

**APPENDIX**



Testimony to the Assembly Housing and Community Development Committee  
Sharon Barker, Vice President and Chief Operating Officer  
sbarker@hcdnnj.org  
July 25, 2018

Good morning. Thank you Chairman Wimberly, Vice Chairperson Chaparro and members of the Committee for the opportunity to testify before you today about New Jersey's housing affordability crisis. As the statewide association of 150 community developers and another 100 private sector partners working to ensure that everyone has a great place they can afford to call home, the Network and our members are deeply concerned about the need for housing to be affordable for all of the residents of our state. I'm Sharon Barker, the Network's Vice President and COO. I am glad that some of our members are here today, while more than 300 are with our CEO and President, Staci Berger and Senior Policy Coordinator Arnold Cohen, as part of our annual NJ Congressional Reception and NJ Hill Day in Washington DC. As we speak, NJ residents are traveling to Capitol Hill to speak with our Congressional delegation about the need to fund housing programs and invest in opportunities to make housing more affordable here in the Garden State.

Unfortunately, we still have a long way to go to create a balanced housing market that gives everyone a fair chance to live in the community of their choice, near transit and employment, and with amenities they enjoy and services they need. According to *Out of Reach 2018*, the annual, national report that provides the Housing Wage and other housing affordability data for every state, metropolitan area, combined non metropolitan area, and county in the country, New Jersey is the sixth most expensive location in the nation to rent a two bedroom apartment. Only Hawaii, the District of Columbia, California, New York, Maryland and Massachusetts, are less affordable, according to the report, produced by the National Low Income Housing Coalition and released by the Housing and Community Development Network of NJ.

In order to afford a modest two-bedroom rental home in the Garden State, a family must earn an hourly wage of \$28.17, far more than the state's average hourly wage of \$18.21. As the Fair Market Rent (FMR) in the state for a two bedroom rental is \$1,465, a family must earn \$58,603 annually in order to make it affordable. Using that formula, a minimum wage worker would have to work **131 hours** per week year-round to be able to afford a two-bedroom home at FMR. Even at the mean wage of \$16.92, a person would need to work for 62 hours a week to be able to afford that home. To gauge affordability, the NLIHC and the Network both use the widely accepted measure that no more than 30 percent of a person's income should be spent on housing. (report included)

For as long as many can remember, New Jersey has been at the top of this list of least affordable places to live. Competition for quality affordable homes is fierce because the housing market is out of balance. We need you as State leaders need to invest in ways to create more homes, including preserving money from the Affordable Housing Trust Fund. Our nurses, police officers, child care providers, administrative assistants, and all who are the backbone of our state's economy need homes they can afford. I can personally attest to this, as I look for a place to purchase that is affordable for my husband and me. My husband is retired and we are now looking further away from my office because it is more

affordable and will now cause me to have close to an hour commute each way. We all want an affordable home, something that is affordable for each of us based on our income and expenses or situation in life.

Unfortunately, our state is on top of other lists that demonstrate the lack of affordable homes. We have more millennials living at home, because they cannot afford to move out. Even worse, our foreclosure crisis continues to lead the nation. It is a huge burden for our families and communities, but especially those who live paycheck to paycheck. The housing affordability and foreclosure crisis is the albatross around the neck of our economic recovery.

It is not surprising that the Eagleton poll (copy included) conducted this spring found that New Jerseyans do not take the issue of housing affordability lightly. Almost all residents believe the cost of housing in New Jersey is a “very” (51 percent) or “somewhat” (35 percent) serious problem. How difficult New Jerseyans think it is to find reasonably priced housing in the state follows a similar overall pattern: 49 percent feel it is “very” difficult, and another 38 percent say “somewhat” difficult. About three-quarters of residents worry “a lot” (44 percent) or “some” (31 percent) about being able to afford housing in New Jersey.”

However, there is a growing sense in the state that both the policy environment and the budget situation are beginning to improve, bringing opportunities to develop the homes NJ needs. Our housing market is like a food market that only regularly offers filet mignon and lobster...we need hamburger and pasta, too. We are watching as the 2015 NJ Supreme Court decision to ensure fair share housing plans in communities takes hold. Communities are engaged in drafting and executing these plans, which include meaningful participation from non-profit builders and advocates. This process can create the homes that our economy and our residents need.

Let us be clear: This shortage is exacerbated by the stubborn patterns of racial and economic segregation that we continue to see in suburban communities, some of whom are openly advocating for a return to the policies of the past. In fact, some of the people here today are demanding “an end to high density housing”... that is a dog whistle, plain and simple. It is a call to keep communities segregated by race and income, to build walls using zoning laws. Our courts and this Legislature have been consistent on this matter: New Jersey’s municipalities cannot use their rules to keep people out of their neighborhoods.

But that is what they want. I am not sure why, perhaps you can ask them. But I know this is a long and difficult struggle here, and around our country. As far back as 1946, in *It's A Wonderful Life*, George Bailey asks Mr. Potter, “This rabble you’re talking about, they do most of the working and paying and living and dying in this community. Well, is it too much to have them work and pay and live and die in a couple of decent rooms and a bath?”

That may be a Christmas movie – and I love Christmas movies more than most – but it is the same thing we are fighting for right now. Is it too much to ask that people have a couple of decent rooms to raise their families, and contribute to their community? Is it too much to ask that they have choices about where to live and where to work? We don’t think it is, and hundreds of other public officials don’t think so either. It’s why more than 300 of them – many of you included – endorsed our campaign to **Build A Thriving NJ**, calling for increased investment to create homes people can afford. I have included the list of key stakeholders from communities around the state who understand the need for people to have a

decent place to live, in a neighborhood of their choosing. It is only a small handful of politicians who are using the ridiculous term of “high density housing” to try to frighten people ahead of elections. We have enough of that in Washington. We don’t need it in New Jersey.

Of course people want choices about where to live— this is America. Some people would love to move to the suburbs, and others want to be in our urban centers. Nonprofit developers have the expertise and community values to help create and rehab homes that can address our housing crisis. We know that you have tried, on numerous occasions, to craft policies and to expand resources to support this effort, and we are glad that this committee is continuing the work started by the late Chairman Jerry Green to that end. We appreciate your leadership and urge you to keep working with us. We have a broad agenda for changes you can adopt, and while I will not go into them all in detail now, I do want to highlight a few key areas that can make a big impact.

First and foremost, the Affordable Housing Trust Fund should be used for its intended purpose, housing production. We appreciate the work by this Committee and other legislators to ensure that the FY2019 budget allocated \$15 million of the Trust Fund. We hope that puts us on a path to using that funding as intended. Supported by more than 79% of residents, using the Trust Fund as intended helps us get to the heart of the problem – that there simply are not enough homes that lower income families can afford. It is why we see folks doubling and tripling up in unsafe conditions.

We need to provide rehabilitation funding for those places that need to address health and safety issues, especially homes where children are at risk of lead poisoning. This completely preventable disease continues to ravage the lives of children here in NJ every year. We are glad to be working with Lt. Governor Sheila Oliver and her team at DCA to deploy the resources available, once siphoned by the Christie Administration, to address this public health crisis.

Funding for rehabilitation of homes with lead poisoning and addressing other problem properties can help put more homes in the mix and help balance our market. In addition, increasing the funding for the Neighborhood Revitalization Tax Credit program, to \$15 million was also a step in the right direction, and we are grateful for that additional investment. As many of you know, the NRTC is a wildly successful, public-private partnership that allows community organizations and private sector investors to work together to create homes and economic development.

Lower income families need help when they face a crisis, especially when a foreclosure threatens. There are numerous proposals to fund housing counseling, which we, as the largest funded HUD-certified housing counseling intermediary in the state, we support. There are also strong proposals on our agenda to prevent foreclosures and address problem properties. Finally, as we work to create communities that are affordable and vibrant for everyone, we must maintain a strong safety-net that protects those most at risk. We are educating and monitoring the Code Blue emergency weather procedures across the state so that every county has a consistent process to shelter homeless residents during severe weather events. No one should freeze to death on our watch.

I am attaching the full list of our policy recommendations, and am happy to answer any questions you might have, now or later. I want to thank you again for the opportunity to be with you here today and for your continued leadership and commitment to make New Jersey a place everyone can afford to call home.

**Remarks from Tim Doherty, Executive Director for Project Freedom Inc. a non-profit developer of affordable housing for persons with special needs.**

July 25, 2018

Chairman Benjie Wimberly, Assemblyman  
Members of the Assembly Housing and Community Development Committee

Thank you for giving me the time to make some remarks with regard to affordable housing in New Jersey.

My name is Tim Doherty, and for the past twenty years I have served as the Executive Director for Project Freedom Inc. Project Freedom Inc, is a 501 c (3) non-profit developer of affordable, barrier free rental apartments for persons with special needs as well as non-disabled families. Established in 1984, Project Freedom Inc has grown from one, 30 unit apartment complex to seven housing communities, over 423 units across the state of New Jersey. In addition, we currently have two projects under construction, one in West Windsor and one in Gibbsboro, and two more in planning stages for another 288 units.

All our rental units are barrier free so that someone who uses a wheelchair can maneuver his or her apartment without difficulty. We not only develop our housing, we also operate and maintain our units, as well as provide support staff for those who reside at our sites.

So our supported Housing and or barrier free housing is also part of the Affordable Housing Industry, since all of our consumers are low income citizens.

Over these last few years, as we have grown and opened up our new communities, I am always amazed at the number of people who make applications for our housing. For example, when we completed our Toms River site, we had a wait list of over 700 applications. Likewise, our Westampton community has a wait list of over 500 families. In order to fairly rent up our units, we hold a lottery, usually in the Town Hall of the community we are building in, which takes all day. The response to our housing communities is overwhelming, and our communities continue to hold waiting lists for future tenants. To say that there is enough affordable housing in New Jersey is just " Fake News".

The need is so great, there isn't a week that goes by that each of our housing communities don't receive new tenant applications. Even more critical, is the need for barrier free or accessible housing for persons who use a wheel chair.

Another hat that I have worn since 2008, has been as a member of COAH—yes, that hated agency that tried to provide affordable housing in New Jersey. I believe that I am still the last man standing on that agency, other than the mandated State officers. And while the functions

of COAH no longer operate, rounds one and two did run relatively well, and did produce certifications for over half of New Jersey communities. Over 60,000 units of housing were created, providing much needed relief for many lower income families.

Since the establishment of COAH, there had always been two options a Town could take, in order to address its Fair Housing Requirements. They could petition COAH and submit their plan, and get certified by COAH, or they could go directly to the courts and submit their plans to the courts for a judgement. Either pathway would provide protection from Builders Remedy lawsuits.

Today, because of the disfunction of COAH, the towns are now forced to go through the courts to get their Affordable Housing plans certified, which had always been an option. And so, no longer are Towns able to put off indefinitely their obligations for affordable housing. From what I know, over two hundred towns have certified their plans through the court system, and housing plans are beginning to become a reality.

Project Freedom Inc. has become a partner to some of these Towns, most recently in West Windsor, Gibbsboro, Robbinsville, and Hamilton Township. Our West Windsor project is currently under construction and our Gibbsboro community is just about to start. We completed planning and have all approvals in hand for our Robbinsville project with Hamilton following close behind. All of these projects are a direct result of the actions taken by the Courts to force these towns to comply with the law.

At long last, after years of delay, Towns are now complying with their Mount Laurel obligations. Judges such as Mercer County Superior Court Judge Mary Jacobson have forced the towns to come to the table and settle and most of the Towns have come away with reasonable settlements, and are moving on.

However there are still Towns who wish to fight the law and these State mandates. They are lobbying their State Legislators to put up roadblocks to housing compliance or to have the housing obligation totally dismissed.

These include the following:

S1701—Requires every urban renewal entity ( the affordable housing project ) to do a cost benefit analysis for a proposed affordable housing project, prior to being granted a long term tax abatement. The PILOT is needed because the affordable rents can't pay the full property tax burden. These studies cost thousands of dollars and provide no justification for NOT granting the PILOT.

S2693 – would apply Prevailing Wage to all projects that receive any governmental funding. This requirement adds 30% to the cost of projects and would therefore make most new construction projects infeasible, were it to be required. Today there are very few funding

sources for affordable housing, and if enacted, would further limit the development of new housing.

A3782 – Repeals the “Statewide Non-Residential Development Fee Act” which puts a 2% fee on all commercial and market rate development which then goes to fund affordable housing projects within that town. This bill would also abolish COAH placing all its powers under the State Department of Community Affairs.

A249 – Proposes to amend the New Jersey Constitution to prohibit exclusionary zoning however also to eliminate the affirmative obligation on any municipality to construct affordable housing. Pursuant to the amendment, Towns would not have an obligation to actually construct affordable housing units.

A5030 – Seeks to prohibit builders’ remedy, as a method of achieving fair share housing. IF enacted this law would eliminate any power of the State to force a town to comply with their affordable housing obligation.

A5025 – Would require COAH to administer affordable housing obligations on a State-wide basis, rather than as an obligation every town should provide. Again, this would let rich towns off the hook with regard to their obligation or allow towns to sell their obligation to another town.

A5029 – Would prohibit affordable housing obligations exemptions for urban aid municipalities. This would require poor towns to continue to develop more low cost housing, when they already have plenty of affordable housing, and need market rate housing.

These bills are evidence that there continues to be resistance by many towns to fulfill their constitutional obligations with regard to providing affordable housing. This is why the present third round requirements are larger than in the past, because they cover the years from 1999 to 2025, and as a result, larger housing numbers for Towns who have done nothing up to now.

We must not return to the time before 1983 and the Fair Housing Act. Although COAH seemed to work in rounds one and two, it became the subject of derision and disdain from the political arena, and lost its independence in the last administration. The Courts have done a much better job of managing the Towns affordable housing requirements and have finally moved towns to action. I recommend that they be allowed to continue this process.

Tim Doherty, Executive Director  
Project Freedom Inc.  
1 Freedom Blvd  
Lawrence, NJ 08648  
609-278-0075



Michael J. Darcy, CAE  
EXECUTIVE DIRECTOR

Michael F. Cerra  
ASSISTANT EXECUTIVE DIRECTOR

Jon R. Moran  
SENIOR LEGISLATIVE ANALYST

Loretta Buckelew  
SENIOR LEGISLATIVE ANALYST

Frank Marshall  
LEAGUE STAFF ATTORNEY

Statement on Behalf of the New Jersey State League of Municipalities  
Before the Assembly Housing and Community Development Committee  
Regarding the Status of Affordable Housing in New Jersey  
Wednesday, July 25, 2018

On behalf of the League of Municipalities and local elected officials statewide, we express our appreciation to Chairman Wimberly and the members of the Assembly Housing and Community Development Committee for holding this hearing today and restarting what we hope is a meaningful and eventually productive review of the State laws and regulations governing affordable housing.

From the outset, we all should be able to agree that there is a societal need that should be addressed. The League supports a reasonable and rational affordable housing program. Our objectives continue to be to seek solutions and tools to assist local governments in meeting affordable housing needs based on sound planning principles and advancing a reasonable, achievable and fully-funded housing policy.

What has been contested for years is the appropriate methodology to determine the number of units for which municipalities must plan. In March 2015 State Supreme Court issued a ruling that transferred oversight of municipal compliance for affordable housing from the administrative agency, COAH, to the Courts. In doing so, the Court stated that participating municipalities that voluntarily file a declaratory judgment action but have generally not implemented their plans as yet (because they had not been approved by COAH) obtain an additional five months to prepare the "new" Housing Element and Fair Share Plan. At the time, the League noted that this would prove to be a difficult task without an established methodology. This certainly has turned out to be the case.

Consequently, in July 2015, as a result of COAH's inaction and the March 2015 State Supreme Court ruling, approximately 300 municipalities sought a judicial declaratory judgement to voluntary comply.

With all due respect to the Court, the process has proven to be both costly and ineffective as while over 200 municipalities now have judicial determinations or settlements, the process moves on slowly.

This should surprise no one as the State Supreme Court has continually invited the State Legislature and COAH to reenter the playing field. The Court recognized its own limitation to

implementing housing plans, but unfortunately neither the Legislature nor the administrative agency have acted.

The Court process has proven to be timely and very costly. Individual municipalities have expended tens, and in some cases, hundreds of thousands of dollars in court costs, fighting to maintain a balance between sound planning practices and providing sufficient affordable housing. There is no doubt that this figure statewide is in the millions. Continuing down this path must not be an option. The Administration and the Legislature must act.

Going forward, are towns expected to continue to file court document after court document, each with its associated costs, for monitoring? Will the Courts again be expected to determine housing obligations in future rounds? At what point will the Legislature and Administration reenter the playing field on an issue of constitutional significance?

Put simply, there has to be a better way. We must learn the lessons from the past and craft a better path going forward. The need for a comprehensive, statewide policy that is reasonable, achievable and fully funded has never been clearer.

In doing so, the Legislature should consider any and all tools available to facilitate municipal affordable housing goals. The Legislature must modernize the Act to take into account the current market, not that of 1985. Reform must be tied to the State's own planning efforts, also ignored for far too long, take into account where transportation and jobs are located, and where millennials prefer to live.

For instance, if the demographic profile of a municipality that the Fair Housing Act (FHA) requires to be included in every housing element demonstrates that the municipality has not used its power to zone to exclude low and moderate income households, that municipality should not be required to provide deed restricted housing and thereby burden the very class of households the doctrine was designed to assist: low and moderate income households. Although the Legislature amended the FHA to allow municipalities to secure credit for housing that is not deed restricted, the restrictions the Legislature imposed on the right of a municipality to secure credit for housing that is not deed restricted dramatically reduces the credits to which the municipality should be entitled. For example, the municipality cannot secure credit for these unrestricted units unless it secures a signed statement from the household under penalty of perjury certifying the income of the household. Such surveys are notoriously ineffective in capturing all the households who qualify as low or moderate. The Legislature needs to design a more practical standard to enable municipalities to capture all the credits to which they should be entitled.

In addition, the Legislature should explore additional incentives and credits to facilitate compliance, such as credits and appropriate subsidies to provide special needs and supportive housing. The State must work with local governments to put in place the financial assistance needed to make these projects happen.

The Legislature should also consider authorization to expand a municipality's ability to seek off-track improvements from developers. As you know, municipalities are being assigned significant

housing obligations and a good portion of that will likely be met through inclusionary zoning, which means, typically, 4 market rate units for each affordable unit. We are providing to you a copy of a September 2015 report authored by Dr. Robert S. Powell, Ph.D and Gerald Doherty, M.A. of Nassau Capital Advisors, LLC, which attempts, "to analyze the factors that determine how effective the inclusionary zoning strategy is likely to be in delivering privately-financed affordable housing units in New Jersey over the next ten years."

The analysis comes to the conclusion that the State economy is, "...likely to continue to struggle over the next ten years to achieve a level of growth needed to fuel a robust housing market." (See Section 5, page 18.) The report also notes the economic effect of recent shift in "locational preferences" as residents shift increasingly away from suburban and rural areas back to the State's urban centers. (See Section 5, page 18.)

The report's authors, "...find no credible evidence to support the conclusion that New Jersey's economy will be able to increase its historic level of housing production to a level that will allow the inclusionary zoning strategy to come close to achieving the aspirational goals of affordable housing advocates." (See Section 5, point 4, page 19.) In conclusion, the report predicts that, "the inclusionary zoning strategy is capable of delivering a total of between 17,000 to 24,000 new units of low and moderate income housing during the next ten years." (See Section 5, page 21.)

Despite this data, the Courts have driven obligations, be it through settlements or judicial determination, that far exceed what the market can bear. Obviously, this rate of development requires expansion of infrastructure, including roads, sewer and water and schools, to name but a few. If a developer is being allowed to build at an 80-20 ratio, it is perfectly reasonable to expect the same developer to contribute to the necessary upgrades and improvements. Otherwise funding these improvements will fall to local governments, operating under a 2% cap and flat municipal property tax relief funding, and by extension to our taxpayers.

While the state imposed housing requirements proposed an unsustainable level of growth, the State continues to be plagued by foreclosures. In advancing needed reforms, the Legislature should incorporate a strategy to address foreclosures.

The Legislature should work with the Administration and stakeholders to create a viable administrative process. As noted above, the State's Courts are unable to continue this arduous process but municipalities have no other option than the Courts. The Fair Housing Act, adopted in 1985, envisioned an administrative remedy for municipalities to voluntarily comply.

We call your attention to League Conference Resolution 2016-16, copies of which have been provided. This resolution, passed unanimously, recognized that many municipalities have collected affordable housing trust funds while at the same time tax credits and other financial incentives for construction or rehabilitation have been significantly reduced. This impedes the ability of local governments and their partners to advance affordable housing projects. The resolution calls for the creation of a State Housing bank, in which municipalities who were certified either by COAH, a successor to COAH or a court for the prior round and have a current approved Housing Element and a Plan certified by COAH, a successor to COAH or a court, would be

permitted to meet up to 25% of its affordable housing obligation through contributions to the statewide housing bank, which in turn is directed to fund affordable housing projects

Lastly, we would like to note Committee member, Assemblywoman Schepisi. The Assemblywoman's advocacy on behalf of her communities is no small reason why we are here today and many of the bills which she has introduced should be considered as we proceed.

Similarly, we would ask that the members of this Committee act in a bipartisan manner to achieve solutions. There is an old adage that at the local level, there's no Democratic or Republican way to fix a pothole. The League is a nonpartisan organization that advances solutions to benefit all our communities and all our taxpayers. And the League stands committed to working with you because reform to the State's affordable housing laws remains a top priority for Mayors and elected officials across the State. Likewise, we call on bipartisan solutions at the State level to address these issues, which have been left unaddressed for far too long.

