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Our File No.: C22117

FILED & RECEIVED #1

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2015 JUL - 7 P 2: 22  
CIVIL OFFICE  
MIDDLESEX VICINAGE

IN THE MATTER OF THE BOROUGH OF SOUTH PLAINFIELD FOR A JUDGMENT OF COMPLIANCE OF ITS THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION: MIDDLESEX COUNTY : DOCKET NO.: MID-L- <b>MID-L- 03994 15</b> : : (MOUNT LAUREL) : : <i>Civil Action</i> : : <b>COMPLAINT FOR DECLARATORY</b> : <b>JUDGMENT (THIRD ROUND</b> : <b>HOUSING ELEMENT AND FAIR</b> : <b>SHARE PLAN)</b>
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The Borough of South Plainfield, by way of Complaint for Declaratory Judgment in accordance with the and In the Matter of the Adoption of N.J.A.C. 5:96 and 5:97, 221 N.J 1 (2015), (“In re COAH”) states:

**COUNT ONE FOR DECLARATION OF COMPLIANCE**

1. The Borough of South Plainfield is a municipal corporation which has been duly created and authorized as a public body politic of the State of New Jersey. Middlesex County.
2. In accordance with its constitutional obligations as set forth in S. Burlington Cnty. v. Twp. of Mount Laurel, 92 N.J. 158 (1983) and its progeny (“Mount Laurel”), and the Fair Housing Act, N.J.S.A. 52:27D-301 et. seq. (“FHA”) the Borough of South Plainfield:
  - i. Has developed a Housing Element and Fair Share Plan, and spending plan (“Plan”) to meet its fair share obligations under Mount Laurel and in accordance with the FHA. These documents are annexed hereto as follows:
  - ii. The Plan, Ex. A

- iii. Spending Plan, Ex. B
- iv. Municipal Affordable Housing Development Fee Ordinance, Ex. C
- v. Has received Substantive Certification from the Council for Affordable Housing (“COAH”) in accordance with the FHA for the First, Second and Third Rounds. Ex. D

3. The Borough of South Plainfield is prepared to supplement its Plan as may be necessary to comply with its constitutional obligation to provide for the realistic opportunity for the development of its fair share of very low, low, and moderate income housing in accordance with Mount Laurel in accordance with the In re COAH, prior decisions of the Courts of New Jersey, the FHA and rules and regulations developed and promulgated by COAH that have been approved by the Courts of New Jersey and consistent with all credits, adjustments, including physical and environmental factors.

4. The Borough of South Plainfield has been working diligently in accordance with the FHA and the rules and regulations promulgated and employed by COAH, and decisions of the courts to meet its obligations under Mount Laurel.

5. At the time that the Borough received substantive certification, COAH had determined that the Borough had a prior-round (Cycle I and II) obligation of 342 units. In its grant of substantive certification, COAH affirmed that the Borough had fully satisfied its prior-round obligation through a combination of credits from a variety of existing affordable housing developments consisting of senior and family-rental units, group homes, rental bonus credits, and a regional contribution agreement (RCA) with the City of New Brunswick. (See Appendix D).

6. The Borough currently has a rehabilitation obligation of 48 units as determined by COAH based on 2010 U.S. Census data as presented its proposed 2014 regulations. The Borough has entered into a contract with Affordable Housing Administrators to manage and administrate its housing rehabilitation program.

7. At the time the Borough received substantive certification from COAH, the Third Round Growth Share that was projected for the Borough was 299 units. The Borough has developed a plan to meet its projected growth-share obligation with a combination of prior-cycle credits, two inclusionary developments (the former Harris Steel site and JSM at Tingley [a.k.a., Celebrations]), a group home, and rental bonus credits. With its grant of substantive certification, COAH affirmed that the Borough had fully satisfied its projected growth share obligation.

8. The Plan that has been adopted, and for which COAH granted *Substantive Certification* under the previously adopted Third Round Rules, which may need to be supplemented in accordance with the In re COAH, is entitled to be “view[ed] more favorably” by the Court. The Fair Share Housing Plan that has been adopted, and continues to be developed by the Borough of South Plainfield in accordance with the In re COAH, has been done with reasonable diligence and the actions of the Borough of South Plainfield should be entitled to deference.

9. Despite the inability of COAH to establish a constitutionally valid set of Third Round regulations, the Borough received Substantive Certification under the invalid growth share regulations on October 12, 2009. During the period from 1999 through 2014, the Borough has produced and been credited for 280 units of affordable housing and rehabilitated 80 units.

10. In accordance with the In re COAH, the Borough of South Plainfield seeks a determination declaring that its Plan, as it is or as supplemented, meets its constitutional obligations under Mount Laurel.

11. During the period of time that the Court is reviewing and working with the Borough of South Plainfield to meet its Mount Laurel obligations, Borough of South Plainfield is entitled immunity from suit by any party or entity, including any claim for builder’s remedy.

12. Once the Court has declared that the Plan of the Borough of South Plainfield satisfies its Mount Laurel obligation, the Borough of South Plainfield is entitled to further repose and immunity from litigation challenging its Fair Share Housing Plan, including any claim for a builder's remedy for the duration of the adopted and approved Fair Share Housing Plan, which the In re COAH held to be no sooner than 2025.

13. In accordance with In re COAH, interested parties are to be noticed of this action, at minimum those parties that participated in the In re COAH. Those parties and others that have requested to be noticed will be provided notice and will be served with the pleadings; other potentially interested parties will be given notice of the pendency of this action.

**WHEREFORE**, Borough of South Plainfield requests the court enter judgment declaring that:

- a. The Plan of the Borough of South Plainfield meets its constitutional obligations under Mount Laurel and the FHA,
- b. The Borough of South Plainfield is entitled to immunity and repose from litigation challenging any aspect of its Plan, including any claim for a builder's remedy, until 2025, or as otherwise directed by the Court, and
- c. Such other relief as is proper and just.

#### **COUNT TWO APPROVING DEVELOPMENT FEE ORDINANCE AND SPENDING PLAN**

14. The Borough of South Plainfield repeats and relies upon each and every allegation set forth in Paragraphs 1-13 herein.

15. The Plan includes a Municipal Development Fee Ordinance ("MDFO") as well as a Spending Plan in accordance with the FHA.

16. In accordance with the MDFO and the Spending Plan the Borough of South Plainfield has been collecting fees from developers for use by the Borough of South Plainfield in implementing certain aspects of its Plan.

17. The FHA requires MDFO and the Spending Plan to be approved by COAH.

18. In the In re COAH, the New Jersey Supreme Court removed all aspects of implementation of the FHA from COAH.

19. In order to continue to meet the provisions of the Plan, the MDFO and the Spending Plan are required to be approved.

20. In the absence of COAH, this determination must be made by the Court.

**WHEREFORE**, Borough of South Plainfield requests the court enter judgment declaring that:

- a. The MDFO and Spending Plan prepared by Borough of South Plainfield meet the requirements of the FHA and further meets its constitutional obligations under Mount Laurel and the FHA.
- b. Such other relief as the Court deems just and proper.

**COUNT THREE PRESERVING THE MUNICIPAL  
HOUSING TRUST FUNDS OF BOROUGH OF SOUTH PLAINFIELD**

21. The Borough of South Plainfield repeats and relies upon each and every allegation set forth in Paragraphs 1-20 herein.

22. In accordance with the MDFO and the Spending Plan, the Borough of South Plainfield has been collecting development fees that are to be used to advance affordable housing needs and programs that are components of its Plan.

23. FHA provided, in part, that the funds collected must be committed within four years of collection or they would be forfeited to the New Jersey Housing Trust Fund and, under certain circumstances to the general funds of the State.

24. COAH failed to adopt regulations to address what constitutes the “commitment for expenditure” of funds, and under what circumstances the funds could be forfeited.

25. The New Jersey Appellate Division ruled that in the absence of appropriate direction from COAH, that the determination of the use of a municipality’s collected funds is to be conducted by the Court within this action. In Re Failure of the Council on Affordable Housing to Adopt Trust Fund Commitment Regulations, 440 N.J. Super. 220 (App. Div. 2015).

26. The MDFO and Spending Plan prepared by the Borough of South Plainfield are components of the Plan, and is a reasonable aspect of the Plan that will enable the Borough of South Plainfield to meet its regional fare share obligation in accordance with Mount Laurel.

27. A forfeiture of those funds would be contrary to the interests of Borough of South Plainfield, the citizens of the State, and would impede the ability of Borough of South Plainfield to implement its Fair Share Housing Plan.

**WHEREFORE**, Borough of South Plainfield requests the court enter judgment declaring that:

- a. The Fees collected by the MDFO and Spending Plan shall not be forfeited to the New Jersey Housing Trust Fund or to the State General Fund,
- b. The Fees collected by the MDFO and Spending Plan are permitted to be used and shall be used in accordance with the Spending Plan, and
- c. Such other relief as the Court deems just and proper.

#### **DESIGNATION OF TRIAL COUNSEL**

Pursuant to R. 4:25-4, Steven A. Kunzman, Esq. is hereby designated as Trial Counsel for the Borough of South Plainfield in the within matter.

**R. 4:5-1 CERTIFICATION**

Pursuant to R. 4:5-1, the undersigned hereby certifies that at the time of filing the within, the matter in controversy is not the subject of any other action pending in any court and/or arbitration proceeding, and no other action or arbitration proceeding is contemplated, and the undersigned is unaware of any other party who is potentially responsible to any party on the basis of the facts set forth herein and who should be joined in this action pursuant to R. 4:28 and 4:29-1 et seq. However, many of the issues to be presented in the matter in controversy and to be addressed by the court will be the subject of similar matters that have been or will be filed by other municipalities and, as such, many of these issues may be required to be addressed by the court in conjunction or simultaneously with other such actions.

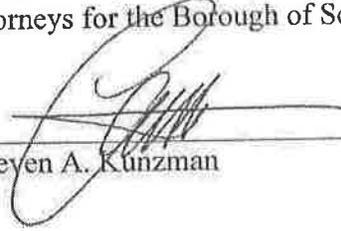
**R. 4:6-1 CERTIFICATION**

The undersigned hereby certifies that this pleading was filed within the time period provided by Rule 4:6-1(c).

**CERTIFICATION IN ACCORDANCE WITH R. 1:38-7(b)**

I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with Rule 1:38-7(b).

DiFRANCESCO, BATEMAN, COLEY, YOSPIN,  
KUNZMAN, DAVIS, LEHRER & FLAUM, P.C.  
Attorneys for the Borough of South Plainfield

By:   
Steven A. Kunzman

Dated: July 6, 2015

# **Exhibit A**

Office copy

Lester  
e(908)756-0040

MBK

① **HOUSING ELEMENT  
AND  
FAIR SHARE PLAN**

**DECEMBER 2008**

12/14/09  
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to Rob  
CME:

①

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② SP Hous.  
Elem.

11/05  
(MBK)

1-15-2010

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to  
Bethany

**Prepared for:**  
Borough of South Plainfield  
2480 Plainfield Avenue  
South Plainfield, NJ 07080

**Prepared by:**  
Bernard and Nebenzahl  
77 North Union Street  
Lambertville, NJ 08530  
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# ***Bernard & Nebenzahl, L.L.C.***

Housing and Land Use Planners  
Municipal Consultants

December 1, 2008  
VIA FED EX PRIORITY OVERNIGHT

Mary Beth Khidre, Planning Board Clerk  
Borough of South Plainfield  
2480 Plainfield Avenue  
South Plainfield, New Jersey 07080

*MBK*

RE: Housing Element and Fair Share Plan  
Borough of South Plainfield  
*B&N File No. 2008 02*

Dear Ms. Khidre:

Pursuant to our telephone conversation today, please find enclosed thirteen (13) unbound copies and one (1) original unbound copy of Appendices A, B and C to be included in the Borough's 2008 Housing Element and Fair Share Plan, dated December, 2008. The enclosed copies of these Appendices are provided for inclusion into the copies of the Housing Element and Fair Share Plan, which were forwarded to your office under separate cover last week. Please insert the original unbound copy of Appendices into your original copy of the document for future use. *OK*

Should you have any questions concerning this matter, please do not hesitate to call me at our East Brunswick office (732-257-4040), or Les Nebenzahl at 908-756-0040.

Very truly yours,



Richard B. Scalia  
Project Manager

*Bernard & Nebenzahl, L.L.C.*

Encls.

Cc: Les Nebenzahl, P.P., AICP

---

40 Brunswick Woods Drive, East Brunswick, New Jersey 08816 Phone 732-257-4040 Fax 732-257-7953  
77 North Union Street, Lambertville, New Jersey 08530 Phone 609-397-8070 Fax 609-397-8084  
61 Carrar Drive, Watchung, New Jersey 07069 Phone 908-756-0040 Fax 908-791-1165

*12/3/08*  
*1) Mayor*  
*2) B. Ackerman*

OFFICE COPY

12/1/08  
"Summary of Findings"  
MISSING - 39,40,41  
Spoke of Mayor/Sutrico -

# HOUSING ELEMENT AND FAIR SHARE PLAN

DECEMBER 2008

MSK

**Prepared for:**  
Borough of South Plainfield  
2480 Plainfield Avenue  
South Plainfield, NJ 07080

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## *Table of Contents*

	Page Number
Content	1
Analysis of Housing Stock	2
Units Affordable to Low and Moderate Income Households	5
Characteristics of Housing Stock	7
Projected Housing Stock	10
Demographic Characteristics	11
Household Size and Age Distribution	11
Income	13
Employment Characteristics	14
Education	16
Projection of Future Employment	17
Determining of Housing Obligation	17
Land As a Scarce Resource	20
Compliance Options	24
Rehab Share	25
The Regulatory Framework for New Construction	25
Zoning and Fees	27
Regional Contribution Agreements	29
Redevelopment	29
Municipal Construction	30

Supportive and Special Needs Housing	31
Accessory Apartments	32
Market to Affordable Program	32
Assisted Living Units	33
Affordable Housing Partnership Program	33
Extension of Expiring Controls	34
South Plainfield's Response to the Housing Obligation	34
Rehab Share	34
New Construction	35
The Growth Share	37
Harris Steel Site	37
JSM at Tingley, LLC (Block 517, Lot 1)	39
Supportive and Special Needs Housing	41
Summary of Plan	41

#### Appendices

Appendix A	Resolution of Approval
Appendix B	Rehab Credit
Appendix C	Mapping of Sites
Appendix D	Fair Share Ordinance
Appendix E	Development Fee Ordinance

### *Content*

New Jersey's Fair Housing Act of 1985 and the Municipal Land Use Law (MLUL) require municipalities to adopt a housing element that addresses the municipal present and prospective housing need, with particular attention to low and moderate income housing. A housing element shall contain at least the following:

1. An inventory of the municipality's housing stock by age, condition, purchase or rental value, occupancy characteristics and type including the number of units affordable to low and moderate income households and substandard housing capable of being rehabilitated;
2. A projection of the municipality's housing stock, including the probable future construction of low and moderate income housing, for the next 10 years, taking into account, but not necessarily limited to, construction permits issued, approvals of applications for development and probable residential development of lands;
3. An analysis of the municipality's demographic characteristics, including but not necessarily limited to, household size, income level and age;
4. An analysis of the existing and probable future employment characteristics of the municipality;
5. A determination of the municipality's present and prospective fair share for low and moderate income housing and its capacity to accommodate its present and prospective housing needs, including its fair share for low and moderate income housing; and
6. A consideration of the lands most appropriate for the construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing, including a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing.

### *Analysis of Housing Stock*

As of the 2000 Census, there were 7,307 housing units in South Plainfield Borough. The vast majority of these units, 97.9 percent, were occupied. Of the 7,151 occupied housing units, 6,360 (88.8 percent) were owner occupied and 791 (11.1 percent) were rentals.

#### OCCUPANCY STATUS & TENURE - Universe: Housing units

	Middlesex County	South Plainfield
Total:	273,637	7,307
Occupied	265,815	7,151
Vacant	7,822	156
% Vacant	2.9%	2.1%
Owner occupied	177,377	6,360
% Owner Occupied	66.7%	88.9%
Renter occupied	88,438	791
% Renter occupied	33.3%	11.1%

*U.S. Census Bureau, 1990 & 2000*

In 2000, most of the housing stock, 87.2 percent, consisted of single family detached housing. Almost nine and one half percent of the housing stock consisted of single family attached units and twins.

#### UNITS IN STRUCTURE - Universe: Housing units

	Middlesex		South Plainfield	
Total:	273,637	(x)	7,307	(x)
1, detached	146,921	53.7%	6,370	87.2%
1, attached	30,048	11.0%	298	4.1%
2	20,100	7.3%	390	5.3%
3 or 4	15,959	5.8%	134	1.8%
5 to 9	15,858	5.8%	34	0.5%
10 to 19	21,055	7.7%	74	1.0%
20 to 49	9,619	3.5%	7	0.1%
50 or more	11,641	4.3%	0	0.0%
Mobile home	2,408	0.9%	0	0.0%
Boat, RV, van, etc.	28	0.0%	0	0.0%

*U.S. Census Bureau, 2000*

The median value of sales housing in South Plainfield, as of the 2000 Census, was \$165,800. Nearly 82 percent of the owner occupied housing stock was valued at between \$125,000 and \$250,000. The median rent in South Plainfield was \$976 as of the 2000 Census.

**VALUE FOR SPECIFIED OWNER-OCCUPIED HOUSING UNITS**

- Universe: Specified owner-occupied housing units

	Middlesex		South Plainfield	
	166,030	(x)	6,075	(x)
Total:				
Less than \$10,000	38	0.0%	0	0.0%
\$10,000 to \$14,999	135	0.1%	7	0.1%
\$15,000 to \$19,999	223	0.1%	0	0.0%
\$20,000 to \$24,999	142	0.1%	5	0.1%
\$25,000 to \$29,999	130	0.1%	5	0.1%
\$30,000 to \$34,999	139	0.1%	0	0.0%
\$35,000 to \$39,999	126	0.1%	0	0.0%
\$40,000 to \$49,999	220	0.1%	0	0.0%
\$50,000 to \$59,999	433	0.3%	0	0.0%
\$60,000 to \$69,999	709	0.5%	0	0.0%
\$70,000 to \$79,999	1,222	0.8%	18	0.3%
\$80,000 to \$89,999	2,344	1.5%	37	0.6%
\$90,000 to \$99,999	4,079	2.6%	107	1.8%
\$100,000 to \$124,999	14,911	9.6%	447	7.4%
\$125,000 to \$149,999	30,624	19.6%	1,392	22.9%
\$150,000 to \$174,999	30,476	19.5%	1,612	26.5%
\$175,000 to \$199,999	21,368	13.7%	1,132	18.6%
\$200,000 to \$249,999	22,375	14.3%	832	13.7%
\$250,000 to \$299,999	13,075	8.4%	328	5.4%
\$300,000 to \$399,999	9,391	6.0%	132	2.2%
\$400,000 to \$499,999	2,348	1.5%	15	0.2%
\$500,000 to \$749,999	1,150	0.7%	6	0.1%
\$750,000 to \$999,999	246	0.2%	0	0.0%
\$1,000,000 or more	126	0.1%	0	0.0%
<b>Median value</b>	<b>\$ 168,500</b>	<b>(x)</b>	<b>\$ 165,800</b>	<b>(x)</b>

U.S. Census Bureau, 2000

BEDROOMS BY GROSS RENT

- Universe: Specified renter-occupied housing units

	Middlesex County	South Plainfield
Total:	88,327	791
No bedroom:	5,807	11
With cash rent:	5,762	11
Less than \$200	445	0
\$200 to \$299	280	0
\$300 to \$499	369	5
\$500 to \$749	1,930	6
\$750 to \$999	2,306	0
\$1,000 or more	432	0
No cash rent	45	0
1 bedroom:	38,799	107
With cash rent:	38,544	92
Less than \$200	1,484	0
\$200 to \$299	1,205	0
\$300 to \$499	1,635	7
\$500 to \$749	12,043	44
\$750 to \$999	17,762	41
\$1,000 or more	4,415	0
No cash rent	255	15
2 bedrooms:	30,569	335
With cash rent:	29,870	322
Less than \$200	481	0
\$200 to \$299	334	8
\$300 to \$499	947	6
\$500 to \$749	4,443	35
\$750 to \$999	11,786	160
\$1,000 or more	11,879	113
No cash rent	699	13
3 or more bedrooms:	13,152	338
With cash rent:	12,169	289
Less than \$200	255	0
\$200 to \$299	160	0
\$300 to \$499	525	6
\$500 to \$749	1,275	7
\$750 to \$999	2,879	66
\$1,000 or more	7,075	220
No cash rent	983	49
Median gross rent	\$ 845	\$ 976

U.S. Census Bureau, 2000

### Units Affordable to Low and Moderate Income Households

Low income households are defined as those households earning less than or equal to 50 percent of a regional median income. Moderate income households earn more than 50 percent of median but less than 80 percent.

