Mayor and Common Council
Borough of Flemington

July 28, 2014

Council Meeting Room

I. Work Session Agenda (7:00)

1. UPDATE: COMPLETE STREETS POLICY (EDWARDS)
2. OVERVIEW: DRAFT COMMENTS ON THE COUNCIL ON AFFORDABLE HOUSING'S (COAH'S) PROPOSED RULES (GREINER)

II. Regular Meeting Agenda (7:30)

Flag Salute

Roll Call:

Erica Edwards	Mayor
Dorothy Fine	Councilwoman
John Gorman	Councilman
Phil Greiner	Councilman
Joey Novick	Councilman
Brian Swingle	Council President
Phil Velella	Council Vice President

1. Public Comments -- Session I (up to approximately 3 minutes each, for a maximum of approximately 30 minutes)
2. Mayor's Report (up to approximately 3 minutes)
3. Council Members' Reports (up to approximately 3 minutes each)

   Councilwoman Fine

   Councilman Gorman

   Councilman Greiner

   Councilman Novick

   Council President Swingle

   Council Vice President Velella
4. Approval of Minutes

   Motion To: **Approve Minutes: July 14, 2014 Regular Council Meeting**

1. RESOLUTION 2014-133: AUTHORIZING THE RETURN OF A DEMOLITION BOND TO COUNTRYSIDE PLAZA FOR BLOCK 35 LOT 32
2. RESOLUTION 2014-134: AUTHORIZING THE RENEWAL OF PLENARY RETAIL CONSUMPTION WITH BROAD PACKAGE LIQUOR LICENSE NUMBER 1009-44-004-007 FOR FLEMINGTON CENTRAL LIQUORS FOR THE YEAR 2014-2015

3. RESOLUTION 2014-135: ADOPTING THE BOROUGH PLANNER'S COMMENTS ON THE COUNCIL ON AFFORDABLE HOUSING'S (COAH'S) PROPOSED RULES
5. Public Comments -- Session II (up to approximately 3 minutes each, for a maximum of approximately 30 minutes)
6. Attorney's Report
7. Payment of the Bills

   Motion To: **Pay The Bills**

Executive Session For Any Other Applicable Matter Identified During the Regular Meeting (Action May Be Taken)

Adjournment

Motion To: **Adjourn**

Mayor and Common Council
38 Park Avenue
Flemington, NJ 08822

Meeting: 07/28/14 07:30 PM
Department: Clerk of the Borough
Category: Appointment
Prepared By: Robin Hughes

SCHEDULED

Initiator: Robin Hughes
Sponsors:

AGENDA ITEM (ID # 1609)

DOC ID: 1609

Update: Complete Streets Policy (Edwards)

Mayor and Common Council
38 Park Avenue
Flemington, NJ 08822

Meeting: 07/28/14 07:30 PM
Department: Clerk of the Borough
Category: Appointment
Prepared By: Robin Hughes

SCHEDULED

Initiator: Robin Hughes
Sponsors:

AGENDA ITEM (ID # 1610)

DOC ID: 1610

Overview: Draft Comments on the Council on Affordable Housing's (COAH's) Proposed Rules (Greiner)

MEMORANDUM

Clarke Caton Hintz
Architecture
Planning
Landscape Architecture

To: Flemington Borough Council

From: Elizabeth McManus, PP, AICP, LEED AP

Re: **2014 Draft COAH Rules & Comments**

Date: July 24, 2014

100 Barrack Street
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clarkecatonhintz.com
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As you may know, COAH approved draft rules regulating how municipal affordable housing obligations are calculated and satisfied. The formal proposed rules were in the June 2nd NJ Register. These rules replace the 2004 and 2008 third round rules that were previously overturned by the Courts. As requested by the Land Use Board, I prepared comments on the draft rules and also a preliminary analysis of the draft rules and their impact on the Borough. Both documents are attached for your review.

