the compliance plan housing units. All of these demands will occur in the short term and must be met by a municipality without the benefit of long-range planning and funding. Obviously, implementation of a housing obligation of such magnitude creates an enormous financial burden on the municipality, a portion of which must be borne by the other taxpayers in the municipality.

Achieving a fair share of more than 1000 units through zoning for inclusionary development would be over burdensome to a municipality by any reasonable standard. Forcing a municipality to zone for too large a number of affordable units may actually decrease the realistic opportunity for the provision of such

housing. For instance, if a town were forced to zone for 2000 affordable units when there is no way that the market for multifamily housing could absorb 10,000 units in six years, creates a situation where developers may be reluctant to commence the development process. Essentially, it would thus be counterproductive to the provision of affordable housing to "glut" the market by over zoning for inclusionary development that cannot be absorbed within six years.

The land use impact of greater than 1000 units might be mitigated through creative approaches to meeting the obligation. However, consideration of any lessened zoning impact resulting from a municipality's creativity in voluntarily meeting its obligation would in effect punish a municipality for its efforts, particularly in light of the fiscal burdens likely to be imposed by alternate compliance schemes.

Although there are compliance devices which may be employed as an alternative to mandatory set-asides, all compliance devices impose burdens on municipalities. For example, Regional Contribution Agreements (RCA's) are an alternative method which may be used to satisfy up to 50 percent of a municipality's obligation. Funding RCA's which may cost a sending municipality as much as \$27,500 per unit such as the regional contribution agreement between Franklin Township and Perth Amboy. Such an RCA creates a severe fiscal burden on the sending municipality. At these rates, a municipality with an obligation in excess of 1,000 units that attempts to satisfy 500 units of its obligation through RCAs must be prepared to spend as much as \$13,750,000 over a five year period. N.J.A.C. 5:92-11.5(e). In fact, even using the mean cost of an RCA, \$21,250.00, which is the midpoint between the most expensive Franklin/Perth Amboy RCA of \$27,500 and the least expensive Denville Township to Newark RCA at \$15,000,000, the cost to a municipality transferring 500 units could be \$10,625,000.00. (Council on Affordable Housing "Status of Municipalities", dated August 1992). This is a significant fiscal burden for the community. Additional RCA units would only further impact the community's fiscal resources.

A case in point involves Middletown Township which elected to satisfy 50 percent of its fair share via RCAs at the time its fair share was capped at 1000 pursuant to the COAH regulation subsequently declared illegal. These 500 RCA units will cost the citizens of Middletown over \$9,000,000. To impose an even greater fiscal burden on these citizens is unreasonable.

In addition, there is no guarantee that a sending municipality will find a municipality within the region eligible and willing to receive the units particularly in view of the magnitude of the potential transferred obligation. In that the municipal and regional needs may not be susceptible to satisfaction through RCA's, the full use of this mechanism cannot be assured as a component of compliance.

Other compliance devices used as alternatives to inclusionary development, such as the adaptive reuse of existing structures or construction of affordable units by a municipality can require subsidies in the range of \$45,000 to \$65,000 per unit, two to three times the cost of an RCA. In employing such devices a municipality takes on a great financial burden for which it should be rewarded, and not punished.

Indeed, experience has shown that imposing a fair share greater than 1000 units does not translate into more affordable housing for low and moderate income households. As exhibited in the past decade, the larger the fair share, the more inclined any municipality will be to "dig in its heels" and fight instead of complying. To illustrate, Cherry Hill had developed a plan for 1000 units and the master was on the verge of recommending approval of that plan when the plaintiff brought a motion challenging COAH's 1000 unit cap regulation upon which the plan was premised. On June 29, 1990, the Court ruled in the plaintiff's favor. In the two years since this ruling, the Township devoted its resources to reducing its fair share to a number it could manage. Those efforts thus far have resulted in the master issuing a report stating that the fair share should be 1082. Thus, instead of the Township devoting its resources to implementing a 1000 unit plan in the last two years, the Township has been compelled to engage in fair share warfare.

It is respectfully submitted that the poor are far better served by a municipality implementing a plan capped at 1000 units rather than having the delivery of affordable housing delayed when the municipality has been forced to fight to have reduced what it regards as an unreasonable fair share obligation. A municipality must be able to conclude that its fair share is reasonable in light of the practical burdens and planning considerations the community must face.

Chart 1

Municipalities with Fair Share Obligations
Greater than 1000 Units

	Indigenous Need	New Construction Obligation	Fair Share Obligation
Atlantic City	717	3359	4076
Hackensack	609	562	1171
Paramus	3	1094	1097
Cherry Hill Twp	191	2104	2295
Newark	6806	0	4885
Bayonne	0	1256	2218
Hoboken	1681	0	1197
Jersey City	7511	0	5988
North Bergen	1978	0	1329
Union City	2352	0	1556
West New York	1681	0	1158
Edison Twp	216	895	1111
Woodbridge Twp.	557	956	1513
Middletown Twp	286	1564	1850
Ocean Township	73	1225	1298
Parsippany Troy-Hills	40	928	1028
Brick Twp	153	882	1035
Dover Twp	165	2246	2411
Clifton	1051	705	1756
Passaic	2128	0	1474
Paterson	3878	0	3424
Wayne Twp.	75	1469	1544
Elizabeth	2969	0	1556

7

37X

CHART 2

MIDDLETOWN TOWNSHIP

TOTAL BUILDING PERMITS

1970 - 267	1980 - 283	1990 - 37
1971 - 385	1981 - 424	1991 - 46
1972 - 467	1982 - 585	
1973 - 422	1983 - 682	
1974 - 269	1984 - 518	
1975 - 137	1985 - 435	
1976 - 427	1986 - 241	
1977 - 482	1987 - 210	
1978 - 579	1988 - 57	
1979 - 809	1989 - 34	