COAH has developed a sliding scale defining the income of eligible low and moderate income households. For example, the median income of a household of one (1) is less than for a household of two (2). COAH has determined separate median incomes for households of one (1) up to households of eight (8).

Similarly, housing units are to be priced to be affordable to households who could reasonably be expected to live within the housing units. For example, the current COAH rules require that an efficiency unit be affordable to a household of one (1). The average one (1) bedroom unit must be affordable to a one (1) and a half person household. Similarly, the average two (2) and three (3) bedroom units must be affordable to households of 3.0 and 4.5 respectively. The following table displays COAH's 2000 income limits by household size. The income of a 1.5 person and 4.5 person household must be determined by interpolation.

**Table 5-H: Income Limits**

	1 Person	2 Person	3 Person	4 Person	5 Person
Moderate	\$45,248	\$51,712	\$58,176	\$64,640	\$67,226
Low	\$28,280	\$32,320	\$36,360	\$40,400	\$42,226

To be affordable, a home owner should not be paying more than 28 percent of its gross income on principal, interest, taxes, and insurance, subsequent to a five percent down payment. A rental unit is affordable if the household is paying no more than 30 percent of its income on rent and utilities. To illustrate, the average three-bedroom rental should be affordable to a household of 4.5 people. Assuming that a 4.5 person moderate income household earned \$67,226 in 2000, the monthly rent and utilities for an affordable three bedroom unit could not exceed \$1,680.

It is difficult, and probably not terribly productive to try and determine how many for sale units were affordable to low and moderate income households when the census was taken. To make this calculation properly would require an analysis of 2000 income limits, interest rates and tax rates. However, assuming that most of the owner occupied housing in South Plainfield are three (3) bedroom units, an owner occupied unit would have been considered affordable if it could be purchased by a moderate income household of 4.5 people. Assuming a household could afford a home priced at 3.0 times the household income, a household earning \$69,811 could afford a \$209,433. Four thousand seven hundred sixty-two (4,762) of South Plainfield's for sales units were value at under \$200,000 as of the Census. There is reason to believe that at least 78 percent of the Borough's 6,075 owner occupied units were affordable to a moderate income household.

With regard to rentals, it is assumed that an efficiency unit should be affordable to a one (1) person household. A one (1) bedroom unit should be affordable to a 1.5 person household. A two (2) bedroom unit should be affordable to a three (3) person household; and a three (3) bedroom unit should be affordable to a 4.5 person household. Given these standards, rent plus utilities on an affordable efficiency, one, two and three bedroom unit could not exceed \$1,132, \$1,212, \$1,454 and \$1,680 respectively in 2000. For purposes of calculating affordability, the Borough assumes that utilities cost: \$60 per month for an efficiency unit; \$75 for a one (1) bedroom unit; \$95 for a two (2) bedroom unit; and \$110 for a three (3) bedroom unit. Thus, an affordable moderate income rent, by COAH standards, may be estimated to be: \$1,072 for an efficiency unit; \$1,137 for a one (1) bedroom unit; \$1,359 for a two (2) bedroom unit; and \$1,344 for a three (3) bedroom unit.

By applying these standards to the rents paid in the Borough as of the 2000 Census (see page 4), one can determine that 11 efficiency units, 92 one bedroom units, at least 209 two (2) bedroom units and at least 63 three (3) bedroom units were affordable to moderate income households at the time of the Census. More rentals may have been

affordable to moderate income households at the time of the Census. However, the Census reports all rents over \$1,000 without specifying ranges. For example, the Census does not report on rents between \$1,000 and \$1,250 or on rents between \$1,250 and \$1,500. Thus, it is not possible to determine how many of the two (2) and three bedroom units were affordable as of the 2000 Census.

The Census demonstrates that a large majority of South Plainfield's housing stock was affordable to either a low or moderate income household as of the 2000 Census.

### **Characteristics of Housing Stock**

Detailed characteristics of housing, as it existed at the time of the 2000 Census, are shown in the following table. The table demonstrates that over half of the Borough's housing stock was constructed between 1950 and 1970. By way of comparison, only 37.2 percent of the Middlesex County housing stock was constructed during this 20 year period. Studies have shown that the condition of the housing stock is inversely related to its age. Thus, it is prudent for the Borough to monitor the condition of its housing stock and participate in the Middlesex County rehabilitation program.

The data show that most of the owner occupied housing consist of at least three (3) bedrooms. Most of the rental units are designed for smaller households.

YEAR STRUCTURE BUILT - Universe: Housing units

	Middlesex		South Plainfield	
<b>Total:</b>	273,637	(x)	7,307	(x)
Built 1999 to March 2000	4,448	1.6%	184	2.5%
Built 1995 to 1998	13,687	5.0%	177	2.4%
Built 1990 to 1994	15,760	5.8%	171	2.3%
Built 1980 to 1989	47,974	17.5%	590	8.1%
Built 1970 to 1979	37,525	13.7%	689	9.4%
Built 1960 to 1969	50,548	18.5%	1,355	18.5%
Built 1950 to 1959	51,265	18.7%	2,448	33.5%
Built 1940 to 1949	20,174	7.4%	945	12.9%
Built 1939 or earlier	32,256	11.8%	748	10.2%
<b>Total Units Built 1940 or earlier</b>	<b>52,430</b>	<b>(x)</b>	<b>1,693</b>	<b>(x)</b>
<b>Percent of all units</b>	<b>19.2%</b>	<b>(x)</b>	<b>23.2%</b>	<b>(x)</b>

U.S. Census Bureau, 2000

TENURE BY BEDROOMS - Universe: Occupied housing units

	Middlesex		South Plainfield	
<b>Total:</b>	265,815	(x)	7,151	(x)
<b>Owner occupied:</b>	177,377	(x)	6,360	(x)
No bedroom	468	0.3%	21	0.3%
1 bedroom	6,123	3.5%	74	1.2%
2 bedrooms	38,742	21.8%	742	11.7%
3 bedrooms	76,401	43.1%	3,430	53.9%
4 bedrooms	46,540	26.2%	1,816	28.6%
5 or more bedrooms	9,103	5.1%	277	4.4%
<b>Renter occupied:</b>	88,438	(x)	791	(x)
No bedroom	5,820	6.6%	11	1.4%
1 bedroom	38,804	43.9%	107	13.5%
2 bedrooms	30,595	34.6%	335	42.4%
3 bedrooms	10,252	11.8%	272	34.4%
4 bedrooms	2,335	2.6%	60	7.6%
5 or more bedrooms	632	0.7%	6	0.8%

U.S. Census Bureau, 2000

The data show that over 97 percent of the homes are heated with oil or gas. The vast majority of homes have complete plumbing facilities.

**HOUSE HEATING FUEL - Universe: Occupied housing units**

	Middlesex		South Plainfield	
Total:	265,815	(x)	7,151	(x)
Utility gas	203,622	76.6%	5,976	83.6%
Bottled, tank, or LP gas	3,631	1.4%	5	0.1%
Electricity	25,328	9.5%	165	2.3%
Fuel oil, kerosene, etc.	31,573	11.9%	975	13.6%
Coal or coke	71	0.0%	11	0.2%
Wood	193	0.1%	13	0.2%
Solar energy	8	0.0%	0	0.0%
Other fuel	707	0.3%	0	0.0%
No fuel used	682	0.3%	6	0.1%

*U.S. Census Bureau, 2000*

**PLUMBING FACILITIES - Universe: Housing units**

	Middlesex		South Plainfield	
Total:	273,637	(x)	7,307	(x)
Complete plumbing facilities	272,512	99.6%	7,268	99.5%
Lacking complete plumbing facilities	1,125	0.4%	39	0.5%
Complete kitchen facilities	272,499	99.6%	7,282	99.7%
Lacking complete kitchen facilities	1,138	0.4%	25	0.3%
Telephone Service	263,302	96.2%	7,138	97.7%
No Telephone Service	2,513	0.9%	13	0.2%

*U.S. Census Bureau, 2000*

An overcrowded unit is often defined as housing more than one person per room. Based on this definition, 2.6 percent of the occupied owner occupied housing units and 8.1 percent of the rental units are overcrowded.

TENURE BY OCCUPANTS PER ROOM - Universe: Occupied housing units

	Middlesex		South Plainfield	
Total:	265,815	(x)	7,151	(x)
Owner occupied:	177,377	(x)	6,360	(x)
0.50 or less occupants per room	127,891	72.1%	4,503	70.8%
0.51 to 1.00 occupants per room	45,635	25.7%	1,690	26.6%
1.01 to 1.50 occupants per room	2,716	1.6%	116	1.8%
1.51 to 2.00 occupants per room	896	0.5%	30	0.5%
2.01 or more occupants per room	239	0.1%	21	0.3%
Renter occupied:	88,438	(x)	791	(x)
0.50 or less occupants per room	42,594	48.2%	441	55.8%
0.51 to 1.00 occupants per room	33,434	37.8%	278	35.1%
1.01 to 1.50 occupants per room	5,821	6.6%	49	6.2%
1.51 to 2.00 occupants per room	4,361	4.9%	23	2.9%
2.01 or more occupants per room	2,228	2.5%	0	0.0%
<b>Total units 1.01 or more occupants/room</b>	<b>18,261</b>	<b>(x)</b>	<b>239</b>	<b>(x)</b>
<b>Percentage of all units</b>	<b>6.1%</b>	<b>(x)</b>	<b>3.3%</b>	<b>(x)</b>

U.S. Census Bureau, 2000

### Projected Housing Stock

The Borough performed an analysis of 1996-2004 certificates of occupancy permits in preparing its 2005 Housing Element. The Borough issued 965 certificates of occupancy during this nine (9) year period, for an average of 107 new housing units per year. Many of them were issued between 1999 and 2003 when the Borough was implementing its 1987-1999 housing plan.

The New Jersey Transportation Planning Authority (NJTPA) is projecting a 2005 – 2015 increase of 1,890 people. The 2000 Census indicates that the average household size in South Plainfield was 3.01 persons per unit. By dividing the average household size into the projected increase in people, one can convert the NJTPA projection into a projection of 628 households.

COAH has developed its own projections for each municipality in New Jersey. It has projected that the Borough will add 518 housing units between 2004 and 2018.

The Borough anticipates that a 484 unit age restricted condominium development will be constructed prior to 2018. South Plainfield granted final site plan approval to this age restricted community on November 27, 2007. It is anticipated that 20 percent of the units in this age restricted community will be low and moderate income units.

The development is proposed to be located on a 26.34 acre tract of land known as Lot 1, in Block 517, on the southwest quadrant of the Coolidge Road/South Avenue intersection. The proposed age restricted community will include a clubhouse building and other amenities. A copy of the Resolution of Final Site Plan Approval is provided in Appendix A.

#### **Demographic Characteristics**

South Plainfield's population peaked in 1970 and declined slightly over the next 20 years. During the 1990s, the Borough's population increased from 20,489 to 21,810. The reported 2000 population is slightly higher than the Borough's population in 1970.

<b>Year</b>	<b>Population</b>	<b>Increase</b>	<b>Percentage Increase</b>
1940	5,379	-	-
1950	8,008	2,629	+48.9
1960	17,879	9,871	+123.3
1970	21,142	3,263	+18.3
1980	20,521	-621	-2.9
1990	20,489	-32	0.0
2000	21,810	1,321	+6.5

The Borough's population projections are discussed in the section related to the Borough's growth share.

#### **Household Size and Age Distribution**

Household sizes have declined nationally for decades. In South Plainfield, the 1980 average household size was approximately 3.3 persons. In 1990, it was 3.0. The 2000

Census reports that the average South Plainfield household size is 3.01. By way of comparison, the 2000 Middlesex County average household size is 2.74.

**AVERAGE HOUSEHOLD SIZE OF OCCUPIED HOUSING UNITS BY TENURE**  
 - Universe: Occupied housing units

	New Jersey	Middlesex County	South Plainfield
Total	2.68	2.74	3.01
Owner occupied	2.85	2.89	3.06
Renter occupied	2.37	2.45	2.59

*U.S. Census Bureau Census, 2000*

It is clear that South Plainfield is attracting larger households than much of New Jersey. The 2000 Census reports that 54.8 percent of all New Jersey households consist of one (1) and two (2) person households. In Middlesex County, 52.6 percent of all households are one (1) and two (2) person households. Only 44.8 percent of South Plainfield households are one (1) and two (2) person households.

**HOUSEHOLD SIZE - Universe: Occupied housing units**

	Middlesex		South Plainfield	
Total:	265,815	(x)	7,151	(x)
1-person household	59,592	22.4%	1,095	15.3%
2-person household	80,179	30.2%	2,109	29.5%
3-person household	48,955	18.4%	1,431	20.0%
4-person household	44,982	16.9%	1,407	19.7%
5-person household	20,323	7.6%	702	9.8%
6-person household	7,485	2.8%	267	3.7%
7-or-more-person household	4,299	1.6%	140	2.0%

*U.S. Census Bureau, 2000*

The median age of the Borough's residents is 38.0. As with much of the State, more of the Borough's population fell within the older age cohorts.

AGE- Universe: Total population

<u>Age Cohort</u>	<u>1990 Distribution</u>	<u>2000 Distribution</u>
0-4	7.1	5.9%
5-17	16.3	19.1%
18-24	8.8	6.5%
25-44	33.9	30.4%
45-64	21.6	23.8%
65+	12.3	14.3%

*U.S. Census Bureau, 2000*

This trend toward more elderly households is typical throughout the State. New Jersey's Department of Labor (DOL) anticipates that this trend will continue. DOL projects population by age. It projects that New Jersey's population will increase by 1,366,550 people between 2000 and 2020. It attributes 69.9 percent of this increase to people over 55. In Middlesex County, DOL projects that the 2000-2020 population will increase by 160,438 and 49.9 percent of that increase is attributable to people over 55.

**Income**

The 1999 median household income (half higher, half lower) in South Plainfield was reported to be \$67,466. The 1999 median household income is 32 percent higher than the 1989 median household income of \$51,198. By way of comparison the 1999 median household income for New Jersey was \$55,146. The 1999 median income for Middlesex County was \$61,446.

In 1999, 13.1 percent of South Plainfield households had incomes of less than \$25,000; and 18.3 percent had incomes of between \$25,000 and \$50,000. Another 44.1 percent reported incomes of between \$50,000 and \$100,000; and 18.4 percent reported household income of between \$100,000 and \$150,000. Only 6.1 percent of South Plainfield households reported incomes in excess of \$150,000.

HOUSEHOLD INCOME IN 1999 - Universe: Households

	Middlesex		South Plainfield	
Total:	265,898	(x)	7,143	(x)
Less than \$10,000	13,102	4.9%	190	2.7%
\$10,000 to \$14,999	9,965	3.7%	260	3.6%
\$15,000 to \$19,999	10,087	3.8%	193	2.7%
\$20,000 to \$24,999	10,516	4.0%	290	4.1%
\$25,000 to \$29,999	11,784	4.4%	236	3.3%
\$30,000 to \$34,999	12,614	4.7%	310	4.3%
\$35,000 to \$39,999	12,270	4.6%	244	3.4%
\$40,000 to \$44,999	12,985	4.9%	301	4.2%
\$45,000 to \$49,999	11,842	4.5%	222	3.1%
\$50,000 to \$59,999	23,854	9.0%	814	11.4%
\$60,000 to \$74,999	33,454	12.6%	1,047	14.7%
\$75,000 to \$99,999	42,599	16.0%	1,283	18.0%
\$100,000 to \$124,999	20,526	10.0%	913	12.8%
\$125,000 to \$149,999	14,018	5.3%	403	5.6%
\$150,000 to \$199,999	11,823	4.4%	312	4.4%
\$200,000 or more	8,459	3.2%	125	1.7%
Median household income in 1999	\$ 61,446		\$ 67,466	

U.S. Census Bureau, 2000

**Employment Characteristics**

The census reports on workers over 16 years old. As of the 2000 Census, only 3.1 percent of the South Plainfield work force was unemployed. By way of comparison, 5.2 percent of County residents and 5.8 of New Jersey residents were unemployed.

**SEX BY EMPLOYMENT STATUS FOR THE POPULATION 16 YEARS AND OVER**  
 - Universe: Population 16 years and over

	New Jersey	Middlesex	South Plainfield
Total:	6,546,155	591,453	16,955
Male:	3,120,943	285,867	8,192
In labor force:	2,234,787	210,636	5,995
In Armed Forces	9,462	129	0
Civilian:	2,225,325	210,507	5,995
Employed	2,098,857	199,753	5,791
Unemployed	128,468	10,754	204
Unemployed		5.7%	5.1%
Unemployed			3.4%
Not in labor force	886,156	75,231	2,197
Female:	3,425,212	305,586	8,763
In labor force:	1,969,806	180,567	5,353
In Armed Forces	1,788	7	0
Civilian:	1,967,820	180,560	5,353
Employed	1,851,172	171,064	5,200
Unemployed	116,648	9,496	153
Unemployed		5.9%	5.3%
Unemployed			2.9%
Not in labor force	1,455,806	125,019	3,410
Total:			
Civilian:	4,193,145	391,067	11,348
Employed	3,950,029	370,817	10,991
Unemployed	243,116	20,250	357
Unemployed		5.8%	5.2%
Unemployed			3.1%

U.S. Census Bureau, 2000

Of the 10,829 employed residents, only 200 worked inside their homes. Over sixty-four (64.4) percent of workers reported that they commuted a half hour or less to work.

**TRAVEL TIME TO WORK FOR WORKERS 16 YEARS AND OVER**  
 - Universe: Workers 16 years and over

	Middlesex	South Plainfield
Total:	363,176 (x)	10,829 (x)
Did not work at home:	355,486 (x)	10,629 (x)
Less than 5 minutes	7,464 2.1%	277 2.6%
5 to 9 minutes	32,889 9.3%	1,479 13.9%
10 to 14 minutes	45,720 12.9%	1,512 14.2%
15 to 19 minutes	47,183 13.3%	1,563 14.7%
20 to 24 minutes	43,808 12.3%	1,404 13.2%
25 to 29 minutes	18,330 5.2%	614 5.8%
30 to 34 minutes	44,349 12.5%	1,358 12.8%
35 to 39 minutes	10,611 3.0%	327 3.1%
40 to 44 minutes	15,483 4.4%	370 3.5%
45 to 59 minutes	34,191 9.6%	847 8.0%
60 to 89 minutes	33,780 9.5%	589 5.5%
90 or more minutes	21,678 6.1%	289 2.7%
Worked at home	7,690 (x)	200 (x)

U.S. Census Bureau, 2000

None of the work force reported working in agriculture. Over half of the Borough's work force reported working in the following sectors: manufacturing (17.8 percent); retail trade

(11.4 percent); educational, health and social service sectors (20.1 percent); and professional, scientific, management, administration and waste management (9.3 percent).

**SEX BY INDUSTRY FOR THE EMPLOYED CIVILIAN POPULATION 16 YEARS AND OVER**  
 - Universe: Employed civilian population 16 years and over

	Middlesex		South Plainfield	
<b>Total:</b>	<b>370,817</b>		<b>10,991</b>	
Agriculture, forestry, fishing and hunting:	441	0.1%	0	0.0%
Agriculture, forestry, fishing and hunting	312		0	
Mining	129		0	
Construction	16,784	4.5%	587	5.3%
Manufacturing	50,728	13.7%	1,959	17.8%
Wholesale trade	17,900	4.8%	493	4.5%
Retail trade	41,175	11.1%	1,253	11.4%
Transportation and warehousing, and utilities:	24,672	6.7%	688	6.3%
Transportation and warehousing	21,553		558	
Utilities	3,119		130	
Information	19,426	5.2%	578	5.3%
Finance, insurance, real estate and rental and leasing:	35,229	9.5%	888	7.9%
Finance and insurance	29,522		684	
Real estate and rental and leasing	5,707		184	
Professional, scientific, management, administrative, and waste management services:	48,150	13.0%	1,023	9.3%
Professional, scientific, and technical services	36,399		658	
Management of companies and enterprises	248		21	
Administrative and support and waste management services	11,503		344	
Educational, health and social services:	68,930	18.6%	2,207	20.1%
Educational services	33,805		1,027	
Health care and social assistance	35,125		1,180	
Arts, entertainment, recreation, accommodation and food services:	20,289	5.5%	537	4.9%
Arts, entertainment, and recreation	3,776		89	
Accommodation and food services	16,511		448	
Other services (except public administration)	14,044	3.8%	505	4.6%
Public administration	13,049	3.5%	293	2.7%

U.S. Census Bureau, 2000

## Education

Less than 16 percent of the Borough's "over 25" population failed to receive a high school diploma. Forty-eight and a half (48.5) percent of the "over 25" population attended a college; 17.4 percent received a bachelor's degree; and 6.7 percent continued in school to receive a graduate or professional degree.