The Land Use Board discussed both documents at their July 22nd meeting. The Board approved the comments for referral to the Council with minor amendments (the amended version is attached). Their most significant concerns and those comments they wish to emphasize address two topics:

1. One of the new requirements is that an Economic Feasibility Study be submitted by the municipality to defend the assigned density for all sites zoned for inclusionary housing (defined as a mix of affordable and market rate units) – unless they are constructed or were approved by the Court. This study may be costly and must be prepared by an expert in real estate finance and market valuation. In Flemington, this means for example, that the Borough will need such a study if it wishes to request credit for the Flemington Cut Glass site, an inclusionary project that previously received site plan approval from the Land Use Board. (see page 1 of the Comments document)
2. It is unclear if a negative unanswered prior obligation can be used as a credit against a prospective need obligation. Flemington has an unanswered prior obligation of –41 units and a prospective need of 5 units. Clearly, it would be best for Flemington if the negative unanswered prior obligation could be used to address the 5 unit prospective need obligation. (see page 2 of the Comments document)

John Clarke, FAIA
Philip Caton, FAICP
Carl Hintz, AICP, ASLA
John Hatch, FAIA
George Hibbs, AIA
Brian Slaugh, AICP
Michael Sullivan, AICP

The deadline to submit comments to COAH is August 1st. Comments must be submitted by the Borough to COAH electronically. The email address is

Attachment: COAH Package 2014 (2014-135 : Coah)

COAHAdmin@dca.state.nj.us and the email should include the words 'Rule Comments' in the subject box. Written comments can also be mailed or faxed to COAH but then the comments should also be included on a PC-formatted disk in Microsoft Word and mailed to COAH.

Please feel free to contact me with any questions or concerns about the proposed rules or comments.

C: Rebecca Newman
Barry Goodman, Esq.

W:\5000's\Flemington Borough\Applications & Projects\5210.FS\2014 Rules\140724 Council Letter.docx

Attachment: COAH Package 2014 (2014-135 : Coah)

COMMENTS ON COAH'S DRAFT SUBSTANTIVE AND PROCEDURAL RULES (N.J.A.C. 5:99 & N.J.A.C. 5:98)

BOROUGH OF FLEMINGTON, HUNTERDON COUNTY

***N.J.A.C.* 5:99-1.1(c)** – The proposed rules should provide bonus credits for the prospective need. Bonus credits were an important incentive for the creation of rental units in all earlier versions of COAH's substantive rules and were specifically upheld in the 2010 Appellate division decision. With the elimination of the rental obligation in the prospective need, bonus credits will be particularly important for encouraging the creation of rental affordable units, which are in far greater need than affordable sale units.

***N.J.A.C.* 5:99-1.1(c)** – The proposed rules should provide clarity on whether inclusionary zoning is recommended or required. This section states COAH "[requires] zoning to be the preferred means of meeting a municipality's fair share obligation..." whereas inclusionary zoning is listed as one of multiple methods of satisfying a fair share obligation elsewhere in the rules at *N.J.A.C.* 5:99-7.1. Requiring inclusionary zoning would be a substantial deviation from the last 30 years of affordable housing policy in the State. Municipalities should continue to be permitted to satisfy their obligation in the manner that is most appropriate for their characteristics.

***N.J.A.C.* 5:99-1.1(d)** – COAH should eliminate the requirement for an Economic Feasibility Study and should, instead, provide minimum density standards and maximum affordable housing set-aside standards." An Economic Feasibility Study (EFS) will be very costly either to a municipality or developer and, thus, such study will be cost generative. Since capital markets and housing markets fluctuate, such a study will only have a shelf-life of 3 - 6 months and will likely be out-of-date by the time the municipality actually submits the prepared study as part of its petition; the study will clearly be out-of-date by the time COAH grants certification. Further, for any number of reasons beyond the municipality's control, inclusionary sites may not get developed right away or for years, thus rendering the EFS results even more outdated.

***N.J.A.C.* 5:99-1.1(d)** – If COAH retains the requirement of an Economic Feasibility Study (EFS), such study should only be required for a site where an owner/developer files an objection regarding a site's proposed density or affordable housing set-aside with the understanding that the site's set-aside and density could increase as well as decrease as a result of such study. In such a case, the municipality and developer would jointly choose the preparer of the EFS, for which the developer would pay or, if the municipality paid the cost of the study upfront, then the developer would refund the municipality the cost of the study upon site approval.