**New Jersey State League of Municipalities Resolution No. 2016 – 16**

**Resolution Supporting Legislative Reforms to the Fair Housing Act for a State Housing Bank as a New Creative Tool to Facilitate Municipal Compliance and Generate Housing Funding**

**Approved at the League Business Meeting, November 17, 2016**  
**Approved at the League Resolutions Committee, November 15, 2016**

**WHEREAS**, the New Jersey's municipalities support the provision of affordable housing in a reasonable, rational and achievable way, consistent with economic realities and sound planning; and

**WHEREAS**, the Council of Affordable Housing (COAH) has not adopted regulations to establish the methodology for determining municipal affordable housing obligations since 1999; and

**WHEREAS**, COAH's inability to adopt regulations has now resulted in hundreds of municipalities being forced to seek declaratory judgements in the courts in order to comply with the State imposed municipal affordable housing obligations; and

**WHEREAS**, since 1999 both COAH and the State Legislature have restricted or abolished municipal compliance tools while failing to create new tools and means of compliance to facilitate the construction of affordable housing; and

**WHEREAS**, the Legislature and Administration need to partner with municipalities to facilitate municipal compliance by enabling new tools which generate funding, provide flexibility, promote transparency, provide incentives for municipalities and further the provision of affordable housing; and

**WHEREAS**, many municipalities have collected affordable housing trust funds while at the same time tax credits and other financial incentives for construction or rehabilitation have been significantly reduced, impeding the ability of local governments and their partners to advance affordable housing projects; and

**WHEREAS**, the Legislature and Administration should advance legislation to create a Statewide Housing Bank, in which municipalities who were certified either by COAH, a successor to COAH or a court for the prior round and have a current approved Housing Element and a Plan certified by COAH, a successor to COAH or a court, would be permitted to meet up to 25% of its affordable housing obligation through contributions to the statewide housing bank, which in turn is directed to fund affordable housing projects; and

**WHEREAS**, the Statewide Housing Bank legislation further should provide that any municipality may apply for funding by providing a plan including: 1) all the details relating to an affordable housing project; 2) the number of affordable housing units that will be provided; 3) a proposed timeline; and 4) satisfying any other information or requirements adopted by the Department of Community of Affairs; and

**WHEREAS**, the creation of a State Housing Bank would: 1) provide a compliance tool for municipalities have demonstrated a past and ongoing commitment to affordable housing; 2) provide necessary financial assistance for the provision of affordable housing; and 3) advance the objectives of the Fair Housing Act;

**NOW, THEREFORE, BE IT RESOLVED** by the New Jersey State League of Municipalities, in conference assembled, that the State Legislature and Administration should partner with municipalities so to provide new, flexible compliance tools for municipalities to meet their affordable housing obligations, including but not limited to a Statewide Housing Bank, so to generate new funding and facilitate the actual provision of affordable housing; and

**BE IT FURTHER RESOLVED**, that copies of this Resolution be forwarded to the Governor and Lieutenant Governor of New Jersey, the Commissioner of the Department of Community Affairs, the President of the New Jersey State Senate, the Speaker of the New Jersey General Assembly and all members of the New Jersey State Legislature.

**Demographic and Economic Constraints on the Inclusionary Zoning  
Strategy Utilized for the Production of Low and Moderate Income  
Housing in New Jersey**

**A Report Prepared for the  
New Jersey State League of Municipalities  
222 West State Street  
Trenton, NJ 08608**

**Robert S. Powell, Jr., Ph.D.  
Gerald Doherty, M.A.**

**Nassau Capital Advisors, LLC  
12 Vandeventer Avenue  
Princeton, NJ 08542**

**September 22, 2015**

## ***Introduction***

This report examines the effectiveness and the limitations of a public policy tool which has been used widely in New Jersey to stimulate the construction of affordable housing for low and moderate income persons. This tool is “*the inclusionary zoning strategy*.” Its origins date back several decades to a series of New Jersey Supreme Court cases generally referred to as the *Mount Laurel* rulings.<sup>1</sup>

The New Jersey Supreme Court’s 1983 *Mount Laurel* decision established a constitutional obligation that municipalities, in the exercise of their delegated power to zone, “afford [ ] a realistic opportunity for the construction of [their] fair share of the present and prospective regional need for low and moderate income housing.”<sup>2</sup> Thereafter, the New Jersey Legislature enacted the Fair Housing Act (FHA) in 1985 codifying the Court’s constitutional holding, and setting forth the particular means and strategy by which municipalities were to satisfy this obligation. The FHA created the Council on Affordable Housing (COAH), and directed that agency to implement rules and procedures for the implementation of the Court’s policy.<sup>3</sup>

A fundamental strategic tool the Court and Legislature both envisioned that municipalities will utilize to establish a realistic opportunity for the creation of low and moderate income housing is inclusionary zoning. This strategy aims to create significant financial incentives to private developers, in the form of favorable zoning policies which provide density bonuses for development in certain areas of a community. In return, developers agree to use a portion of the profits obtained from the density bonuses to subsidize the construction of a certain number of low and moderate income housing units.

In recent years, inclusionary zoning plans have provided density bonuses to private developers throughout the state, who in return, have set aside up to 20% of the total number of units built for low and moderate income persons.

The primary reliance on private capital, as opposed to public subsidies, is a fundamental element of New Jersey’s affordable housing strategy. The FHA specifically noted that nothing in that statute “shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing.”<sup>4</sup> In its proposed set of Third Round Substantive Rules published in the N.J. Register June 2, 2014, the N.J. Council on Affordable housing affirmed that the “production of affordable housing relies primarily on the private sector ....”<sup>5</sup>

The inclusionary zoning strategy is organized around an economic bargain with private developers. The strategy assumes that there is an enormous, untapped demand for new market-rate housing in New Jersey, and a primary barrier to the satisfaction of this demand by the private sector is the artificial constraint on the market represented by restrictive municipal zoning.

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<sup>1</sup> *S. Burlington Cnty. NAACP v. Twp of Mount Laurel*, 92 N.J. 158, 205 (1983; see also *So. Burlington Cty. N.A.A.C.P., et al. v. Mount Laurel Tp., et al.*, 67 N.J. 151 (1975) (*Mount Laurel I*), and subsequent decisions, including *Hills v. Bernards Township*, 103 N.J. 1 (1986), *Toll Bros. v. West Windsor Township et al.*, 173 N.J. 502 (2002).

<sup>2</sup> *Ibid*

<sup>3</sup> *Fair Housing Act*, L. 1985, c 222. N.J.S.A. 52:27D-301

<sup>4</sup> *FHA 52:27D-311.(d)*

<sup>5</sup> *N.J. COAH Proposed Third Round Substantive Rules published June 2, 2014, Section 5:99 1.1 (d)*

Therefore, the strategy presumes that if local governments selectively relax zoning constraints on private developers in certain portions of municipalities by granting developers generous density bonuses to build market rate housing, then New Jersey will experience a substantial boom in the production of market rate housing. This will result in creation of excess profits, which developers will invest back into private subsidies for construction of affordable units, in accordance with the mandates of the inclusionary zoning regulations.

The inclusionary zoning strategy can succeed only to the extent that private developers are willing to invest substantial amounts of capital in the New Jersey housing market. Thus, the production of affordable housing over the next ten years is largely dependent upon the ability of the New Jersey economy to support the production of new market rate housing by private developers in quantities sufficient to subsidize the desired number of affordable units.

The determination of the financial feasibility of inclusionary zoning plans is a fundamental element of the legislative intent of the FHA, and this concept has been affirmed by the courts. The FHA mandates that COAH, in establishing standards for substantive certification of municipal inclusionary zoning plans, consider whether the proposed percentage of units to be reserved for low and moderate income persons in such zoning plans is “based on economic feasibility with consideration for the proposed density of development.”<sup>6</sup> The FHA further directs municipalities to consider that “[r]ezoning for densities [should] assure the economic viability of any inclusionary developments....”<sup>7</sup>

With the passage of the Fair Housing Act and the establishment of COAH, zoning plans for inclusionary developments were initiated by municipalities throughout the state pursuant to the First Round Certifications issued by COAH in 1988. Thereafter, COAH required municipalities to file annual reports on such plans. These reports were to include the potential number of new units authorized by inclusionary zoning enactments approved by each municipality, and the number of new units actually constructed pursuant to such plans. COAH provides a summary of such reports on its website. The data covers the period from approximately 1990 – 2010.<sup>8</sup>

We tallied a summary of these reports. We found that for the 20-year period 1990 – 2010, municipalities have reportedly incorporated inclusionary zoning provisions in their respective land use plans authorizing a total of 35,910 units of low and moderate income housing units to be built. Of this number, 16,870 affordable units (approximately 47% of the total authorized by zoning) have actually been constructed statewide over this 20-year reporting period.

This report is divided into five sections.

**Section I** summarizes the state-wide need for low and moderate income housing over the next ten years in New Jersey as projected by two recent expert assessments. The first assessment is made in a series of recent reports prepared by David N. Kinsey, Ph.D. on behalf of the Fair Share Housing Center (FSHC). The reports in the FSHC assessment are identified in footnotes 10 and 11. The second assessment was

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<sup>6</sup> 52:27D-307(e)

<sup>7</sup> 52:27D-311(a)(1)

<sup>8</sup> [www.nj.gov/dca/services/lps/hss/archive.html](http://www.nj.gov/dca/services/lps/hss/archive.html). See “COAH Status and Information,” and then “COAH Jurisdiction,” and then “Proposed and Completed Affordable Units.” The data is based upon municipal reports as of 3/1/2011, for years 1990 through 2010. Time periods covered by these reports have been confirmed with senior COAH officials.

prepared for the N.J. Council on Affordable Housing (COAH) in a report with appendices, prepared by Rutgers University Center for Urban Policy Research, Edward J. Bloustein School of Planning and Public Policy under the direction of Robert W. Burchell, Ph.D. The report is identified in footnote 9.

Our report provides a summary of these assessments of need for affordable housing for background purposes only. This report will not evaluate the methodologies or findings of these assessments of need. Rather, the focus of this report is *to evaluate the effectiveness of the inclusionary zoning strategy as a delivery mechanism of affordable housing*, without regard to the statistical extent of that need.

**Section 2** examines the historical levels of new housing production in New Jersey over the past twenty-five years. This section also examines the relationships between new housing production historically and several fundamental macroeconomic and demographic factors which commonly are used to assess the health of the New Jersey housing market, including the rate of new household formation, employment growth, population changes, and growth in Gross State Product. The purpose of this section is to provide the analytical basis for a realistic forecast of the performance of the New Jersey housing market over the next ten years.

**Section 3** examines the recent shift in the location of new housing development in New Jersey, away from rural and suburban municipalities, back into the state's older, more densely-populated towns. This shift has been significant. The trend has enormous implications for the effectiveness of the inclusionary zoning strategy, because, assuming the trend continues, it will result in a growing percentage of all new housing units developed over the next ten years being located in towns which, as a matter of state policy, have no affordable housing obligations under the *Mount Laurel* mandate. This will mean that a significant portion of the total production of new housing will be outside the reach of the inclusionary zoning strategy, thus diminishing the effectiveness of the strategy in meeting affordable housing goals.

**Section 4** analyzes a structural limitation on the ability of the inclusionary zoning strategy to meet the needs of more than a quarter of the low and moderate income households in New Jersey. The limitation arises from the fact that the judicial and legislative definitions of those who are deemed to be "low and moderate income" persons includes persons who are extremely poor, and thus unable to afford even a low-income unit produced by private developers under the rules of the inclusionary zoning strategy.

**Section 5** provides our findings and conclusions. We will assess the likelihood that the New Jersey economy is capable of producing a sufficient volume of new market-rate housing over the next ten years, such that, in tandem with the inclusionary zoning strategy, the state can succeed in achieving the ambitious goals for affordable housing set by advocates and public policymakers.

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### **Section 1: Projected Need for Affordable Housing in New Jersey: 2015 – 2025**

Two authoritative studies of the future need for affordable housing in New Jersey were recently published. The first was produced under the sponsorship of the New Jersey Council on Affordable Housing (COAH) as part of COAH's proposed Third Round Substantive Rules in 2014. This study was prepared by Rutgers University Center for Urban Policy Research, under the direction of Principal Consultants Robert W. Burchell, Ph.D.; William Dolphin, M.A.; and Jinwoo Kwon, M.R.P. The study,

dated April 27, 2014, was included as a series of Technical Appendices to the proposed Third Round Substantive Rules of COAH.<sup>9</sup> This study is referred to herein as the “Rutgers-Burchell Study.”

The second study was produced under the sponsorship of the Fair Share Housing Center, with offices in Cherry Hill, NJ, and was prepared by David N. Kinsey, Ph.D., FAICP, PP. This study was dated April 16, 2015.<sup>10</sup> This study was updated on July 17, 2015 with a number of technical revisions and corrections, focusing primarily on adjustments to the fair share needs of several municipalities as set forth in the April 16, 2015 study. The April 16, 2015 study as modified by the July 17, 2015 revisions are together referred to herein as the “FSHC-Kinsey Study.” The FSHC-Kinsey Study followed an earlier analysis of New Jersey low and moderate income housing needs prepared by Dr. Kinsey in cooperation with Art Bernard, PP, for the Fair Share Housing Center, dated July, 2014.<sup>11</sup>

These two separate assessments of need use statistical methodologies and demographic analysis which have much in common. However, the conclusions of the two reports are dramatically different.

The Rutgers-Burchell Study concludes that the prospective need for affordable housing for the period 2014 – 2024 is 30,633 new units; in addition, another 21,558 units are needed as a result of the “unanswered obligations” mandated by COAH for the period 1987 – 2014, but which were not produced, for a total projected need over the period 2014 – 2024 of 52,191 units. This Study also identified an additional 62,859 units needed as “Rehabilitation Share,” for a total need of approximately 115,000 units.

The FSHC-Kinsey Study examined the prospective need for new units for a similar ten-year period (2015 – 2025) and also took into account the unanswered obligations from past years (1999-2014). After making adjustments for such factors as filtering, demolitions, and conversions, the FSHC-Kinsey Study concluded that the total prospective need for the period 2015 – 2025 is 201,382 affordable units. When this Study included unfulfilled past obligations and the rehabilitation share for existing housing, the Study need totaled nearly 350,000 units.

The aggregate need determined by the FSHC-Kinsey Study therefore is more than three times the need determined by the Rutgers-Burchell Study.

As noted earlier, an analysis of the data, methodologies and assumptions used by these two experts in preparing their respective forecasts, is beyond the scope of this report. Both reports confirm that the level of need for more affordable housing in New Jersey is substantial. Quantifying the exact number of new units needed will undoubtedly be the subject of vigorous debate among experts over the next several years.

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<sup>9</sup> *Municipal Determination of Rehabilitation Share, Fair Share, and Unanswered Prior Obligation – to 2024; Appendices A, B, C, D and E, for New Jersey Council on Affordable Housing, Third Round Substantive Rules, Technical Appendices, Prepared by Rutgers University Center for Urban Policy Research, New Brunswick, NJ, Principal Consultants Robert W. Burchell, Ph.D., William Dolphin, M.A. and Jinwoo Kwon, M.R.P., dated April 27, 2014.*

<sup>10</sup> *FSHC Report dated April 16, 2015 entitled “New Jersey Low and Moderate Income Housing Obligations for 1999-2025, Calculated Using the NJ COAH Prior Round (1987-1999) Methodology,” prepared by David Kinsey, Ph.D., FAICP, PP.*

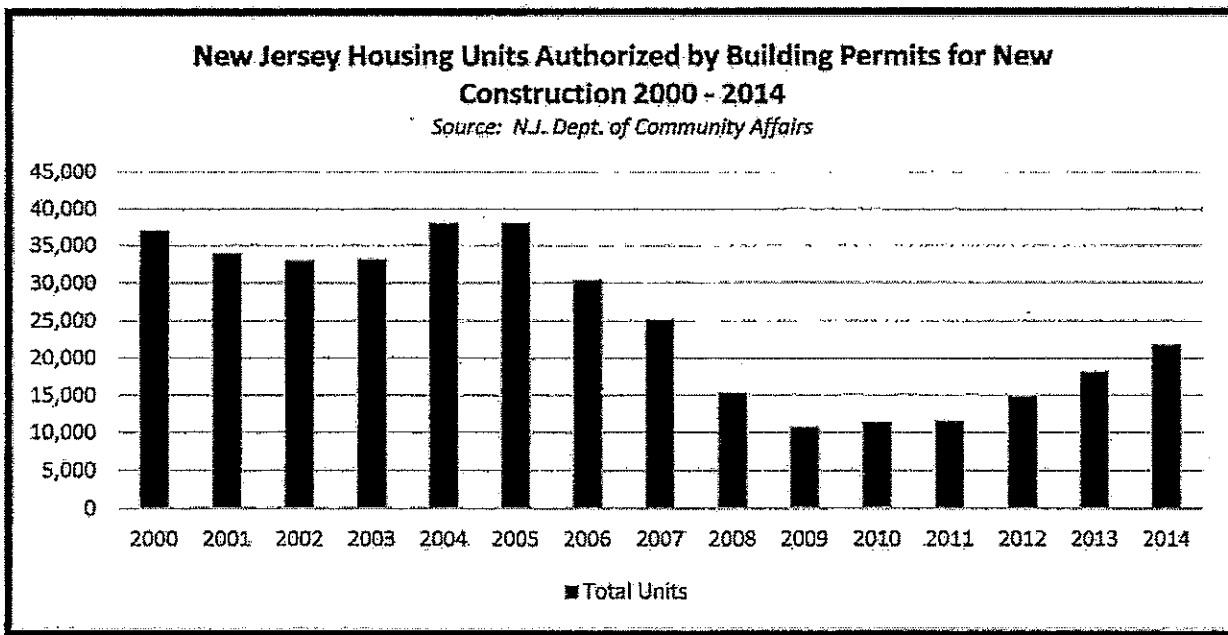
<sup>11</sup> *FSHC Report dated July, 2014, entitled “New Jersey Low and Moderate Income Housing – Prospective Need for 1999-2024, Using the NJ COAH Prior Round (1987-1999) Methodology,” prepared by David N. Kinsey, Ph.D., FAICP, PP and Art Bernard, PP.*

The focus of this report, on the other hand, is to examine the effectiveness of one method of delivery of affordable units, namely the inclusionary zoning strategy, in whatever quantity policymakers agree is the correct number.

**Section 2: Housing Production in New Jersey: The Key Demographic and Economic Factors that Drive the Housing Market**

In 1990, according to the NJ Department of Community Affairs, a total of 17,527 building permits were issued for the construction of new homes in New Jersey. This figure (and the building permit figures for new housing which follow here) include one-and two-family units, multi-family units such as garden apartment complexes, and new residential units as part of mixed-use projects.<sup>12</sup>

During the most recent 15-year period (2000 – 2014), as the following chart illustrates, new housing permits fluctuated from a high of 38,000 permits in 2005 to a low of 10,800 in 2009.



During this most recent 15-year period, despite cyclical ups and downs, the trend in new housing production in New Jersey is headed gradually downward.

Thus, for the past 15-year period (2000 – 2014), the average number of new residential permits issued each year was 24,942.

<sup>12</sup> Note that, while the number of permits issued for new housing construction year to year provides a reliable indicator of the health of the housing market, less than 100% of such permits issued result in actual certificates of occupancy for such new homes for a variety of reasons.

However, for the most recent 10-year period (2005 – 2014), the average dropped to 19,845 permits per year.

For the most recent 5-year period (2010-2014), marked in many other states as a period of robust recovery from the recession, average new housing production in New Jersey dropped even further, to 15,646 permits per year.

**Historical Trends  
New Jersey New Housing Permits Issued  
2000 – 2014**

Source: New Jersey Department of Community Affairs

Time Period	Average Number New Housing Permits Issued Annually
2000 – 2014 (past 15 years)	24,942
2005 – 2014 (past 10 years)	19,845
2010 – 2014 (past 5 years)	15,646

Factors Driving Demand for New Housing

It is widely accepted among economists that “[N]et household growth is the largest single driver of demand for new housing units”<sup>13</sup> Thus, in assessing the future direction of the New Jersey housing market, one focuses on the extent to which the number of households in the state is likely to grow.

The demographic measurement of households in a state first requires calculation of what is known as the “headship rate,” which is the probability that a person in the population is a head of a household. Headship rates vary by age group, so that persons under age 18 will have a low headship rate, and the rate increases with each age group as persons form households. Demographers project changes in the number of households over time by first projecting the population of various age groups, and then multiplying those population estimates by the headship rates of each age group. Since household growth is a key component of the demand for new housing, forecasters look at the underlying economic factors which impact both headship rates and population, over time.

<sup>13</sup> George S. Masnick, Daniel McCue and Eric S. Belsky, “Updated 2010-2020 Household and New Home Demand Projections,” Joint Center for Housing Studies, Harvard University, September 2010, p. 33.

Changes in headship rates and thus the pace of household formation have been shown to be driven generally by two factors: demographic changes within the population, and the health of the underlying economy.<sup>14</sup>

Headship rates and thus household formations tend to increase with age, while recessionary forces in the economy tend to reduce household formation, as young people are less willing and able to establish their own households, and continue living with their parents. Slow or negative economic growth also diminishes job prospects, and the recent recession led to a tightening in home mortgage credit, making it more difficult to obtain a mortgage. Such factors have caused more young persons to defer purchasing a home.