EDUCATIONAL ATTAINMENT - Universe: Population 25 years and over		
	South Plainfield	
Population 25 years and over	14,940	100.0%
Less than 9th grade	807	5.4%
9th to 12th grade, no diploma	1,541	10.3%
High school graduate (includes equivalency)	5,369	35.9%
Some college, no degree	2,669	17.9%
Associate degree	964	6.6%
Bachelor's degree	2,594	17.4%
Graduate or professional degree	996	6.7%
Percent high school graduate or higher	84.3	(x)
Percent bachelor's degree or higher	24	(x)

*U.S. Census Bureau, 2000*

### **Projection of Future Employment**

The New Jersey Transportation Planning Authority (NJTPA) performs projections for purposes of its transportation planning. It projects an increase of 4,050 jobs in South Plainfield from 2005-2015.

COAH, in adopting N.J.A.C. 5:97-1 et seq., completed its own 2004-2018 projections of municipal non-residential growth. COAH has projected an increase of 3,131 jobs in the Borough. The Borough believes that COAH's projection is more likely than the NJTPA projection.

COAH's current methodology requires each municipality to accept a housing obligation of one (1) affordable unit for every 16 jobs. Should the Borough add more than the 3,131 jobs that COAH anticipates through 2018, it may be required to accept a greater obligation for low and moderate income housing.

### ***Determination of Housing Obligation***

Pursuant to Mount Laurel II, each New Jersey municipality is responsible for addressing the needs of low and moderate income households living in substandard housing. COAH estimates the number of substandard units occupied by the poor through use of the 2000 United States Census. Pursuant to N.J.A.C. 5:97-1 et seq., COAH has estimated that

there are 101 substandard units occupied by the poor in South Plainfield. COAH refers to this estimate as the Borough's rehab share.

Each New Jersey municipality is also responsible for its fair share of a housing region's need for low and moderate income housing. In 1994, COAH adopted N.J.A.C. 5:93-1 et seq. These rules provided the methodology for determining the Borough's 1987-1999 share of the region's housing obligation. COAH determined that the Borough had a 1987-1999 housing obligation of 379 housing units.

South Plainfield received a judgment of repose for its 1987-1999 housing obligation. The Borough presented evidence to the court that demonstrated that the covered employment data, that was the basis for allocating the region's 1987-1993 prospective need to the Borough, was in error. The data indicated that 45 percent of the covered employment had been assigned to South Plainfield incorrectly. As a result of this information, the Rutgers Center for Urban Policy Research determined that the errors in covered employment reduced the Borough's inclusionary component from 379 to 342 low and moderate income units.

In adopting N.J.A.C. 5:97-1 et seq., COAH has not accounted for this correction. COAH has republished the Borough's housing obligation at 379 low and moderate income units in the June 2, 2008 New Jersey Register. It is respectfully submitted that COAH's publication of the Borough's 1987-1999 housing obligation is in error and that the correct housing obligation should be 342.

In 2004, COAH adopted N.J.A.C. 5:94-1 establishing a methodology for determining the Borough's housing obligation. The Appellate Division overturned this methodology in January of 2007 because: there was nothing in the record to support COAH's low estimates of housing need; the methodology did not allocate all of the need to municipalities; and, the methodology allowed a municipality to lower its housing obligation based on the growth it was willing to accept.

COAH's 2008 rule adoption (N.J.A.C. 5:97-1 et seq.) quantifies a 1999-2018 housing obligation of 115,666 new units. In order to allocate this need to each municipality, COAH has projected 2004-2018 residential and non-residential growth for each municipality. It has directed each municipality to calculate its projected residential growth share by dividing the COAH residential projection by five (5). In other words, COAH requires each municipality to accept one (1) affordable unit for every five (5) units of projected growth.

Similarly, COAH is requiring that each municipality accept an obligation of one (1) affordable unit for every 16 projected jobs. Thus, a municipality may calculate its projected non-residential growth share by dividing the number of projected jobs by 16.

In the case of South Plainfield, COAH is projecting an increase of 518 new housing units and 3,131 new jobs. Dividing the residential projection of 518 housing units by five (5), and the non-residential projection of 3,131 jobs by 16, results in a projected residential growth share of 103.6 units and a projected non-residential growth share of 195.7 units. South Plainfield's total projected growth share is 299 units (103.6 + 195.7).

COAH's rule adoption requires the Borough to attempt to create a realistic opportunity for at least these 299 units even if it believes that COAH's projections are too high. In addition, COAH has developed the concept of actual growth share. Should the Borough grow more than anticipated by COAH, its housing obligation will increase. The Borough will be responsible for one (1) affordable unit for every five (5) units actually constructed through 2018. It shall also be responsible for one (1) affordable unit for every 16 jobs of actual job growth.

In order to measure actual growth, COAH requires that the municipality maintain certificate of occupancy records associated with actual residential and non-residential growth. Certificate of occupancy records for non-residential development do not yield jobs data. It provides the type of use and the square footage associated with the non-residential development. COAH has adopted non-residential coefficients that are to be

used to convert types of use and floor area of non-residential space into estimates of job creation.

The Borough analyzed trends of residential and non-residential growth when it adopted its 2005 Housing Element. The methodology used in preparing the 2005 Housing Element is very similar to the methodology COAH now uses to measure actual residential and non-residential growth. Based on that analysis, it does not appear that South Plainfield will grow at a much faster rate than COAH has projected. (This is especially true if the density bonus associated with inclusionary developments do not add to the municipal growth share.)

N.J.A.C. 5:97-2.4 and 2.5 allow each municipality to reduce COAH's residential and non-residential projections if the municipality can demonstrate that some of the projected 2004-2018 growth has been constructed or is expected to be growth associated with implementing the municipal plan for the 1987-1999 housing obligation. Thus, some or all of the growth associated with a residential development in which affordable units are subsidized by market housing may be subtracted from COAH's projections in order to reduce the projected growth share. Regarding affordable housing built in response to the Borough's 1987-1999 housing obligation, all such housing was provided and constructed prior to 2004, and therefore, no affordable housing has been constructed or is planned to be constructed between 2004 and 2018.

#### *Land As A Scarce Resource*

New Jersey's need for affordable housing is great. The amount of land available to address it is finite. Thus, when the Legislature adopted the Fair Housing Act of 1985, it directed COAH to adjust municipal obligations based on the lack of vacant land. COAH responded by adopting a process for calculating the municipal capacity to absorb affordable housing at N.J.A.C. 5:93-4.2.

COAH has adopted a similar process to adjust the projections of residential and non-residential growth it uses to calculate the municipal 1999-2018 housing obligation. The process requires the Borough to demonstrate that it lacks sufficient land to address COAH's residential and non-residential projections.

COAH's rule requires the Borough to provide an inventory of vacant and underutilized land. The inventory must include all privately and municipally owned vacant land. It must include land that has been developed at low intensities, such as: a driving range; a farm in Planning Areas 1 and 2; a nursery; a golf course not owned by its members; and non-conforming uses.

The inventory of vacant and underutilized sites is a starting point for determining the capacity of the municipality to absorb COAH's projections of residential and non-residential growth. However, sites or portions of sites can be eliminated for a variety of reasons:

- Municipal lands can be eliminated if the Borough has adopted a resolution dedicating the property for another public purpose;
- Agricultural lands can be eliminated if the development rights have been purchased or restricted by covenant;
- Sites or portions of sites can be eliminated if they cannot be developed pursuant to the State's environmental regulations, including, but not limited to: wetlands, flood plain and Category 1 Waters;
- Sites or portions of sites impacted by slopes in excess of 15 percent may be eliminated provided the municipality has adopted a steep slope ordinance that regulates inclusionary developments and non-inclusionary developments in the same manner;
- Land surrounding historical and architecturally important sites can be eliminated from a vacant land inventory pursuant to a recommendation from the New Jersey Preservation Office;
- COAH has adopted minimum standards for active and passive recreation area. Those municipalities that have not reserved land equal to the COAH adopted standard may eliminate sites from the vacant land

inventory for active and passive recreation provided the purchase of such land is recommended in the municipal master plan. A municipality must purchase the recreational land within one (1) year of COAH's substantive certification or the proposed recreational land must be reconsidered for affordable housing.

The sites or portions of sites that remain in the municipal vacant land inventory must all be considered for affordable housing. Contrary to previous COAH rule making, any residential site that can accommodate even one (1) housing unit must be considered to determine the "adjusted residential growth share." Similarly, sites which are not suitable for housing must be considered in determining the "adjusted non-residential growth share." COAH's philosophy is that all development generates a housing obligation and must be considered.

COAH distinguishes between a residential and a non-residential site based on the municipal zoning. COAH then considers the character of the area and the need for affordable housing to compute the residential and non-residential yields of each site. In determining the site yields, COAH has adopted the following minimum standards, based on the site's location on the SDRP's State Plan Policy Map:

<u>Location</u>	<u>Minimum density</u>	<u>Minimum Jobs/acre</u>
Urban centers	22/acre	220
Planning Area 1	8/acre	80
Planning Area 2	6/acre	60
Centers	6/acre	60
Land in sewer service areas Outside of planning areas 1, 2 And centers	4/acre	40
Planning Areas 3, 4 and 5*	see N.J.A.C. 5:97-5.6(c)5	

\* Note: The explanation of the minimum density and minimum anticipated jobs in Planning Areas 3, 4 and 5 is too involved for the table above. Therefore, the table refers the reader to the regulation.

By way of illustration, a three (3) acre residential site in Planning Area 1 would have a minimum density of eight (8) units per acre. It would have a minimum yield of 24 units. A three (3) acre non-residential site in Planning Area 1 would generate a minimum of 240 jobs.

COAH will add the number of housing units and the number of jobs for each remaining site in the vacant land inventory to determine the total number of housing units and the total number of jobs that are possible based on the remaining vacant and underutilized land in the Borough. It will then divide the total residential yield by five (5) to determine the potential for additional affordable housing. Similarly, it will divide the total jobs that can be generated from the remaining land by 16 to determine the municipal affordable housing obligation associated with those jobs.

The final step in adjusting COAH's growth share projection is to add the *actual* residential and non-residential growth (since January of 2004) to the potential residential and non-residential growth associated with the remaining sites in the vacant land inventory. Thus, if the Borough grew by 20 housing units since 2004 and the remaining residential sites in the community might yield 215 units, COAH's residential projection might be "adjusted" to 235. Dividing the projected total 235 units by five (5), yields an adjusted residential growth share of 47 affordable units.

If the Borough added 400 jobs since 2004 and the remaining non-residential sites in the vacant land inventory might generate 580 jobs, the "adjusted" non-residential projection would be 980. Dividing the total projected jobs by 16, yields an "adjusted" non residential growth share of 61 affordable units.

The total "adjusted" growth share in this example is 108 (an adjusted residential growth share of 47 plus an adjusted non-residential growth share of 61). If this process results in an adjusted growth share greater than 10 percent less than the growth share resulting from COAH's projections, COAH will adjust the municipal growth share obligation downward.

Having determined the capacity of its vacant and underutilized parcels to compute an "adjusted growth share", the municipality must develop a plan to address the adjusted obligation. The municipality may utilize any compliance technique that COAH has approved to address the need for additional low and moderate income housing pursuant to N.J.A.C. 5:97-6 to address the adjusted growth share

The Borough must also consider sites that might help the municipality to address potential growth share opportunities in excess of the "adjusted growth share." Such sites might include: a privately owned club owned by its members; publicly owned land; downtown mixed use areas; high density residential areas surrounding the downtown; areas with a large aging housing stock appropriate for accessory apartments; properties that may be subdivided to support additional development; and sites "ripe" for redevelopment. The municipality must consider:

- Zoning amendments that permit apartments and accessory apartments;
- Implementing a subsidy program designed to convert existing units into affordable units;
- Overlay zoning designed to promote redevelopment;
- Designating areas for redevelopment and implementing a redevelopment plan; and
- The collection of development fees.

### *Compliance Options*

COAH has established a municipal housing obligation that begins in 1987 and extends through 2018. South Plainfield has received a judgment of repose for the 1987-1999 portion of its housing obligation. This section of the housing element discusses the options available for addressing the 1999-2018 portion of the housing obligation, which may be divided into the rehab share and the growth share.

### ***Rehab Share***

A municipality may address its rehab share by devising a rehabilitation program. The focus of any rehabilitation effort must be to repair or replace existing housing systems (i.e. roof, plumbing, electricity, heat, and/or a load bearing system) and bring the housing unit up to code. The program must be administered by an entity experienced in the rehabilitation of affordable housing and the program must be outlined in a manual that COAH approves.

The minimum investment to administer a rehabilitation program is established at \$10,000, of which no more than \$2,000 may be used for administrative costs. In reality, the cost of a rehabilitation program is a function of the repairs required to bring an affordable housing unit up to code. COAH requires 10 year controls on affordability to be placed on rental and sale units after the rehabilitation activity is complete. With regard to sales units, the control may be in the form of a forgivable loan.

A municipality may also address its rehab share through the creation of Elder Cottage Housing Opportunities (ECHO Housing). The municipality may purchase up to 10 ECHO units.

South Plainfield can also address its rehab share by creating new affordable units through any of the techniques discussed below for creating new affordable housing within the Borough.

### ***The Regulatory Framework for New Construction***

COAH has various rules that provide a framework for addressing the municipal housing obligation. With the possible exception of units created through tax credits, at least half of all affordable units must be affordable to low income households.<sup>1</sup> All affordable housing must be affirmatively marketed and be priced in accordance with COAH's rules.

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<sup>1</sup> COAH, HMFA and the Department of Community Affairs are working on a joint response to the low and moderate income split associated with tax credit projects.

No more than 25 percent of the municipal growth share constructed in the municipality may be addressed with age restricted housing.

At least 25 percent of the municipal growth share shall be addressed by rental housing. No more than 50 percent of the rental obligation may be addressed with age restricted units.

Ten percent of all affordable townhouse units proposed by a municipality must be accessible in accordance with the accessibility requirements set forth at N.J.A.C. 5:23-7.5(b) and (c) in the Barrier Free Subcode, N.J.A.C. 5:23-7. Townhouse units in communities that have received development approvals prior to June 20, 2005, are exempt from this requirement.

Pursuant to P.L. 2008, Chapter 46, at least 13 percent of the housing units responding to the Borough's 1999-2018 housing obligation must be affordable to very low income households. Very low income households are defined as earning no more than 30 percent of the region's median income.

The Borough may receive extra credit for achieving statutory and regulatory requirements. It may also receive credit for designing a plan that addresses various planning objectives. For example South Plainfield:

1. may receive two (2) units of credit for exceeding COAH's requirements for constructing housing affordable to very low income households;
2. may receive two (2) units of credit for constructing rental housing in excess of its rental obligation;

3. may receive two (2) units of credit for constructing/approving affordable housing between December 20, 2004 and June 2, 2008;<sup>2</sup>
4. may receive an extra third of a unit of credit for constructing affordable housing within a half mile of a transit oriented development subject to specific provisions outlined at N.J.A.C. 5:97-3.18; and
5. may receive an extra third of a unit of credit for constructing affordable housing within a designated redevelopment area.

COAH has placed limits on the extra credit or bonus a municipality may receive. Pursuant to N.J.A.C. 5:97-3.20:

In no event may a municipality receive more than one (1) type of bonus for any unit. In addition, in no event shall the total number of bonuses for the growth share obligation exceed 25 percent of the projected growth share obligation.

### ***Zoning and Fees***

South Plainfield has various options in addressing its inclusionary component, or growth share. The Borough can rely on zoning to address its housing obligation. The advantage to *inclusionary* zoning is that it is one of the few approaches recognized by COAH that limits the municipality's fiscal responsibility to produce affordable housing. Once a property is zoned, the Borough's only other responsibility is to: fast-track *inclusionary* developments and eliminate unnecessary cost generating standards. COAH sets forth these responsibilities in N.J.A.C. 5:93-10 and 5:97-10.

COAH has provided standards for the creation of inclusionary developments based, in large part, on the manner in which the State Planning Commission classifies the land within its State Development and Redevelopment Plan (SDRP). The SDRP purports to be a growth management plan that divides New Jersey into five (5) planning areas. New Jersey has invested in the public infrastructure necessary to support growth in Planning

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<sup>2</sup> This is an apparent effort to recognize municipal efforts to respond to the 1999-2014 housing obligation established pursuant to N.J.A.C. 5:94-1 et seq. (the COAH rules that were partially overturned by the Appellate Division).

Areas 1 and 2. Thus, the SDRP endorses concentrating much of the State's growth in areas that have the public water and sewer to accommodate the growth. The SDRP's goals in Planning Areas 3, 4 and 5 are more preservation/conservation oriented. COAH's rule provides that Planning Areas 1 and 2, as well as designated centers, are the preferred location for affordable housing.<sup>3</sup>

COAH's standards for inclusionary development are as follows:

1. In Planning Area 1, a minimum density of eight (8) units per acre and a maximum set-aside of 25 percent;
2. In Planning Area 2 and in designated centers, a minimum density of six (6) units per acre and a maximum set-aside of 25 percent;
3. In sewer service areas outside of Planning Areas 1 and 2, a minimum density of four (4) units per acre and a 25 percent set-aside;
4. In Planning Areas 3, 4 and 5, a minimum density increase of 40 percent over the existing zoning and a 20 percent set-aside;
5. In urban centers, as designated by the SDRP, a minimum density of 22 units per acre and a 20 percent set-aside.

COAH has recognized that affordable rental housing requires a greater subsidy than affordable for sale housing. Thus, in most areas of the State, COAH requires a minimum density of 12 units per acre and a maximum set-aside of 20 percent to build affordable rentals. In designated urban centers, COAH requires a minimum density of 25 units per acre and a maximum set-aside of 20 percent.

Pursuant to previous rule making, COAH permitted each municipality to impose a housing obligation on non-residential development. P.L. 2008, Chapter 46 prohibits this practice. Instead, each non-residential development is required to pay a 2.5 percent development fee (as COAH defines the term).

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<sup>3</sup> Centers are discreetly defined areas that have the infrastructure to support growth. They are designated as part of a plan endorsement process.

A municipality that zones a residential site for affordable housing may permit a developer to pay a fee rather than build affordable housing. COAH has developed standards for such in lieu fees. In the South Plainfield housing region, a municipality may accept a fee of \$145,903 in lieu of building affordable housing.

A municipality may collect a development fee on residential sites that are not zoned to produce affordable housing. A development fee is an exaction to be used for affordable housing. COAH permits a municipality to collect a development fee equal to 1.5 percent on all residential development. Where a developer receives a density increase pursuant to a "D" variance, a municipality may collect a six (6) percent development fee on the additional units achieved pursuant to the "D" variance.

There are restrictions on the use of development fees. Up to 20 percent of development fees may be used for administrative purposes. At least 30 percent of development fees must be used to render affordable housing more affordable to low and moderate income people. These limitations do not apply to "in lieu fees." With this in mind, the Borough must utilize strict accounting practices in order to use development fees and in lieu fees properly.

#### ***Regional Contribution Agreements***

Regional contribution agreements were a vehicle established by the Legislature that allowed a municipality to enter into an agreement to transfer up to half of its housing obligation to what was called a "receiving municipality." The Legislature, pursuant to P.L. 2008, Chapter 46, has determined that regional contribution agreements are no longer an acceptable way for a municipality to address its housing obligation. Thus, this compliance mechanism is no longer available to the Borough.

#### ***Redevelopment***

A municipality may pursue the construction of affordable housing through redevelopment pursuant to the Local Redevelopment and Housing Law. All sites proposed for

redevelopment shall conform to COAH's criteria for a suitable site. The municipality must designate the site as an area in need of redevelopment and adopt a redevelopment plan. It must also designate a redeveloper and prepare an estimated timeline for the redevelopment of the site.

### ***Municipal Construction***

Some municipalities choose to address the housing obligation by sponsoring the construction of low and moderate income housing. It is not unusual for a municipality to donate municipal land to a non-profit or for profit developer interested in constructing a development that will be devoted entirely for low and moderate income households.