***N.J.A.C.* 5:99-2.3(b)** – The proposed rules should provide clarity on if or when a municipality will need to satisfy the remaining half of the unanswered prior obligation. What, if any, circumstance would require a municipality to address some or part of the obligation prior to 2024?

***N.J.A.C.* 5:99-2.3(b)** – COAH should confirm that a municipality may satisfy the entire unanswered prior obligation and/or the entire rental obligation in the 2015 housing element if so desired. Where the entire

Attachment: COAH Package 2014 (2014-135 : Coah)

rental obligation for the unanswered prior obligation is satisfied, COAH should confirm that bonus credits for all such units may be received.

***N.J.A.C.* 5:99-2.3(b)** – This section permits a municipality to use the second round rules to satisfy the unanswered prior obligation; as such, the municipality may receive rental bonus credits consistent with *N.J.A.C.* 5:93-5.15. The proposed rules should provide clarity on the application of bonus credits consistent with the 2010 Appellate Division decision.

***N.J.A.C.* 5:99-2.3(b)** – The proposed rules should provide clarity as to how the age-restricted limitation will be applied to the unanswered prior obligation. Will it be applied to the 1987-1999 or 1999-2014 obligations or will it be applied to calculated unanswered prior obligation?

***N.J.A.C.* 5:99-2.3(b)** – The proposed rules should provide clarity as to how the age-restricted limitation will be applied to and calculated for the unanswered prior obligation in the case of municipalities that received a first or second round vacant land adjustment. Will it be applied to the previously granted RDP, the 1987-1999 or 1999-2014 obligations or will it be applied to calculated unanswered prior obligation?

***N.J.A.C.* 5:99-2.4(b)** – Please confirm that a municipality with a negative Prior Obligation allocation may use this negative allocation to offset Prospective Need.

***N.J.A.C.* 5:99-2.4(b)** – Please confirm that a municipality with a negative Prospective Need allocation may use this negative allocation to offset Prior Obligation.

***N.J.A.C.* 5:99-2.4(b)** – The proposed rules should be revised to clarify how surplus credits from the unanswered prior obligation may be used to satisfy the prospective need.

***N.J.A.C.* 5:99-3.5(a)** – Can a municipality use sent RCAs or prior round rental bonus toward the "percentage of units completed" in the calculation of substantial compliance bonus? RCA and bonus credits should be permitted contributors since these two mechanisms are specified in the prior round rules and previous third round rules as eligible to satisfy the 1987-1999 and 1999-2014, respectively. It is unreasonable and unduly burdensome to prohibit credits which are eligible to satisfy the unanswered prior obligation from contributing toward the substantial compliance bonus which rewards municipalities from creating credits to satisfy said obligation.

***N.J.A.C.* 5:99-3.5(a)** – The proposed rules should provide clarity on how the substantial compliance bonus is calculated. Is the reduction applied to only the 1987-1999 obligation or is applied to the entire unanswered prior obligation 1987-2024? If the bonus is applied to the entire unanswered prior obligation 1999-2024, should the reduction be applied before or after application of completed and subsidized units?

COMMENTS ON COAH'S DRAFT SUBSTANTIVE AND PROCEDURAL RULES (N.J.A.C. 5:99 & N.J.A.C. 5:98)

BOROUGH OF FLEMINGTON, HUNTERDON COUNTY

N.J.A.C. **5:99-4.3(a)2.** – The proposed rules should provide clarity on how the 13% very low income requirement will be calculated and applied. Will the 13% requirement apply to some or the entire new construction obligation (1987-1999, 1999-2014 and/or 2014-2024)? It is unreasonable to apply the requirement retroactively to fair share obligations for time periods prior to the 2008 change to the Fair Housing Act that required provision of 13% very low income units; as such this requirement should only apply to the prospective need. COAH previously provided guidance about this requirement in the Fair Housing Act in 2009, relative to the 2008 rules. At that time COAH stated the requirement would only be applicable to third round units. COAH should provide guidance similar to this with respect to the proposed rules by applying the requirement to only the prospective need.