The Joint Center for Housing Studies at Harvard University, in its State of the Nation's Housing 2014, noted that "while headship rates across income groups have been relatively constant over the past 10 years (2004 – 2014), growth in each group has not....," and further noted that "difficult economic and housing market conditions ... reduced headship rates among the native born" as well as among immigrants.<sup>15</sup>

The Joint Center's most recent report, the State of the Nation's Housing 2015, concluded its outlook for this current year with an emphasis on the importance of continued employment growth as a key element in improving otherwise tepid national housing demand:

*Despite the slowdown in 2014, the housing market recovery could regain steam in 2015 if continued employment growth helps to lift household incomes. But the lingering effects of the housing crash and Great Recession continue to impede the recovery. Millions of owners still have little or no equity in their homes and/or damaged credit histories, dampening demand in both the first-time buyer and trade up markets. Although members of the millennial generation are starting to find their footing in the job market and helping to propel rental demand, many of these young adults are saddled with rent burdens and student loan payments that will slow their transition to homeownership.*<sup>16</sup>

A recent report from the respected Pew Research Center, which focuses on social and demographic trends in the U.S. noted that one of the nation's most rapidly-growing demographic groups, the "Millennials," appear to be forming households today at a slower pace than was the case before the recent great recession. The Pew Report noted that "the nation's 18- to 34-year olds are less likely to be living independently of their families and establishing their own households today than they were in the depths of the Great Recession."<sup>17</sup>

The Pew research report went on to note that the declining rate of household formation among millennials has very negative implications for the growth of the housing market in the years ahead:

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<sup>14</sup> "Household Formation and the Great Recession," Timothy Dunne, *Data Analysis, Economy, Think Tank*, August 23, 2012 [[www.ritholtz.com/blog/2012/08/household-formation-and-the-great-recession/](http://www.ritholtz.com/blog/2012/08/household-formation-and-the-great-recession/)].

<sup>15</sup> Joint Center for Housing Studies, Harvard University, *State of the Nation's Housing 2014*, pp. 12 – 13.

<sup>16</sup> Joint Center for Housing Studies of Harvard University, *The State of the Nation's Housing 2015*, p. 6

<sup>17</sup> "More Millennials Living with Family Despite Improved Job Market," by Richard Fry, Pew Research Center, July 29, 2015, <http://www.pewsocialtrends.org/category/publications/>, Page 1.

*The decline in the rate at which young adults are forming households from 2007 to 2015 has had a negative impact on the demand for the nation's housing and, in turn, residential construction. Because of the recession, there are substantially fewer households than would have been predicted based on population growth; using CPS (Current Population Survey) data through 2011 an economist estimated that the shortfall in the number of young adult households accounted for almost three-quarters of the total 2.6 million shortfall in households throughout the economy. In other words, young adults have been a key demographic in the nation's housing bust. Four years later, the rate at which they are forming households is no higher than it was in 2011.<sup>18</sup>*

Moving from projections for the U.S. economy to New Jersey, headship rates and therefore growth in number of households in this state are also expected to be flat over the next 10 years. As discussed below, this forecast is based on projected below-average economic growth in New Jersey, and below-average increases in employment and population.

In the FSHC-Kinsey Study, Dr. Kinsey acknowledged that his methodology

*takes a conservative approach to headship rates, adopting the actual headship rates observed from the 2000 Census through the current, most recent available headship rate, from the 2013 American Community Survey one-year data, and constant, flat headship rates from the present through 2015, consistent with the JCHS [Joint Center for Housing Studies] projection.<sup>19</sup>*

The Rutgers-Burchell Study utilized similarly conservative projections of headship rates in New Jersey, and therefore, conservative projections for the growth of households from 2014 – 2024:

*Household sizes in New Jersey have increased slightly over the last two decade; conversely, headship rates have slightly decreased..... Headship rates are determined by age group and county in New Jersey and extended into the future at five year intervals at one-half the rate of change observed from 1990 to 2010.”<sup>20</sup>*

Thus, with respect to the primary driver of demand for new residential construction, namely the growth in number of households in New Jersey over the next ten years, there is little evidence to support a projection for a robust increase in housing production in New Jersey over the next decade. This finding must dampen expectations about the ability of the inclusionary zoning strategy to fuel the production of affordable housing.

Demographic trends are not the only indicators of a slow housing market for New Jersey in the next decade. The state's economy has been struggling to recover from the deep recession of 2008 – 2010, and key indicators point to a very disappointing economic performance for New Jersey over the next ten years.

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<sup>18</sup> *Ibid*, page 9; the economist referred to in the text is Timothy Dunne, "Household Formation and the Great Recession," Federal Reserve Bank of Cleveland Economic Commentary, Aug. 23, 2012.

<sup>19</sup> FSHC-Kinsey Report April 16, 2015, p. 17.

<sup>20</sup> Rutgers-Burchell Report, 2014, Technical Appendix p. 10

The Rutgers Economic Advisory Service (R/ECON) is part of the Center for Urban Policy Research at the Edward J. Bloustein School of Planning and Public Policy at Rutgers University. R/ECON's Forecast of the New Jersey Economy in January, 2015 was entitled "New Jersey: The Recovery Continues at a Slow Pace."<sup>21</sup> The key economic indicators forecasted for the state's economy which could have created momentum for the housing market are lagging.

Particularly troubling in this forecast is the employment picture. The forecast shows growth in employment of only 0.3% in 2014 (an addition of only about 10,000 new jobs), after a growth of 1.2 percent (about 44,800 jobs) in 2013. The report noted that:

*At these rates the job base will return to the peak level reached in the first quarter of 2008 in mid-2017. By the end of the forecast period in 2024 the employment base will be about 200,000 jobs greater than its level at the peak (2008).<sup>22</sup>*

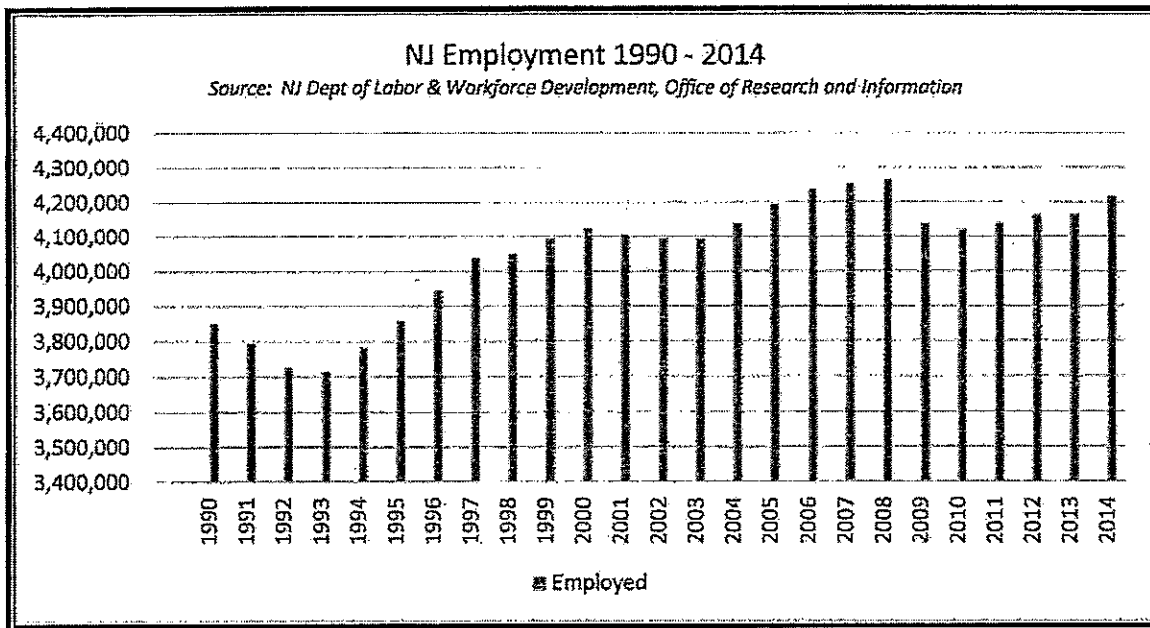
**SUMMARY OF NEW JERSEY ECONOMIC FORECAST**

	2013	2014	2015	2015 to 2024
<b>Annual Percentage Change</b>				
<b>Nonagricultural Employment</b>	1.2%	0.3%	1.4%	0.8%
<b>Real Gross State Product</b>	1.1%	1.0%	2.9%	2.1%
<b>Personal Income</b>	2.3%	3.1%	4.9%	4.4%
<b>Population</b>	0.4%	0.4%	0.6%	0.7%
<b>Consumer Prices</b>	1.4%	1.4%	0.5%	2.4%
<b>Percentage Unemployment Rate (Average)</b>	8.2%	6.7%	5.9%	5.4%

Source: R/ECON, January 2015

<sup>21</sup> "Forecast of January, 2015 – New Jersey: The Recovery Continues at a Slow Pace," Nancy H. Mantell, Ph.D. and Michael L. Lahr, Ph.D., Rutgers Economic Advisory Service; the report reflects preliminary employment data for November, 2014 released in December 2014 by the N.J. Dept. of Labor as well as income data for the first 3 quarters of 2014 released in December, 2014 by the U.S. Bureau of Economic Analysis. It also takes into account the preliminary gross domestic product data for 2013 released by the U.S. Bureau of Economic Analysis in June 2014. U.S. forecast information in the report come from the IHS Economics forecast of December 2014.

<sup>22</sup> R/ECON Forecast of January 2015 New Jersey



The report goes on to note that as of May, 2014, the jobs recovery in the U.S. was complete, with employment gains making up for more than all of the 8.7 million jobs lost in the recession.

But the outlook in New Jersey is not as bright. *“Given its slower recovery and rate of expansion, New Jersey’s share of the nation’s job base will decline from its current 2.83 percent to 2.81 percent in 2024.”*<sup>23</sup>

New Jersey has had one of the most disappointing records of recovery from the recent recession of any of the 50 states. In an assessment of the recovery rates of the states as of 2012, a recent Rutgers Regional Report found that by 2012, all but 12 of the 50 states had returned to a level of “real private-sector GDP” equal to 2007 levels. New Jersey was among the 12 laggards, having recovered only 98.8% of its 2007 real GDP, placing New Jersey 43<sup>rd</sup> among the 50 states in the recovery.<sup>24</sup>

The same analysis indicated that our neighboring states have fared much better in recovery, with New York State recovering 103.3% of its 2007 GDP (and ranking 23<sup>rd</sup> among the states), and Pennsylvania recovering 103.2% of 2007 GDP, and ranking 24<sup>th</sup>.<sup>25</sup>

The broader outlook for New Jersey’s economic output for the next decade is not bright. In a release accompanying the R/ECON 2015 Forecast, Rutgers economist Nancy H. Mantell noted that in terms of real output (as measured by real gross state product), the state’s economy will grow at an average rate of 2.2 percent per year between 2012 and 2033, about 15 percent slower than the average rate expected nationwide.

<sup>23</sup> *Ibid.*

<sup>24</sup> “*Employment, Recession and Recovery in the 50 States: A Further Update*,” Joseph J. Seneca and Will Irving, Rutgers Regional Report Number 36, July, 2013, Rutgers Edward J. Bloustein School of Planning and Public Policy, page 7; GDP data from U.S. Bureau of Economic Analysis.

<sup>25</sup> *Ibid.*

*Dr. Mantell cited the relatively high cost of living and doing business in New Jersey, the state's lower proportion of working-age people and the shift in industrial composition ever more heavily into the service economy, all as contributors to lower real gross state product. Dr. Mantell also called a projected slower average annual increase in population growth in New Jersey throughout the forecast period – 0.6 percent compared with a 0.7 percent national average – as a contributor to the lower real gross state product.<sup>26</sup>*

### **Section 3: The Shifting Location of New Housing in New Jersey: Implications for the Inclusionary Zoning Strategy**

New Jersey's challenging demographics and lagging economy are not the only obstacles to the successful use of inclusionary zoning as a tool for the production of affordable housing. Another obstacle – this one involving shifting patterns of development in the state - presents a different and equally-formidable challenge.

A consensus among recent forecasts for the New Jersey and U.S. housing markets is that, to the extent the market for new housing in the next economic cycle will have any vitality, demand is likely to focus most sharply on rental housing, and on locations which are close to public transportation and employment centers.

In an April, 2012 Regional Report entitled "Demographics, Economics and Housing Demand," Dr. James W. Hughes and Dr. Joseph J. Seneca reported that:

*Demography is destiny! And, just as forecast, the long-anticipated demographic paradigm of the twenty-first century has unfolded almost exactly on schedule.... As a result, the intersection of demography and the new global economic realities has fundamental implications for residential demand and construction that differ somewhat from the prevailing forecasts of the recent past. Consequently, a new economically constrained demography has emerged, with shifting spatial ramifications....*

*Demographic dynamics now in force ... have led to new non-suburban-centric patterns of spatial shelter demand. This is a sharp change from the second half of the twentieth century, when baby boom-driven suburban New Jersey reigned supreme. However, this does not portend the "Death of the American Dream House," nor the demise of suburban New Jersey, although both will never recover their once-vaunted dominant twentieth-century status.<sup>27</sup>*

Writing about the trend away from suburban development, Professors Hughes and Seneca, in a November, 2012 Issue Paper "The Evolving Rental Housing Market in New Jersey" observed that during the period 2000-2009, the underlying dynamics of New Jersey's rental market experienced a marked shift:

<sup>26</sup> News Release: Rutgers Forecast: New Jersey Economy Remains in Recovery Mode but Pace Trails Nation's in Several Key Indicators, December 11, 2013.

<sup>27</sup> "Demographics, Economics and Housing Demand," James W. Hughes and Joseph J. Seneca, Rutgers Regional Report Issue Paper Number 29, April, 2012, Rutgers Edward J. Bloustein School of Planning and Public Policy, p. 1.

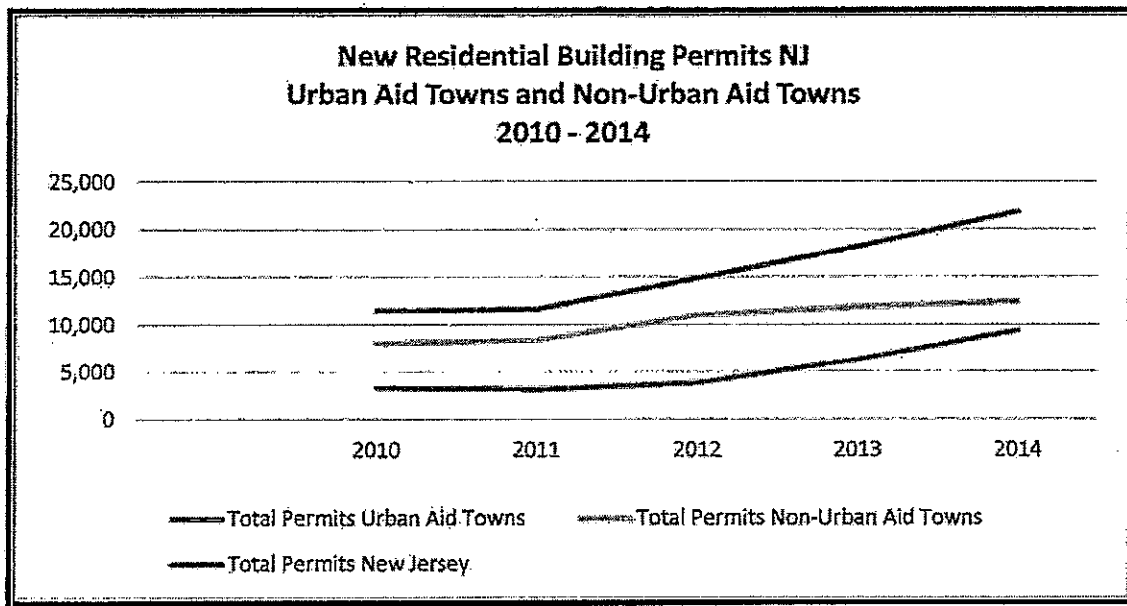
*Suburban areas were no longer the new economic frontiers, and the proliferation of office sprawl slowed from its previous frantic pace. While suburban restrictive-growth policies intensified, young households began to retreat from suburban lifestyles. As the baby-boom echo, born between 1976 and 1994, began to enter the housing market, a more urban focus emerged. The new generation was far less suburban-centric than its parents. This change will be one of the key rental contours of the decade now unfolding.<sup>28</sup>*

Indeed, the data on New Jersey's recovery from the recent recession confirms that this shift in the locational preferences for new housing from rural and suburban communities, back to urban areas, is now underway.

This trend back to urban areas may be welcome news to smart growth advocates, who have long decried New Jersey's historical pattern of suburban sprawl.

But the shift of new housing back to New Jersey's older cities is moving an increasing share of the growth in housing to places which are outside the regulatory reach of the inclusionary zoning strategy.

During the past five years (2010 – 2014), 78,228 building permits were issued statewide in New Jersey for new residential construction. Of this number, 26,263 (34% of the permits) were issued for units located just in the 56 municipalities which receive state urban aid pursuant to the provisions of N.J.S.A. 52:27D-178. See following table, and Appendix A attached here.



Most of these "urban aid" municipalities are among New Jersey's older, more densely-populated communities, and more likely to be served by public transportation than their suburban and rural counterparts. Many of these towns are undergoing substantial redevelopment with the construction of

<sup>28</sup> "The Evolving Rental Housing Market in New Jersey," James W. Hughes and Joseph J. Seneca, Rutgers Regional Report Issue Paper Number 32, November, 2012, Rutgers Edward J. Bloustein School of Planning and Public Policy, p. 5.

large mixed-use projects funded by private capital. The surge in residential redevelopment in many of these 56 towns has also been accompanied (and likely fueled) by growth in employment in new downtown corporate offices and expansion of employment in nearby higher education and health care institutions.

The concentration of new residential development in urban aid municipalities has enormous implications for the effectiveness of the inclusionary zoning strategy. The reason is that these municipalities are exempt from any fair share housing obligations under Mount Laurel mandates.

The policy excluding “urban aid” municipalities from obligations of prospective need dates back to the adoption of COAH’s First Round Rules in 1986, wherein COAH noted that

*The Council determined that it would be inappropriate to distribute reallocated present need and prospective need to urban areas that were in special need of aid. It was determined that such areas have historically housed a disproportionate share of New Jersey’s low and moderate income households and have special problems associated with poverty. The urban aid cities were the only general class of cities to meet these criteria.<sup>29</sup>*

The policy was affirmed in COAH’s most recent proposed Technical Appendices to Third Round Substantive Rules for the period 2014 – 2024 published in June, 2014:

*Urban aid cities do not receive projected need and this need is distributed to all communities in the state according to a combined allocation factor that uses the four allocation factors (land capacity, relative income, non-residential job growth/residential unit growth on a statewide basis.) Each non-urban aid community is adjusted by this additional need. This need is taken from Urban Aid Cities and distributed to all other municipalities.<sup>30</sup>*

Thus, the growing volume of new construction of market rate housing in these urban aid towns over the next decade will produce little, if any, increase in the supply of low and moderate income housing, because such new housing developments will be beyond the reach of the inclusionary zoning strategy. This shift in the location of new housing in the state will significantly handicap the effectiveness of the inclusionary zoning strategy as a delivery mechanism for affordable housing over the next ten years.

#### ***Section 4: The Inability of the Inclusionary Zoning Strategy to Address the Housing Needs of the Extremely Poor***

The financial model which forms the basis of inclusionary zoning presumes that all persons with “moderate incomes” and “low incomes,” as those two levels of household incomes are defined, should have a reasonable opportunity for affordable housing.

Regulations adopted by the N.J. Department of Community Affairs to implement the Fair Housing Act generally define housing created by the inclusionary zoning strategy to be “affordable” for a household

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<sup>29</sup> 18 N.J.R. 1529, comments on First Round Rules, August 4, 1986.

<sup>30</sup> COAH Third Round Substantive Rules, Technical Appendices, p. 59, published New Jersey Register June 2, 2014.

qualifying as “low” or “moderate” income if such household does not have to spend more than 30% of gross income on housing costs.<sup>31</sup>

COAH publishes guidelines which define “moderate” and “low” income persons, differentiated among six geographic regions within the state, and scaled according to the number of persons in the household.

“Moderate Income” is defined as 80% of median income in a region. “Low” income is a single point equal to 50% of median income. “Very low” income is exactly 30% of median income. See *Appendix B* which sets forth the 2014 COAH Affordable Housing Regional Income Limits. These income brackets are used by developers and local officials in setting the pricing for affordable units developed under the inclusionary zoning strategy.<sup>32</sup> Pursuant to the provisions of UHAC noted earlier, the allowable pricing for such owned or rented units is calculated such that generally no more than 30% of an eligible household’s total monthly income should be devoted to housing costs.<sup>33</sup>

For purposes of illustration, as set forth in Appendix B, a 2-person household in Region 1 (Bergen, Hudson, Passaic, Sussex) would be classified as “very low” income if its annual income did not exceed \$20,261 (which is 30% of the median income for a 2-person household in that region in 2014 of \$67,538). That 2-person household would be eligible to occupy an affordable housing unit with an annual housing cost of approximately 30% of that “very low” annual income, or \$6,078. If that “very low income” unit were a rental apartment, the monthly rent and related housing expenses as defined by COAH would be set at \$506.53.

A similar calculation would apply to a “very low income” for sale unit, taking into account costs of a mortgage loan, taxes, insurance and maintenance, the sum of which would also be approximately \$506.53. The COAH rules permit landlords or sellers of such affordable units to require credit and background checks on prospective tenants or buyers, to establish the financial ability of the household to make the required housing payments.

This set of financial guidelines can work reasonably well in assisting households with incomes between 30% - 80% of median income in qualifying for “affordable” units built under the inclusionary zoning program.