It is not easy for municipalities to "get into the housing business." Most developers interested in building low and moderate income housing without any market units to help subsidize the affordable housing require other forms of subsidy. Such subsidies often include: land, some form of municipal subsidy and other subsidies from a variety of state and federal sources (i.e., tax credits, Balanced Housing Program, Federal Home Loan Bank).

COAH's rules regarding municipal construction require the following minimum documentation:

1. The municipality must demonstrate that it has control of the site. Control may be in the form of an option.
2. The municipality must submit a plan regarding the administration of the development indicating who will income qualify applicants and administer the units once they are occupied.
3. The municipality must estimate what the proposed development will cost and the revenues that it projects the development to generate. The municipality must

demonstrate a *stable* source of funding. As outside funding sources become available, a municipality may reduce its reliance on municipal resources. and

4. The municipality must develop a construction timetable that provides for the construction of low and moderate income housing units.

### ***Supportive and Special Needs Housing***

Supportive and special needs housing includes, but is not limited to: residential health care facilities as regulated by the New Jersey Department of Health and Senior Services or DCA; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; permanent supportive housing; and supportive shared living. COAH's definition excludes transitional facilities for the homeless, long term health care facilities (such as nursing homes) and Class A, B, C, D and E boarding homes.

The following criteria apply to supportive and special needs housing:

1. The units of credit for group homes, residential health care facilities and share living housing shall be the bedroom;
2. The unit of credit for permanent supportive housing shall be the unit;
3. Supportive and special needs housing that is age restricted shall be included with the number of units that a municipality may age restrict;
4. All bedrooms and/or units shall be affordable to low-income households;
5. Units shall serve populations 18 and over;
6. All sites for supportive and special needs housing shall meet COAH's site suitability criteria; and
7. The municipality or developer/sponsor shall have control or the ability to control any site on which supportive and special needs housing is proposed.

Supportive and special needs housing may provide an opportunity for a municipality that is willing to convey land to an organization that is interested in providing an alternative living arrangement. There are capital and operating subsidies available that could minimize the municipal subsidy required to construct a group home or other facility.

### *Accessory Apartments*

COAH's rules allow municipalities to address up to ten (10) low and moderate income units by creating a program for accessory apartments. A municipality interested in such a program must demonstrate that it has a housing stock that lends itself to accessory apartments. COAH believes that a large, older housing stock lends itself to accessory apartments. COAH's rule requires water and sewer to serve any proposed accessory apartment.

If the Borough is interested in accessory apartments, it must revise its zoning ordinance to permit accessory apartments. It must also commit to funding the program. COAH's minimum funding commitment is \$20,000 for each moderate income accessory apartment and \$25,000 for each low income accessory apartment. The Borough must also create an administrative mechanism with procedures for dealing with cost estimates, accepting bids, awarding contracts, inspecting work, income qualification of applicants, establishing rents and ensuring rents remain affordable over time.

COAH will accept affordability controls of 10 years on accessory apartments. Accessory apartments may be used to address the Borough's rental obligation.

### *Market to Affordable Program*

COAH has adopted rules that allow a municipality to purchase housing units that are already part of the housing stock and make these units available, at affordable rents or sales prices, to low and moderate income households. In each case, COAH's rule limits the number of units for which a municipality may receive credit to 10, unless the municipality has demonstrated a successful history in creating affordable housing from

the existing housing stock. Therefore, a municipality may create up to 10 affordable sales units and 10 affordable rental units from the existing housing stock. In each case, the minimum required subsidy is \$25,000 per unit for a moderate income unit and \$30,000 for a low income unit

With regard to affordable sales units, the rule requires the municipality to demonstrate that there are sufficient units in the municipality for a viable program to operate through the multiple listing service. The rule requires conveyed affordable units to be in sound condition and to be affordable to low and moderate income households. Thus, although the rule allows a minimum subsidy of \$25,000 - \$30,000 per unit, the Borough should be aware that the real subsidy may be a function of the quality of the housing stock and the subsidy necessary to deliver a sound housing unit to the target population at a price that conforms to COAH's "affordability criteria." The same caveat applies to COAH's rental program. In reality, the subsidy may exceed \$25,000 - \$30,000 per unit.

#### *Assisted Living Units*

Bedrooms in assisted living residences may address a municipal housing obligation. Affordable units within an assisted living facility may be affordable to households earning up to 60 percent of median income. Up to 80 percent of a low and moderate income household's gross income may be used for rent, food and services. Units within an assisted living facility shall be viewed as age restricted units, subject to the restrictions on senior units imposed at N.J.A.C. 5:94-4.13.

#### *Affordable Housing Partnership Program*

COAH's rule permits two (2) or more municipalities in the same housing region to enter into an agreement addressing their respective housing obligations by constructing affordable housing in one municipality. For example, South Plainfield and the Borough of Watchung could enter into an agreement with Green Brook Township to build affordable housing in Green Brook. The agreement would specify the credit that each

community would receive for the proposed housing. This mechanism is similar to a regional contribution agreement in that it allows a municipality to address its housing obligation in another municipality in exchange for money. Since the Legislature has prohibited the future use of regional contribution agreements, COAH is examining the viability of this program.

### *Extension of Expiring Controls*

A municipality may receive a credit toward its growth share by extending controls on affordability that are scheduled to expire during the 1999-2018 period. The extended controls must be consistent with COAH's rules as articulated pursuant to N.J.A.C. 5:80-26. To obtain this credit, the municipality must obtain a certified statement from its building inspector stating that the affordable unit complies with all code standards. A municipality may use development fees and in lieu fees to purchase units and complete any necessary repairs.

A municipality may extend controls administratively. For example, a municipality can make the extension of controls a condition of sale to a prospective purchaser of low and moderate income housing provided the controls have not already expired. Thus, the extension of controls is a very cost effective way of addressing the 1999-2018 housing obligation.

## **SOUTH PLAINFIELD'S RESPONSE TO THE HOUSING OBLIGATION**

### **Rehab Share**

COAH has used the 2000 Census to estimate substandard housing occupied by low and moderate income households (the rehab share). COAH has determined that the Borough has a 101 unit rehab share. The Middlesex County Community Development and Housing Agency has rehabilitated one (1) low and moderate income unit since the 2000 Census (see Appendix B)

It is understood that COAH uses census surrogates to estimate the number of substandard housing units occupied by low and moderate income households. These census surrogates do not always provide a reliable "ball park" estimate of the number of substandard low and moderate income units in a community. Thus, COAH has devised an exterior housing survey to devise a more accurate estimate of the rehab share. South Plainfield reserves the right to conduct this exterior housing survey.

South Plainfield has been participating in the Middlesex County Housing and Community Development Program since the early 1990s. If the County cannot accommodate a request to administer South Plainfield's rehabilitation program, the Borough shall fund a rehabilitation program that will be administered by a for-profit or non-profit entity experienced in the day-to-day management of a rehabilitation program. The entity that administers the rehabilitation program will develop an administrative manual outlining the procedures that will be utilized to rehabilitate substandard housing.

It is understood that the cost of each unit rehabilitated must average at least \$10,000 per unit. The Borough shall attempt to fund this program through development fees and/or fees in lieu of constructing low and moderate income housing. It is understood that South Plainfield must fund no less than half of the rehabilitation program by the mid-point of substantive certification pursuant to N.J.A.C. 5:97-6.2(b)3.

#### **New Construction**

The court determined that the Borough's 1987-1999 housing obligation was 342 housing units. The court granted repose for a plan that addressed the housing obligation as follows:

10 units of credits without controls

37 credits for rentals in two group living facilities

133 credits for 100 units of senior housing constructed at Morris Avenue

76 units of credit for 38 rentals in a community known as the Highlands

57 units through a regional contribution agreement with New Brunswick

32 units of credit for 32 rental units on Pomponio Avenue (Woodland Manor)

5 units of credit for four rentals within Bengivenga use variance

350 units

In granting repose, the court deviated from COAH's rules by permitting: more credit for age restricted units; and rental bonus credits for rental housing in excess of the Borough's rental housing obligation. *In granting the Borough an extension to its repose, the court permitted the Borough to seek a return to the court's jurisdiction, if COAH does not honor the credits granted by the court.*

COAH has recalculated the Borough's housing obligation based on unanticipated growth from 1993-1999. As discussed above, as a result of the recalculation, the Borough believes that its recalculated 1987-1999 new construction housing obligation is 342 units.

Since receiving repose, Bengivenga's rights pursuant to a use variance have expired. Therefore, the Borough is not entitled to the five (5) unit reduction granted by the court.

Based on a 342 unit housing obligation, the Borough had a 2<sup>nd</sup> round affordable housing rental obligation of 88 units. In response, the Borough created 100 senior rentals at Morris Avenue, 38 rentals within the Highlands development, and 32 rental units within Woodland Manor (Pomponio Avenue). The Borough also received credit for two group living facilities (rentals): Keystone Community Habitation and Training Residence, Inc., a 29 bed licensed private developmental disability facility; and, a four (4) bed Class C

Boarding Home at 305 Hillside Avenue. Thus, the Borough created 203 rental units and/or bedrooms, 115 more than required.

### **The Growth Share**

As computed by COAH, South Plainfield has a third round growth share of 299 units. Based on a 299 unit growth share, COAH's rules establish a minimum (25%) rental obligation of 75 units. The maximum (25%) number of age-restricted units which the Borough may receive credit for is 75 units. A minimum of 13 percent (39 units) of affordable housing must be affordable to "very low" income households (30 percent of median income). In addition, half of the "very low" income units must be available as family housing (not restricted to any segment of the population).

South Plainfield proposes to meet its third round affordable housing obligation with inclusionary developments on two (2) sites. One site concerns the development of 708 garden apartment family rental units on the Harris Steel site, located along the Borough's westerly municipal boundary. The second development concerns a recently approved 484 unit age-restricted condominium development located in the southern portion of the Borough.

### **Harris Steel Site (Block 467, Lots 20 & 21)**

The Harris Steel site comprises 86.54 acres of land along the westerly municipal boundary with Piscataway Township. It is identified as Block 467, Lots 20 & 21 on the Borough of South Plainfield tax maps. The site extends along New Brunswick Avenue, between Tyler Place and Jersey Street, and is surrounded by a mix of residential and non-residential uses. The site is currently zoned MUD-1, Mixed Use Development. A portion of the site is currently utilized for industrial use, with the balance of the site comprising undeveloped upland areas and environmentally sensitive wetland areas.

The Borough and a developer are in the process of negotiating a development that will address much of the Borough's affordable housing obligation. The negotiation would result in the construction of 708 garden apartment rental units consisting of twenty-five (25) three-story buildings. The 708 apartments would include 156 low and moderate income units. It is proposed that the developer create 20 low income units affordable to households earning no more than 30 percent of median income.

The proposed agreement on the Harris Steel site would more than address the Borough's 1999-2018 rental obligation. Pursuant to N.J.A.C. 5:97-3.6, the Borough may receive a 2-1 bonus for exceeding its rental obligation of 75 units. N.J.A.C. 5:7-3.20 caps the number of extra credits at 75. Thus, the proposed agreement on the Harris Steel site will result in 75 units of credit for the first 75 rentals, 150 credits for the next 75 rentals and six (6) credits for the last six (6) rentals. The Harris Steel agreement would satisfy 231 units of the Township's 299 unit growth share obligation.

The Harris Steel site has been in the Borough's Housing Element as a possible affordable housing site since the late 1980s. The site was zoned for a mixed use development as a result of COAH's mediation process. However, the rezoning had not resulted in a development application when the court granted the Borough repose in 2002.

At that time, the court's Special Master expressed concern regarding the viability of the mixed use zoning due to the lack of a density bonus for non-residential development to subsidize the low and moderate income housing. It is envisioned that the rezoning of the property subject to an agreement with an interested developer provides the requisite realistic opportunity.

The Harris Steel site conforms to COAH's rules regarding suitability. The site is located in Planning Area 1. Thus, it is consistent with COAH's memorandum of understanding with the State Planning Commission. The site is served by public water and sewer. The Borough is not aware of any title problems that preclude the development of low and moderate income housing on-site.

**APPENDIX A**  
**RESOLUTION OF APPROVAL**

**APPENDIX B**  
**REHAB CREDIT**

**APPENDIX C**  
**MAPPING OF SITES**

**APPENDIX D**  
**FAIR SHARE ORDINANCE**

## **AFFORDABLE HOUSING**

### **ARTICLE 1**

#### *General Provisions*

##### **1. Title**

This chapter shall be known and may be cited as the "Affordable Housing Ordinance of South Plainfield Borough."

##### **2. Purpose**

The purpose of this chapter is to establish a mechanism for assuring that housing units designated for occupancy by low and moderate income households remain affordable to and occupied by low and moderate income households.

##### **3. Definitions**

The following terms, wherever used or referenced to in this chapter, shall have the following meanings unless a different meaning clearly appears from the context:

#### **ADMINISTRATIVE AGENT:**

The agency responsible for ensuring that housing units are restricted and affordable to low and moderate income households. The agency shall also be responsible for ensuring that housing units are occupied by income eligible households, unless otherwise excepted by this Chapter.

#### **AFFORDABLE HOUSING PLAN:**

An instrument to be recorded with the office of the Recorder, Monmouth County, New Jersey, constituting restrictive covenants running with the land with respect to the low and moderate income units described and identified in such instrument. The instrument

shall set forth the terms, restrictions and provisions applicable to the low and moderate income units and shall be consistent with this chapter concerning use, occupancy, sale, resale, rental, re-rental, sales price and rental determination, duration of restrictions, exempt transactions, hardship exemptions, foreclosure, violation, legal description of the specific low and moderate income units governed by the instrument, determination of eligible purchasers and owners, responsibilities of owners and improvements and creating the liens and rights of the Administrative Agent upon such low and moderate income units, authorizing the Administrative Agent or, in the alternative, South Plainfield Borough to enforce the restrictive covenants referred to herein, all as such provisions of this chapter exist at the time that the instrument is executed by the Administrative Agent. The terms, restrictions, and provisions of the instrument shall bind all purchasers and owners of any low and moderate income units, their heirs and assigns and all persons claiming by, through or under their heirs, assigns and administrators. If a single instrument is used to govern more than one (1) low and moderate income unit, then the instrument must identify the location of each low and moderate income unit governed by the instrument, and the deed of each and every individual low and moderate income unit so governed must contain the recording information of the instrument applicable to such low and moderate income units. The instrument shall be executed by the Administrative Agency prior to recording of the Affordable Housing Plan.. The instrument shall also be executed by the developer and /or the then current title holder of record of the property upon which the low- and moderate-income units are to be constructed.

**ASSESSMENTS:**

Taxes, levies, charges or assessments both public and private, including those imposed by the association, as the applicable case may be upon the low and moderate income units which are part of the association.

**COAH:**

The Council on Affordable Housing.

**DEVELOPMENT FEES:**

Money paid by a developer for the improvement of property as permitted in *N.J.A.C.* 5:97-8.3.

**EQUALIZED ASSESSED VALUE:**

The assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).

**FIRST PURCHASE MONEY MORTGAGE:**

The most senior mortgage lien to secure repayment of funds for the purchase of low and moderate income units.

**FIRST PURCHASE MONEY MORTGAGEE:**

The holder and/or assigns of the first purchase money mortgage and which must also be an institutional lender or investor, licensed or regulated by a state or federal government or an agency thereof. Other lenders, investors or persons may be holders of a first purchase money mortgage; however, for the purposes of this chapter, such other lenders, investors, or persons shall not be "first purchase money mortgagees."

**FORECLOSURE:**

A termination of all rights of the mortgagor or the mortgagor's assigns or grantees in a low and moderate income unit covered by a recorded mortgage through legal processes,

or through a deed in lieu of foreclosure which has been executed and delivered prior to a judicially regulated sale.

**GROSS AGGREGATE HOUSEHOLD INCOME:**

The total annual income from all sources of all members of the household or family, except income received by a family household member (other than the family head, spouse or foster children) who is under the age of eighteen (18) years or a full-time student of any age. Income includes but is not limited to compensation for employment services, interest, dividends, rent, pension benefits, government benefits, unemployment compensation, welfare payments, disability income, support payments and return-on-assets income as defined herein.

**HOUSEHOLD:**

One (1) or more persons living as a single nonprofit housekeeping unit, whether or not they are related by blood, marriage or otherwise.

**HOUSING TRUST FUND:**

The interest bearing account in which all development fees will be deposited pursuant to N.J.A.C. 5:94-6.11.

**IMPROVEMENT:**

Additions within a low and moderate income unit, including materials, supplies, appliances or fixtures which become a permanent part of, or affixed to, such low and moderate income units.

**INCLUSIONARY DEVELOPMENT:**

A development containing low and moderate income units, the term includes, but is not necessarily limited to, new construction, the conversion of a non-residential structure to a

residential structure, and the creation of new low and moderate income units through the substantial rehabilitation of a vacant residential structure.

**INCOME CEILING:**

Eighty percent (80%) of the regional median income for moderate income households and fifty percent (50%) of the regional median income for low income households, with adjustments for household size.

**JUDGMENT OF REPOSE:**

A judgment entered by the Superior Court approving a municipality's plan to satisfy its fair share obligation.

**LOW INCOME HOUSEHOLD:**

A household with a gross aggregate household income which does not exceed fifty percent (50%) of the regional median income, with adjustments for household size.

**LOW-INCOME PURCHASER:**

A low income household purchasing either a low income unit or a moderate income unit, as the case may be.

**LOW INCOME UNIT:**

A unit which is affordable to a low income household.

**MARKET UNIT:**

Any residential unit within a development which is not designated as a low and moderate income unit.

**MODERATE INCOME HOUSEHOLD:**

A household with a gross aggregate household income which is greater than fifty percent (50%) of the regional median income, but which does not exceed eighty percent (80%) of said regional median income, with adjustments for household size.

**MODERATE INCOME PURCHASER:**

A moderate income household purchasing a moderate income unit.

**MODERATE INCOME UNIT:**

A unit which is affordable to a moderate income household.

**NET FAMILY ASSETS:**

The value of equity in real property, including gains from the sale of real property, savings and other forms of capital investment, but not including equity in a business or farm operation where that business or farm operation is the principal means of support of the household, amounts in an irrevocable trust fund or the value of personal property (e.g., car, furniture, etc.).

**OWNER:**

The then current title holder of record of a low or moderate income unit. "Owner" shall refer to and mean the titleholder of record as the same is reflected in the most recently dated and recorded deed for the particular low and moderate income unit. For purposes of the initial sale or rental of any low or moderate income unit, "owner" shall include the developer/owner of the land upon which the low and moderate income unit is to be constructed. Ownership of a low and moderate income unit shall be deemed to be acceptance and ratification of the provisions of this chapter and the Affordable Housing Plan. Where appropriate, the term "owner" shall also mean and refer to a person who owns a low and moderate income unit as a landlord or who occupies a low and moderate

income unit as a tenant. "Owner" shall not include any cosigner or co-borrower on any purchase money mortgage unless such cosigner or co-borrower is also a named title holder of record of such low and moderate income unit.

**QUALIFIED PURCHASER:**

A person who, pursuant to this chapter and the Affordable Housing Plan, submits an application for certification as a qualified purchaser to the Administrative Agent and whose gross aggregate household income at the time of proposed purchase of a low and moderate income unit is within low and moderate income levels, as these income levels are designated herein, and in the case of a development unit, the approval from a lending institution meeting the minimum qualifications set forth herein for issuance of a commitment for a mortgage to purchase a low and moderate income unit is within low and moderate income levels, as these income levels are designated herein, and in the case of a development unit, the approval from a lending institution meeting the minimum qualifications set forth herein for issuance of a commitment for a mortgage to purchase a low and moderate income unit and who obtains certification as a qualified purchaser of a low and moderate income unit from the Administrative Agent. Once a "qualified purchaser" becomes an owner of a lower income unit in accordance with the provisions of this chapter, any increase or decrease in the gross aggregate household income of such owner shall not affect ownership rights, privileges or obligations of a person or family who occupies the low and moderate income unit subject to the qualifications and conditions stated above and elsewhere herein. Any person who submits false information in support of an application for certification and who subsequently received such certification and either title to a low and moderate income unit as owner or possession of a low and moderate income unit as tenant shall be deemed to have committed a substantial breach of the provisions of this chapter and the Affordable Housing Plan, and any right of ownership of such unit shall be subject to forfeiture pursuant to the

provisions of 11C of this chapter. A "qualified purchaser" shall not be permitted to own more than one (1) low and moderate income unit at the same time.