N.J.A.C. **5:99-4.3(a)3.** – This section should be deleted since it is inconsistent with other parts of the substantive rules. A municipality's "determination of the total residential zoning necessary to assure that the municipality's affordable housing obligation is achieved" serves no purpose when municipalities may use a variety of programs to satisfy the obligation. Additionally, the definition of "affordable housing obligation" includes rehabilitation obligation; inclusionary zoning is not relevant to this portion of the obligation. Should this section remain in the adopted rules, COAH should provide clarity on what steps a municipality must take to satisfy this requirement. Is a GIS analysis necessary? This would be very costly to the municipalities and would be duplicative of COAH's calculation of the buildable limit.

N.J.A.C. **5:99-5.4**– The proposed rules should provide clarity as to what, if any, steps a municipality must take to maintain a first or second round vacant land adjustment.

N.J.A.C. **5:99-7.1** -- The proposed rules should reinstate the market to affordable, accessory apartment and extension of expiring controls programs for satisfying the prospective need. Additionally, the extension of expiring controls program should be a permitted mechanism for satisfying the unanswered prior obligation. These programs successfully created affordable housing units and are particularly useful in municipalities which have limited public sewer and water. Furthermore, the market to affordable and accessory apartment programs are unique in that they inherently disperse affordable units throughout a community.

N.J.A.C. **5:99-7.1(a)3.** – This section should be revised to permit a larger variety of special needs housing types to qualify for credit. The proposed rules should be revised to permit, at a minimum, all special needs housing which is eligible for credit in the second round rules (*N.J.A.C.* 5:93). Not only will this encourage creation of housing for those with a wider range of special needs but will simplify the rules by eliminating a distinction between the types of affordable housing permitted to satisfy the unanswered prior obligation and the prospective need.

N.J.A.C. **5:99-7.1(b)1.** – COAH should define what makes infrastructure "currently or imminently available".

Attachment: COAH Package 2014 (2014-135 : Coah)

COMMENTS ON COAH'S DRAFT SUBSTANTIVE AND PROCEDURAL RULES (N.J.A.C. 5:99 & N.J.A.C. 5:98)

BOROUGH OF FLEMINGTON, HUNTERDON COUNTY

N.J.A.C. **5:99-7.2(a)2** – The presumptive inclusionary housing set-aside of 10% should be increased to 20%. This set-aside has been in place throughout the entirety of the Mount Laurel doctrine and has successfully created affordable housing units, thus demonstrating its appropriateness and the ability of developers to create economically successful projects where 20% of the units are affordable. Decreasing the set-aside by half is a disincentive for its use and therefore directly conflicts with the proposed rules stated purpose of having inclusionary zoning serve as the preferred means of addressing the affordable housing obligation (*N.J.A.C.* 5:99-1.1(c)). Such a reduction will double the acreage necessary and the number of market rate units necessary for inclusionary housing. These impacts are particularly problematic given limited land availability across the state and the tax implications of single family housing in most municipalities.

N.J.A.C. **5:99-7.2(a)2** – COAH should confirm that an Economic Feasibility Study may be used to increase or decrease the presumptive affordable housing set-aside of 10%.

N.J.A.C. **5:99-7.2(c)2**– The phasing schedule should be revised to reflect that which was in the second round rules. Requiring additional affordable units to be completed early in the construction of market rate units will jeopardize the economic feasibility of inclusionary projects. The second round (*N.J.A.C.* 5:93-5.6(d)) phasing schedule that required only 10% of affordable units be completed when 25% of market units were completed was more appropriate than the current proposal that requires 25% of affordable units to be completed when 25%+1 of market units were completed. In both the proposed rules and the second round rules all of the affordable units are required to be completed when the market units are 90% completed.

N.J.A.C. **5:99-7.3(c)4.** – COAH should provide clarity as to whether municipalities may continue to submit draft RFP's for municipally sponsored sites. It would be unreasonable for municipalities to be required to select a developer for a site prior to COAH approving the site's use for affordable housing.

N.J.A.C. **5:99-11-17(d)4** – COAH should eliminate the requirement that a municipality submit a municipal resolution or ordinance and an executed contract or agreement for administrative expenses in order to demonstrate a commitment of trust fund money for administrative purposes. It is not possible to know in advance the cost of administration as it varies depending on planning (i.e. must the Town respond to requests for information from COAH) and on the needs of its low and moderate income residents (i.e. are residents requesting help with refinancing their affordable units or are affordable rental units turning over). Furthermore, administration is often handed by municipal staff members for whom an executed contract for services is not an applicable document.