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<sup>31</sup> *Uniform Housing Affordability Controls (“UHAC”), N.J.A.C. 5:80-26.6 (b) (price restrictions for ownership units) and 5:80-26.12 (a) (price restrictions for rental units). Note that the formula set forth in the UHAC regulations for calculating the allowable “costs” of owning an affordable unit are somewhat complex. The percentage of monthly income of a qualifying household that can be devoted to such costs of ownership is capped at 28%. The formula for calculating the allowable “costs” of renting an affordable unit include utility charges paid by tenant plus the landlord’s rent charge. The regulations provide that such “rental costs” should not exceed 30% of the monthly income of the eligible household. We have used the somewhat higher cap of 30% of income in our analysis here for all affordable units, whether owned or rented. UHAC is a set of regulations adopted in 2001 and amended in 2004 by the N.J. Department of Community Affairs to implement the N.J. Fair Housing Act.*

<sup>32</sup> *N.J.A.C. 5:80-26.4(a)*

<sup>33</sup> *Note that this housing cost to allowable income standard is not a “sliding scale.” That is, the allowable housing cost for a moderate income household is fixed at 30% of exactly 80% of median income for such household in a region, even though a moderate income household can be so designated if it has annual income as low as 51% of median or as high as 80% of median. Thus, households in the lower end of an affordable income bracket may have to pay more than 30% of actual annual income for housing costs in an affordable unit.*

The strategy, however, fails to address the needs of households whose incomes are significantly below 30% of median. *The pricing of the least expensive ("very low income") affordable units is significantly above the ability to pay for those households with incomes 20% or less than median.*

To illustrate this structural limitation in the inclusionary zoning strategy, we recalculated the 2014 N.J. COAH income limits by region and household size, focusing only on those households *with annual incomes of 20% of median or less*. We labeled this group of households as "*extremely low income*" as distinguished from the "*very low income*" households with incomes of at least 30% of median income.

Region	Annual Income 20% of Median ("Extremely Low Income")	Household Size							
		1 Person	2	3	4	5	6	7	8
1	Bergen, Hudson, Passaic, Sussex	\$11,819	13,508	15,196	16,884	18,235	19,586	20,937	22,288
2	Essex, Morris, Union, Warren	12,686	14,498	16,311	18,123	19,573	21,022	22,472	23,922
3	Hunterdon, Middlesex, Somerset	14,700	16,800	18,900	21,000	22,680	24,360	26,040	27,720
4	Mercer, Monmouth, Ocean	12,966	14,818	16,670	18,523	20,005	21,486	22,968	24,450
5	Burlington, Camden, Gloucester	11,410	13,040	14,670	16,300	17,604	18,908	20,212	21,516
6	Atlantic, Cape May, Cumberland, Salem	10,217	11,677	13,136	14,596	15,764	16,931	18,099	19,266

These "*extremely low income*" households seeking affordable housing created under the inclusionary zoning strategy would need to pay housing costs associated with units priced for "*very low income*" households, whose incomes are 50% or more higher than the "*extremely low income*" households (i.e., 30% of median vs. 20% or less of median).

As the following tables illustrate, these "*extremely low income*" households would need to pay approximately 45% or more of total income for housing expenses (rent or ownership costs) in a "*very low income*" unit. Such a housing cost burden is contrary to UHAC guidelines, because it would place an unmanageable financial burden on such households.

<b>COAH Allowable Housing Expense</b> <b>@ 30% of "Low Income" Level</b>									
Region		<i>Household Size</i>							
		1 Person	2	3	4	5	6	7	8
1	Bergen, Hudson, Passaic, Sussex	\$5,319	\$6,078	\$6,838	\$7,598	\$8,206	\$8,814	\$9,422	\$10,029
2	Essex, Morris, Union, Warren	5,709	6,524	7,340	8,155	8,808	9,460	10,113	10,765
3	Hunterdon, Middlesex, Somerset	6,615	7,824	8,802	9,780	10,562	11,345	12,127	12,910
4	Mercer, Monmouth, Ocean	6,130	7,006	7,882	8,758	9,458	10,159	10,859	11,560
5	Burlington, Camden, Gloucester	5,135	5,868	6,602	7,335	7,922	8,509	9,095	9,682
6	Atlantic, Cape May, Cumberland, Salem	4,598	5,255	5,911	6,568	7,094	7,619	8,144	8,670

<b>Allowable Housing Expense for "Very Low Income" Units</b> <b>as Percentage of "Extremely Low Income" (20% of Median)</b>									
Region		<i>Household Size</i>							
		1 Person	2	3	4	5	6	7	8
1	Bergen, Hudson, Passaic, Sussex	45%	45%	45%	45%	45%	45%	45%	45%
2	Essex, Morris, Union, Warren	45%	45%	45%	45%	45%	45%	45%	45%
3	Hunterdon, Middlesex, Somerset	45%	47%	47%	47%	47%	47%	47%	47%
4	Mercer, Monmouth, Ocean	47%	47%	47%	47%	47%	47%	47%	47%
5	Burlington, Camden, Gloucester	45%	45%	45%	45%	45%	45%	45%	45%
6	Atlantic, Cape May, Cumberland, Salem	45%	45%	45%	45%	45%	45%	45%	45%

How many households are impacted by this structural limitation built into the inclusionary zoning strategy?

To determine this, we first examined the projected number of affordable housing units needed by *all low and moderate income households* in New Jersey (i.e., households with incomes between 0% - 80% of median) for the period 1999 – 2025 as calculated by the FSHC-Kinsey Study (*Appendix C: Table 3-A attached*). That total is 284,345 units.

Second, we calculated that same total prospective need to 2025 using the FSHC-Kinsey Study, *but excluded households below 20% of median income ("extremely low income")* (*Appendix C: Table 3-B attached*). That number is 208,606 units.

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We then calculated the difference between the two numbers (*Appendix C: Table 3-C*).

*The result is that, based upon the methodology used in the FSHC-Kinsey Study, 75,739 affordable units is the total number of prospective need in New Jersey through 2025 just by households whose incomes are 20% of median or less.*<sup>34</sup>

This subset of households, which we have classified as “extremely low income households,” represents approximately 27% of all those persons identified in the FSHC-Kinsey Study designated as “low and moderate income households.”

As shown in the table above, in order for the housing needs of these 75,739 “extremely low income” households to be satisfied by the inclusionary zoning strategy, such households would be required to pay 45% or more of household income for housing costs. Such a result is contrary to state affordable housing policy as set forth in the UHAC rules.

Our conclusion therefore is that more than one-quarter of all “low and moderate income households” statewide do not have sufficient incomes to afford even a “low income” housing unit built under the inclusionary development strategy.

Therefore, the inclusionary development strategy, by reason of its financial structure, *and without regard to the total volume of low and moderate income units produced over the next ten years*, is incapable of meeting the housing needs of more than one-quarter of the households targeted for assistance by the strategy.

This finding has significant implications for the reasonableness of government affordable housing mandates which assign numerical goals to municipalities pursuant to the *Mount Laurel* doctrine. Assuming such regulatory mandates include affordable housing goals for “extremely low income” persons, and further assuming towns achieve 100% compliance in satisfying the mandates, the affordable housing thus produced cannot meet the needs of more than 25% of the targeted population.

Thus, that portion of the future need mandate should not be included in the affordable housing goals for municipalities.

### ***Section 5: Summary and Conclusions***

The purpose of this report has been to analyze the factors that determine how effective the inclusionary zoning strategy is likely to be in delivering privately-financed affordable housing units in New Jersey over the next ten years.

Our findings and conclusions may be summarized as follows.

- 1) All key demographic and economic indicators point to a New Jersey economy that has been, and will continue to be, sluggish, slow-growing, and substantially underperforming the U.S. economy (and the economies of our neighboring Mid-Atlantic states). These key indicators describe a New Jersey economy likely to continue to struggle over the next ten years to achieve a level of growth needed to fuel a robust housing market.

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<sup>34</sup> Please refer to *Appendix C: Tables 1-A, 1-B, 1-C, 2-A, 2-B, 2-C and 3-A, 3-B and 3-C*.

- 2) The inclusionary zoning strategy faces a significant obstacle in its ability to produce affordable housing, under any realistic future market conditions, as a result of the recent shift in the locational preferences of the housing market away from suburban and rural communities, and now noticeably towards the state's urban areas. New Jersey's "urban aid" municipalities are likely to attract a growing share of the state's new housing production in the coming decade. Because these municipalities are exempt from the "set aside" rules of the inclusionary zoning strategy, this trend will significantly diminish the effectiveness of the inclusionary zoning strategy in meeting affordable housing goals.
- 3) The inclusionary zoning strategy is designed to address the housing needs of households with incomes of at least 30% of median income. However, approximately 76,000 households in New Jersey have significantly lower incomes (20% of median or below). These "extremely low income" households will not be able to afford even the "very low" income units that may be produced over the next 10 years by the inclusionary zoning strategy. In our opinion, there is no credible financial basis to assign mandates to municipalities to create affordable housing for households with incomes of 20% of median or less, utilizing the inclusionary zoning strategy.
- 4) With respect to the macro-economic outlook for housing production in the state, we find no credible evidence to support the conclusion that New Jersey's economy will be able to increase its historic level of housing production to a level that will allow the inclusionary zoning strategy to come close to achieving the aspirational goals of affordable housing advocates.

We are mindful that prediction of economic and demographic trends into the future is a risky business, and is not an exact science. The many factors and variables that combine to produce such results may change unexpectedly over a ten year period. With those qualifications in mind, and taking into account the multiple challenges to the effectiveness of the inclusionary zoning strategy discussed herein, we have prepared three alternative forecasts for new affordable housing production in New Jersey for the next ten years, which are summarized in the table below.

The three alternative projections are based on the following assumptions:

- (i) an average of 20% of all new housing in New Jersey over the next 10 years will be located in "urban aid" towns (and thus beyond the jurisdiction of the inclusionary zoning strategy)<sup>35</sup>;
- (ii) 60% of all new housing projected to be built statewide over the next ten years (excluding the urban aid municipalities) will be part of an inclusionary development project; and
- (iii) Within this group of 60% of new housing subject to inclusionary development agreements, all such new developments will abide by a 20% "set aside" for low and moderate income households.

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<sup>35</sup> This is a conservative assumption, considering that for the 5-year period 2010-2014, 34% of all new housing in the state was built in these urban aid towns. See Section 3 of this report and Appendix A.

Based upon these assumptions, and taking into account the economic and demographic analysis of the New Jersey housing market presented in Section 2 of this report, we have projected three alternative forecasts for affordable housing production for the next decade, as set forth in the following table.

**Alternative Projections for Affordable Housing Production in New Jersey  
2015 – 2025  
Utilizing the Inclusionary Zoning Strategy**

1	2	3	4	5	6	7
<b>Alternative Growth Assumptions</b>	<b>2015-2025 New Market Rate Units Average Per Year</b>	<b>Aggregate 10-Year Total New Units 2015-2025</b>	<b>Adjusted 10-Year Totals Excluding 20% in Urban Aid Towns<sup>36</sup></b>	<b>New Units 2015-2025 Subject to Inclusionary Development Plan (Assume 60% of Row 4)</b>	<b>Average Set-Aside For Affordable Units In all Inclusionary Developments 2015-2025 (Column 5)<sup>37</sup></b>	<b>Projected Total New Affordable Units 2015-2025</b>
Very Aggressive	40,000	400,000	320,000	192,000	20%	38,400
Optimistic	25,000	250,000	200,000	120,000	20%	24,000
Achievable	18,000	180,000	144,000	86,400	20%	17,280

The first growth assumption, labeled “Very Aggressive,” is shown for purposes of illustration only. It assumes that New Jersey will produce an average of 40,000 new housing units per year during the next ten years (column 2). In our opinion, there is no credible economic or demographic evidence that supports this forecast. The state has not achieved that level of housing production in many decades, even during the recent housing bubble. Considering the numerous economic and demographic impediments to growth which New Jersey is carrying forward into the next decade, such a prediction has little basis in reality.

The reason we include the “Very Aggressive” growth assumptions is illustrate the enormous structural limitation of the inclusionary growth strategy as a delivery mechanism for producing affordable housing over the next ten years.

<sup>36</sup> This column reduces projected new housing permits statewide by 20%, to account for the likelihood that at least 20% of these new units will be built in “urban aid” towns which are exempt from inclusionary zoning mandates. The 20% downward adjustment is a conservative assumption; as noted in Appendix A, 34% of all new housing permits statewide were in “urban aid” towns between 2010-2014.

<sup>37</sup> Reliable historical data are not available on the aggregate percentage of all new housing units built in New Jersey which were part of an inclusionary zoning agreement. For projection purposes here, we have assumed that over the next 10 years, 60% of all new units statewide will be subject to an inclusionary zoning agreement, and that, for such agreements, the average “set aside” will be 20% of the total. This formula thus equates to an average of a 12% “affordable housing set aside” for all new units projected statewide outside the urban aid towns (i.e., 60% of total units times 20% set aside = 12% of total units set aside).

The "Very Aggressive" assumption illustrates that, even if the state's housing market were to perform at such an unprecedented level of production (40,000 units per year for 10 years), the likely result would be the production of only about 38,400 units of affordable housing over the entire ten-year period.

That production figure is approximately 19% of the 10-year need projected by the FSHC-Kinsey Study, and approximately 74% of the 10-year need projected by the Rutgers-Burchell Study.

We have included two less ambitious (and more realistic) forecasts for future housing production. We have labeled these projections "Optimistic" and "Achievable." We find substantial, credible evidence in current economic and demographic trends in New Jersey to support projections of housing production which are bracketed by these two scenarios.

Therefore, we project the production of all new housing units in New Jersey over the next ten years in the range of 18,000 units per year ("Achievable") up to 25,000 units per year ("Optimistic"), for an aggregate total production over the next decade of between 180,000 to 250,000 new housing units.

Based on these projections, with the adjustments and assumptions set forth in the table above, we estimate that the inclusionary zoning strategy is capable of delivering a total of between 17,000 to 24,000 new units of low and moderate income housing during the next ten years.



Robert S. Powell, Jr., Ph.D.



Gerald Doherty, M.A.

September 22, 2015

**APPENDICES**

- APPENDIX A: NJ Building Permits for New Housing in Urban Aid Towns and Statewide 2010-2014
- APPENDIX B: NJ COAH 2014 Affordable Housing Regional Income Limits
- APPENDIX C: Set of data Tables outlining the steps in calculating Projected Number of Low and Moderate Income Households in New Jersey to 2025 with *incomes below 20% of median*, utilizing income data from the FSHC-Kinsey Study

APPENDIX A

NJ Building Permits New Housing  
Urban Aid Towns and Statewide  
2010-2014

Source: N.J. Dept Community Affairs  
nj lom housing trends 1990 - 2014

	A	B	C	D	E	F	G	H	I
1	NJ Urban Aid Year								Totals
2	Municipalities SET 2015	County	2010	2011	2012	2013	2014		2010-2014
3									
4	Asbury Park	Monmouth	11	5	1	0	2		19
5	Bayonne	Hudson	19	17	166	213	34		449
6	Belleville	Essex	10	2	0	17	86		115
7	Bloomfield	Essex	0	1	1	50	558		610
8	Brick	Ocean	54	82	74	101	167		478
9	Bridgeton	Cumberland	5	5	3	4	3		20
10	Camden	Camden	132	112	25	22	6		295
11	Carteret	Middlesex	207	8	0	0	0		215
12	Clifton	Passaic	43	88	95	102	67		395
13	East Orange	Essex	4	0	74	68	13		159
14	Elizabeth	Union	180	58	151	246	236		871
15	Garfield	Bergen	38	32	55	42	130		297
16	Glassboro	Gloucester	99	67	64	66	68		364
17	Gloucester City	Camden	0	0	0	0	0		0
18	Gloucester Twp	Camden	0	0	0	0	0		0
19	Hackensack	Bergen	4	227	3	9	101		344
20	Hillside	Union	5	0	13	12	1		31
21	Hoboken	Hudson	254	308	254	295	253		1,344
22	Irvington	Essex	13	0	17	0	6		36
23	Jersey City	Hudson	246	696	618	1,702	3,281		6,543
24	Kearny	Hudson	5	5	8	14	156		188
25	Lakewood	Ocean	403	377	388	501	649		2,318
26	Lindenwold	Camden	2	0	3	24	0		29
27	Lodi	Bergen	4	6	1	0	8		19
28	Long Branch	Monmouth	12	26	99	79	130		346
29	Monroe	Gloucester	218	63	62	124	37		504
30	Montclair	Essex	4	2	15	5	265		291
31	Mount Holly Twp	Burlington	0	0	1	79	212		292
32	Neptune City	Monmouth	1	1	1	11	6		20
33	Neptune Twp	Monmouth	2	6	3	4	234		249
34	New Brunswick	Middlesex	203	3	0	347	544		1,097
35	Newark	Essex	157	90	266	309	728		1,550
36	North Bergen	Hudson	0	0	0	0	0		0
37	Old Bridge	Middlesex	97	21	35	54	0		207
38	Orange	Essex	82	158	1	152	155		548
39	Passaic	Passaic	1	82	94	125	0		302
40	Paterson	Passaic	236	21	42	97	144		540
41	Pemberton Twp	Burlington	21	23	18	0	0		62
42	Penns Grove	Salem	0	0	1	0	0		1
43	Pennsauken	Camden	10	9	49	4	10		82
44	Perth Amboy	Middlesex	177	35	5	32	25		274
45	Phillipsburg	Warren	0	0	2	4	0		6
46	Plainfield	Union	2	4	2	53	3		64
47	Pleasantville	Atlantic	87	17	5	8	149		266
48	Rahway	Union	4	3	173	118	123		421
49	Roselle Boro	Union	2	1	0	0	0		3
50	Salem City	Salem	2	0	0	0	0		2
51	Trenton	Mercer	69	26	16	148	1		260
52	Union City	Hudson	14	2	1	18	31		66
53	Vineland	Cumberland	80	79	67	90	65		381
54	Weehawken	Hudson	0	36	356	742	507		1,641
55	West New York	Hudson	26	239	364	104	58		791
56	Willingboro Twp	Burlington	2	98	51	25	123		299
57	Winslow	Camden	25	20	1	0	0		46
58	Woodbridge	Middlesex	129	45	160	129	46		509
59	Woodbury City	Gloucester	2	1	0	0	1		4
60									
61	Total New Permits - Urban Aid Towns		3,403	3,207	3,882	6,349	9,422		26,263
62									
63	Total New Permits - Statewide		11,509	11,651	14,935	18,235	31,898		78,228
64									
65	Urban Aid Cities as								
66	Percent of Statewide Total		30%	28%	26%	35%	43%		34%

**APPENDIX B**

**NEW JERSEY COUNCIL ON AFFORDABLE HOUSING  
2014 AFFORDABLE HOUSING REGIONAL INCOME LIMITS**

		1 Person	*1.5 Person	2 Person	*3 Person	4 Person	*4.5 Person	5 Person	6 Person	7 Person	8 Person	Max. Increase** Rentals Sales	Regional Asset Limit***
Region 1	Median	\$59,095	\$63,317	\$67,538	\$75,980	\$84,422	\$87,799	\$91,176	\$97,930	\$104,683	\$111,437		
Bergen, Hudson, Passaic and Sussex	Moderate Low	\$47,276	\$50,653	\$54,030	\$60,784	\$67,538	\$70,239	\$72,941	\$78,344	\$83,747	\$89,150	1.8%	\$163,245
	Very Low	\$29,548	\$31,858	\$33,769	\$37,990	\$42,211	\$43,899	\$45,588	\$48,965	\$52,342	\$55,719	0.00%	
Region 2	Median	\$17,729	\$18,995	\$20,261	\$22,794	\$25,327	\$26,340	\$27,353	\$29,379	\$31,405	\$33,431		
Essex, Morris, Union and Warren	Moderate Low	\$63,430	\$67,961	\$72,492	\$81,553	\$90,614	\$94,239	\$97,864	\$105,113	\$112,362	\$119,611	1.8%	\$173,844
	Very Low	\$50,744	\$54,369	\$57,993	\$65,242	\$72,492	\$75,291	\$78,090	\$84,080	\$89,890	\$95,688	0.00%	
Region 3	Median	\$18,029	\$20,388	\$21,747	\$24,466	\$27,184	\$28,272	\$29,359	\$31,534	\$33,709	\$35,883		
Hunterdon, Middlesex and Somerset	Moderate Low	\$73,500	\$76,750	\$80,000	\$94,500	\$105,000	\$108,200	\$113,400	\$121,800	\$130,200	\$138,600	1.8%	\$199,836
	Very Low	\$58,800	\$63,000	\$67,200	\$75,600	\$84,000	\$87,360	\$90,720	\$97,440	\$104,160	\$110,880	0.00%	
Region 4	Median	\$22,050	\$23,625	\$25,200	\$28,350	\$31,500	\$32,760	\$34,020	\$36,540	\$38,060	\$41,580		
Mercer, Monmouth and Ocean	Moderate Low	\$64,830	\$69,461	\$74,091	\$83,353	\$92,614	\$96,319	\$100,023	\$107,432	\$114,841	\$122,250	1.8%	\$174,209
	Very Low	\$51,664	\$55,568	\$59,273	\$66,682	\$74,091	\$77,055	\$80,018	\$85,946	\$91,873	\$97,800	0.00%	
Region 5	Median	\$19,449	\$20,838	\$22,227	\$25,006	\$27,784	\$28,886	\$30,007	\$32,230	\$34,452	\$36,675		
Burlington, Camden and Gloucester	Moderate Low	\$57,050	\$61,125	\$65,200	\$73,350	\$81,500	\$84,760	\$88,020	\$94,540	\$101,060	\$107,580	1.8%	\$151,043
	Very Low	\$45,640	\$49,900	\$54,160	\$60,675	\$67,190	\$69,808	\$72,426	\$77,032	\$82,638	\$88,244	0.00%	
Region 6	Median	\$17,115	\$18,338	\$19,560	\$22,005	\$24,450	\$25,428	\$26,406	\$28,362	\$30,318	\$32,274		
Atlantic, Cape May, Cumberland and Salem	Moderate Low	\$51,085	\$54,734	\$58,383	\$65,681	\$72,979	\$75,698	\$78,417	\$84,656	\$90,494	\$96,332	1.8%	\$136,680
	Very Low	\$40,868	\$43,787	\$46,707	\$52,545	\$58,383	\$60,719	\$63,054	\$67,725	\$72,395	\$77,066	0.00%	
	Very Low	\$25,543	\$27,367	\$29,192	\$32,841	\$36,490	\$37,949	\$39,409	\$42,328	\$45,247	\$48,166	0.00%	
	Very Low	\$15,326	\$16,420	\$17,515	\$19,704	\$21,894	\$22,769	\$23,645	\$25,397	\$27,148	\$28,900	0.00%	

Moderate income is between 80 and 50 percent of the median income. Low income is 50 percent or less of median income. Very low income is 30 percent or less of median income.