#### **REGIONAL MEDIAN INCOME**

The median household income shall mean and refer to the annual median income of the Mercer, Ocean and Monmouth housing region as determined by COAH.

#### **RETURN-ON-ASSETS INCOME:**

When the household's total net family assets exceed five thousand dollars (\$5,000.), the gross aggregate household income shall include the dollar amount resulting from multiplying the value of the household's total net family assets by ten percent (10%) after excluding the first five thousand dollars (\$5,000.) in assets.

#### **4. ADMINISTRATIVE AGENT**

A. The Borough shall designate an Administrative Agent with the responsibilities for administering the Borough's responsibilities related to ensuring controls on affordability, pricing low and moderate income households, affirmative marketing, and referring income qualified households to low and moderate income housing. The Administrative Agent shall also work with the Borough in completing monitoring forms required by COAH.

B. The Borough hereby designates the Borough Clerk as its Municipal Housing Liason to the Administrative Agent. The clerk shall be responsible for assisting the Administrative Agent in completing its responsibilities.

C. Administrative Agent Responsibilities:

1. To determine the maximum sale, resale, and rental charges for low or moderate income units and to provide certification of the same to the developer. Said sales and rental prices shall be adjusted annually to reflect recalculations of the regional median income.
2. To prequalify prospective owners and renters based upon income and household size and to issue a certificate as to income eligibility status.
3. To establish selection procedures and criteria for determining qualified purchasers and households.
4. To verify that an Affordable Housing Plan has been recorded and the deeds of individual low and moderate income units reference such Affordable Housing Plan.
5. To develop a formula for use in calculating the maximum resale price of low and moderate-income units.
6. To determine whether the cost or value of the installation of improvements or amenities within or as part of a low or moderate income unit should be included in the calculation of the resale price or rental charge for the unit and to establish guidelines whereby a homeowner can obtain a determination from the Administrative Agent in this regard prior to the time the improvements are made. In no event may the maximum homeowner's/renter's housing cost exceed the maximum homeowner's/renter's housing cost permitted pursuant to COAH's rules for the number of bedrooms within the housing unit.

9. To review and to approve or disapprove the Affordable Housing Plan required of all developers of low and moderate income housing.
10. To review and approve or disapprove the developer's proposed affirmative marketing plan and to require developers to submit proofs of publication in accordance with approved affirmative marketing plans, and to monitor the marketing practices of developers of low and moderate income units to ensure that they comply with the affirmative marketing requirements of this chapter.
11. To report semiannually to the Governing Body and Borough Planning Board on the status of low and moderate income units, including but not limited to such things as the Administrative Agent's actions in connection with any statements of exemption and foreclosures upon any low and moderate income unit.

D. Fees

1. Developers of low and moderate income housing shall be responsible for reimbursing the Administrative Agent for its services as provided in N.J.S.A. 52:27D-324 upon initial sale.
2. Owners of low and moderate income housing units shall be responsible for reimbursing the Administrative Agent for its services as provided in N.J.S.A. 52:27D-324 upon subsequent sales.

3. Owners of rental low and moderate income units shall be responsible for reimbursing the Administrative Agent for its services as provided in N.J.S.A. 52:27D-324 upon each rental and re-rental.

4. In addition to the above fees, each and every applicant for low and moderate income housing shall be responsible for any application fee required by the Administrative Agent. The application shall be approved by COAH.

5. **General Provisions**

A. Wherever reference is made to low or moderate income housing in the Borough's Zoning Ordinance, the standards, definitions and procedures set forth in this section shall apply.

B. Except as otherwise expressly provided herein, no low income unit shall be offered for sale or rental except at prices that are affordable by low income households, and no moderate income unit shall be offered for sale or rental except at prices that are affordable by moderate income households, and, except as otherwise expressly provided herein, no low income unit shall be sold, resold, rented or re-rented except to a household that has been qualified as a low income household by the Administrative Agent. The provisions of this subsection shall apply equally to qualified low and moderate income units or renters in terms of controls on sale, resale, rental, or re-rental of any low and moderate income unit.

C. However, nothing contained in this chapter shall restrict or preclude any household which was classified as low or moderate income based upon its gross aggregate household income at the time it purchased or leased a low or moderate

income unit from continuing to own or lease said unit after its income exceeds the income ceilings established in this chapter.

6. **Occupancy Selection**

The Administrative Agent shall designate an application period during which applications to purchase affordable housing units will be accepted. Applications shall be accepted only if submitted on an application form prepared and/or approved by the Administrative Agent. Applications shall be completely filled out and notarized. Knowingly or intentionally making any false statement on a form shall be grounds for disqualifying an applicant even if the applicant is otherwise eligible. In placing households in low and moderate income units, the following verification and certification procedures shall be employed:

1. Every household member 18 years of age or over who will live in the affordable unit and receives income shall be required to provide income documentation as applicable and determined by the Administrative Agent. This includes income received by adults on behalf of minor children for their benefit. Household members 18 years of age or over not receiving income must produce documentation of current status.
2. Verification may include, but is not limited to, the following:
  - a. Four consecutive pay stubs including overtime, bonuses, or tips dated within 120 days of the interview date or a letter from an employer stating present annual income figure as projected annually;

- b. A copy of regular IRS Form 1040 (Tax computation form) 1040A, or 1040 EZ as applicable and State income tax returns filed for each of the three years prior to the date of interview;
- c. A letter of appropriate reporting form verifying benefits such as Social Security, Unemployment, Welfare, Disability or Pension income (monthly or annually);
- d. A letter or appropriate reporting form verifying any other sources on income claimed by the applicant such as alimony and child support;
- e. Reports that verify income from assets to be submitted by banks or other financial institutions managing trust funds, money market accounts, certificates of deposits, stocks or bonds;
- f. Evidence or reports of income from assets such as real estate or businesses that are directly held by any household member;
- g. Evidence or reports that verify assets that do not earn regular income such as non-income producing real estate or savings that do not earn interest; and
- h. A notarized statement of explanation in such form as to be satisfactory to the Administrative Agent.

3. Generally, sources of annual income shall be based on regular income reported to the IRS and which can be utilized for mortgage approval. Household annual gross income shall be calculated by projecting current gross income over a 12-month period.

4. Income includes but is not limited to wages, salaries, tips, commissions, alimony, regularly scheduled overtime, pensions, social security, unemployment compensation, AFDC, verified regular child support, disability, net income from business or real estate,

and income from assets such as savings, CDs, money market, mutual funds, stocks and bonds and imputed income from non-income producing assets such as equity in real estate.

5. Assets not earning a verifiable income shall have an imputed interest income using a current average annual savings interest rate. Assets not earning income include present real estate equity. Applicants owning real estate must produce documentation of a market value appraisal and outstanding mortgage debt. The difference will be treated as the monetary value of the asset and the imputed interest added to income.

6. Income from assets that have delayed earnings, such as IRA's or annuity programs shall not be included in current income until such payments are being received. However, these assets must be reported and verified.

7. Net rent from real estate is considered income after the monthly mortgage payment including real estate taxes and insurance is deducted. Other expenses are not deductible. In addition, the equity in the rented real estate is considered an asset and will have the imputed interest income on the calculated value of equity added to income.

8. Income does not include payments, rebates or credits received under Federal or State low income home energy assistance programs, Food Stamps, payments received for care of foster children, relocation assistance benefits, income of live-in attendants, scholarships, student loans, personal property such as automobiles, lump-sum additions to family assets such as inheritances, one-time lottery winnings, and insurance settlements except for additional income earned from these additions, and causal, sporadic or irregular gifts and bonuses.

9. Standard credit information services that provide conventional credit and tenant reports may be utilized when certifying a household with required written permission from the household. An unsatisfactory credit history or credit information that demonstrates a disproportionate debt to income ratio may result in a denial of certification. Court-ordered payments for alimony or child support to another household shall be considered a regular monthly debt whether or not it is being paid regularly.
10. Households whose total Gross Annual Income is measured at 50 percent or below 50 percent of the authorized median income guideline shall be certified as low income households and referred to units designated for low income households.
11. Households whose total gross annual income is measured above 50 percent but below 80 percent of the authorized median income shall be certified as moderate income households and referred to units designated for moderate income households.
12. Generally, households will be referred to units where predetermined total monthly housing costs correspond to the household's calculated ability to pay using 28 percent of gross monthly income as a standard for home ownership and 30 percent of gross monthly income as a standard for rental units.
13. At the discretion of the Administrative Agent, households may also be required to produce documentation of household composition for determining the correct unit size and the applicable median income guide.
14. Generally, households will be referred to available units using the following standards for occupancy:
  - a. A maximum of two persons per bedroom;

- b. Children of same sex in same bedroom;
- c. Unrelated adults or persons of the opposite sex other than husband and wife in separate bedrooms; and
- d. Children not in same bedroom with parents.

15. Households may be considered for units other than as above, but in no case shall a household be referred to a unit that provides for more than one additional bedroom per household occupancy standard as stated in (b) 14 above.

16. A form for certification shall be prepared and signed by the Administrative Agent. Only households receiving certification shall be referred to affordable housing units.

17. Certified Households who reject an opportunity for affordable housing may remain on the referral list at their request and may be interviewed again for certification when their name appears on a listing for a subsequent unit.

18. Certification shall be valid for no more than 120 days unless a valid sales contract or lease has been executed within that time period. In this event, certifications shall be valid until such time as the sales contract or lease is ruled invalid and no occupancy has occurred. Certifications may be renewed in writing at the request of a Certified Household for no more than an additional period of 120 days at the discretion of the Administrative Agent.

19. Households who are denied certification may make a written request for a re-determination. Households shall be required to produce additional documentation to support their claim. Households who are denied certification a second time may request a hearing before the Governing Body by forwarding a written request to the Administrative Agent 30 days following the household's receipt of denial notification. If

a written request has not been received within the 30 day time period, the ineligible determination will be final. The hearing decision shall be final.

7. Income Eligibility Standards

- A. The Administrative Agent shall adopt income eligibility ceilings for low and moderate income units for various sized households consistent with those adopted by COAH. No applicant with a household income in excess of these ceilings shall be eligible to purchase or rent the low and moderate income units.
- B. Upon annual adoption of adopted income standards by COAH, the Administrative Agent shall modify its income eligibility ceilings accordingly.

8. Bedroom Distribution, Family Housing, Pricing of Units, and Barrier Free Townhouses

- A. South Plainfield Borough's new construction component/growth share will be divided equally between low and moderate income households.
- B. Except for inclusionary development constructed pursuant to low income tax credit regulations:
  - 1. At least half of all unit within inclusionary developments will be affordable to low income households;
  - 2. At least half of all rental units will be affordable to low income households; and
  - 3. At least one-half of all units in each bedroom distribution pursuant to pursuant to N.J.A.C. 5:93-7.3 will be affordable to low income households.

4. At least half of all low and moderate income units, half of all affordable rentals and half of all units affordable to households earning no more than 30 percent of median income shall not be restricted to any specific segment of the population.
- C. Inclusionary developments that are not restricted to senior citizens will be structured in conjunction with realistic market demands so that:
1. the combination of efficiency and one bedroom units are no greater than 20 percent of the total low and moderate income units; and
  2. at least 30 percent of all low and moderate income units are two bedroom units; and
  3. at least 20 percent of all low and moderate income units are three bedroom units.
- D. Low and moderate income units restricted to senior citizens may utilize a modified bedroom distribution. At a minimum, the number of bedrooms will equal the number of senior citizen low and moderate income units within the inclusionary development.
- E. In conjunction with realistic market information, the following criteria will be used in determining maximum rents and sales prices:
1. Efficiency units will be affordable to one person households.
  2. One bedroom units will be affordable to a 1.5 person household.
  3. Two bedroom units will be affordable to a three person household.
  4. Three bedroom units will be affordable to a 4.5 person household.

5. Median income by household size will be established by a weighted average of the uncapped Section 8 income limits as adopted on an annual basis by COAH.
6. The maximum average price of low and moderate income sales units within each inclusionary development will be affordable to households earning 55 percent of median income. The maximum price of a moderate income unit shall be affordable to households earning 70 percent of median income.
7. Moderate income sales units will be available for at least three different prices and low income units will be available for at least two different prices.
8. The average rent of rental units shall be affordable to households earning 52 percent of median income. The maximum rent for a moderate income unit shall be affordable to a household earning 60 percent of median income. At least 10 percent of all low and moderate income units shall be affordable to households earning no more than 35 percent of median income. **COAH must provide guidance.**
9. For both owner occupied and rental units, the low and moderate income units will utilize the same heating source as the market units within an inclusionary development.
10. Low income units will be reserved for households with a gross household income less than or equal to 50 percent of the median income approved by COAH. Moderate income units will be reserved for households with a gross household income less than 80 percent of the median income approved by COAH

F. For rental units, developer and/or municipal sponsors may

1. Establish one rent for a low income unit and one for a moderate income unit for each bedroom distribution, provided at least 10 percent of all low and moderate income units are affordable to households earning no more than 35 percent of median income. **COAH must provide guidance.**
2. Gross rents, including an allowance for utilities, will be established so as not to exceed 30 percent of the gross monthly income of the appropriate household size as per Section E above. The tenant paid utility allowance will be consistent with the utility allowance approved by HUD for use in New Jersey.

G. For sales units:

1. The initial price of a low and moderate income unit will be established so that after a down payment of five (5) percent, the monthly principal, interest, homeowner's insurance, property taxes (based on the restricted value of the low and moderate income unit) and condominium or homeowner fee do not exceed 28 percent of the eligible gross monthly income.
2. Master Deeds of inclusionary developments will establish condominium or homeowner association fees or special assessments of low and moderate income purchasers at the same rate as market purchasers within the inclusionary development.

H. Barrier Free Townhouses

1. Ten percent of all affordable townhouses shall be accessible in accordance with the accessibility requirements set forth at N.J.A.C. 5:23-7.5(b) and (c) in the Barrier Free Subcode, N.J.A.C. 5:23-7. Townhouse units in projects that have received development approvals up to June 20, 2005 shall be exempt from this requirement.

9. **Procedures for Raising Rents**

Rental charges shall remain in effect for a period of at least one (1) year, except that the landlord may request a modification of these charges by applying to the Administrative Agent for recalculation of the rents based on changes in the index for rentals adopted by COAH.

11. **Phasing and Integration**

- A. Low and moderate income units shall be built pursuant to the following phasing schedule:

<b>Minimum % of Low/Mod Income Units Completed</b>	<b>% of Market Housing Units Completed</b>
0	25
10	25+1
50	50
75	75
100	90

- B. The integration of low and moderate income units with market units is encouraged.

11. **Term of Controls**

- A. Newly constructed low and moderate income units shall remain affordable to low and moderate income households for at least 30 years. The Administrative Agent shall require a deed restriction and mortgage lien that conforms to those published in the Appendices to N.J.A.C. 5:93-1 et. seq.

- B. Affordability Controls on accessory apartments will be for a period of 10 years, except if the apartment is to receive a rental bonus credit pursuant to N.J.A.C.

5:93-5.13. For accessory apartments that will receive a rental bonus, controls on affordability shall extend for 30 years.

- C. Alternative living arrangements (including but not limited to assisted living facilities) will be controlled in a manner suitable to COAH that provides assurance that such a facility will house low and moderate income households for at least 10 years. If the low and moderate income units are to receive a rental bonus, pursuant to N.J.A.C. 5:93-5.13, then the controls on affordability shall extend for 30 years.

12. **Certificate of Occupancy**

- A. No certificate of occupancy for a low or moderate income unit shall be issued until the developer shall have submitted and have approved by the Administrative Agent a deed restriction encompassing all the provisions of these regulations.
- B. No certificate of occupancy shall be issued for the re-rental of a low or moderate income unit unless the Administrative Agent shall certify that the rental complies with the terms of these regulations.
- C. No certificate of re-occupancy shall be issued unless the Administrative Agent approves the sale of the unit to a qualified low and moderate income household. The Borough may choose to purchase any affordable housing unit upon resale.
- D. No low and moderate income unit may be occupied by an initial tenant or subsequent tenant without a certificate of occupancy.

13. **Affirmative Marketing**

- A. Program Definition

The Administrative Agent shall develop and implement an affirmative marketing program for affordable housing units. The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of sex, age or number of children, to housing units which are being marketed by the developer of affordable housing. It is a continuous program and covers the period of the deed restriction.

B. Advertising

1. Advertising for affordable housing units shall begin at least four months prior to expected occupancy. There shall be at least one paid advertisement in the *Home News Tribune* during the first week of the marketing program. In addition, an advertisement will be placed in the *Reporter*. The advertisement shall include:
  - a. The location of the units;
  - b. Directions to the housing units;
  - c. A range of prices for the housing units;
  - d. The size, as measured in bedrooms, of the housing units;
  - e. The maximum income permitted to qualify for the housing units;
  - f. The location of applications for the housing units; and
  - g. The business hours when interested households may obtain an application for a housing unit.
  
2. The Administrative Agent shall supplement newspaper advertisements by:

- a. providing quarterly published materials to the Somerset, Hunterdon and Middlesex County Offices on Aging; Boards of Social Service; and Boards of Realtors;
  - b. providing quarterly published materials to mailing lists of employers, public housing authorities, community development block programs and non-profit agencies that provide housing services within Somerset, Hunterdon and Somerset Counties;
  - c. posting advertisements in local businesses in and surrounding South Plainfield Borough; and
  - d. mailing information about affordable housing to local religious organizations.
3. The cost of all newspaper and radio advertising shall be the developer's responsibility and shall be established at preliminary approval.

C. Applications

Applications for affordable housing shall be available at the municipal building, the municipal library, and the developer's sales office. Applications shall be mailed to prospective applicants upon request.

D. Random Selection Procedures

Applications for low and moderate income units shall be reviewed as follows:

1. Households that apply for low and moderate income housing shall be screened for preliminary income eligibility by comparing their

total income to the low and moderate income limits adopted by COAH. Applicants shall be notified as to their eligibility status.

2. Having screened applicants for preliminary income eligibility, the Administrative Agent may analyze the income and household sizes of applicants to determine which applicants have the assets and/or income necessary to purchase or rent each available low or moderate income unit.
3. The Administrative Agent shall interview each applicant and utilize the procedures outlined to verify the applicant's income and household size, determine the applicant's asset availability and review the applicant's credit history. Applicants shall be required to submit income verification for each household member 18 years or older. This process shall be utilized in establishing the final certified applicant group.
4. The process described in (1) through (3) above shall begin no sooner than one month after the initial advertisement outline in B(2) above. Households shall proceed through the process described in (1) through (3) based on their ability to provide the information required pursuant to (1) through (3) and pursuant to the occupancy selection procedures included in this Ordinance (Section 6). Households shall be certified for affordable units using the procedures outlined in Section 6. The process described in (1) through (3) shall be continued until all the low and moderate income units are occupied.

E. Procedures Following Initial Occupancy

Following the initial sale or rental of affordable units, the Administrative Agent shall:

1. Maintain a current pool of at least five income eligible applicants for each low and moderate income unit.
2. Contact each income eligible applicant annually to request updated information regarding income and family size.
3. As units become available, the Administrative Agent shall select eligible applicants for the units as described in Section D(2-4) until the units are occupied by low and moderate income households.

F. Developer Responsibilities

1. All developers shall submit an affirmative marketing plan for marketing low and moderate income units that conforms to this subsection of the Ordinance. The affirmative marketing plan shall be subject to the Administrative Agent's approval and shall be incorporated as a condition of approval of the development application. The developer shall also be responsible for the following unless such responsibilities are waived by the Administrative Agent:
  - a. Submissions of information as to financing terms readily available to low and moderate income households for use in computing maximum sales prices.

- b. Submission of an affordable housing plan and an affirmative marketing plan to the Administrative Agent for approval and submission of proofs of publication to ensure compliance with said plan.
  - d. Submissions of quarterly reports to the Administrative Agent detailing the number of low and moderate income households who have signed leases or purchase agreements, as well as the number who have taken occupancy of lower income units, including household size, number of bedrooms in the unit, sales price and monthly carrying costs or, in the case of rental units, the monthly rental charges and utilities included.
2. The developer's responsibilities hereunder shall expire automatically with respect to for sale low and moderate income units upon the date upon which the last low and moderate income unit within the particular development is sold by the developer. With respect to rental low and moderate income units, the developer's responsibilities shall be assumed by the landlord/management agent and shall be performed by the landlord/managing agent so long as such unit is a rental low and moderate income unit and subject to the restrictions of this chapter.
3. The developer of affordable housing units shall be responsible for returning all applicant and sales records for affordable units to the Administrative Agent to aid in reporting to the court or COAH

subsection in accordance with the requirements and standards established by COAH.