N.J.A.C. **5:99 Appendix D** – COAH should provide clarity as to how the vacant land adjustment figure in the table was calculated or what it represents.

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COMMENTS ON COAH'S DRAFT SUBSTANTIVE AND PROCEDURAL RULES (N.J.A.C. 5:99 & N.J.A.C. 5:98)

BOROUGH OF FLEMINGTON, HUNTERDON COUNTY

N.J.A.C. 5:98-3.1(b) – COAH should clarify the length of time municipalities will receive substantive certification. This section states substantive certification shall not exceed a 10 year period beginning on the date the housing plan is filed whereas the definition of substantive certification in *N.J.A.C.* 5:98-1.3 states substantive certification shall be for a period of 10 years or December 31, 2024, whichever is earlier. COAH should provide a 10 year substantive certification regardless of the date the housing plan is filed as it will eliminate the need for extended substantive certifications should the next set of substantive rules not be prepared in time for January 1, 2025. Furthermore, the current rule will serve as a disincentive for municipalities to file their Plan with COAH as the date gets closer to December 31, 2024.

N.J.A.C. 5:98-3.4(c) – Does this section refer to municipalities that received first or second round vacant land adjustments or only those that receive vacant land adjustments pursuant to the proposed rules?

N.J.A.C. 5:98-3.4(c) – This section should be revised to provide clarity. It currently states that a town which received a vacant land adjustment must repetition if developable land or an extension of utilities occurs. However, this language is vague and it is unclear if a repetition would be required if, for example, an industrial property became developable even though the site is not suitable for affordable housing. It is overly burdensome to require a town to repetition for any and all sites which may become available. Criteria for when a municipality must alert COAH to such changes should be provided and alternative criteria for when a municipality must repetition should be provided.

Attachment: COAH Package 2014 (2014-135 : Coah)

MEMORANDUM

Clarke Caton Hintz
Architecture
Planning
Landscape Architecture

To: Flemington Borough Land Use Board

From: Elizabeth McManus, PP, AICP, LEED AP

Re: **Preliminary Review of 2014 Draft COAH Rules**

Date: July 9, 2014

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As requested, this memo provides a preliminary discussion of COAH's new draft rules and their impact on Flemington Borough.

On March 14, 2014 the NJ Supreme Court ordered COAH to propose and adopt new regulations using a methodology similar to COAH's first and second round methodologies. The Court set the following schedule:

- COAH approved draft rules which were released on April 30th. The formal proposed rules were in the June 2nd NJ Register and are different in some respects from the initial draft version.
- COAH will hold a public hearing on the proposed rules on July 2nd.
- The 60-day comment period on the proposed rules began on June 2nd and will end on August 1st.
- COAH was ordered to adopt new rules in October and publish them in the November 17th NJ Register.

John Clarke, FAIA
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Carl Hintz, AICP, ASLA
John Hatch, FAIA
George Hibbs, AIA
Brian Slaugh, AICP
Richard Sullivan, AICP

The draft rules give municipalities six (6) months to submit new housing plans – by May 15, 2015.

I reviewed the draft rules and discussed them internally, with other professionals and with COAH staff. **There is much that remains unclear about the proposed rules and how they will be interpreted.** Also as requested, I have prepared comments on the proposed rules for the Borough's review and submittal to COAH prior to the August 1st deadline. It is likely the rules will be revised before they are adopted.

Also, it is worth noting that on June 17, 2014 the Fair Share Housing Center filed a lawsuit challenging the rules as not being sufficiently similar to the first and second round methodologies by which regional housing need was calculated and allocated to municipalities. The Center is asking the NJ Supreme Court to intervene even before the rules have been adopted and to either order COAH to adjust the rules or, alternatively, to

Attachment: COAH Package 2014 (2014-135 : Coah)

effectively transfer the administration of the fair share housing plans from COAH to the courts. We will keep you posted on any significant developments as this lawsuit progresses.