\* These columns are for calculating the pricing for one, two and three bedroom sale and rental units as per N.J.A.C. 5:80-26.4(a).

\*\* This column is used for calculating the pricing for resale and rent increases for units as per N.J.A.C. 5:97-9.3. However, low income tax credit developments may increase based on the low income tax credit regulations.

\*\*\* The Regional Asset Limit is used in determining an applicant's eligibility for affordable housing pursuant to N.J.A.C. 5:80-26.16(b).

Since the COAH Regional Income Limits for 2013 were higher than 2014 figures, the 2013 income limits, shown above, will remain in force for 2014 and until Regional Income Limits surpass the 2013 Regional Income Limits.

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**APPENDIX C**

Low and Moderate Income Housing Needs NJ Projections 1999 - 2025 Adjusted by Eliminating Needs of Households with Incomes Below 20% of Median



**STEP 1: Calculating ALL Low and Mod Income Households by Region 1999 (0% to 80% of Median Income)**

(s: FSHC-Kinsey Study April 16, 2015, p. 19)

		Age of Head of Household										Total
		0-24	25-34	35-44	45-54	55-64	65-74	75-84	85+			
Region												
1	1999	14,694	56,490	71,310	49,342	37,137	46,681	44,301	14,454		334,409	
2	1999	15,022	50,860	62,916	43,012	35,747	39,982	36,822	12,456		296,815	
3	1999	7,611	28,615	37,319	25,034	17,411	24,751	23,023	6,336		170,101	
4	1999	8,128	28,596	36,638	25,280	22,356	40,646	40,498	13,318		215,461	
5	1999	8,392	25,318	30,245	18,767	16,029	24,869	21,677	6,206		151,503	
6	1999	4,717	12,602	14,784	10,627	10,124	14,173	12,964	4,277		84,269	
Total	1999	58,564	202,481	253,212	172,062	138,804	191,102	179,284	57,048		1,252,558	



**STEP 2: Calculating ALL Low and Mod Income Household Projections by Region to July 1, 2025 (0% to 80% of Median Income)**

(s: FSHC-Kinsey Study April 16, 2015, p. 20)

		Age of Head of Household										Total
		0-24	25-34	35-44	45-54	55-64	65-74	75-84	85+			
Region												
1	2025	10,576	42,591	62,948	63,495	62,674	67,488	55,363	24,684		389,818	
2	2025	8,845	49,352	48,617	49,596	55,239	64,339	46,138	21,437		343,564	
3	2025	4,519	23,129	30,258	30,620	37,670	43,752	32,356	14,952		217,255	
4	2025	5,203	35,850	35,034	31,902	43,814	59,861	47,550	25,430		284,644	
5	2025	5,779	29,500	25,656	23,325	28,692	37,643	30,304	15,971		196,870	
6	2025	3,244	14,045	14,192	11,964	16,232	20,436	16,987	7,651		104,751	
Total	2025	38,166	194,466	216,705	210,901	244,321	293,520	228,697	110,126		1,536,902	



**STEP 3: Difference 2015 Projections - 1999 Projections (Increase in LMI Households - 0% to 80% of Median Income)**

(s: FSHC-Kinsey Study April 16, 2015, p. 21)

		Age of Head of Household										Total
		0-24	25-34	35-44	45-54	55-64	65-74	75-84	85+			
Region												
1	2025	-4,118	-13,900	-8,362	14,153	25,556	20,808	11,062	10,230		55,409	
2	2025	-6,177	-1,508	-14,299	6,584	19,492	24,358	9,316	8,981		46,749	
3	2025	-3,092	-5,486	-7,062	5,586	20,259	19,001	9,333	8,616		47,155	
4	2025	-2,925	7,253	-1,604	6,622	21,458	19,216	7,051	12,112		69,183	
5	2025	-2,613	4,182	-4,589	4,557	12,663	12,774	8,627	9,765		45,367	
6	2025	-1,474	1,443	-592	1,337	6,109	6,262	4,024	3,374		20,482	
Total	2025	-20,398	-8,015	-36,507	38,839	105,517	102,418	49,413	53,078		284,345	

**APPENDIX C**

Low and Moderate Income Housing Needs NJ  
 Projections 1999 - 2025 Adjusted by Eliminating Needs  
 of Households with Incomes Below 20% of Median

Source: FSHC-Kinsey Study

**STEP 4: Calculating Low and Mod Income Households by Region 1999**

		Excluding Households below 20% of Median Income											
		Age of Head of Household											Total
	Region	0-24	25-34	35-44	45-54	55-64	65-74	75-84	85+			Total	
1999	1	10,534	45,088	59,312	41,061	29,228	37,393	35,072	11,317			269,005	
1999	2	10,265	39,426	50,592	33,815	27,348	31,741	28,758	9,221			231,165	
1999	3	5,804	25,689	33,215	22,171	15,059	21,023	18,658	4,555			146,173	
1999	4	6,035	24,462	31,629	20,407	18,813	35,339	34,204	11,107			181,995	
1999	5	6,700	21,626	25,734	15,540	12,864	21,824	18,904	5,439			128,630	
1999	6	3,659	10,214	12,660	8,665	8,271	12,252	11,294	3,583			70,597	
1999	<b>Total</b>	<b>42,995</b>	<b>166,505</b>	<b>213,141</b>	<b>141,659</b>	<b>111,583</b>	<b>159,572</b>	<b>146,889</b>	<b>45,223</b>			<b>1,027,566</b>	

**STEP 5: Calculating Low and Mod Income Households by Region 2025**

		Excluding Households below 20% of Median Income											
		Age of Head of Household											Total
	Region	0-24	25-34	35-44	45-54	55-64	65-74	75-84	85+			Total	
2025	1	8,389	31,938	48,883	51,462	49,877	55,088	42,866	19,660			308,162	
2025	2	5,383	38,425	40,397	39,126	42,124	50,853	35,719	17,585			269,611	
2025	3	2,904	19,497	25,048	24,430	30,738	36,549	26,562	11,360			177,087	
2025	4	3,960	28,298	29,349	26,890	35,034	49,721	39,449	21,153			233,853	
2025	5	4,096	23,883	20,021	17,539	24,253	32,717	25,783	14,206			162,498	
2025	6	1,853	11,138	10,885	9,852	13,209	16,436	15,313	6,276			84,961	
2025	<b>Total</b>	<b>26,584</b>	<b>153,178</b>	<b>174,583</b>	<b>169,298</b>	<b>195,235</b>	<b>241,364</b>	<b>185,691</b>	<b>90,239</b>			<b>1,236,172</b>	

**STEP 6: Difference: 2025 Projections less 1999 Projections (Projected Increase in LMI Households Excluding those Below 20% Median)**

		Age of Head of Household											Total
		Age of Head of Household											Total
	Region	0-24	25-34	35-44	45-54	55-64	65-74	75-84	85+			Total	
	1	-2,145	-13,151	-10,429	10,400	20,649	17,695	7,794	8,343			39,157	
	2	-4,882	-1,001	-10,195	5,912	14,776	19,111	6,961	8,363			38,445	
	3	-2,899	-6,192	-8,166	2,259	15,679	15,526	7,904	6,804			30,914	
	4	-2,075	3,836	-2,280	6,483	16,221	14,382	5,245	10,046			51,857	
	5	-2,604	2,258	-5,712	1,999	11,389	10,893	6,879	8,767			33,868	
	6	-1,806	924	-1,775	1,187	4,938	4,184	4,019	2,692			14,364	
	<b>Total</b>	<b>-16,411</b>	<b>-13,326</b>	<b>-38,557</b>	<b>27,640</b>	<b>83,652</b>	<b>81,791</b>	<b>38,802</b>	<b>45,016</b>			<b>208,606</b>	

**APPENDIX C**  
**Low and Moderate Income Housing Needs NJ**  
**Projections 1999 - 2025 Adjusted by Eliminating Needs**  
**of Households with Incomes Below 20% of Median**

**STEP 7: Pinpointing # Households with Incomes Less than 20% Median**

TABLE 3 - A Total Prospective Need (units) 1999-2025 With Reallocated Under 65 Need (0% to 80% of Median Income)		TABLE 3 - B Total Prospective Need (units) 1999-2025 With Reallocated Under 65 Need (Excluding Households Below 20% Median Income)		TABLE 3 - C The Difference: Projected Need of Just Households with Income Less than 20% of Median	
Region	Units	Region	Units	Region	% of Total Need
1	58,012	1	42,445	1	26.83%
2	56,866	2	42,128	2	25.92%
3	52,028	3	38,395	3	26.20%
4	55,844	4	39,126	4	29.94%
5	40,519	5	31,601	5	22.01%
6	21,076	6	14,910	6	29.26%
<b>TOTAL</b>	<b>284,345</b>	<b>TOTAL</b>	<b>208,606</b>	<b>TOTAL</b>	<b>75,739</b>
					<b>26.64%</b>

**Written Testimony Before the  
New Jersey General Assembly Housing and Community Development  
Hearing on the Affordable Housing Needs of the State**

**July 25, 2018**

**By**

**Alexander M. Smith**

**Mayor, Scotch Plains, New Jersey**

Chairman Wimberly, Vice Chairwoman Chaparro, and distinguished members of the Assembly Housing and Community Development Committee, I am Mayor Al Smith from Scotch Plains, New Jersey, and I thank you for the opportunity to speak to you about what is perhaps one of the most important issues facing our state.

Since being sworn-in as Mayor in January 2017, one of the most significant challenges my Township Council colleagues and I have faced is settling our state-mandated, third-round affordable housing obligations, which we finally did in April 2018.

First, let me say that the people of Scotch Plains are not against affordable housing. We are a caring, inclusive town, and we are working hard to meet our constitutional obligation as it relates to affordable housing. There is no doubt that we need to provide affordable housing in New Jersey. When I campaigned for Mayor in 2016, it was very obvious that there is an affordable housing need for low and moderate-income families, seniors, millennials, veterans, and those with special needs as well as many other groups.

To implement our affordable housing settlement, Scotch Plains will have to allow for the building of approximately 2,655 living units, of which only 454 will be deemed affordable units. This has to be done in seven years. Scotch Plains currently only has about

7,500 units. Our affordable housing settlement, if implemented in its entirety, will lead to a 35% increase in the number of housing units, and assuming an occupation rate of 2.5 persons per unit, will lead to an additional 6,638 residents or a 28% increase in our current population of 24,064. It also cost the township over \$250,000 in legal, planning and court costs to produce this overburdening, overdevelopment settlement.

Scotch Plains has no train station, limited bus service, and limited resources to handle this new capacity of units and population. Can our aging infrastructure, filled school system, and first responders handle this surge in population? In the court process, these critical questions are not addressed, creating a recipe for disaster for municipalities.

Based on my experience in Scotch Plains, the current court-driven process is out of control and will result in the mindless building of high density residential projects, which in many cases will be built in areas not suited for high density housing while breaking the resources and infrastructure of municipalities. And the sad fact is that it will not effectively or efficiently fulfil our state's affordable housing need, whatever the real affordable housing demand is.

The principal method of meeting affordable housing needs is with inclusionary rental housing developments that only provide a 15% set-aside for affordable housing units, which are the classic builder's remedy projects. I believe the affordable housing numbers are not currently being calculated in a transparent way, which is why the State Legislature again needs to take responsibility for calculating the numbers. In my opinion, profit motives have compromised the original Mt. Laurel intent of providing affordable housing

to providing developers with enormous profit, while leaving taxpayers to deal with the consequences of overdevelopment.

So here are my recommendations to make the process more realistic:

1). Shift the determination of affordable housing obligations from the courts to the State, making sure that affordable housing needs are transparently calculated by an independent group that reflects the current population growth of New Jersey.

2). Distribute affordable housing requirements by region considering the resources of each region with additional State support required when necessary. Include the mayors in each region to understand development opportunities, infrastructure needs, transportation options, and impact on schools, town services, and town population growth.

3). Make the minimum affordable housing set-aside percentage for a builder's remedy 30 percent. For Scotch Plains, our total number of new residential units would drop from 2,655 to 1,513, while still providing 454 affordable housing units.

4). Provide additional state funding for children living in affordable housing units and attending the local public school system helping to remove one of the biggest obstacles to implementing affordable housing while caring for the overburdened New Jersey taxpayer.

5). Allow municipalities to set-aside up to 50 percent of affordable housing in a project for their low-income residents who need housing and want to stay in their community. For example, the lack of affordable units makes it difficult for the township

to retain its firefighters. Additionally, in a recent town survey, 20 percent of Scotch Plains residents indicated they would take advantage of affordable housing options.

6). Affordable Housing projects containing greater than 20 units should be coordinated with NJ Transit, County Planning Boards and other Regional Planning Groups to help New Jersey better plan and prepare for their residents.

Assemblywoman Holly Schepisi, a member of this Committee, has already introduced a set of Assembly bills that address many of these recommendations, and I have previously offered to Assembly Majority Leader Lou Greenwald and Assemblywoman Holly Schepisi, to serve on an affordable housing mayors' advisory group. I'm ready to do so.

The time is now for the State Legislature to take the lead on fixing affordable housing.

Thank you.

Alexander M. Smith  
Scotch Plains Mayor  
(908) 322-6700 ext 313  
[alsmith@scotchplainsnj.com](mailto:alsmith@scotchplainsnj.com)

## Manufactured Home Owners Association of NJ 2018 Legislative Priorities

We focus on preserving communities and improving conditions for home owners/leaseholders under the conventional leasehold regime – which will remain the great majority of all parks – at the same time we work on conversion to long-term affordability. That, in turn, leads to defining four legislative and policy objectives:

- (1) Increase security of tenure under existing MH park regimes and provide greater protections for leaseholders where parks are converted to other uses;
- (2) Foster better living conditions and greater affordability in MH parks under existing ownership regimes.
- (3) Facilitate conversion of MH parks to stable long-term affordable forms of tenure through resident cooperatives or non-profit ownership.
- (4) Increase attractiveness of MH park preservation to local government by ensuring adequate credit for long-term affordable MH parks under COAH rules.

### Municipal and Local Level

Protecting and expanding existing local rent control ordinances.

### New Jersey Level

The establishment of a statewide community registration and inspection program administrated by the Department of Community Affairs, and certification program for community managers.

Creating community preservation programs within the Department of Community Affairs, Housing Trust Fund and Housing Mortgage Financing Agency with inclusion of MH in the State's Consolidated Plan

Enacting mandatory relocation and compensation laws for homeowners when communities close.

Amending the Landlord/Tenant process to allow for a reasonable period of time and access to the home for the sale of a MH.

Developing an alternative to landlord tenant courts for resolving homeowner /landlord disputes within the Attorney General's Department of Consumer Affairs.

Working with the state to incorporate manufactured housing communities into the states COAH fair share affordable housing rules.

Sponsoring improvements to the community purchase opportunity laws and the information included in the required notices, and exempting MH cooperatives, non-profit community owners and land trust owners from New Jersey Planned Real Estate Development mandates.

Advocating for the inclusion of MH community projects in Community Development Block grant programs.

Addressing disparities in the property taxation of manufacture housing communities.

### Issues at the Federal level

Support for Senate anti-Blacklisting Bill, House HUD Manufactured Housing Modernization Bill and the MH cooperative bills introduced by Ellison

Federal Budget cuts to Housing Trust Funds, Health Care, CDBG funds, and investment in Affordable Housing programs

HMFA Duty to Serve programs for manufactured housing

Regulatory review of HUD's MH Code process and MHCC. MH in Federal Disaster Recovery p[rograms – FEMA and HUD



## ***Fighting to Protect and Preserve our Manufactured Homes and Communities in NJ***

We are MHOA-NJ, the **Manufactured Home Owners Association of New Jersey**. While we represent the interests of all manufactured home residents, the major focus of our advocacy is toward serving owners of homes in the hundreds of land lease communities in New Jersey. Our members and leaders are homeowners themselves and also serve as volunteer leaders of local, regional or statewide homeowner advocacy groups. MHOA-NJ promotes education, networking and solidarity of manufactured home owners at many levels and we are part of a nationwide network of manufactured home advocates. In New Jersey roughly one percent of our homes are manufactured homes. That may not seem like a lot of homes, but it represents a significant amount of the affordable housing in the state. Many of our manufactured home owners are elderly, on fixed or limited incomes, and the homes that they own are their largest asset.

**Threatened Homeowners** - Today, manufactured home owners are under threat like never before. One threat is "Get rich quick schemes" which tout ownership of manufactured home communities as sure money-makers and encourage "pushing of rents relentlessly" to achieve a 20% capitalization rate. The days of "Mom and Pop" land ownership of communities has given way to control by powerful corporations and real estate moguls. Many of them are today's version of the Robber Barons, driven by a competitive zeal, unscrupulous greed and a mindset of being above the law. Vulnerable and captive homeowners too often become the helpless prey of these predatory community landowners. Manufactured housing is currently the most significant source of unsubsidized affordable housing in the United States but regrettably is now on the "endangered" list due to threat of widespread community closures for change of land use and unconscionable rent increases causing economic eviction of homeowners from their own homes.

### **Our goals for New Jersey homeowners include:**

1. Make sure that all manufactured housing communities have rent stabilization ordinances in place.
2. Create a State registration and Inspection program, similar to the current state program for multi-family dwellings.
3. Secure comparable mortgage and insurance rates as site-built homes.
4. Enforcement of existing laws with appropriate fines based on the severity of the violations.
5. Protect our freedom of association, of speech, and the right to canvass our communities. Enforce New Jersey's anti-retaliation laws and insist on freedom from retaliation and political harassment.
6. Ensure the right to sell our homes in place for a fair price.
7. Provide assistance for alternative ownership of manufactured home communities - land trust, non-profit, HUD owned, and resident owned communities.
8. Prevention of elder abuse and exploitation in manufactured home communities, and to proactively work to make manufactured housing communities good places to "age in Place".

**Stigmas, Stereotypes and Misconceptions** - The typical person is unaware of who lives in manufactured home communities, or what a manufactured home really is. Archaic, inaccurate, and stereotypic terms such as "mobile home" and "trailer park" trigger popular cultural images that fail to accurately depict the significant financial and emotional investment by the individuals, families, seniors, and veterans who reside in contemporary manufactured home communities.

## **Some Important Facts About Manufactured Housing**

**Manufactured homes are not mobile** - Less than 1% of manufactured homes are moved after being installed. Moving them is expensive, impractical and rarely a viable option if conditions become unbearable. The costs of relocating a manufactured home can run in excess of \$15,000.

**Today's manufactured homes are well designed and constructed, yet economical** - Manufactured homes can be designed in a variety of architectural styles to make them virtually indistinguishable from site-built homes. In 2007, the average manufactured home with 1,595 sq. ft. cost \$65,100 or \$40.82 per sq. ft. to build. The average site-built home itself with 2,479 sq. ft. cost \$229,332 or \$92.51 per sq. ft. to build.

**Manufactured housing is home to a significant number of Americans** - Seventeen million Americans live in manufactured housing, and manufactured housing makes up 7% of the nation's housing stock. Manufactured housing represents nearly 11% of housing for families living at 150% or less of the poverty level-5.

**For many people, manufactured housing is their housing of choice** - Today's manufactured homes are safe, energy efficient and last as long as conventionally built homes. For millions of home buyers, a manufactured home is the smart choice; an affordable investment with the potential to appreciate in value.

**People who live in manufactured homes are stable residents** - Contrary to popular belief, manufactured home owners are not necessarily more transient than the general population. They also represent all income levels and all ages. The typical turnover rate in a manufactured housing community is only 2 to 4% per year.

**Manufactured housing is located in all regions of the United States** - Manufactured homes can be found in urban and rural areas and virtually all climatic zones throughout the country.

**Owning a home on rented land is a precarious situation** - Owning a home on the land of another leaves families at the mercy of landowners regarding potential rent increases, community rules, infrastructure investment and maintenance, and potential community closure for a "change of use." It means not having control over your home and your biggest financial asset.

**Residents of manufactured home parks can own and operate their own communities.** Mounting evidence shows that homeowners want the security of community ownership and that they are capable of buying and managing it. Throughout the United States, there are more than 750 resident-owned manufactured home communities.

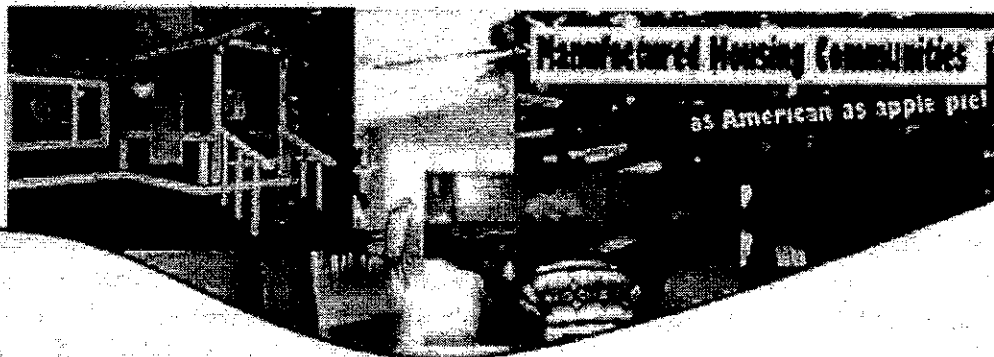
**New Jersey has laws that need to be strengthened and enhanced.** We are a forgotten group of citizens legislatively, in policy matters and enforcement. We need your attention and help. Manufactured Home Owners Association of New Jersey represents the more than 40,000 New Jersey households who own their homes and live in these communities; we are your constituents and we deserve better protection for our homes, our equity in our homes, and our communities. Thank you for meeting with us today and we look forward to working together in the future.