**15. In Lieu Fees**

A developer that is permitted to pay a fee in lieu of building affordable housing shall pay a fee equal to COAH's standard for the housing region. In the case that the housing obligation is not a whole number, the developer shall pay a fee equal to the housing obligation multiplied by the in lieu fee established by COAH's rule.

Example: The developer is constructing seven (7) units and the ordinance requires a 20 percent set-aside. The housing obligation is 1.4 (7/5). COAH's in lieu fee for the region (as of 2008) is \$180,267. The in lieu fee is  $1.4 \times \$145,903 = \$204,264$ .

**16. Severability**

If any section, paragraph, subdivision, clause or provision of this chapter shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision so adjudged and the remainder of the chapter shall remain in full force and effect.

**APPENDIX E**  
**DEVELOPMENT FEE ORDINANCE**

development, a municipal construction project or a 100 percent affordable development.

- ii. "COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.
- iii. "Development fee" means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.
- iv. "Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
- v. "Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).
- vi. "Green building strategies" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

#### 4. Residential Development fees

##### a) Imposed fees

- i. Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5 percent of the equalized assessed value for residential development provided no increased density is permitted.
- ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 6 percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the

equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- b) Eligible exactions, ineligible exactions and exemptions for residential development
  - i. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
  - ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
  - iii. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

## **5. Non-residential Development fees**

- a) Imposed fees
  - i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
  - ii. Non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
  - iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed

value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

- b) Eligible exactions, ineligible exactions and exemptions for non-residential development
- i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
  - ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
  - iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
  - iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
  - v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by South Plainfield as a lien against the real property of the owner.

## 6. Collection procedures

- a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- b) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete

Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

- c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e) The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g) Should South Plainfield fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- h) The developer shall pay 100 percent of the calculated development fee amount prior to the municipal issuance of a final certificate of occupancy for the subject property.
- i) Appeal of development fees
  - 1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by South Plainfield. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.

- b) Funds shall not be expended to reimburse South Plainfield for past housing activities.
- c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
  - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
  - ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
  - iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d) South Plainfield may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more

than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

**9. Monitoring**

- a) South Plainfield shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with South Plainfield's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH or the court. All monitoring reports shall be completed on forms designed by COAH.

**10. Ongoing collection of fees**

- a) The ability for South Plainfield to impose, collect and expend development fees shall expire with its substantive certification unless South Plainfield has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If South Plainfield fails to renew its ability to impose and collect development fees prior to the expiration of its substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). South Plainfield shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall South Plainfield retroactively impose a development fee on such a development. South Plainfield shall not expend development fees after the expiration of its substantive certification.

# **Exhibit B**

## INTRODUCTION

South Plainfield Borough, Middlesex County, has prepared a Housing Element and Fair Share Plan that addresses its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.). A development fee ordinance creating a dedicated revenue source for affordable housing was adopted by the Borough of South Plainfield on February 7, 2006. As part of the Third Round Petition Application, a proposed revised development fee ordinance was submitted to COAH with South Plainfield's Housing Element and Fair Share Plan for review and approval. Upon COAH's approval, the development fee ordinance will be adopted by the municipality. The ordinance establishes the South Plainfield affordable housing trust fund for which this spending plan is prepared.

As of December 31, 2008, South Plainfield Borough has collected \$204,911, expended \$0, resulting in a balance of \$204,911. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in TD Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9 as described in the sections that follow.

## **1. REVENUES FOR CERTIFICATION PERIOD**

To calculate a projection of revenue anticipated during the period of third round substantive certification, South Plainfield considered the following:

(a) Development fees:

1. Residential and nonresidential projects which have had development fees imposed upon them at the time of preliminary or final development approvals;
2. All projects currently before the planning and zoning boards for development approvals that may apply for building permits and certificates of occupancy; and,
3. Future development that is likely to occur based on historical rates of development.

(b) Payment in lieu (PIL):

South Plainfield has no actual or committed payments in lieu (PIL) of construction from developers.

(c) Other funding sources:

Other than the collection of development fees, the Borough of South Plainfield does not anticipate the collection of any other funds for the purposes of affordable housing development.

(d) Projected interest:

Interest on projected revenue in the municipal affordable housing trust fund at the current average interest rate.



## 2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by South Plainfield:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with South Plainfield's development fee ordinance for both residential and non-residential developments in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

A request for the expenditure of development fee revenues will be submitted to the chief financial officer (CFO) of South Plainfield. Requests for expenditure of funds may come from administrative agencies, developers, contractors or other entities engaged in the development or rehabilitation of affordable housing in South Plainfield. The CFO will review the request and, if deemed a valid utilization of development fee funds, will submit a report and request for approval to South Plainfield's governing body. If approved by the governing body, the funds will be distributed by the CFO.

## 3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)

South Plainfield will dedicate \$700,000 to rehabilitation or new construction programs (see detailed descriptions in Fair Share Plan) as follows:

**Rehabilitation program: \$700,000**

**New construction project(s): As available.**

(b) **Affordability Assistance (N.J.A.C. 5:97-8.8)**

Based upon projected development fees to be collected by the Borough of South Plainfield, South Plainfield will dedicate a minimum of \$1,458,567.00 in affordability assistance. This affordability assistance will go toward making low income units and very low income units more affordable. A minimum of \$486,189.00 of the affordability assistance funding will be provided to make very low income units more affordable.

Projected minimum affordability assistance requirement:

Actual development fees through 12/31/2008		\$ 202,523.00
Actual interest earned through 12/31/2008	+	\$ 2,388.00
Development fees projected* 2009 - 2018	+	\$ 4,501,800.00
Interest projected* 2009 - 2018	+	\$ 155,179.00
Less housing activity expenditures through 06/02/2008	-	\$ 0.00
<b>Total</b>	=	\$ 4,861,890.00
30 percent requirement	x 0.30 =	\$ 1,458,567.00
Less Affordability assistance expenditures through 12/31/2004	-	\$ 0
<b>PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2005 through 12/31/2018</b>	=	\$ 1,458,567.00
<b>PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2005 through 12/31/2018</b>	÷ 3 =	\$ 486,189.00

\* Note: The 2008 portion of this projection reflects 2008 subsequent to July 17 as the remainder of 2008 is included in the actual figure reported above.

**(c) Administrative Expenses (N.J.A.C. 5:97-8.9)**

Based upon projected development fees to be collected by the Borough, South Plainfield could spend \$988,284 on administrative expenses (20% of revenue). The Borough does not anticipate a need to expend this amount of funds for the administration of the Borough's affordable housing program. At this time, it is estimated that the borough administrative expenses to be \$910,000.

Projected administrative expenditures, subject to the 20 percent cap, are as follows:

1. Housing rehabilitation program administration:	\$140,000
2. General administrative expenses (Municipal):	\$400,000
3. Administrative Agent:	\$370,000



## **5. EXCESS OR SHORTFALL OF FUNDS**

Pursuant to the requirements of the Council on Affordable Housing, if necessary the governing body of South Plainfield will adopted a resolution agreeing to fund any shortfall of funds required for implementing the housing rehabilitation program, affordability assistance to low and very low income households, or any other affordable housing program or mechanism approved by COAH.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to fund the drafting of a fourth round plan and the programs necessary to address any fourth round obligation.

### **SUMMARY**

South Plainfield intends to spend affordable housing trust fund revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and consistent with the housing programs outlined in the housing element and fair share plan dated December, 2008.

South Plainfield has a balance of \$204,911.00 as of December 31, 2008 and anticipates an additional \$4,501,800 in revenues before the expiration of substantive certification for a total of \$4,861,890.00. The municipality will dedicate \$700,000 toward a 28-unit rehabilitation program, a minimum of \$3,251,890 to render units more affordable, and \$910,000 to administrative costs.

In the event of a shortfall in funds, South Plainfield will adopted a resolution agreeing to fund any shortfall of funds required for implementing the housing rehabilitation program, affordability assistance to low and very low income households, or any other affordable housing program or mechanism approved by COAH. In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to fund the drafting of a fourth round plan and the programs necessary to address any fourth round obligation.

<b>SPENDING PLAN SUMMARY</b>	
Balance as of December 31, 2008	\$ 204,944.00
<b>PROJECTED REVENUE July 18, 2008 - 2018</b>	
Development fees	+ \$ 4,501,800.00
Payments in lieu of construction	+ \$ 0.00
Other funds	+ \$ 0.00
Interest	+ \$ 155,179.00
<b>TOTAL REVENUE</b>	<b>= \$ 4,861,890.00</b>
<b>EXPENDITURES</b>	
Funds used for Rehabilitation	- \$ 700,000.00
Funds used for New Construction	
1. <i>[list individual projects/programs]</i>	- \$
2.	- \$
Affordability Assistance	- \$ 3,251,890.00
Administration	- \$ 885,000.00
Excess Funds for Additional Housing Activity	= \$ 25,000.00
1. Bond Retirement	- \$ 0.00
2. Housing Element Preparation	- \$ 25,000.00
<b>TOTAL PROJECTED EXPENDITURES</b>	<b>= \$ 4,861,890.00</b>
<b>REMAINING BALANCE</b>	<b>= \$ 0.00</b>

# **Exhibit C**

\*\*\* Transmission Result Report (MemoryTX) ( Feb. 1. 2011 10:14AM ) \*\*\*

1) Boro. No. P1fd Tax/Bewer Dept  
2) 908 226.7612

Date/Time: Feb. 1. 2011 10:11AM

File No. Mode	Destination	Pg(s)	Result	Page Not Sent
4193 Memory TX.	916096336056	P. 13	OK	

Reason for error  
E. 1) Hang up or line fail  
E. 3) No ANSWER

E. 2) Busy  
E. 4) No facsimile connection

BOROUGH OF SOUTH PLAINFIELD  
248 PLAINFIELD AVENUE  
SOUTH PLAINFIELD, NJ 07066  
FINANCE DEPARTMENT

FAX COVER SHEET

DATE: 2/01/11 TIME: \_\_\_\_\_  
 TO: REC'D CAJ PHONE: \_\_\_\_\_  
 FROM: Marie Dick PHONE: 908-226-7600  
 FAX: 908-226-7604  
 FAX: 908-754-9091  
 Rpt: Revised Service Agreement  
 CCh: \_\_\_\_\_  
 NUMBER OF PAGES INCLUDING COVER SHEET: 13

MESSAGE:

As per our telephone conversation yesterday, attached please find the  
 revised Service Agreement. The Development Fee Ordinance's date  
 has been corrected. Please see attached Ordinance 1113 to reflect  
 the change. Please review the revised service agreement. If acceptable  
 please contact us at (908) 226-7600. We would gladly send you (2) copies.  
 Thank you for your cooperation.  
 M. Dinkel

BOROUGH OF SOUTH PLAINFIELD  
2480 PLAINFIELD AVENUE  
SOUTH PLAINFIELD, NJ 07080

FINANCE DEPARTMENT

FAX COVER SHEET

DATE: 2/01/11

TIME: \_\_\_\_\_

TO: Ngozi Obi

PHONE: \_\_\_\_\_

FAX: 609-633-6056

FROM: Marie Dudek

PHONE: 908-226-7604

FAX: 908-754-9091

RE: Revised Escrow Agreement

CC: \_\_\_\_\_

NUMBER OF PAGES INCLUDING COVER SHEET: 13

MESSAGE:

As per our telephone conversation yesterday, attached please find the  
revised Escrow Agreement. The Development Fee Ordinance's date  
has been corrected. Please see attached Ordinance 1719 to reflect  
the change. Please review the revised escrow agreement, if acceptable  
please contact me at (908) 226-7604. We would gladly send you (3) copies.  
Thank you for your cooperation.

M. Dudek

ORDINANCE NO. 1719

AN ORDINANCE AMENDING THE ZONING ORDINANCE OF THE BOROUGH OF SOUTH PLAINFIELD, 1992, BY REPEALING THE EXISTING SECTION 1206 REGARDING DEVELOPMENT FEES, AND ADOPTING A NEW DEVELOPMENT FEE ORDINANCE TO ESTABLISH A STANDARD FOR THE COLLECTION, MAINTENANCE AND EXPENDITURE OF DEVELOPMENT FEES FOR THE PURPOSE OF PROVIDING LOW AND MODERATE INCOME HOUSING.

WHEREAS, the New Jersey Supreme Court and New Jersey Legislature have recognized and mandated in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and the Fair Housing Act, N.J.S.A. 52:27D-301, et. seq. ("FHA") that every municipality in New Jersey has an affirmative obligation to facilitate the prompt provision of affordable housing;

NOW, THEREFORE, be it ordained and established by the Borough Council of the Borough of South Plainfield, County of Middlesex and State of New Jersey, that the Zoning Ordinance of the Borough of South Plainfield, 1992, be and is hereby amended as follows:

**SECTION 1. - Legislative Intent.**

The legislative intent set forth in the above preamble and recital is hereby adopted and incorporated by reference herein as if set forth herein at length.

**SECTION 2.** - Section 1206 of the Borough Zoning Ordinance is amended to read as follows:

**§1206 Collection, Maintenance and Expenditure of Development Fees.**

**A. Definitions.**

"Development fees" means money paid by an individual, person, partnership, association, company or corporation for the improvement of property as permitted in N.J.A.C. 5:93-8.

"Equalized assessed value" means the value of a property determined by the municipal tax assessor through a process designed to ensure that all property in the municipality is assessed at the same assessment ratio or ratios required by law. Estimates at the time of building permit may be obtained by the tax assessor utilizing estimates for construction cost. Final equalized assessed value will be determined at project completion by the municipal tax assessor.

"Housing trust fund" means the interest-bearing account in which all development fees will be deposited pursuant to N.J.A.C. 5:93-8.15.

"Inclusionary development" means a development containing low and moderate income units. This term includes, but is not necessarily limited to, new construction, the conversion of a non-residential structure to a residential structure and the creation of new low and moderate income units through gut rehabilitation of a vacant residential structure.

**B. Development Fee Assessment.**

1. Unless otherwise excluded by Subsection 1206(E) residential and non-residential development shall be assessed a development fee as a condition for securing preliminary subdivision or site plan approval, and as a condition for securing a building permit.
2. Unless otherwise excluded by Subsection 1206(E), construction activity that does not require subdivision or site plan approval shall be assessed a development fee as a condition for securing a building permit.

**C. Residential Development Fees.**

1. Development fees for residential development shall be; one percent (1%) of the equalized assessed value of the development; the coverage amount of the Home Owner Warranty document of a for-sale unit; or the appraised value on the document utilized for construction financing for a rental unit.
2. Where an increase in density is granted pursuant to a "d" variance, residential developers shall pay a development fee of one percent (as outlined in Subsection (C)(1)) of units permitted by right and shall pay an additional development fee of six percent (6%) of the equalized assessed value, coverage amount on the Home Owner Warranty document or the appraised value on the document utilized for construction financing (as outlined in subsection (C)(1)) permitted as a result of the "d" variance.
3. Residential developers in which a required percentage of the dwelling units are to be set aside for low and moderate income households may make a monetary contribution in lieu of constructing low and moderate income units, subject to the approval of the Planning Board or Board of Adjustment and COAH. The in-lieu contribution shall equal \$100,000.00 per affordable unit. Developers that make a monetary contribution in lieu of constructing low and moderate income units shall not replace low and moderate income units with additional market units.

**D. Non-Residential Development Fees.**

1. Development fees for non-residential construction shall be two percent (2%) of the equalized assessed value or two percent (2%) of the appraised value on the document used for construction financing.
2. Non-residential developers that receive an increase in floor area, pursuant to a "d" variance, shall pay a two percent (2%) development fee for the floor area permitted pursuant to the Ordinance and a fee of six percent (6%) for the value of the additional floor area permitted by the "d" variance. The two (2%) and six (6%) percent shall be applied to the equalized assessed value or the appraised value as outlined at Subsection (D)(1).

**E. Eligible Exactions, Ineligible Exactions and Exemptions.**

1. Inclusionary developments shall be exempt from paying development fees except when the developer is permitted to pay a fee in lieu of building low and moderate income housing units, as provided for in Subsection (C)(3).
2. Developers that construct low and moderate income housing or make a monetary contribution toward affordable housing pursuant to the Borough's growth share ordinance, Section 1207, shall be exempt from paying development fees.
3. Developers that expand an existing non-residential structure shall pay a development fee as required in Subsection (D). The development fee shall be calculated based on the increase in the equalized assessed value of the improved structure.
4. Improvements and expansions to existing residential structures shall be exempt from paying a development fee.
5. Developers of churches, synagogues, public non-profit uses or hospitals shall be exempt from paying a development fee.

**F. Collection of fees.**

1. Developers shall pay fifty percent (50%) of the calculated development fee at the issuance of building permits. The development fee shall be estimated by the tax assessor prior to the issuance of building permits.
2. Developers shall pay the remaining fee upon the issuance of certificates of occupancy. Upon issuance of certificates of occupancy, the tax assessor shall calculate the equalized assessed value and the appropriate development fee. The developer shall be responsible for paying the difference between the fee calculated at certificate of occupancy and the amount paid at building permit.
3. Development fees that are challenged by a developer shall be placed in an interest-bearing account. If all or a portion of the contested fees are returned to the developer, the accrued interest on the returned amount shall also be returned.

**G. Housing Trust Fund.**

a. There is hereby created an interest-bearing trust fund in Commerce Bank or such other federally insured institution as the Borough may designate by Resolution, from time to time, for the purpose of receiving development fees from residential and non-residential developers. All development fees paid pursuant to this ordinance shall be deposited in this fund. No money shall be expended from the housing trust fund unless the expenditure conforms to the municipality's spending plan approved by COAH.

a. If COAH determines that the Borough is not in conformance with COAH's rules on development fees, COAH is authorized to direct the manner in which all development fees collected pursuant to this ordinance shall be expended. Such authorization is pursuant to: this ordinance; COAH's rules on development fees; and the written authorization from the governing body to the Commerce Bank or such other federally insured institution as the Borough may designate by Resolution, from time to time.

**H. Use of Funds.**

1. Money deposited in a housing trust fund may be used for any activity approved by COAH for addressing the Borough's low and moderate income housing obligation. Such activities may include, but are not necessarily limited to: housing rehabilitation; new construction; regional contribution agreements; the purchase of land for low and moderate income housing; extensions and/or improvements of roads and infrastructure to low and moderate income housing sites; assistance designed to render units to be more affordable to low and moderate income people; and administrative costs necessary to implement the Borough's housing element. The expenditure of all money shall conform to the spending plan approved by COAH.
2. At least thirty percent (30%) of the revenues collected, not targeted for a regional contribution agreement, rehabilitation program or a municipal construction project, shall be devoted to render units more affordable. Examples of such activities include, but are not limited to, down payment assistance; low interest loans; and rental assistance.
3. No more than twenty percent (20%) of the revenues shall be expended on administrative costs necessary to develop, revise or implement the housing element. Examples of eligible administrative activities include: personnel; consultant services; space costs; consumable supplies; and rental or purchase of equipment.

4. Development Fees shall not be used to reimburse the Borough for municipal expenditures that preceded its judgment of repose.

**I. Expiration of Ordinance.**

This ordinance permitting the collection of development fees shall expire as a result of any of the following:

1. A violation of a judgment of repose that results in the loss of repose; or
2. The expiration of the time defined by a judgment of repose unless the Borough has filed an adopted housing element with COAH; petitioned for substantive certification; and received COAH's approval of its development fee ordinance.

**SECTION 3. - Severability.**

If any paragraph, section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining paragraphs or sections hereof.

**SECTION 4. - Inconsistency.**

All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

**SECTION 5. - Effective Date.**

The Ordinance shall take effect upon final passage and publication according to law and filing with the Middlesex County Planning Board in accordance with N.J.S.A. 40:55D-16.

ATTEST:

  
VINCENT BUTTIGLIERI  
Borough Clerk

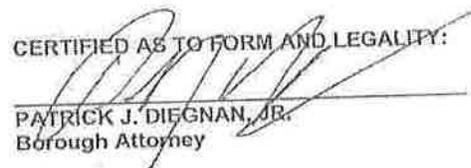
Adopted, First Reading: January 17, 2006  
Publication Date: January 27, 2006

Adopted, Second Reading: February 7, 2006  
Publication Date: February 10, 2006

  
Council President

  
DANIEL J. GALLAGHER, Mayor  
2/7/06  
Date

CERTIFIED AS TO FORM AND LEGALITY:

  
PATRICK J. DIEGNAN, JR.  
Borough Attorney

**Statement of Purpose**

The purpose and intent of this ordinance is to establish a standard for the collection, maintenance and expenditure of development fees for the purpose of providing low and moderate income housing.