While COAH no longer refers to the new construction obligations in "rounds", the Borough should note that what is commonly referred to as the "third round" has been extended. The 2008 COAH rules define the third round obligation as the need generated between 1999 and 2018, with a delivery period between 2008 and 2018. It furthermore defined the prior round obligation as the affordable housing need generated during the the first and second rounds of affordable housing between 1987 to 1993 and 1993 to 1999, respectively. In contrast, the draft rules define the unanswered prior obligation as the previously referred to prior round obligation for 1987 to 1999 *and* the obligation for 1999 to 2014; they define the prospective need as the affordable housing obligation for 2014 to 2024.

COAH's draft rules reduce the overall statewide affordable housing need (even with the extension of the third round beyond 2018 to 2024). The total statewide need, and its comparison to the 2008 rules, is as follows:

Comparison of Statewide Affordable Housing Obligations		
	Current Draft Rules	2008 Rules
Rehabilitation Share	62,859	51,891
1987 – 1999 Obligation	77,500	85,964
1999 – 2014 / 2018 Obligation	41,280	103,908
Subtotal	*181,639*	*269,152*
2014 – 2024 Obligation	30,788	n/a
Total	***212,427***	***269,152***

COAH's Draft Numbers for Flemington Borough

In response to COAH's 2008 rules, Flemington Borough submitted an adopted Third Round Housing Element and Fair Share Plan in December 2008 and received substantive certification from COAH in April 2009. Subsequently, the New Jersey Supreme Court overturned COAH's 2008 rules. Nonetheless, since the 2008 rules are the most recent fair share benchmarks and provide the foundation for the Borough's

2008 Housing Element, we will use the numbers from the 2008 rules for purposes of comparison to those of COAH's proposed 2014 rules.

The affordable housing obligations for municipalities are contained in the technical appendices of the draft substantive rules – *N.J.A.C.* 5:99. Flemington's obligation is shown below.

- **Rehabilitation Share = 58**
- **Unanswered Prior Obligation (1987 to 2014) = 0**
- **Prospective Need (2014 to 2024) = 5**

The **"Rehabilitation Share"** has been recalculated from the 2010 US Census and the 2008-2012 American Community Survey and brought forward to July 1, 2014 (Appendix B). Flemington's new rehabilitation obligation is 58 units. This compares to 17 units in the 2008 third round rules which used the 2000 census.

The **"Unanswered Prior Obligation"** is the affordable housing obligation from the first and second rounds, from 1987 to 1999, as well as much of the previous third round period from 1999 to 2014 (Appendix D). As stated above, Flemington's total unanswered prior obligation is 0. To calculate this portion of the obligation, COAH developed the numbers in a set of steps[1] as follows:

1. The new construction obligation from 1987 through 1999 (cumulative first and second rounds) was reviewed and, for Flemington, was increased from 38 (the prior round obligation in the 2008 Housing Element and Fair Share Plan, not accounting for the Borough's vacant land adjustment) to **45 units**.
2. Next, a revised new construction obligation from 1999 through 2014 was computed. This time period represents the bulk of COAH's third round 'growth share' period which had been from 1999 to 2018. The new rules assign the Borough an obligation of **0 units** for the 1999 to 2014 period. This can be compared to the 2008 rule's 21-unit growth share obligation for the period 1999 to 2018 calculated by COAH. There are no details provided for the calculation of this 0-unit number.
3. Affordable housing units that have been completed and any publicly subsidized affordable units eligible for crediting were subtracted from the Prior Obligation. COAH listed 71 affordable housing credits for Flemington. COAH based its credits for "Past Affordable Housing Completions" on the municipal monitoring reports.

[1] - The calculations were undertaken by the Center for Urban Policy Research (CUPR) at Rutgers, headed by Robert Burchell, PhD, who prepared the first and second round numbers for COAH.

The following table indicates those projects that constitute the 71 units. COAH's data on this topic appears to be correct.