**Manufactured Home Owners Association of New Jersey, Inc.**  
Post Office Box 104, Jackson NJ 08527

For more information: visit [mhoanj.org](http://mhoanj.org) or send a note to [president@mhoanj.org](mailto:president@mhoanj.org)

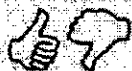


# NJ Manufactured Housing Policy Snapshot



*Thumbs up/Thumbs down  
when compared to other US states*

## MANUFACTURED HOME COMMUNITY ISSUES



**Fundamental freedoms.** Almost half the states affirmatively guarantee fundamental freedoms—such as the right to canvas their neighbors, hold meetings, distribute flyers, and invite public officials and candidates to speak—to residents of manufactured home communities. New Jersey provides no affirmative protections for these fundamental freedoms. However, its anti-retaliation law and its strong for-cause eviction law accomplish at least some of these purposes.



**Protections against retaliation.** Most states, even if they do not provide affirmative protections for fundamental freedoms, at least prohibit community owners from retaliating against residents. New Jersey broadly prohibits retaliation for enforcing any rights, involvement in an organization, or complaining about conditions. N.J. Stat. Ann. § 2A:42-10.10 (made applicable to manufactured housing communities by N.J. Stat. Ann. § 2A:42-10.13).



**Protection against arbitrary eviction.** Some states protect homeowners in manufactured home communities from eviction or nonrenewal of their lease unless they have done something wrong—failed to pay lot rent or violated a rule or a law. New Jersey's law provides this critically important protection, and also provides that a resident cannot be evicted for failure to pay an unconscionable rent increase. N.J. Stat. Ann. §2A:18-61.1. In addition, New Jersey law provides for criminal penalties for landlords who practice self-help evictions (evictions done outside the legal system). N.J. Stat. Ann. §2C:33-11.1. If the lease provides for the resident to pay the community owner's attorney fees in an eviction case, the community owner must pay the resident's attorney fees if the resident wins the case. N.J. Stat. Ann. § 2A:18-61.67.



**Notice before community closure.** About half the states require a substantial notice period before a manufactured home community closes. New Jersey's 18-month notice requirement is stronger than most states, but still delays rather than prevents closure. N.J. Stat. Ann. § 2A:18-61.2.



**Purchase opportunity.** The fundamental reason that homeowners in manufactured home communities are so vulnerable is that they do not own the land under their homes. New Jersey is one of eighteen states with a policy that requires or encourages community owners to give residents the opportunity to purchase the land on which their homes sit. New Jersey's law is extremely weak as it applies only when the community is sold in contemplation of a change in use. N.J. Stat. Ann. §§ 46:8C-10 to 46:8C-15.



**Right to sell home in place.** Manufactured home community owners can effectively prevent homeowners from selling their homes by reserving the right to reject any potential buyer as a resident. Many states—including New Jersey—prohibit arbitrary rejection of a buyer's application for residency. N.J. Stat. Ann. §§ 2A:18-61.3a, 46:8C-3.



**Relocation expenses.** About 15 states have programs, usually funded by community owners, for paying the costs of moving the homes if a manufactured home community closes. New Jersey requires payment of one month's rent as a moving expense, but only when a park is closing because of conversion to a condo, a co-op, or individual ownership of the lots. N.J. Stat. Ann. § 2A:18-61.10. New Jersey's only other relocation expense law, N.J. Admin. Code § 5:24-1.7, provides only that a community owner closing a park can deprive the court of authority to delay an eviction by giving the resident a relocation allowance of five months' rent. Before approving a zoning change that would result in removal of homes, a local governmental unit must determine that adequate private residential facilities exist for relocation of the homeowners. This statute does not require payment of relocation expenses. N.J. Stat. Ann. § 46:8C-21.



**Requirement of lease of at least one year.** About twenty states—including New Jersey—require the owner of a manufactured home community to offer homeowners leases of at least a year. This requirement provides a modicum of security of tenure. N.J. Stat. Ann. § 46:8C-4.



**Requirement that community owner maintain the community.** Many states specifically require manufactured home community owners to maintain common areas, utility service, and other services so that they are clean, safe, and in good working order. New Jersey has only a general landlord-tenant law on this topic, and it does not focus on the particular problems in manufactured home communities. Nor does the state have a statewide registration system for manufactured housing communities or a community inspection program (which New Jersey does have for multifamily developments).



**Resident ability to enforce the laws.** A right without a remedy is unlikely to be effective. Recognizing this, many states specifically provide that residents have the right to enforce the manufactured home community protections. New Jersey provides specific remedies for its protection of the right to sell the home in place, N.J. Stat. Ann. § 46:8C-3, and other protections are usually enforceable through New Jersey's strong consumer protection laws and its for-cause eviction law.



**Administrative complaint procedure.** Some states—but not New Jersey—offer a simple administrative procedure for resolving residents' complaints.



**Right to treat home as real property.** In many states, manufactured homes cannot be treated as real property if they are located in land-lease communities. As a result, homeowners are relegated to high-cost chattel financing rather than regular mortgage loans. New Jersey's law allows manufactured homes to be treated as real estate in a wide range of circumstances, but only if the homeowner owns the land. N.J. Stat. Ann. §§ 39:10-2, 19:10-6, 54:4-1.5.

### **LICENSING ISSUES FOR NONPROFIT DEVELOPERS**

A person may engage in the business of selling manufactured or mobile homes in New Jersey by obtaining either a motor vehicle dealer license or a real estate broker license. To be licensed as a dealer requires a criminal background check, a \$200 fee, and a permanent display building with at least 1000 square feet of space. N.J. Stat. Ann. § 39:10-19.

### **STATE AND UTILITY-SPONSORED WEATHERIZATION PROGRAMS**

The New Jersey Weatherization program, administered by the New Jersey Department of Community Affairs, serves families living in manufactured housing under the same processes and rules as any other household. In addition, PSE&G, Jersey Central Power & Light, Elizabethtown Gas, and several other investor-owned electric and gas companies offer the New Jersey Comfort Partners program, a no-cost efficiency program. It is open to low-income residents living in manufactured housing as long as they heat with gas or electricity. The Department of Community Affairs also administers a utility assistance program that applies to manufactured housing. The Low Income Home Energy Assistance Program (LIHEAP) is designed to help low-income families and individuals meet home heating and medically necessary cooling costs.

### **STATE HOUSING FINANCE AGENCY**

The New Jersey Housing and Mortgage Finance Agency provides a number of programs for purchase, repair and down payment assistance. Information available on-line for the Homeward Bound program and the First-Time Homebuyer program, which provides 30-year fixed rate, do not make specific mention of manufactured homes or give any indication that they are excluded. To date, however, these programs have not treated homes on leased land as eligible. The Home Seeker down payment assistance program, which is available only in Atlantic, Camden, Gloucester, Essex, Union, and Passaic Counties and was temporarily suspended on August 31, 2017, includes manufactured homes, but also requires that they be permanently affixed to real property owned by the homeowner.

Non-profit developers can access programs like CHOICE for new development or substantial rehabilitation. Eligible units include new construction or substantially rehabilitated one-family developed as fee simple units, condos and PUDs. However, there is no public funding earmarked for preservation of manufactured home communities or for infrastructure repairs or upgrades.

### **NEW JERSEY STATE CONSOLIDATED PLAN**

New Jersey's consolidated plan make no mention of manufactured housing. The Consolidated Plan is used to guide the use of HUD Community Development Block Grant (CDBG) funds. It is an important planning and community development tool. Many states include specific programs designed to replace aging homes, or to preserve MH communities, but not New Jersey.

### **ZONING AND OTHER LOCAL AND MUNICIPAL POLICIES**

#### **Local Zoning and Fee Simple Manufactured Homes**

New Jersey has a strong statute prohibiting municipalities from excluding or restricting manufactured homes as long as they are at least 22' wide, are located on land that the homeowner owns, and are on a permanent foundation. N.J. Stat. Ann. § 40:55D-104.

## Page Four - NJ MH Policy Snapshot

### **Notice to Residents before Rezoning**

New Jersey requires community owners to notify residents of any application for a zoning variance that would result in removal of the homes or relocation of residents. N.J. Stat. Ann. § 46:8C-20.

### **Inclusion of Manufactured Homes in Municipal Planning**

New Jersey law places strong obligations on municipalities to promote and preserve affordable housing. New Jersey law encourages, but does not require, municipalities to consider manufactured home communities as a means of providing affordable housing as part of their preparation of master plans. N.J. Stat. Ann. §§ 40:55D-101, 40:55D-105.

### **Moratoriums on Redevelopment**

In some states, a municipality has authority to place a temporary moratorium on redevelopment of manufactured home communities. This can be a first step toward finding a way to preserve a community. New Jersey law authorizes a municipality to place a moratorium of up to six months on development, but only in health emergencies. N.J. Stat. Ann. § 40:55D-90.

### **Local Tax and Other Financial Incentives**

New Jersey municipalities have not adopted tax or other financial incentives for preservation of manufactured home communities.

### **Local Rent Control**

New Jersey has a strong tradition of local rent control. More than 100 municipalities have adopted local rent control ordinances which include manufactured housing or ordinances which are solely for manufactured home communities. Each municipality has different versions of rent control with some local ordinances allowing vacancy decontrol. Certain developments are exempted from rent control by state law. N.J. Stat. § 2A:42-84.5

### **Municipal Fees and Property Tax for Manufactured Home Communities**

The Manufactured Home Taxation Act (1) defines a manufactured home; (2) exempts manufactured home structures in mobile home parks from local property taxation; and (3) in order to compensate a municipality for the loss of local property tax revenues by virtue of that exemption, provides for manufactured home owners to pay to the municipality a municipal service fee, if enacted by the municipality. N.J. Stat. Ann. § 54:4-1.2 (2007). However, the property taxes for manufactured housing communities are often calculated using a business value method which includes the value of the manufactured homes. These inconsistent tax valuations coupled with municipal fee ordinances mean that homeowners often are paying both high property taxes (through lease pass-through) and municipal fees.

### **New Jersey's Council on Affordable Housing (COAH) and Manufactured Housing**

New Jersey is a Fairshare state and, as such, each municipality is required to have a certain ratio of affordable housing. Manufactured housing is not systematically included in the censuses of affordable housing stock but has been included in municipality qualifying counts of affordable housing on a case-by-case basis. A standardized policy for inclusion of manufactured housing in municipal affordable housing certifications would help in the preservation of manufactured housing communities. In general manufactured housing is overlooked and uncounted in state housing policy.

Prepared by Manufactured Home Owners Ass'n of New Jersey & National Consumer Law Center. For more information please contact Manufactured Home Owners Association of New Jersey Post Office Box 104, Jackson, N.J. 08527. (updated January 2018)

**MHOA-NJ**

MANUFACTURED HOME  
OWNERS ASSOCIATION  
OF NEW JERSEY, INC.

# New Jersey Manufactured Housing Fact Sheet



MOBILE JUSTICE

## Key Facts About NJ MH Homeowners

### Who lives in Manufactured Housing (MH)?

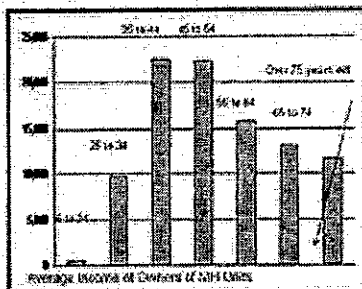
According to the 2000 Census, 57,282 NJ residents lived in manufactured homes (MH), occupying 28,900 dwelling units. These residents are disproportionately older adults; 62% of MH unit owners were 55 or older, and 43% were 65 or older. 20% of the householders are renters and 80% own their homes & rent the land under the home. MH households consist of people who are older and have lower incomes than other housing types in New Jersey.

**43%**

are 65 or older

### What are Manufactured Homes?

(sometimes called mobile homes) MH are prefabricated in a factory and transported for installation. These homes are built to federal HUD codes since 1976.



**73%**

have lived in their homes for longer than 10 years

### What are the homes like?

Manufactured housing tends to be smaller in square footage than stick-built homes, thus the numbers of persons per unit in this type of housing also tends to be smaller. 79% of the households consist of 1 or 2 members. Newer MH units are larger than older units and doublewide units can create housing units with three or four bedrooms which provides room for larger families. The value of MH is much lower than the typical New Jersey home. The median value is \$30,500 compared to \$167,900 for other N.J. housing types in 2000. 39% are homes that are over forty years old, pre-1972 HUD-code homes.

**39%**

have homes that are over 40 years old, with ~ 5,000 homes built before 1960

### New Jersey Manufactured Housing Park Locations and Unit Concentration by County

MH Park Size

- 0 - 75
- 140 - 154
- 362 - 600
- 793 - 831
- 1178 - 1500
- 2117 - 2303
- 2808 - 3101
- 6519

DATA FOR THIS MAP IS FROM PRIMARY SOURCES AND IS CURRENTLY BEING UPDATED - APRIL 2007

### Where are NJ's MH communities?

Based on our census, there are about 300 MH communities in NJ, consisting of a range of community types - some with abundant amenities and spacious lots - and others in trailer courts with closely spaced, high densities of homes. MH communities are concentrated in the coastal, central and southern portions of the state. Older MH communities are often located along transportation corridors or in lands that had been unsuitable for other residential development.

NJ's MH communities were largely established many years ago, in areas where land prices were modest and land-use regulations did not pose severe constraints. As land values have risen many MH park sites have come to be potentially worth more for other uses. Thus, placing MH communities under significant risk of change of use. This means that thousands of lower income households are at risk of displacement and the loss of a home that they own, and thousands of affordable housing units, in communities that can offer a decent quality of life to their residents, are at risk of being removed from New Jersey's housing stock over the coming years.

Manufactured Home Owners Association of New Jersey, Inc.  
[www.mhoanj.org](http://www.mhoanj.org) - March 2018 - data from US Census



## MEMORANDUM

**TO:** Assembly Housing and Community Development Committee  
**FROM:** Gary La Spisa, Assistant Vice President of Government Affairs  
**DATE:** July 25, 2018  
**RE:** NJAA Testimony on Affordable Housing in New Jersey

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On behalf of the New Jersey Apartment Association (NJAA), and our members who own, develop, and manage safe, clean, and affordable rental housing to over a million New Jersey residents, we commend Chairman Wimberly and all the committee members for your attention to the critical issue of affordable housing. We greatly appreciate this opportunity to discuss strategies and ideas to assist the State in meeting its affordable housing needs.

Specifically, to meet the current demand, New Jersey must construct at least 100,000 units of affordable housing over the next decade. At the same time, we must preserve or rehabilitate the existing affordable housing stock. While much of the discussion surrounding affordable housing focuses on development, any solution must be comprehensive in its approach. First, New Jersey must make a commitment to address the affordable housing crisis we currently face. Second, we must treat both the production of new affordable housing and the preservation of existing affordable housing as equally important. And third, we must come up with a state funding source that is capable of producing and preserving sufficient affordable housing to meet the needs of low-and-moderate-income families.

NJAA offers the following suggestions for your consideration in an effort to address the State's affordable housing needs:

1. Focus the Economic Redevelopment and Growth (ERG) program to support the production of affordable housing. ERG pledges future tax revenues from a project to help developers fill financing gaps. This would provide a much-needed infusion of capital and gap funding into those projects.
2. Establish a separate tax credit program for the preservation of existing affordable housing. We envision a competitive program for affordable properties with expiring deed restrictions to apply for funding to make capital improvements in exchange for an extension of their affordable housing controls. In short, the owner receives funding and in return, the community stays affordable for a longer period of time.
3. Allow municipalities to count rehabilitation of existing affordable housing communities toward satisfying their affordable housing obligations. This does not need not be a one-for-one reduction, but even providing a 50 percent credit for rehabilitation/revitalization of existing affordable housing communities would incentivize municipalities to reinvest, and ultimately bring properties in need of rehabilitation into better condition. Most importantly, this would create a better quality of life for those living there.

4. Allow municipalities to extend the existing tax abatements on older affordable housing communities. Many tax abatements end 30 to 35 years from the time they are originally granted. Allow municipalities to renegotiate and extend those abatements, ensuring that dramatic cost increases (in taxes) do not occur. This will help the owner/operators of affordable housing to keep their rents low and still have funds to invest in their properties.
5. Update the state's Uniform Housing Affordability Controls (UHAC). The UHAC rules govern the administration of affordable units, including COAH (Council on Affordable Housing) units, in New Jersey. These rules have become outdated, and conflict with certain federal program criteria. As such, they need to be updated and reformed.

Finally, it is extremely important to understand that legislation that drives up the cost of housing, whether its mandates on new construction or mandates on property owners, hinders both the development and preservation of market rate and affordable housing. More specifically, there is a limited amount of money that is available for affordable housing construction, management and operation. When costs are increased, absent increased funding, less affordable housing will be built, existing housing will deteriorate, and/or the cost of housing will continue to rise.

NJAA stands ready to work with the Legislature and the Governor to address these issues, and we offer the expertise of our membership to help develop a comprehensive affordable housing policy. Should you have any questions or need further information, please do not hesitate to contact me at 732-992-0600.

*The New Jersey Apartment Association represents over 200,000 multifamily apartment units throughout the State of New Jersey. We are a statewide organization dedicated to maintaining, improving, and building both market-rate and affordable rental housing that serves over one million New Jersey residents.*



**TO:** Assembly Housing and Community Development Committee  
**FROM:** Karin McGrath Dunn, President, PRD Management, Inc.  
**DATE:** July 25, 2018  
**RE:** NJAA Testimony on Affordable Housing in New Jersey

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Chairman Wimberly and members of the Committee, thank you for your attention and interest to the critical issue of affordable housing in our state. I am here today representing those who own, manage and live in existing affordable housing properties.

Many of the properties built in the 1960s, 70s and 80s are owned or overseen by the original owners or sponsors. As those original owners begin to move on, PRD Management continues to provide needed expertise and support to new owners as they begin the work of maintain and improving the properties while keeping them affordable.

Many well-intended initiatives disincentivize affordable housing programs, because they increase costs and administrative burden on properties and owners, which already run at very thin margins. I am here to encourage this committee to consider the full impact on our industry when weighing legislative initiatives such as; changes to maintenance and inspection standards, fire code or labor regulations. I ask that while these bills are being debated, consider that we might be able to provide feedback on what impact it will have on our ability to both preserve and develop affordable housing for low and moderate-income residents.

Current owners face a myriad of issues which work against long term affordable housing preservation efforts. These include:

- *Repetitive municipal fees when properties are already registered with DCA and HUD.*
- *Tax burdens and difficulty renewing tax abatements for affordable housing which can compromise efforts at preservation.*
- *The high costs of maintaining aging equipment, systems, and infrastructure on older properties due to the lack of resources available to assist owners when major upgrades are needed.*
- *Restrictions on a landlord's ability to properly screen applicants for credit and criminal history to ensures a strong, tenant base with a low delinquency rate which is crucial for low margin properties. Properties with strong screening criteria see less tenant turnover leading to a stronger sense of community.*

For your consideration, below are some suggestions which would help alleviate some of the financial and other burdens that affordable owners and managers currently face:

- Look for ways to **limit tax burdens** on affordable properties, i.e.

- *Consider an exemption from Sales Tax for maintenance and capital improvements;*
- *Consider exemption from utility franchise taxes on gas and electric use;*
- *Allow affordable housing complexes that are 20 years old or older to renew their tax abatement “by right” at favorable rates or maintaining the same rate for the duration of the time the property remains designated as affordable.*
- **Look for ways to reduce redundant fees on affordable properties, i.e.**
  - *Exempt all affordable units from registration fees by the town or county.*
  - *Create one statewide registration program overseen by NJDCA and shared openly with each municipality.*
- **Look for ways to reduce construction & operating costs for affordable properties, i.e.**
  - *Consider allowing affordable properties to utilize modern technology and make residents responsible for their own utility consumption.*
  - *Consider that other requirements and initiatives that drive prices up, will inevitably drive rents up.*
  - *Offer special State Tax Credits to assist with critical repairs and upgrades for projects over 20 years of age in return for maintaining affordable rents.*
- **Look for ways to incentivize preservation-minded collaboration between all stakeholders including towns, owners, state, and renters i.e.**
  - *Consider how the use of “local preference” on a waiting list might be helpful to the big picture. The town provides a great tax abatement and the owner provides a “local preference” in their tenant selection plan. This results in needy town residents to get priority waiting list status for affordable housing in their town.*
  - *Allow municipalities more easily meet a portion of their obligations by providing incentives for repositioning or rehabbing existing old multifamily communities that are already in existence. Perhaps provide special state tax credits for this purpose.*
  - *Give municipalities some credit for the number of units involved in projects that have renewed affordable housing tax abatement agreements.*
  - *Repurpose abandoned property or provide long term leases on state owned property for creating new affordable housing*

As affordable housing managers and owners, we strive to make sure our properties enhance lives and communities. Keeping existing high quality affordable properties “on line” is a key element in making sure that happens. Our efforts can be helped or hindered by the best of intentions, which is why we ask this committee for careful consideration of any regulations as they pertain to affordable housing, and we offer ourselves as a resource as you work towards our shared goals. We appreciate your commitment to this issue, and your willingness to invite us to be part of the solution.

# PENNROSE

Bricks & Mortar | Heart & Soul

## MEMORANDUM

**TO:** Assembly Housing and Community Development Committee

**FROM:** Jacob Fisher, Regional Vice President, Pennrose, LLC

**DATE:** July 25, 2018

**RE:** Pennrose Testimony on Affordable Housing in New Jersey

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On Behalf of Pennrose, LLC, we thank Chairman Wimberly and all the members of the committee members for your focus on and concern for the issue of affordable housing in the State of New Jersey. We appreciate the opportunity to offer our perspective, as developers of multifamily housing, to this critical conversation.

Over the last 40 years, Pennrose has developed more than 15,000 units of affordable, market rate and mixed income housing in 15 states in the Eastern United States. We have completed 4,263 apartment and townhouse units across 58 distinct projects in New Jersey. This includes developments in many of the areas represented by members of the committee, including Paterson, Jersey City and Newark. We are long-term owners and managers of the properties that we develop and with each new development we endeavor to make a positive contribution to the communities and neighborhoods we serve.