\* \* \* Communication Result Report ( Feb. 1. 2011 11:47AM ) \* \* \*  
1}

Date/Time: Feb. 1. 2011 11:45AM

File No.	Mode	Destination	Pg(s)	Result	Page Not Sent
3702	Memory TX	916096336056	P. 8	OK	

Reason for error  
 E. 1) Hang up or line fall  
 E. 2) Busy  
 E. 3) No answer  
 E. 4) No facsimile connection  
 E. 5) Exceeded max. E-mail size

BOROUGH OF SOUTH PLAINFIELD  
 1450 PLAINFIELD AVENUE  
 SOUTH PLAINFIELD, NJ 07080  
 FINANCE DEPARTMENT

FAX COVER SHEET

DATE: 2/01/11  
 TO: Merrill Lynch  
 FROM: Merida Delak  
 TIME: \_\_\_\_\_  
 PHONE: \_\_\_\_\_  
 FAX: 800-433-4000  
 YIPHONE: 800-776-7604  
 FAX: 908-774-2021

RM: 2009 - 2011 Fax Destination  
 CC: \_\_\_\_\_

NUMBER OF PAGES INCLUDING COVER SHEET: \_\_\_\_\_

MESSAGE:  
 For your records attached please find the Drafts No. 1876  
 for the 2009 2011 Fax.  
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BOROUGH OF SOUTH PLAINFIELD  
2480 PLAINFIELD AVENUE  
SOUTH PLAINFIELD, NJ 07080

FINANCE DEPARTMENT

FAX COVER SHEET

DATE: 2/01/11 TIME: \_\_\_\_\_

TO: Ngazi Obi PHONE: \_\_\_\_\_

FAX: 609-633-6056

FROM: Marie Dudek PHONE: 908-226-7604

FAX: 908-754-9091

RE: 2009 - Dev'l Fee Ordinance

CC: \_\_\_\_\_

NUMBER OF PAGES INCLUDING COVER SHEET: 8

MESSAGE:

Per your request attached please find the Ordinance No. 1856  
for the 2009 Dev'l Fee.

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ORDINANCE No. 1856

AN ORDINANCE OF THE BOROUGH OF SOUTH PLAINFIELD ESTABLISHING STANDARDS FOR THE COLLECTION, MAINTENANCE, AND EXPENDITURE OF DEVELOPMENT FEES PURSUANT TO THE COUNCIL ON AFFORDABLE HOUSING (COAH) REGULATIONS AND IN ACCORDANCE P.L.2008, C.46, SECTIONS 8 AND 32-38.

1. Purpose

- a) In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- b) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

2. Basic requirements

- a) This ordinance shall not be effective until approved by COAH pursuant to N.J.A.C. 5:96-5.1.
- b) South Plainfield shall not spend development fees until COAH has approved a plan for spending such fees in conformance with N.J.A.C. 5:97-8.10 and N.J.A.C. 5:96-5.3.

3. Definitions

- a) The following terms, as used in this ordinance, shall have the following meanings:
  - i. "Affordable housing development" means a development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable development.
  - ii. "COAH" or the "Council" means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.
  - iii. "Development fee" means money paid by a developer for the improvement of property as permitted in N.J.A.C. 5:97-8.3.

- iv. "Developer" means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
- v. "Equalized assessed value" means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).
- vi. "Green building strategies" means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

#### 4. Residential Development fees

##### a) Imposed fees

- i. Residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5 percent of the equalized assessed value for residential development provided no increased density is permitted.
- ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 6 percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

##### b) Eligible exactions, ineligible exactions and exemptions for residential development

- i. Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- iii. Development fees shall be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded, if the expansion is not otherwise exempt from the development fee requirement. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.

5. **Non-residential Development fees**

a) **Imposed fees**

- i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- ii. Non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes.
- iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

b) **Eligible exactions, ineligible exactions and exemptions for non-residential development**

- i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
- ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
- iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by South Plainfield as a lien against the real property of the owner.

6. Collection procedures

- a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- b) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e) The construction official responsible for the issuance of a final certificate of occupancy shall notify the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g) Should South Plainfield fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- h) The developer shall pay 100 percent of the calculated development fee amount prior to the municipal issuance of a final certificate of occupancy for the subject property.
- i) Appeal of development fees
  - 1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by South Plainfield. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  - 2) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by South Plainfield. Appeals from a determination of the Director may be made to the tax court in accordance

with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**7. Affordable Housing trust fund**

- a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  - 1. payments in lieu of on-site construction of affordable units;
  - 2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
  - 3. rental income from municipally operated units;
  - 4. repayments from affordable housing program loans;
  - 5. recapture funds;
  - 6. proceeds from the sale of affordable units; and
  - 7. any other funds collected in connection with *[insert municipal name]*'s affordable housing program.
- c) Within seven days from the opening of the trust fund account, South Plainfield shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, *[ the bank ]*, and COAH to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).
- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

**8 Use of funds**

- a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address South Plainfield's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.
- b) Funds shall not be expended to reimburse South Plainfield for past housing activities.
- c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.

- i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance, assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
- ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
- iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d) South Plainfield may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
- e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

9. **Monitoring**

- a) South Plainfield shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with South Plainfield's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH or the court. All monitoring reports shall be completed on forms designed by COAH.

10. **Ongoing collection of fees**

- a) The ability for South Plainfield to impose, collect and expend development fees shall expire with its substantive certification unless South Plainfield has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If South Plainfield fails to renew its ability to impose and collect development fees prior to the expiration of its substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). South Plainfield shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall South Plainfield retroactively impose a development fee on such a development. South Plainfield shall not expend development fees after the expiration of its substantive certification

**11. Severability.**

If any paragraph, section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any Court or administrative agency of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining paragraphs or sections hereof.

**12. Inconsistency.**

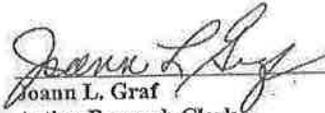
All ordinances or parts of ordinances inconsistent with this Ordinance are hereby repealed to the extent of such inconsistency.

Adopted, First Reading: MAY 24 2009  
Publication Date: MAY 28 2009

Adopted, Second Reading: MAY 18, 2009  
Publication Date: MAY 22, 2009

  
\_\_\_\_\_  
Charles F. Butrico, Jr.  
Mayor

ATTEST:

  
Joann L. Graf  
Acting Borough Clerk

# Exhibit D



**State of New Jersey**  
**Council on Affordable Housing**  
101 SOUTH BROAD STREET  
PO BOX 813  
TRENTON NJ 08625-0813  
(609) 292-3000  
(609) 633-6056 (FAX)

**JON S. CORZINE**  
Governor

**CHARLES A. RICHMAN**  
Acting Commissioner

**LUCY VANDENBERG**  
Executive Director

October 14, 2009

The Honorable Charles Butrico  
South Plainfield Borough  
2480 Plainfield Ave  
South Plainfield, NJ 07080-

**RE: SUBSTANTIVE CERTIFICATION**

Dear Mayor Butrico:

Congratulations!

Enclosed is a Resolution approved by the Council on Affordable Housing (COAH) granting third round substantive certification to South Plainfield Borough/Middlesex County.

Pursuant to N.J.A.C. 5:96-6.3(e), South Plainfield Borough has 45 days from the grant of this substantive certification to adopt all implementing Fair Share Ordinances, or COAH's grant of substantive certification shall be void and of no force or effect.

If you have any questions, please contact Pamela Weintraub, COAH Principal Planner at (609) 633-2133. We appreciate the opportunity to work with you on your affordable housing planning and thank you for your ongoing commitment to affordable housing.

**If you would like to be contacted via email regarding the future information/ correspondence for South Plainfield Borough, please provide COAH with your email address.**

Sincerely,

A handwritten signature in cursive script that reads "Lucy L Vandenberg".

Lucy Vandenberg, PP, AICP  
Executive Director

1222 - SOUTH PLAINFIELD BORO - MIDDLESEX

Full Service List Labels

The Honorable Charles Butrico  
Mayor  
Borough of South Plainfield  
2480 Plainfield Avenue  
Municipal Building  
South Plainfield, New Jersey 07080

Joann Graf  
Municipal Clerk/Admin  
Borough of South Plainfield  
2480 Plainfield Ave  
South Plainfield, New Jersey 07080

Linda Zushma  
Affordable Housing Coordinator  
Township of South Plainfield  
2480 Plainfield Ave  
South Plainfield, New Jersey 07080

Glen Cullen  
CFO  
Borough of South Plainfield  
2480 Plainfield Ave  
South Plainfield, New Jersey 07080

Municipal Engineer  
CME Associates  
Municipal Building  
2480 Plainfield Avenue  
South Plainfield, New Jersey 07080

Jacqui Adam  
Allies, Inc.  
1262 White Horse-Hamilton Sq Rd  
Bldg A, Ste 101  
Hamilton, New Jersey 08690

Karl Hartkopf  
Office of Smart Growth, Dept of Community Affairs  
101 S Broad St  
PO Box 204  
Trenton, New Jersey 08625

Joseph Sordillo  
Esq.  
1300 Mt. Kemble Ave  
Morristown, New Jersey 07962

Lester J. Nebenzahl, PP, AICP  
Bernard & Nebenzahl, LLC  
61 Carrar Drive  
Watchung, New Jersey 07069

James F. Clarkin, III, Esq.  
Clarkin & Vignuolo, PC  
1100 Centennial Ave  
Ste 203  
Piscataway, New Jersey 08854

Mary Beth Khidre  
Planning Board Clerk  
Borough of South Plainfield  
2480 Plainfield Ave  
South Plainfield, New Jersey 07080

Elizabeth C. McKenzie, PP, AICP  
Elizabeth C. McKenzie, PP, PA  
9 Main St  
Flemington, New Jersey 08822

Mirah Becker  
Middlesex County Department of Planning  
40 Livingston Ave  
New Brunswick, New Jersey 08901

Thomas A. Loughlin, 3rd  
Municipal Administrator  
City of New Brunswick  
City Hall  
78 Bayard Street  
New Brunswick, New Jersey 08903

**1222 - SOUTH PLAINFIELD BORO - MIDDLESEX**

**Full Service List Labels**

**George Ververides  
Director  
Middlesex County Planning Board  
100 Bayard St  
New Brunswick, New Jersey**

**Jon Vogel  
Development Director  
AvalonBay Communities, Inc.  
517 Rte 1 S  
Ste 5500  
Iselin, New Jersey 08830**

**JSM  
1650 Stelton Rd  
Piscataway, New Jersey 08854**

**Tyler Properties, LLC  
1640 New Market Ave  
South Plainfield, New Jersey 07080**

**Middlesex County Planning Board  
40 Livingston Ave  
New Brunswick, New Jersey 08901**

**Art Bernard, PP  
Bernard & Nebezahl  
77 N Union St  
Lambertville, New Jersey 08530**

**Chris A. Nelson, Esq.  
Venezia & Nolan, PC  
306 Main St  
Woodbridge, New Jersey 07095**

RESOLUTION GRANTING THIRD ROUND SUBSTANTIVE CERTIFICATION #41-09

**South Plainfield Borough, Middlesex County**

WHEREAS, on December 30, 2008, South Plainfield Borough, Middlesex County, petitioned the Council on Affordable Housing (COAH) for substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation; and

WHEREAS, pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:96-3.5, on March 5, 2009, the Borough published notice of its petition in the *Home News Tribune*, which is the newspaper of general circulation within the county; and

WHEREAS, no objections to the plan were received by COAH during the 45-day objection period, which ended May 27, 2009; and

WHEREAS, the Borough's fair share plan addresses a total 1987-2018 affordable housing obligation of 742 units, consisting of a 101-unit rehabilitation share, 342-unit prior round obligation and a 299-unit projected growth share obligation pursuant to N.J.A.C. 5:97; and

WHEREAS, COAH staff has reviewed the Borough's Housing Element and Fair Share Plan, which is incorporated by reference herein; and

WHEREAS, the Borough proposes to address its 101-unit rehabilitation share with one credit from a unit rehabilitated by the Middlesex County Rehabilitation Program and 100 units to be completed by the Middlesex County Rehabilitation Program for 101 units; and

WHEREAS, the Borough proposes to address its 339-unit prior round obligation with 29 prior cycle credits; 100 credits and 9 rental bonuses for 100 units at South Plainfield Senior Residences, an age-restricted, rental development; 38 credits and 38 rental bonuses for 38 units at The Highlands, a family, rental development; 32 credits and 32 rental bonuses for 32 units at Woodland Manor, a family, rental development; 57 credits for a 57-unit Regional Contribution

Agreement with New Brunswick; and 4 credits for 4 units at Hillside Avenue, a group home; and

WHEREAS, South Plainfield proposes to address a portion of its 299-unit projected growth share obligation with 10 credits for 10 prior cycle units; and

WHEREAS, South Plainfield proposes to address its remaining projected growth share obligation of 289 units with 156 credits and 74 rental bonuses for 230 units for Tyler Properties, also known as Harris Steel, a proposed inclusionary family, rental development; and 74 credits for 74 units at JSM at Tingley, a proposed inclusionary age-restricted, for-sale development; and

WHEREAS, pursuant to N.J.A.C. 5:96-6.2(a)2, on August 21, 2009 COAH issued a Compliance Report (attached as Exhibit A and incorporated by reference herein) recommending approval of the Borough's petition for third round substantive certification; and

WHEREAS, there was a 14-day period to submit comments to the COAH Compliance Report pursuant to N.J.A.C. 5:96-6.2(b) and COAH received no comments.

NOW THEREFORE BE IT RESOLVED that the Housing Element and Fair Share Plan submitted by the Borough of South Plainfield comports to the standards set forth at N.J.S.A. 52:27D-314 and meets the criteria for third round substantive certification pursuant to N.J.A.C. 5:96-6.3; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.2(a), after having reviewed and considered all of the above, COAH hereby grants third round substantive certification to the Borough of South Plainfield; and

BE IT FURTHER RESOLVED that after receiving final substantive certification, pursuant to N.J.A.C. 5:96-6.3(e), the Borough shall adopt all implementing Fair Share Ordinances within 45 days of this grant of substantive certification; and

BE IT FURTHER RESOLVED if the Borough fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect; and

BE IT FURTHER RESOLVED that South Plainfield shall submit all Fair Share Ordinances to COAH upon adoption; and

BE IT FURTHER RESOLVED that South Plainfield shall comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting South Plainfield's actual growth pursuant to N.J.A.C. 5:97-2.5; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-10.1, COAH shall conduct biennial plan evaluations upon substantive certification of South Plainfield's Housing Element and Fair Share Plan to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing; and

BE IT FURTHER RESOLVED that if upon any biennial review the difference between the number of affordable units constructed or provided in South Plainfield and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, the Borough is not adhering to its implementation schedule pursuant to

N.J.A.C. 5:97- 3.2(a)4 or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, then the Council may direct the municipality to amend its plan to address the shortfall; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-2.5(e), if the actual growth share obligation determined is less than the projected growth share obligation, South Plainfield shall continue to provide a realistic opportunity for affordable housing to address the projected growth share; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(b), South Plainfield's substantive certification shall remain in effect until December 30, 2018; and

BE IT FURTHER RESOLVED that any changes to the facts upon which this substantive certification is based or any deviations from the terms and conditions of this substantive certification which affect the ability of the Borough to provide for the realistic opportunity of its fair share of low- and moderate-income housing and which the Borough fails to remedy, may render this certification null and void.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on October 14, 2009

A handwritten signature in cursive script that reads "Renee Reiss". The signature is written in black ink and is positioned above the printed name and title.

Renee Reiss, Secretary  
Council on Affordable Housing



**Council on Affordable Housing  
Compliance Report  
August 21, 2009**



**Municipality:** *South Plainfield Borough*  
**County:** *Middlesex County*

**COAH Region:** *3*  
**Planning Area:** *1*  
**Special Resource Area:** *N/A*

**Housing Element and Fair Share Plan Adopted:** *December 9, 2008*  
**Petition for 3<sup>rd</sup> Round Substantive Certification:** *December 30, 2008*  
**Completeness Determination:** *February 10, 2009*  
**Date of Publication:** *March 5, 2009*

**Objections Received:** *No*

**Petition Includes:**  
**VLA:** *No*  
**GPA:** *No*  
**Waiver:** *No*

**Date of Site Visit:** *August 19, 2009*

**History of Approvals:**

	<b>COAH</b>	<b>JOC</b>	<b>N/A</b>
<b>First Round:</b>	<i>October 19, 1987</i>		
<b>Second Round:</b>		<i>April 13, 1998</i>	
<b>Extended Certification:</b>			<i>x</i>

**Plan Preparer:** *Art Bernard, PP*

**Municipal Housing Liaison:** *Joanne Graf*

**Recommendation:** Grant Substantive Certification

**SUMMARY OF FAIR SHARE OBLIGATION**

Rehabilitation Share	101
Prior Round Obligation	342
Projected Growth Share Obligation	299

**ACTUAL GROWTH and GROWTH SHARE through September, 2008<sup>1</sup>**

Res Units (#)	Actual Res Growth Share	Jobs (#)	Actual Non-Res Growth Share	Actual TOTAL Growth Share
105	21 units	1,292	81 units	102 units

**COMPLIANCE PLAN SUMMARY**

Obligation	Credit/ Mechanism Type	# Units Completed	# Units Proposed	TOTAL
<b>Rehabilitation: 101 units</b>				
<b>Credits</b>	Post-April 1, 2000	1		1
<b>Program</b>	County/Municipal		100	100
<b>Rehabilitation Subtotal</b>				<b>101</b>
<b>NEW CONSTRUCTION:</b>				
<b>Prior Round: 342 units</b>				
<b>Credits</b>	Prior Cycle	29		29
	Post-1986	174		174
	RCA	57		57
<b>Prior Round Bonuses</b>	Rental	70		70
	Age-Restricted Rental	9		9
<b>Prior Round Subtotal</b>				<b>339</b>

<sup>1</sup> This growth share number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.4; therefore, the actual growth share may vary.

Growth Share: 299 units				
<b>Credits</b>	Group Home	10		10
<b>Proposed Mechanisms</b>	Inclusionary Zoning		230	230
<b>Growth Share Bonuses</b>	Rental	74		74
<b>Growth Share Subtotal</b>				<b>314</b>
<b>Surplus</b>				<b>12</b>

**I. HOUSING ELEMENT**

Pursuant to N.J.S.A. 40:55D-28(b), the Housing Element is a required section of the Municipal Master Plan. The Housing Element must be designed to achieve the goal of access to affordable housing to meet existing and future housing needs, with special attention given to low- and moderate-income households. The housing needs analysis must include demographic information on existing and projected housing stock and employment characteristics, a quantification of low- and moderate-income housing need, and a consideration of the lands within the municipality that are most appropriate to accommodate such housing. South Plainfield's Housing Element includes sufficient information regarding housing stock, demographic and employment characteristics and population trends pursuant to N.J.S.A. 52:27D-310.

Under N.J.A.C. 5:97-2.1(b), the Housing Element must also set forth the municipality's affordable housing fair share obligation, which is the sum of the rehabilitation share, the prior round obligation and the growth share.

**A. Rehabilitation Share**

The rehabilitation share is the number of existing housing units within a municipality as of April 1, 2000, that are both deficient and occupied by households of low or moderate income. As indicated in Appendix B of N.J.A.C. 5:97, South Plainfield has a rehabilitation share of 101 units.

**B. Prior Round Obligation**

The prior round obligation is the cumulative 1987-1999 new construction obligation provided in Appendix C of N.J.A.C. 5:97. South Plainfield has a prior round obligation of 379 that was reduced by an employment adjustment of 37 in a second round judgment of compliance. As a result, South Plainfield has an adjusted prior round obligation of 342 units.

**C. Projected Growth Share**

The projected growth share is initially calculated based on household (residential) and employment (non-residential) 2004-2018 projections. Pursuant to Appendix F of N.J.A.C. 5:97, South Plainfield has a residential projection of 518 units and a non-residential projection of 3131 jobs, which results in an initial projected growth share obligation of 299 affordable units. South Plainfield's total projected growth share for the period 1999-2018 is 299 affordable units consisting of a 103.60-unit projected residential growth share and a 195.69-unit projected non-residential growth share.<sup>2</sup>

**SUMMARY OF FAIR SHARE OBLIGATION**

Rehabilitation Share	101
Prior Round Obligation	342
Projected Growth Share Obligation	299

**II. FAIR SHARE PLAN**

A Fair Share Plan, as required under N.J.A.C. 5:97-3.1, describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and

<sup>2</sup> Pursuant to N.J.A.C. 5:97-2.2(d), South Plainfield's residential projection of 518 is divided by 5 to yield 103.60 units and the non-residential projection of 3,131 jobs is divided by 16 to yield 195.69 units. South Plainfield's total projected growth share is therefore 299 units (103.60 + 195.69).

growth share obligation and includes the draft ordinances necessary to implement that plan. Affordable housing must be provided in direct proportion to the growth share obligation generated by the actual growth.

