



American Planning Association
New Jersey Chapter

Making Great Communities Happen

Monday, January 23, 2012

Sean Thompson
New Jersey Department of Community Affairs (DCA)
PO Box 813
Trenton, NJ 08625-0800

Sent by email: lpsmail@dca.state.nj.us

RE: Rule comment, proposal no. PRN 2011-243

Dear Mr. Thompson:

The American Planning Association - New Jersey Chapter (APA-NJ) comments on the above referenced rules that affect the implementation of the Fair Housing Act.

In general, APA-NJ believes the regulations allowing for waivers of affordable housing set-asides and reduction in densities for inclusionary projects under conditions of alleged economic feasibility have tremendous potential for abuse. Further APA-NJ does not believe the regulations currently in place governing municipal housing liaisons, administrative agents, and Regional Contribution Agreement (RCA) administrators should be changed. One of reasons New Jersey has had a successful affordable housing program is because of the administrative requirements to implement and maintain affordable housing programs. Dilution of these administrative requirements will weaken implementation of affordable housing programs in New Jersey.

Our specific comments on the proposed changes are as follows:

5:96-12.5 and 5:96-13.3 Comment: While the Fair Housing Act gives DCA, upon the request of a developer or of a developer and a municipality, the authority to reduce affordable housing set asides and housing densities in order to ensure economic feasibility of an inclusionary development, the proposed regulations are vague and do not contain sufficient criteria to determine "economic feasibility." As we read these regulations, key terms like "hard costs," "soft costs," and "return on investment" are not defined. The regulations permit the applicant to propose his or her own methodology by which return on investment is to be calculated, and select his or her own expected rate, rather than utilize an independent, objective survey of what levels of return or hurdle rates different types of inclusionary developments are currently earning. As a practical matter, since the former Council on Affordable

Housing staff has been drastically reduced, who within DCA has the expertise to evaluate these requests objectively and do so without pressure on independent professional judgment?

If there is to be a waiver on affordable housing set-asides and allowance for reduced density, then DCA must: (a) have a standardized methodology in a spreadsheet format, accompanied by instructions and definitions, so that proposals can be evaluated in a uniform manner; (b) conduct an annual survey on actual returns on investment from existing inclusionary projects so as to provide a benchmark against which these requests can be evaluated; (c) have a floor on the reductions in the set-aside requirement—certainly no less than 10 percent of the development—and a floor on the percentage reduction of density—again certainly no less than 10-15 percent of the initial proposed density; and (d) create a list of external, experienced evaluators of economic feasibility, not on the DCA staff, who would be assigned at random to review the developer’s information and submit a report that would be made part of the record of the DCA Commissioner’s determination on the request.

At bottom, APA-NJ is concerned that these sections of the proposed rules will become a reverse “builder’s remedy” in which builders, or builders in connivance with noncompliant municipalities, will use the alleged lack of adequate return on investment to avoid building any affordable housing at all.

5:96-16.3 Comment: The current regulations should not be changed. DCA should approve and monitor municipal housing liaisons.

5:96-16.4 Comment: The current regulations should not be changed. Municipal housing liaisons should continue to be required to “successfully” complete the DCA education program for municipal housing liaisons. Municipal housing liaisons should be required to attend continuing education opportunities related to their position so that they keep up-to-date concerning the implementation of the municipal affordable housing program. Municipal housing liaisons should be required to complete the required education program within a year from date of appointment.

5:96-16.5 Comment: The DCA should continue to provide model operating manuals to guide municipalities in the preparation of required operating manuals.

5:96-17.2 Comment: The current regulations should not be changed. DCA should approve and monitor administrative agents.

5:96-17.3 Comment: The current regulations should not be changed. All administrative agents should continue to be required to “successfully” complete the DCA education program for administrative agents. Administrative agents should be required to attend continuing education opportunities related to their responsibilities so that they keep up-to-date concerning the implementation of municipal affordable housing program. Administrative agents should be required to complete the required education program within a year from date of appointment.

5:96-18.3 Comment: The current regulations should not be changed. DCA should approve and monitor RCA administrators.

5:96-18.4 Comment: All RCA administrators should continue to be required to “successfully” complete the DCA education program RCA administrators. RCA administrators should be required to attend continuing education opportunities related to their position so that they keep up-to-date concerning the implementation of their responsibilities.

Thank you for your consideration and if you should have any further questions, please don't hesitate to contact us.

Respectfully,

A handwritten signature in blue ink that reads "Charles Latini, Jr." in a cursive script.

Charles Latini, Jr., PP, AICP
President

A handwritten signature in black ink that reads "Vito Gallo" in a cursive script.

Vito Gallo, PP
Housing Committee Chairman