The bulk of Pennrose's work in New Jersey has consisted of affordable housing developments achieved through public-private partnerships and financed in part by the Low Income Housing Tax Credit ("LIHTC"). Enacted as part of the 1986 Tax Reform Act, the LIHTC has been the most successful engine for developing affordable rental housing in the history of the nation. The program aligns incentives and interests of the public and private sectors to generate capital to fund affordable housing.

The LIHTC program is incredibly flexible, funding everything from mixed income housing (with a minimum of 20% affordable units) up to 100% affordable housing. The LITHC credit can provide up to 70% of equity needed to develop an affordable housing community, however, the credit is a scarce resource. New Jersey receives an allocation from the Internal Revenue Service of approximately \$24 million in credits to allocate to projects. According the New Jersey Housing and Mortgage Finance Agency, the State uses the credits to develop 1,100 new affordable units every 12-18 months.

While this is an admirable quantity of new or preserved rental housing, it is but a small contribution toward the 100,000 units of affordable housing needed throughout New Jersey. To make a significant dent in this total will take a combination of inclusionary, mixed income and 100% affordable projects throughout the State. The solution will also require New Jersey to begin to be more strategic about how it deploys resources to support the development of affordable housing.

Of the 15 states where Pennrose works, New Jersey is the only State with a constitutional amendment requiring the construction of affordable housing. It's the only State that requires the calculation of a town-by-town affordable housing obligation. Unfortunately, New Jersey is one of the only States that we work in where the

[Type here]

State provides no additional funding resources to support the development of affordable housing. In failing to do this New Jersey is leaving potential shovel-ready LIHTC projects on the shelf each year and diminishing the number of units that could be delivered.

Some examples of State funding for affordable housing from the other States where we work are:

- 1) Pennsylvania: Pennsylvania provides housing trust funds funded by gas drilling fees and realty transfer tax, the fund provides up to \$25 million per year.
- 2) Connecticut: The Department of Housing provides approximately \$25 million in funding to support affordable and mixed-income developments. DOH also provides predevelopment loans of up to \$300,000. The State uses General Obligation bonds to fund these programs.
- 3) Maryland: Rental Housing Works program provides approximately \$25 million in General Obligation bonds to support affordable and workforce housing.
- 4) Massachusetts: Offers a State Low Income Housing Tax Credit program, which can be paired with the Federal Program. It also has a State Historic Tax Credit program that works with the Federal and various State funding programs, such as a State Affordable Housing Trust Fund, who offers up to \$1,000,000 per project.
- 5) Georgia: Offers a State Low Income Housing Tax Credit program. When paired with the Federal credit it can increase the resources available to a project through Tax Credits by about 50%.

New Jersey once had its own programs, Balanced Housing and Home Express. The loan program was funded by realty transfer taxes and available in amounts up to \$3,000,000 per LIHTC project. DCA and NJHMFA processed applications for this resource side-by-side with LIHTC applications. Approximately nine years ago, the dollars used to fund this program were reallocated to other uses. New Jersey also had the ERG program, which was also used in some instances to support affordable housing. The loss of these resources reduce the potential amount of affordable housing that can be delivered each LIHTC cycle by several hundred units.

If New Jersey were to reinstate Balanced Housing, ERG or develop a new resource, such as the programs described above, the State could begin to increase the number of housing units it funds every year. Combining the LIHTC program with other dedicated resources would allow NJHMFA to be more strategic in how it deploys LIHTC credits. For some projects it could fill funding gaps with State tax credits, while others could use a dedicated funding program. The goal would be to stretch the annual \$24 million LIHTC allocation that the State has at its disposal to fund more projects each year.

Pennrose stands ready to work with the Legislature and the Governor to address this issue. We have development team members who have first-hand experience working with each of the State program described above, who would be available for consultation. Should you have any questions or need further information, please do not hesitate to contact me at 267-386-8670.

*For more than 40 years, Pennrose has combined its expertise in creating real estate developments of distinction with professional management services to create exceptional lifestyle communities that our residents, employees, and partners can be proud of.*

Testimony

Christiana Foglio

CEO Community Investment Strategies

Thank you for the opportunity to speak this morning. I have had the pleasure of serving in a variety of roles over the last 30 years in the provision of affordable housing in New Jersey. As President of the New Brunswick Development Corporation, I negotiated the first Regional Contribution Agreement which allowed that City to stabilize a critical neighborhood which provided the framework for the award winning redevelopment we see today.

I served as the NJHMFA director, Under Governors Florio And Whitman and the COAH chairperson during many critical debates of fair share numbers and municipal obligations. For the Last 25 years I have been, the CEO of CIS an affordable developer building apartments throughout New Jersey in partnership with municipalities and utilizing state and local resources to try to meet the enormous demand for housing.

My hope is to share what I have to come to see firsthand as our opportunities and challenges as we look ahead to the needs of New Jersey for affordable housing.

As a young staffer to the primary sponsor of the original Fair Housing Act, I had the privilege to witness what the legislative

leaders envisioned when crafting a legislative response to Mount Laurel in the Fair Housing Act. I clearly remember their legislative intent; housing policy should be crafted by administrative process not by courts, and that the obligation of affordable housing should not be a fiscal burden on the municipality.

That commitment of the legislature has been all but erased by the actions of the previous administration, and we currently face the climate of housing policy through court settlement.

Our current state of affairs is a far cry from the first round obligations and the days of COAH. And yes I too eventually started to refer to COAH as another 4 – letter word you would rather not say...

But where we are today does not feel much better. I will not argue that many towns have settled in court to build housing. But in my opinion, I question if we have asked the right questions or taken the time to understand, what are we building? Is it right for the market demands we face? Is it meeting the needs we originally identified in Mount Laurel? Is it right for the community? Or is it just meeting a number?

Let me share some examples;

We just finished leasing a 57 home inclusionary rental community in Mt Olive New Jersey. By all standards I believe

most affordable housing advocates would give A+ it has a distribution of apartments including 3 bedrooms , it shares a municipal park and a walking path with the market rate community , there are great schools and a public golf course across the street. Just a great place to raise a family.

Unfortunately, we had to turn away 2 out of every 3 applicants for being over income. Not because they were by any means rich.. on average they earned between 80 and 100% of median income. I know that we have satisfied a need for the families that did get housing but what about the families we had to turn away?

When you look back at The original Mount Laurel Litigation, and the argument that police, firemen and teachers need to be able to afford to live in the communities they serve, I think we all agree that would continue to ring true today.

But if you look at the average salary for those occupations today, the average salaries are above the limits for our current affordable housing programs, and towns would not get affordable housing credit for units occupied by teachers, firemen or police.

Something is not right..

The situation is even worse when we look at the provision of senior housing. In our Bloomfield Senior community, 1 in five seniors that applied were over income. Unfortunately seniors

with a decent pension \$50,000 per year could not get qualified for the tax credit project. Yet these seniors cannot afford the new Avalon Bay project in the downtown, nor can they afford the taxes on their home, but they want to stay in their home town and we should have an ability to let them stay.

So today I ask the Chairman, under his leadership to take this opportunity to start a new dialogue. To truly consider if we are just reworking old rules set in the 1980s designed to address different market conditions, and development pressures and trying to adapt them to the reality we face today?

Do we have the opportunity to look at the housing needs of the State under a new lens? Even HUD moved this year to identify the greater need of people earning over the 60% of median income by increasing the tax credit program to serve families up to 80% of median .

Should we now consider a definition of affordable that captures the needs of people between 80-100% of median income who are vital to the economic vitality of our State?

Can we encourage through incentives and subsidy inclusionary developments, like New York, instead of creating economic penalties on the development community with affordable housing set aside?

Could we protect the Housing Trust fund, authorized at the same time as the Fair Housing Act, known as Balanced Housing which is funded by the realty transfer tax, which was created to provide the necessary funding for affordable housing so that it would not be borne by the municipality nor by appropriation?

We historically have had the tools to do this right , we just need Leadership.

Currently critical policy decisions are being made at the HMFA for the most valuable resource we have in the development of rental affordable housing, namely the Low income tax credit credit. There is no state policy , no priorities, no direction by which this agency is guided to allocated this resource. The State has no policy ,no framework. For the past two years, Affordable Housing has been decided by an advocacy group in a room with a municipal lawyer in front of a judge . We now have the chance at a comprehensive policy lead by this committee and with the support of Governor Murphy .

Thank you for time and I look forward to working with you.

**CAROL BIANCHI, BERNARDS TOWNSHIP COMMITTEE**

55 Spring House Lane  
Basking Ridge, NJ 07920  
(908) 230-2382

July 25, 2018

Assembly Housing and Community Development Committee  
State House Annex  
PO Box 068  
Trenton NJ 08625-0068

Dear Members of the Assembly Housing and Community Development Committee,

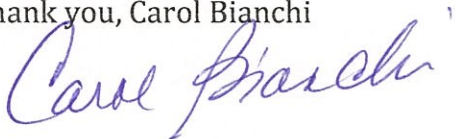
I am a Committeewoman in Bernards Township, serving since 2013 and as Mayor in 2016. Bernards has always met its affordable housing obligations under COAH, receiving 1<sup>st</sup>, 2<sup>d</sup>, and 3<sup>d</sup> round substantive certification. Our community offers a diverse range of housing to accommodate all income ranges and has done so in a responsible manner. Under COAH and prior round rules, Bernards has preserved the rural character and historic charm of our community while also providing high density housing in various locations throughout the township.

With the demise of COAH, Bernards Township is now recognizing our three year anniversary in court. With no legislative guidance, the elimination of regional contribution agreements, no suitable vacant land, and under pressure to settle with Fair Share Housing Center, Bernards Township is forced to address our affordable housing obligations with overdevelopment through inclusionary zoning, allowing hundreds of clustered housing units with a small affordable component. We have just reached a settlement with our only intervenor, to replace a grocery store and other businesses in a commercial zone with 212 residential rental units, yielding only 34 low and moderate units. And FSHC said we aren't done. This litigation driven solution is eroding our office and commercial zones and having a negative impact on our economy. There is no public transportation near the developments and traffic throughout the town is jammed, taking 30 mins to drive 2 miles to get into our high school. It's only going to get worse.

I ask you to commit today to passing legislation to remove affordable housing from the courts, including legislation to eliminate builders' remedy lawsuits and bring back more options for towns to work together to address affordable housing, including RCAs.

Bernards Township has always provided our fair share of affordable housing and will continue to do so—but it should be with clear legislative guidelines that allow us to plan in a responsible manner.

Thank you, Carol Bianchi



My name is Virginia Manzari. I have lived in West Windsor for nearly 20 years, and I currently serve on our Town Council as Vice President.

West Windsor has been very responsible in keeping up with its affordable housing obligation. Despite our good faith, Fair Share Housing refused to settle with us telling us that they "wanted to make an example" of us. During the trial, the judge made us pay for a court-appointed expert and then ignored that expert and gave us numbers 50% higher than what the expert suggested. I think I'd like to get my money back for that expert. So far, we have spent half a million dollars on legal fees. Other towns have spent similarly without a single house being built.

In the end, we were ordered to build 1500 affordable housing units – even though the law clearly states that housing in any round is capped at 1,000 units. Because we have been proactive in building and planning affordable units, we currently have credit for about 1000 units, leaving us with 500 units that we have to build by 2025. Unfortunately that really means that we have to build about 2500 homes – because the builders get to build 4 market rate homes for every one affordable home. That amounts to a 25% increase in our housing market. That's just crazy.

In the last 2 decades, our town has changed significantly. But it will be unrecognizable if this rampant overdevelopment doesn't stop. Our classrooms are already packed, we continue to expand existing schools, and our superintendent is having difficulty finding land to build additional schools that will be needed. Traffic is terrible, our taxes have increased astronomically, and our quality of life has suffered for this overdevelopment.

As a local councilwoman, people often share their concerns with me. More than anything I hear about people's plans to leave New Jersey. They are tired of seeing fields, farms, and forests replaced with high-density housing. They are fed up. They are done with the taxes, they are done with the overdevelopment, they are done with New Jersey. I think that's a real shame, and it's something that all of you can change. These housing decisions need to be taken from the courtrooms. We have spent ridiculous amounts of money defending our township in these lawsuits, and in the end we all lose anyway.

Thank you.



## New Jersey Association of Centers for Independent Living

July 25, 2018

Public Hearing -- Affordable / Accessible Housing

Assembly Housing and Community Development Committee

To: Chris Jewett or Joe Pezzulo / Email: [OLSAideAHO@njleg.org](mailto:OLSAideAHO@njleg.org) Fax: 609.633.1228

1. New Jersey needs MORE not less Affordable/Accessible Housing, most especially barrier free accessible housing.
2. Court Settlements on their Fair Share Plans have worked out well with many towns settling. Now at least they cannot avoid this requirement.
3. Leave the process alone, as the judges and the courts are finally getting towns to the table to settle. Under COAH they could delay, delay, delay. But not today with the courts involved, however if there are measures put in place to speed things along without going to court, I am okay with that as long as the ending is fair and equitable for those living with disabilities.
4. There is a critical need for Supportive Housing and Accessible housing, which falls under the Affordable Housing criteria. If this is changed it will affect all housing for persons with disabilities.
5. We are not in favor of a constitutional Amendment that would NOT mandate affordable housing in every town.
6. Towns continue to fight affordable housing -- all these years, since 1985 until today, when they have to go to Court to affirm their Housing plans. This should not be interfered with.
7. The bottom line is people with disabilities need much more housing opportunities where they wish to live, no different than all the rest of our population.

Sincerely,

Scott Elliott  
Chairman

**Connie M. Pascale**  
**Individually and as a Board Member of STEPS**  
**(Solutions to End Poverty Soon)**  
**101 Dewey Street**  
**Toms River, NJ 08753**  
**(732) 691-1076**

**Testimony regarding needs related to affordable housing**

Prepared for presentation on July 25, 2018 before the Assembly Housing and Community Development Committee.

I would like to thank Committee Chair Wimberly and the Members of the Committee for the opportunity to appear before you today.

As a retired individual with over 40 years of experience as a Legal Services housing attorney, and as a Board member of STEPS (Solutions to End Poverty Soon), a statewide, grass-roots anti-poverty organization, I respectfully request that the Committee accept the following comments regarding critical issues related to the need for affordable housing in New Jersey. **These comments focus on the importance of assuring that the lower income households most in need of such housing - especially members of the African-American, Latinx, and other communities of color who have been severely disadvantaged by our state and country's long history of discrimination, exclusion and segregation - are not unjustly and unfairly prevented from obtaining affordable dwelling units as they become available, and, if successful, are not unjustly and unfairly displaced from the homes they have struggled so hard to obtain.**

**It cannot be overemphasized: public and private discussions of affordable housing involve two dominant subtexts. The real discussion, the real issues, are who will be living there, and the race of those people. It is always about the people, not the housing.** Although commonly framed in technical or formulaic terms such as need-calculation methods, square footage, traffic, and so many others, where affordable housing is involved, **the critical factors are race and class.** Who will be living there, who will be moving into the new homes and apartments, who will be living next door, or down the street, who will be attending our schools – questions of far less import in public discussion of expensive homes or luxury apartments - are the dominant, if frequently unspoken, questions driving the emotion-fraught public debates surrounding affordable dwellings.

NJ is not among the most segregated states in the country by chance. Our long history of intentional, systemic and structural racism has seen to that. (See The Color of Law, Richard Rothstein's indispensable new book, for indisputable evidence of this "forgotten history." See also "The Uncomfortable Truth: Racism, Injustice and Poverty in New Jersey," the recent report

issued by the Anti-Poverty Network.) I have no doubt that if towns were not required to have real people live in their affordable units, or had unlimited control over who did live there, the hue and cry arising in so many places at the mention of affordable housing would be severely curtailed, if not eliminated, and the units would be built forthwith. Affordable housing is all about providing lower-income families and individuals with greater opportunity to access the personal, economic and social benefits that for too long have been denied to so many of them. Affordable housing is, in so many instances, a pathway to overcoming white supremacy, racism and exclusion, invidious policies that have long-afflicted people of color and, in both the long- and short-runs, have harmed and will continue to harm all of us.

The concerns I would like to emphasize, however, come into play after successful advocacy results in the production of an increased supply of affordable units. **All of the affordable housing units in the world will not achieve their purpose if low-income people, especially the African-Americans and other people of color who were the object of the formal racist policies described in Rothstein's book, are unable to gain access to them.** At the same time, adding affordable dwellings in numbers sufficient to make a dent in the overwhelming need will be counterproductive if already existing affordable units are allowed to revert to market rate, or otherwise become unaffordable to lower-income households.

**Some examples of policies, issues, and ongoing developments that must be closely scrutinized include the following:**

- **Discriminatory tenant and mortgage screening**: creditworthiness/credit scores (see A1869/S1939); criminal history; and court-filing discrimination (a.k.a. tenant "blacklisting" – see A2938/S806) are three major examples. (These problems are exacerbated by the eviction crisis referred to below.) Applied indiscriminately and without meaningful standards and limitations, they defeat the purposes of the FHA and LAD by providing pre-textual, pseudo-objective cover for racial, ethnic, disability, family status, and other prohibited types of discrimination. They also defeat the mobility opportunities represented by tenant-based subsidies, as well as related policies such as the recent implementation of Small Area Fair Market Rents (SAFMR).
- **The ongoing eviction and foreclosure crises, which at present disproportionately affect low-income households, especially people of color.** Tenants are disproportionately lower-income and people of color. And African-Americans and people of color are disproportionately tenants and lower-income. For example, 60% of African-Americans are tenants, while only 27% of whites are renters. **More than 150,000 eviction actions are filed each year in NJ** – more than double the maximum number of foreclosures filed at the height of the foreclosure problem. (The normal annual foreclosure filing rate is far less.) The eviction problem is exacerbated by the rigid rent posting requirement that bars the door to the courthouse for so many low-income tenants, the "churning" process generated by unfair, standardless tenant screening practices, and the growth of "robo-filing."

- **RAD and the conversion of public housing**, threatening the current and eventual loss of subsidized apartments.
- **Expiring affordability limits and controls**. For example, more than 16,500 publicly supported rental homes have affordability restrictions which will expire over the next 5 years.
- **Deplorable living conditions** generated by the severe affordable housing shortage, discriminatory screening policies, and the systemic conditions that cause and exacerbate them: “eviction churning,” LLC abuse, mandatory rent posting preventing the assertion of habitability defenses (see A2937/S806), the eviction crisis, etc.
- **Homelessness and related “last resort housing” issues**, such as discrimination against, and systematic elimination of, rooming/boarding/residential health care units, the “last resort” housing for some many struggling with mental, emotional and physical disabilities.
- **Anti-crime, nuisance, mandatory screening and other ordinances** which disproportionately and negatively affect low-income people
- **Segregation and exclusion** perpetuated by “home rule” and structural racism, which, in addition to the zoning issues addressed in the Mt. Laurel litigation, include related policies such as the non-inclusion or severe curtailment of a number of affordable alternative housing options such as accessory apartments, manufactured homes, “tiny homes,” etc.

**Once again, all of these issues are, at heart, about people.** Housing issues are disproportionately difficult because, in reality, they cannot simply be addressed by more money or additional resources. **Housing issues are difficult because they ultimately involve who will be living next door, who our neighbors are, who are children will be playing with, who are our brothers and sisters.**

I refer you to the remedies and policy initiatives proposed in the APN report, as well as those embodied in the bills expressly referred to above. What they call for, and what is needed, are focused, aggressive, unflinching and innovative action by government and community leaders at every level. Solving housing problems is not rocket science. **We do not lack the means; what we lack is the will to resolve them.**

Some possible remedies will be controversial, many unpopular. But that cannot be an excuse. Housing poverty, homelessness, segregation, discrimination and residential exclusion can no longer be tolerated. Action is required now to end them.

**On behalf of STEPS – and also on behalf of myself as an individual - I urge you in the strongest terms to keep these concerns in mind as you consider legislation dealing with affordable housing and the needs of the people to whom it is so critically important. This Committee must take great care to ensure that the crucial, inseparably-related goals of fair housing, inclusion and integration – goals demanded by justice, fairness, and the law – are not subverted or ignored. The legislation which you consider, debate and approve must, whenever and wherever possible, in ways both direct and indirect, support the identification and elimination of the structural, systemic and overt racism embodied in so many of our existing land use and housing policies and practices.**

Sincerely,

Connie M. Pascale

# THE UNCOMFORTABLE TRUTH: RACISM, INJUSTICE, AND POVERTY IN NEW JERSEY

– A Call To Action –



September 2017

Produced by the Anti-Poverty Network of New Jersey  
and the Structural Racism and Poverty Working Group

With generous support from The Fund For New Jersey



30x

Unfortunately, carefully tailored, individually-focused policies of this sort are more the exception than the rule, whatever the screening category involved. As is noted immediately below, a growing number of landlords now subscribe to fee-for-service tenant rating agencies which furnish them with tenant rating “scores” based on unknown, proprietary formulae. The Guidance further points out that criminal history screening can also be used as a pretext or surrogate for intentional racial discrimination (“disparate treatment”). A recent investigative report, using White and Black testers provided with identical criminal histories, verified the prevalence of this practice.<sup>112</sup>

In the same vein, reports such as statewide studies of insurance credit scoring in Missouri and Texas have led the Federal Trade Commission to declare that credit scoring discriminates against low-income people of color, and that such scoring is a proxy for race.<sup>113,114</sup>

The exponential growth of for-profit businesses offering landlords detailed tenant-screening reports has made securing rental housing (along with jobs, loans, and many other critical needs) exceedingly difficult for many minority households.<sup>115,116</sup> The absence of generally agreed upon, consistent, fair, reasonable and articulated standards has made arbitrariness and uncertainty the rule, rather than the exception, where credit, criminal history and court filing screening are concerned. Even worse, the absence of common standards provides a patina of “objectivity” designed to obscure the pretextual use of tenant screening as a cover for overt racial and ethnic discrimination.<sup>117</sup>

The result is that credit, criminal history, and court filing screening, along with already prohibited forms of discrimination (such as race, religion, ethnicity, family status, disability and source of income/rent payment), all too frequently prevent disadvantaged households — including those with tenant-based rental housing vouchers, or those applying for admission to subsidized apartment buildings or affordable Mt. Laurel units — from finding and obtaining decent, safe and affordable housing in areas of opportunity, areas close to good jobs, better schools, and better neighborhoods.<sup>118,119,120,121,122,123</sup> This in turn exacerbates, reinforces and perpetuates existing patterns of racial exclusion and segregation, forcing many families to reside in sub-standard apartments located in severely disadvantaged neighborhoods characterized by the continual “churning” of such households from one unaffordable, ill-maintained dwelling to another.