South Plainfield's Fair Share Plan, and the supporting documentation incorporated by reference therein, addresses the requirements of N.J.A.C. 5:97-3.1 as follows:

**A. Plan to Address Rehabilitation Share**

**Rehabilitation Share Credits**

South Plainfield is requesting credit for one unit rehabilitated subsequent to April 1, 2000. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

**Rehabilitation Credits**

Rehabilitation Program	# Credits
Middlesex County Rehab Program	1
<b>TOTAL</b>	<b>1</b>

**Proposed Rehabilitation Program**

***Middlesex County Rehabilitation Program***

South Plainfield will utilize the Middlesex County Rehabilitation Program to address 100 units of its rehabilitation obligation. The Borough anticipates that ten units per year will be rehabilitated by the County. If the County is unable to complete the Borough's obligation, South Plainfield is prepared to hire an experienced administrator to manage a local rehabilitation program. The Borough plans to utilize development fees to fund the program and has allocated \$672,000.00 in its spending plan. If necessary, the Borough has adopted a Resolution of Intent to Bond in case there is a shortfall of funds.

**Proposed Rehabilitation Program**

Rehabilitation Program	# Units
Middlesex County Rehab Program	100
<b>TOTAL</b>	<b>100</b>

**B. Plan to Address Prior Round Obligation**

**Prior Round Obligation Credits**

South Plainfield is addressing the adjusted prior round obligation with 10 prior cycle credits and 343 post-1986 credits. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

***Morris Avenue – South Plainfield Senior Residences***

South Plainfield Senior Residences, also known as Morris Avenue, was part of South Plainfield's second round judgment of compliance. Pursuant to N.J.A.C. 5:97-4.1(c), COAH will honor the judgment of compliance and allow the Township to claim credit for 100 age-restricted units in South Plainfield Senior Residences, even though the Age-Restricted Maximum has been determined to be 89 units.

**Prior Cycle Credits**

Project/Development Name	Year Built	Type of Affordable Unit	# Units/Bedrooms
Credits without Controls		family	10
Keystone Community	1982	group home	19
<b>TOTALS</b>			<b>29</b>

**Post-1986 Credits**

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
South Plainfield Senior Residences	2002	age-restricted, rental	100	rental	9	109
The Highlands	2000	family, rental	38	rental	38	76
Woodland Manors		family, rental	32	rental	32	64
RCA- New Brunswick	2003		57		0	57
Hillside Avenue	1991	group home	4	rental	0	4
<b>TOTALS</b>			<b>231</b>		<b>79</b>	<b>310</b>

**Proposed Affordable Housing Mechanisms**

South Plainfield is relying on credits and therefore is not proposing any additional affordable housing mechanisms to address its prior round obligation.

**Prior Round Obligation Parameters**

South Plainfield has satisfied the applicable Prior Round parameters as follows:

**Prior Round Rental Obligation:<sup>3</sup> 79 Units**

Development/Project Name	Type of Affordable Unit	# Units
The Highlands	family	38
Woodland Manors	family	32
South Plainfield Senior Residences	age-restricted	100
<b>TOTAL</b>		<b>170</b>

**Prior Round Age-Restricted Maximum<sup>4</sup>: 89 Units**

Development/Project Name	Type of Affordable Unit	# Units
South Plainfield Senior Residences	rental	100
<b>TOTAL</b>		<b>100</b>

**Regional Contribution Agreement (RCA) Maximum<sup>5</sup>: 206 Units**

Receiving Municipality	Type of Affordable Unit	# Units
New Brunswick	rehabilitation	57
<b>TOTAL</b>		<b>57</b>

<sup>3</sup> Rental Obligation: N.J.A.C. 5:97-3.10(b)1 Rental Obligation = 25 percent (Prior Round Obligation – Prior Cycle Credits) - .25 (342 – 29) = 79 units

<sup>4</sup> Age-Restricted Maximum: N.J.A.C. 5:97-3.10(c)1 Age-Restricted Maximum = 25 percent (Prior Round Obligation + Rehabilitation Share – Prior Cycle Credits – Rehabilitation Credits – Transferred RCA Units Addressing the Prior Round Obligation) = .25 (342 + 101 -29 – 1 – 57) = 89 units

<sup>5</sup> RCA Maximum: N.J.A.C. 5:97-3.10(c)1 RCA Maximum = 50 percent (Prior Round Obligation + Rehabilitation Share – Prior Cycle Credits – Rehabilitation Credits) = .5(342 + 101 – 29 – 1) = 206 units

**Prior Round Rental Bonus Maximum<sup>6</sup> : 79 Units**

Development/Project Name	Type of Bonus	# Bonuses
The Highlands	family, rental	38
Woodland Manors	family, rental	32
South Plainfield Senior Residences	age-restricted, rental	9
<b>TOTAL</b>		<b>79</b>

**C. Plan to Address Projected Growth Share**

**Growth Share Obligation Credits**

South Plainfield is addressing 10 units of the projected growth share obligation with 10 units of credit. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

**Prior Cycle Credits**

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Keystone Community	1982	group home	10	-	0	10
<b>TOTALS</b>			<b>10</b>		<b>0</b>	<b>10</b>

**Proposed Affordable Housing Mechanisms**

South Plainfield proposes to address the remaining 289-unit growth share obligation through the following mechanisms:

<sup>6</sup>No rental bonuses shall be granted for rental units in excess of the prior round rental obligation, therefore, PR Rental Bonus Maximum = PR Rental Obligation N.J.A.C. 5:97-3.5

*Harris Steel Site – Tyler Place*

South Plainfield will rely on zoning to address 230 units of its projected growth share obligation. The Harris Steel Site is located along the Borough's western border with Piscataway. The site, identified as Block 467, Lots 21 and 21, consists of 86.54 acres. Although the site is flat, it is constrained by wetlands on half of the site. The 25 garden apartment buildings will be located with access to New Brunswick Avenue, away from the wetlands and the associated buffers. The site is located in Planning Area 1 and has access to public water and sewer.

The Borough submitted an agreement between Tyler Properties and the Borough to develop the site, dated August 21, 2009. The agreement states that 708 garden apartments will be constructed on the site. Of the 708 units, 136 units will be available to low- and moderate-income households and 20 units will be deed restricted for very low-income households. **[156 low- and moderate-income family, rental units of which 20 units are very low-income units and 74 rental bonuses]**

*JSM at Tingley*

South Plainfield will utilize zoning to address 74 units of its projected growth share obligation. The site is located at the intersection of Coolidge Street and South Avenue, on Block 517, Lot 1. The location is comprised of 26.34 acres, of which it is estimated that 13 acres of the site has been mapped with "herbaceous wetland areas," leaving 10 acres for development. The site is located in PA1 and has access to public water and sewer.

The site was formerly zoned for non-residential uses, but is currently zoned SC-2, Senior Citizen Residential. The developer received final site plan approval on November 27, 2007. The approval was submitted as part of the Borough's petition. The site will be developed to include 484 age-restricted, for-sale units, of which 97 will be deed restricted for low- and moderate-income households. The Borough's projected growth share obligation is 299 units, as a result, the Borough may utilize 74 of the 97 deed restricted units to address a portion of its third round obligation. **[74 age-restricted, rental units]**

**Proposed Growth Share Affordable Housing Mechanisms**

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Harris Steel Site – Tyler Place	family, rental	156	rental	74	230
JSM at Tingley	age-restricted, for-sale	74	-	0	74
<b>TOTALS</b>		<b>230</b>		<b>74</b>	<b>304</b>

**Growth Share Parameters**

South Plainfield has satisfied the applicable Growth Share parameters as follows:

**Growth Share Rental Obligation:<sup>7</sup> 75 Units**

Development/Project Name	Type of Affordable Unit	# Units
Harris Steel Site – Tyler Place	family	156
<b>TOTAL</b>		<b>156</b>

**Growth Share Family Rental Requirement<sup>8</sup> : 38 Units**

Development/Project Name	Type of Affordable Unit	# Units
Harris Steel Site – Tyler Place *	family	156
<b>TOTAL</b>		<b>156</b>

\*In accordance with N.J.A.C. 5:97-3.6(a)4, 75 of these units are addressing the minimum rental requirement and are therefore not eligible to receive rental bonuses.

<sup>7</sup> Projected Growth Share Rental Obligation:  $.25(\text{Projected Growth Share})$  or  $.25(299)= 75$  units N.J.A.C. 5:97-3.10(b)3

<sup>8</sup> Projected Growth Share Family Rental Requirement:  $.5(\text{Projected Growth Share Rental Requirement})$  or  $.5(75)= 38$  units N.J.A.C. 5:97-3.4(b)

**Growth Share Minimum Family Requirement<sup>9</sup> : 113 Units**

Development/Project Name	Type of Affordable Unit	# Units
Harris Steel Site – Tyler Place	family, rental	156
<b>TOTAL</b>		<b>156</b>

**Very Low Income Minimum Requirement<sup>10</sup> : 30 Units**

Development/Project Name	Type of Affordable Unit	# Units
Harris Steel Site – Tyler Place	family, rental	20
Keystone Community	group home	10
<b>TOTAL</b>		<b>30</b>

**Age-Restricted Maximum<sup>11</sup> : 74 Units**

Development/Project Name	Type of Affordable Unit	# Units
JSM at Tingley	age-restricted, for-sale	74
<b>TOTAL</b>		<b>74</b>

**Bonus Maximum<sup>12</sup> : 74 Bonuses**

Development/Project Name	Type of Bonus	# Bonuses
Harris Steel Site – Tyler Place	family, rental	74
<b>TOTAL</b>		<b>74</b>

<sup>9</sup> Projected Growth Share Family Requirement: .5(Units Addressing the Growth Share Obligation) or .5(225)= 113 units N.J.A.C. 5:97-3.9

<sup>10</sup> Growth Share Very Low Income Requirement: .13(Units Addressing the Growth Share Obligation) or .13(225)= 30 units pursuant to P.L.2008, c.46

<sup>11</sup> Projected Growth Share Age Restricted Maximum: .25(Projected Growth Share) or .25(299)= 74 units N.J.A.C. 5:97-3.10(c)2

<sup>12</sup> Projected Bonus Maximum: .25(Projected Growth Share) or .25(299)= 74 units N.J.A.C. 5:97-xxx

**Actual Growth Share Obligation**

The actual growth share obligation will be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with Appendix D of N.J.A.C. 5:97. At plan evaluation review pursuant to N.J.A.C. 5:96-10, COAH will compare the actual growth share obligation with the actual number of affordable units constructed.

The New Jersey Department of Community Affairs (NJ DCA) *Construction Reporter* indicates that between January 1, 2004 and September 2008, South Plainfield issued certificates of occupancy for 105 housing units and for the non-residential square footage equivalent of 1,292 jobs, yielding an actual growth share obligation through September 30, 2008, of 102 affordable units.<sup>13</sup>

**D. Summary of Plan to Address Fair Share Obligation**

**REHABILITATION SHARE SUMMARY**  
**Rehabilitation Share: 101 Units**

Program Name	# Units
Rehabilitation Credit	1
Middlesex County Rehabilitation Program	100
<b>TOTAL</b>	<b>101</b>

<sup>13</sup> The number of residential COs (105) is initially divided by 5 to yield 21 units and the number of jobs (1,292) is initially divided by 16 to yield 81 units. South Plainfield's total actual growth share is therefore 102 units (21 + 81). **Note:** This number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.4; therefore, the actual growth share may vary.

**PRIOR ROUND SUMMARY**  
**Prior Round Obligation: 342 Units**

	Name of Mechanism	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
<b>Prior Cycle Credits</b>	Credits without Controls	10			10
	Keystone Community	19			19
<b>Post-1986 Credits</b>	South Plainfield Senior Residences	100	rental	9	109
	The Highlands	38	rental	38	76
	Woodland Manors	32	rental	32	64
	Hillside Avenue	4	-	0	4
	RCA - New Brunswick	57	-	0	57
<b>Subtotal</b>		<b>260</b>		<b>79</b>	<b>339</b>
<b>TOTAL</b>					<b>339</b>
<b>Shortfall</b>					<b>3</b>

**GROWTH SHARE SUMMARY**  
**Projected Growth Share Obligation: 299 Units**

	Name of Mechanism	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
<b>Prior Cycle Credits</b>	Keystone Community	10	-	0	10
<b>Subtotal</b>		<b>10</b>		<b>0</b>	<b>10</b>

<b>Proposed Mechanisms</b>	Harris Steel – Tyler Place	156	rental	74	230
	JSM at Tingley	74	"	0	74
	<b>Subtotal</b>	<b>230</b>		<b>74</b>	<b>304</b>
<b>TOTAL</b>					<b>314</b>
<b>Surplus</b>					<b>15</b>

### **III. FAIR SHARE DOCUMENT REVIEW**

#### **A. Development Fee Ordinance**

COAH granted South Plainfield approval of an amendment to its development fee ordinance on March 9, 2009.

#### **B. Third Round Spending Plan**

A revised third round spending plan was submitted by South Plainfield with the Borough's third round petition for COAH's review and approval. The spending plan will be reviewed by COAH in a separate report.

#### **C. Affordable Housing Ordinance/Affordable Housing Administration**

South Plainfield has submitted a draft affordable housing ordinance that comports with the requirements of the Uniform Housing Affordability Controls (UHAC), N.J.A.C. 5:80-26.1 et seq., which was amended on December 20, 2004. The draft proposed ordinance has been amended to comply with the barrier free subcode of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and the accessibility requirements of N.J.S.A. 52:27D-123.15. The draft ordinance must be adopted within 45

days of COAH's grant of substantive certification and submitted to COAH immediately upon adoption.

An ordinance establishing the position of a municipal housing liaison was adopted by the Borough. The Borough must adopt a resolution naming the municipal employee designated as the municipal housing liaison within 45 days of COAH's grant of substantive certification and submit to COAH immediately upon adoption.

South Plainfield is responsible for the continued re-sale and re-rental of existing affordable units and the initial sale and rental of newly constructed affordable units within the Borough and must identify an experienced administrative entity for that purpose by contract, agreement or letter. South Plainfield has designated a municipal employee as its administrative entity for all affordable units. Pursuant to N.J.A.C. 5:80-26.14(b), South Plainfield must submit a written operating manual for administering affordable units within the Borough within 45 days of COAH's grant of substantive certification and submit to COAH immediately upon adoption.

#### **D. Affirmative Marketing Plan**

South Plainfield has submitted an affirmative marketing plan that comports with the requirements of the UHAC and ensures the completed units in the Borough's 1987-2018 Fair Share Plan and all future affordable housing units will be affirmatively marketed to the region upon initial sale/rental and re-sale/re-rental. Once approved by COAH, the affirmative marketing plan must be adopted by resolution by the Borough within 45 days of COAH's grant of substantive certification and submitted to COAH.

#### **IV. MONITORING**

South Plainfield must comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the municipality's actual growth pursuant to N.J.A.C. 5:97-2.5. As indicated above, credits for built units will be validated and verified by COAH staff during monitoring prior to the first biennial plan evaluation. It should be noted that credits for affordable housing programs and/or affordable units must

be in compliance with N.J.A.C. 5:97-4. If the units are determined not to be eligible for credit, COAH will notify South Plainfield in writing and the Borough may be directed to amend its certified plan to address the shortfall.

Pursuant to N.J.A.C. 5:96-10.1, COAH will conduct biennial plan evaluations upon substantive certification of South Plainfield's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. If upon any biennial review the difference between the number of affordable units constructed or provided in South Plainfield and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the municipality to amend its plan to address the shortfall.

#### **V. RECOMMENDATION**

COAH staff recommends that South Plainfield be granted third round substantive certification. The Borough must submit to COAH within 45 days of the grant of substantive certification: a resolution appointing a municipal employee to the municipal housing liaison position and an operating manual for the Borough's existing affordable units. South Plainfield must adopt all necessary implementing ordinances within 45 days of the grant of substantive certification and submit certified copies of the adopted ordinances to COAH within seven days of the adoption.

Appendix XII-B1

	<b>CIVIL CASE INFORMATION STATEMENT (CIS)</b>		<b>FOR USE BY CLERK'S OFFICE ONLY</b>	
	Use for initial Law Division Civil Part pleadings (not motions) under <i>Rule 4:5-6</i> <b>Pleading will be rejected for filing, under <i>Rule 1:5-6(c)</i></b> <b>if information above the black bar is not completed</b> <b>or attorney's signature is not affixed</b>		DOCUMENT TYPE: <input type="checkbox"/> CK <input type="checkbox"/> CG <input type="checkbox"/> CA CHG/CK/NO AMOUNT: 7 OVERPAYMENT: P 2:22 BATCH NUMBER:	RECEIVED #1 JUL 7 P 2:22 CIVIL OFFICE MIDDLESEX COUNTY
ATTORNEY / PRO SE NAME Steven A. Kunzman, Esq.		TELEPHONE NUMBER (908) 757-7800	COUNTY OF VENUE Middlesex	
FIRM NAME (if applicable) DiFrancesco, Bateman, Coley, Yospin, Kunzman, Davis, Lehrer & Flaum		DOCKET NUMBER (when available) MID-L- <b>MID-L- 03994 15</b>		
OFFICE ADDRESS 15 Mountain Boulevard Warren, NJ 07059		DOCUMENT TYPE Declaratory Judgment Complaint		
		JURY DEMAND <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		
NAME OF PARTY (e.g., John Doe, Plaintiff) Plaintiff Borough of South Plainfield		CAPTION In the Matter of the Borough of South Plainfield for a Judgment of Compliance of its Third Round Housing Element and Fair Share Plan		
CASE TYPE NUMBER (See reverse side for listing)  303	HURRICANE SANDY RELATED? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO	IS THIS A PROFESSIONAL MALPRACTICE CASE? <input type="checkbox"/> YES <input checked="" type="checkbox"/> NO IF YOU HAVE CHECKED "YES," SEE N.J.S.A. 2A:53 A -27 AND APPLICABLE CASE LAW REGARDING YOUR OBLIGATION TO FILE AN AFFIDAVIT OF MERIT.		
RELATED CASES PENDING? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, LIST DOCKET NUMBERS		
DO YOU ANTICIPATE ADDING ANY PARTIES (arising out of same transaction or occurrence)? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		NAME OF DEFENDANT'S PRIMARY INSURANCE COMPANY (if known) <input checked="" type="checkbox"/> NONE <input type="checkbox"/> UNKNOWN		
<b>THE INFORMATION PROVIDED ON THIS FORM CANNOT BE INTRODUCED INTO EVIDENCE.</b>				
CASE CHARACTERISTICS FOR PURPOSES OF DETERMINING IF CASE IS APPROPRIATE FOR MEDIATION				
DO PARTIES HAVE A CURRENT, PAST OR RECURRENT RELATIONSHIP? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, IS THAT RELATIONSHIP: <input type="checkbox"/> EMPLOYER/EMPLOYEE <input type="checkbox"/> FRIEND/NEIGHBOR <input type="checkbox"/> OTHER (explain) <input type="checkbox"/> FAMILIAL <input type="checkbox"/> BUSINESS		
DOES THE STATUTE GOVERNING THIS CASE PROVIDE FOR PAYMENT OF FEES BY THE LOSING PARTY? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No				
USE THIS SPACE TO ALERT THE COURT TO ANY SPECIAL CASE CHARACTERISTICS THAT MAY WARRANT INDIVIDUAL MANAGEMENT OR ACCELERATED DISPOSITION This matter is assigned to the designated Mount Laurel Judge.				
DO YOU OR YOUR CLIENT NEED ANY DISABILITY ACCOMMODATIONS? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, PLEASE IDENTIFY THE REQUESTED ACCOMMODATION		
WILL AN INTERPRETER BE NEEDED? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		IF YES, FOR WHAT LANGUAGE?		
I certify that confidential personal identifiers have been redacted from documents now submitted to the court, and will be redacted from all documents submitted in the future in accordance with <i>Rule 1:38-7(b)</i> .				
ATTORNEY SIGNATURE: 