## **Homelessness**

Compound the racism-engendered problems outlined above and throughout this report, and you have a formula for homelessness on an alarmingly disproportionate scale.<sup>124</sup> Thus, it comes as no surprise that, according to the New Jersey 2015-2019 Consolidated Plan,<sup>125</sup> while 14 percent of the state’s population is Black, 55 percent of the homeless individuals in New Jersey are Black, a figure higher than the national average. Blacks also remain homeless for longer periods of time than Whites.

As reaffirmed in the state’s announcement of an expanded “housing first” approach to homelessness, chronic homelessness exacts severe costs, not simply from the vulnerable people involved, but also from society, in the form of unnecessary hospitalizations, emergency room visits and incarcerations.<sup>126</sup> These costs represent another clear example of the ways that racism crushingly burdens Blacks and other people of color, perpetuates exclusion and segregation, and harms all of us in the bargain.

## **POLICY RECOMMENDATIONS**

1. The state and its municipalities must officially, emphatically and publicly recognize the problem of severe, historically-based racial and ethnic segregation and exclusion in New Jersey. The reversal and sharp reduction of exclusion and segregation must be made an immediate priority of the highest order, evidenced by implementation of the following actions.
  - a) All county and municipal governments, as well as the state itself, should be required to develop race-based “Inclusion and Integration Plans” containing explicit, measureable, time-sensitive objectives aimed at ending exclusion, segregation, and environmental injustice. Each Plan must be developed through an open, public, diverse

- and inclusive process involving representatives from all segments of the community, and especially from key advocacy organizations representing Blacks and other minorities. A high priority must also be placed on insuring the meaningful participation of low-income people of color.
- b) Each such plan must: incorporate statistical data and maps detailing the extent of exclusion and segregation; establish explicit numerical goals for the production of affirmatively-marketed affordable housing units in the most exclusionary areas and neighborhoods of opportunity; identify specific strategies to address environmental justice issues; provide for the imposition of meaningful sanctions if substantial progress in relation to inclusion and integration of Blacks and others is not made; and include descriptions of those changes to laws, ordinances, regulations, etc., which will be enacted or adopted by the jurisdiction to facilitate implementation of the plan.
  - c) In furtherance of the above, a "toolbox" of strategies must be identified and implemented to overcome fear over the negative effects of residential integration on the neighborhood; ignorance concerning the societal costs of poverty; and political divisiveness.
  - d) The state must undertake an immediate effort to preserve existing subsidized and affordable housing, as well as significantly and expeditiously expand the supply of project- and tenant-based housing subsidies. In addition to increasing the amount of new construction, rehabilitation and preservation funding, the state must commit sufficient dollars to the creation of thousands of new SRAP vouchers and target them to assist the lowest-income and most disadvantaged households.
  - e) The state and its municipalities must adopt policies and take steps that "affirmatively further fair housing" ("AFFH") in a significant, effective manner. (The state must enact legislation, or promulgate regulations, which makes AFFH an explicit mandate of state as well as federal law.) State and local implementation of the revised "Assessment of Fair Housing" (formerly "analysis of impediments") process — mandated by the recent adoption of the new federal "Affirmatively Furthering Fair Housing" rule — must be made as extensive, inclusive and thorough as possible, especially with regard to a race-based analysis of fair housing concerns. The process must include establishment of a task force composed of civil rights organizations, low-income people of color, legislators, housing advocates, and others committed to integration and fair housing.
  - f) The state must undertake an aggressive effort to combat foreclosure in low-income communities and communities of color. State resources in an amount sufficient to achieve this goal must be committed for housing counseling, mortgage modification programs, and other necessary actions, including better policy tools to address abandonment that results in blight and becomes a drain on the resources of urban areas.
  - g) Significant reductions in de facto segregation must be made a mandatory correlative of the Inclusion and Integration Plans discussed above.
  - h) The DCA voucher program (both federally-funded Housing Choice and state-funded SRAP) must adopt (or, if necessary, seek appropriate federal waivers enabling it to adopt) voucher payment standards, as well as unit size and bedroom configurations, that facilitate movement by minority households to municipalities and neighborhoods that have limited minority populations. In addition, DCA should project-base a portion of its federal and state vouchers for the sole purpose of facilitating construction of housing developments intended to AFFH by integrating currently segregated or exclusionary communities and neighborhoods.
2. To the greatest extent possible, the state should implement a "carrot and stick" approach to eliminating racism.
    - a) Such an approach would allocate and distribute an enhanced amount of state funds and resources — such as school aid, road maintenance funding, etc. — as well as discretionary federal funds, to those communities which meaningfully, substantially and measurably promote inclusion and integration, address environmental injustice, and affirmatively further fair housing. Conversely, exclusionary and/or segregated municipalities which do not facilitate the actual provision of affordable housing in ways that reduce neighborhood segregation and significantly expand inclusion and integration, should have receipt of any such funding severely curtailed.

*The Uncomfortable Truth: Racism, Injustice, and Poverty in New Jersey*

- b) State and local Consolidated Plans and Action Plans must adopt policies that limit the allocation of CDBG, HOME and other federal funds to governmental units that meaningfully and significantly AFFH (for instance, by adopting and implementing some of the overlay zones and other approaches described below).
3. The state (as well as counties and municipalities where necessary and appropriate) should immediately adopt and undertake administrative, legislative and legal/litigation strategies designed to:
    - a) Aggressively enforce existing civil rights laws in an effort to eliminate racial exclusion, segregation and environmental injustice. Among other things, this would include a well-funded, prioritized litigation strategy centered on challenging municipally-erected or maintained barriers to fair housing and integration. Approaches would include Westchester-type litigation against counties and municipalities that fail to AFFH and lawsuits under the LAD and federal FHA. Remedies would include the mandatory, expedited production of a minimum number of affirmatively-marketed affordable units situated within exclusionary or segregated areas, extensive environmental remediation, and, if necessary, require the use of local funds or bonding authority to accomplish these results.
    - b) Creatively maximize the use of existing legal protections to prevent the unnecessary eviction of low-income tenants — in part through the provision of legal counsel to disadvantaged tenants in eviction matters — and insure fair, non-discriminatory access to decent, affordable housing in areas of opportunity.
    - c) Enact statutes, regulations and ordinances which (a) prevent involuntary displacement of tenants and other residents from lower-income, largely minority urban neighborhoods undergoing redevelopment, revitalization and gentrification; and (b) insure that the residents of such communities are the primary beneficiaries of the employment, housing and overall economic benefits generated by redevelopment and revitalization.
    - d) Undertake an aggressive litigation strategy using existing civil rights laws to eliminate discriminatory tenant- and other housing-related screening practices.
    - e) Adopt, by statute or regulation, uniform, reasonable, and fair tenant- and other housing-related screening standards in all relevant areas, including credit history, criminal background, court filing history, source of income, and related categories. The state must also adopt ancillary procedures, such as the sealing and expungement of certain eviction filings, and establish appropriate penalties and enforcement mechanisms, in order to end unfair, arbitrary, and pretextual use of tenant/housing screening procedure.
    - f) Enact legislation and regulations authorizing "private attorneys general" to pursue anti-discrimination litigation against offending counties and municipalities on behalf of the state, and obtain attorneys' fees in matters where they are not currently authorized.
    - g) Enact legislation amending the Municipal Land Use Law to mandate — subject to appropriate limitations and conditions — municipal adoption of overlay zones that allow multi-family dwellings and manufactured home parks at significant densities, authorize accessory units dedicated to lower-income households, mandate approval of moderate-sized SROs, allow construction of affordable housing as of right above certain commercial structures, etc..
    - h) Implement at the municipal level — assisted or compelled by the state as needed — a comprehensive, consistent, aggressive and effective program of health and housing code enforcement, including a concerted, well-funded effort to use receivership where necessary to achieve needed repairs and insure that housing by low-income households is decent, safe and sanitary.
    - i) Enact or adopt such additional laws and regulations as are needed to facilitate the forgoing efforts.

Hopewell Township is a somewhat rural hometown for approximately 18,000 residents living in around 6500 residences in Mercer County. We are here today to explain some of the challenges which the current system of allocating affordable housing units places on our township.

First of all, an adversarial court proceeding emptied our Affordable Housing Trust fund - dollars which could have been spent on furthering our goals of creating a more diverse housing stock within our township. I would hope that this body could help create a system where the court system is not the main beneficiary of those dollars - the families who want to live in safe communities near their jobs and with great schools for their kids will be.

We are very happy with the section of our agreement that requires every new development to have a 20% affordable component. We firmly believe that the strongest communities are diverse communities. We want our young adults, single parent families, <sup>workers</sup> from every section of the pay scale to be able to live in the community we love.

Part of the challenge unique to Hopewell Township is that only 40% of our residents live in sewer service areas in an area that is less than 30% (?) of our total municipality - a requirement for any new affordable housing. This means that all our new housing will have to be concentrated in what is already the more dense areas of our township.

Our case was also somewhat unique in that we had multiple intervenors. These developers are now are our partners in providing affordable housing in the township. The courts have ruled that 100% affordable developments do not give a realistic opportunity for housing so developers build communities with a mix of market rate and affordable units. In addition, as I have said, we believe that strong communities include as many people as possible. The result of these policy decisions is that the number of allotted affordable units needs to be multiplied by, usually, 4 or more to come up with the true number of additional homes that will be built.

In Hopewell Township, after all of our credits were applied, we were assigned a number of 653 new units of affordable housing to be built. When you multiply that by what is our relatively low, negotiated number, 4, you have an total number of 2,600 plus new residences to be built in the Township over the next decade or so. Hopewell Township will be celebrating its 320th anniversary in the next couple of years. In only the next decade, we will have to absorb nearly 40% growth. The numbers are too high.

In addition, there is no thought in the current allocation system of what affect this type of growth will have on the school system, emergency services and other vital aspects of of a municipality. I don't think that these are small problems. We believe that we are doing a great job of planning for these changes, but without a crystal ball, there is no way to know how municipal budgeting will be affected as these larger numbers of new residents arrive.

We ask that you consider "speed of growth" as a component of whatever provisions are in future legislation.

Thank you for opening a long needed discussion on this absolutely critical issue facing every municipality in this great state. In Hopewell Township, we look forward to continuing a dialogue between this body and ourselves as we navigate the challenges and opportunities presented by our affordable housing mandate. Thank you very much.

## VETERANS EXECUTIVE LEGISLATIVE ACTION COUNCIL



Comments for the Wednesday July 25, 2018 Assembly Housing and Community Development Hearing 10:00 AM Committee Room 16, 4th Floor, State House Annex, Trenton, NJ

### HOUSING

A783/S2153 Establishes grant program for homeless veterans shelters. Introduced, referred to Assembly Military and Veterans' Affairs Committee 1/9/2018. Introduced in the Senate, referred to Senate Military and Veterans' Affairs Committee 3/5/2018.

This legislation stalled last session in the Senate Budget and Appropriations Committee and Assembly Appropriation Committee.

This bill would require the Adjutant General of the Department of Military and Veterans' Affairs to award grants to certain southern New Jersey counties to provide veterans with improved access to homeless shelters. Under the bill, Atlantic County, Cape May County, and Cumberland County may submit applications to the Adjutant General proposing locations for homeless veterans shelters and identifying property the county would provide to the State for the development of a shelter.

New Jersey's southern counties are in particular need of shelters for homeless veterans. Because of mobility issues, homeless veterans' access to resources is often limited by geographic location. Various factors may have caused homeless veterans to locate within southern New Jersey counties. However, when conditions, such as extreme cold, require them to seek out temporary shelter, they find themselves isolated from shelters and other facilities that provide resources for veterans. This bill would result in the development of shelters in locations appropriate to meet this need.

This legislation was initially introduced in the Assembly and referred to the Assembly Military and Veterans' Affairs Committee 3/16/2015.

We support legislation that addresses the need to provide shelter to veterans experiencing homelessness. Having said that, the legislation has to be meaningful, realistic and have the potential of actually being passed and signed into law.

According to the Fiscal Year 2019 State of New Jersey Detailed Budget, Revenues, Expenditures & Fund Balances, Schedule 3 Expenditures Budgeted (Page C-25); funding for DMAVA for 2017 was listed as Actual \$105,241,000.00 The 2018 Estimated amount was \$96,678,000.00 - - a decrease of \$8,563,000.00. The FY 2019 Estimated amount was \$95,478,000.00 - - a decrease of \$1,200,000.00. The FY 2016 DMAVA budget was 1.061 million dollars less than the FY 2015 budget. The DMAVA budget has been steadily decreasing.

This proposed legislation will take effect immediately. Without a dedicated funding source DMAVA will have to move money from an existing program to fund this program. In each of the two previous sessions this legislation was listed as taking effect immediately even though there was no additional money in the DMAVA budget

## VETERANS EXECUTIVE LEGISLATIVE ACTION COUNCIL



to implement this program. The last two budgets alone have cut almost 10 million dollars from the DMAVA budget and yet here is another unfunded program to spend more money from a drastically reduced budget. That is unacceptable.

This is not how we should be addressing the pressing needs of the veteran community. Cutting the DMAVA budget and then requiring the Department to shift funding to provide monies to fund a new program is not legislation that we support. It is disingenuous.

A2165/S2143 Grants credit against business income taxes to developer of rental housing reserved for occupancy by veterans. Introduced, referred to Assembly Military and Veterans' Affairs Committee 1/29/2018. Reported favorably from Senate Military and Veterans Affairs Committee 5/31/2018 and referred to Senate Budget and Appropriations Committee.

This legislation was previously passed by the Assembly (76-0-0) 6/8/2017 and stalled in the Senate Budget and Appropriations Committee. It was stalled in the Senate Budget and Appropriations Committee in 2013. This legislation was initially introduced in 2009 in both chambers.

This bill would establish a tax credit for New Jersey housing developers who construct homes for New Jersey veterans. This legislation would provide a credit against an entity's business taxes.

The bill permits a developer to receive a non-refundable credit against New Jersey business taxes. The credit amount is calculated based on the developer's expenditures to create rental housing restricted to occupancy by veterans. The bill provides that expenditures for a wide array of construction and real estate development activities are "allowable costs" that qualify for a credit. The credit amount may be up to 10 percent of the developer's allowable costs for developing veterans' housing.

To receive a credit, the developer must submit both a project plan and an application to the Department of Community Affairs. The Department of Community Affairs will issue a certificate of eligibility, which the developer will file with the developer's tax return to obtain the credit. The Commissioner of the Department of Community Affairs will develop regulations to administer the credit program in conjunction with the Division of Taxation and the Department of Military and Veteran's Affairs.

This program will benefit the developer, however it does not provide any credit or cost reduction for the veteran. It would be ideal that if the developer gets a tax credit, some of the savings is passed on to the veteran. The biggest need is for affordable housing for veterans. If the developer is going to get a credit it would be ideal if the units for the veterans would also receive some sort of discount. This would benefit veterans and improve their odds at getting into affordable housing. Veterans who rent are not entitled to the veterans \$250 property tax reduction or the 100% property tax exemption.

## VETERANS EXECUTIVE LEGISLATIVE ACTION COUNCIL



A2985/S1104 Authorizes COAH to credit municipalities with 1.5 units of fair share affordable housing obligation for each housing unit occupied by a veteran; permits municipalities to satisfy fair share affordable housing obligation through 35 percent set aside for veterans. Introduced, referred to Assembly Housing and Community Development Committee 2/8/2018. Introduced in the Senate, referred to Senate Community and Urban Affairs Committee 1/25/2018. This legislation was initially introduced in 2009 and referred to the Assembly Housing and Local Government Committee.

This bill would allow municipalities to obtain credits toward the fulfillment of their fair share affordable housing obligations for housing reserved for certain veterans. This bill would require the Council on Affordable Housing to credit 1.5 units toward a municipality's fair share obligation for each unit of housing occupied by a veteran of low or moderate income.

This legislation also permits a municipality to submit a housing element to the Council on Affordable Housing that sets aside 35 percent of all new affordable housing for low and moderate income veterans who had active service in time of war, as defined by current law.

Maybe someone on this committee would like to explain why after nine years this legislation has not received a hearing in either chamber.

A2986/S1088 Authorizes COAH to credit municipalities with 1.5 units of fair share affordable housing obligation for each unit of transitional housing occupied by a veteran. Introduced, referred to Assembly Housing and Community Development Committee 2/8/2018. Introduced in the Senate, referred to Senate Community and Urban Affairs Committee 1/25/2018. This legislation was initially introduced in 2009 and referred to the Assembly Housing and Local Government Committee.

This bill would allow municipalities to obtain credits toward the fulfillment of their fair share affordable housing obligations for transitional housing reserved for certain veterans. This bill would require the Council on Affordable Housing to credit 1.5 units toward a municipality's fair share obligation for each unit of transitional housing occupied by a veteran of low or moderate income who had active service in time of war, as defined by current law.

Maybe someone on this committee would like to explain why after nine years this legislation has not received a hearing in either chamber.

Prepared by  
Robert E. McNulty, Sr.



and seems to be following a pattern of gentrification that has totally changed the characters of New York City's Harlem and Washington D.C. Yet, most importantly, we are concerned with the historic preservation of our Ward.

In closing, we view the over-development occurring in the 4<sup>th</sup> Ward of Englewood as violative of the spirit and intent of the State Statute referred to as the Municipal Land Use Law. We highlight 2 provisions featured within the law's purpose:

- To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment.
- To promote the conservation of historic sites and districts, open space, energy resources, valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land.

Thank you again for the opportunity to speak on this very important topic.



**NEW  
JERSEY  
TENANTS  
ORGANIZATION**

**MATTHEW B. SHAPIRO**  
*President*

**GABRIELLE AGUELE**  
*1st Vice President*

**BONNIE SHAPIRO**  
*Administrative Director*

**96 Linwood Plaza #233, Fort Lee, New Jersey 07024 • Telephone (201) 342-3775**  
*Fax (201) 342-3776 • e-mail info@njto.org • www.njto.org*

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June 25, 2018

Assembly Housing and Community Development Committee

Re: Affordable Housing

Dear Committee Members,

Thank you for the opportunity to present testimony regarding affordable housing in New Jersey. Unfortunately, I cannot be present at the hearing. I hope you will accept this letter as my testimony.

As the voice of the 1.1 million tenant families in New Jersey since 1969, The New Jersey Tenants Organization (NJTO) deals with the affordable housing needs of New Jersey's tenants on a daily basis. To meet the housing need of low and moderate income residents, New Jersey would have to spend in the neighborhood of a billion dollars to help construct new housing and provide voucher based assistance to those who need it and qualify for it.

We should do that. However, even if we did, we would still have a housing affordability problem in this state. The cost of rental housing in New Jersey is extremely high – sixth or seventh highest in the nation – despite the existence of over 100 municipal rent control ordinances. Most of those ordinances are very weak, allowing automatic rent increases well above the inflation rate, and vacancy decontrol, which encourages harassment as it destroys affordability. Except for the very wealthy, New Jersey's tenants are having a very difficult time paying for their housing. At the same time, profit margins for landlords are at record levels because of the historically low interest rates that have prevailed for the last 10 – 15 years, mortgage interest being far and away the single highest cost factor in rental housing. In truth, rents should be decreased. Certainly, they should not increase by more than the inflation rate, and the state should encourage stronger inflation-based municipal rent control without vacancy decontrol, in order to try to maintain affordability levels.

Without a tremendous investment in housing affordable to low and moderate income households, rent control is the only mechanism available to limit the completely unaffordable market rates. Maintaining the same level of un-affordability is certainly preferable to letting it get even more unaffordable.

We do not expect the kind of massive investment in affordable housing that New Jersey needs. In consequence we must try our best to improve the situation as much as possible, given budget constraints, by promoting both affordability and habitability. Here are some ideas.

- Fund low/moderate income housing construction/rehabilitation and voucher based assistance to the greatest degree possible.
- Encourage strong municipal inflation-based rent control without vacancy decontrol.
- Ensure that all future low/moderate income housing built with the assistance of state dollars require affordability in perpetuity rather than for a limited number of years.
- Do everything possible to improve the state's inspection program so that all existing housing is brought up to code in reality, not just on paper, and provide inspection reports online to all.
- Restore the warranty of habitability by eliminating rent-posting requirements that prevent lower income tenants from using lack of habitability as an eviction defense. Require the courts to use the warranty to enforce habitability standards in any building where tenants have had non-payment eviction actions which resulted from habitability-induced rent withholding.
- End the practice of blacklisting tenants who have been sued for eviction, regardless of the outcome. Having to the right to a habitability defense is not meaningful if it means you can never move to a better apartment.
- Provide free legal representation in eviction cases to those tenants who cannot afford it.
- Require landlords to provide written, signed receipts for cash rent payments, so that tenants will not fear reprisal evictions for standing up for their right to habitable housing.

The above list is by no means exhaustive, but implementation of these ideas would be very meaningful in dealing with the crisis in affordable and habitable housing facing the tenants of New Jersey.

Thank you again for the opportunity to submit this testimony.

Sincerely yours,



Matthew B. Shapiro  
President