COAH-Listed Completed Projects & Subsidized Units	
Completed Projects & Subsidized Units	Units
Herman E. Kapp Senior Rentals	59
Martin Village (Allen Street) Family Sales	4
Anderson House Special Needs Rentals	6
Luster / Dodger Blues Family Rental	1
Flemington Electric Family Rental	1
Total Completed & Subsidized	**71**

Subtracting these 71 completed units from the Borough's 45 unit obligation (45 + 0 = 45; see items 1 and 2 above) thus far results in a -26 unit obligation (45 – 71 = -26).

4. COAH's rules recognize the fact that the Borough received a vacant land adjustment. In 2000 the Borough received a vacant land adjustment that reduced the obligation from 38 units to a 4 unit RDP and 38 unit unmet need. In doing so, COAH subtracts 41 from the unanswered prior obligation. This reduction brings the obligation to -67 ([45 + 0] – 71 – 41). However, the source of the 41 unit reduction is unclear and may be inconsistently applied across municipalities that received a vacant land adjustment.

5. A "substantial compliance bonus" may be granted to those municipalities that have substantially met its 1987-1999 unanswered prior obligation through completed new units (*N.J.A.C.* 3-5(a)). Flemington satisfied the entirety of the 45 unit obligation (see items 1 and 3 above). Municipalities which complete 80% or more of the 1987-1999 are eligible for a 20% reduction in the unanswered prior obligation. However, given that Flemington's obligation is already a negative number, the Borough is not eligible for an additional reduction.

6. Only half of the Unanswered Prior Obligation is required to be addressed in the 2014 to 2024 period for which the Borough's next housing plan will be developed (*N.J.A.C.* 5:99-2.3). However, with a negative unanswered prior obligation, this is not applicable to Flemington. It does not appear the negative obligation may reduce the prospective need.

The third and last component of the affordable housing obligation is the **"Prospective Need"** (Appendix C). This is the newly calculated affordable housing demand from 2014 to 2024, which factors in various reductions and other caps relevant to each community. COAH has assigned a prospective need of **5 units** to Flemington Borough.

In summary, the housing plan required in May 2015 must address a rehabilitation share of 58 units and a new construction component of 5 units (0 + 5) for the time period of 1987 to 2024.

Comparison of Flemington Affordable Housing Obligations		
	Current Draft Rules	2008 Rules
Rehabilitation Share	58	10
1987 – 1999 Obligation	0	38
1999 – 2014 / 2018 Obligation		21
2014 – 2024 Obligation	5	n/a
Total	63	59

Significant Components of the Draft Rules

The following lists a number of significant changes in the draft rules that may have implications on the Borough as it crafts a plan to address its unanswered prior obligation and prospective need affordable housing obligation.

- There is no longer a requirement to undertake a rental rehabilitation program.
- Only rehabilitations completed after July 1, 2014 will be eligible for credit against the new Rehabilitation Share.
- Satisfaction of the unanswered prior obligation shall comply with COAH's second round rules (*N.J.A.C.* 5:93), instead of the draft rules.
- Prospective Need is to be addressed with a reduced number of compliance mechanisms including inclusionary zoning, 100% affordable housing sites, group homes and redevelopment sites. Example mechanisms excluded from the draft rules include the market to affordable program, accessory apartments and extension of expiring controls.

- There have been conflicting interpretations as to whether COAH's endorsement of inclusionary zoning as noted in the intent section (*N.J.A.C.* 5:99-1.1) is a requirement or just a preference.
- Inclusionary zoning has a new and reduced presumptive affordable housing setaside standard of 10% (as opposed to the previous standard of 20%).
- An Economic Feasibility Study must be submitted by the municipality to defend the assigned density for all sites zoned – unless they are constructed or were approved by the Court. This study will be costly and must be prepared by an expert in real estate finance and market valuation.
- All affordable housing sites must be identified and found to be suitable for affordable housing.
- No minimum rental housing requirement.
- No future rental bonuses.
- No minimum family housing requirement.
- The senior cap of 25% can be exceeded if the municipality demonstrates a higher regional need for affordable senior housing. However, this standard may be challenged again per the 2007 Appellate Court decision invalidating COAH's across-the-board 50% senior cap.
- Sewer/water must be imminently available for affordable housing sites.
- Foreclosure actions can extinguish controls again, forcing towns to either buy such units or lose credit.
- Actions that constitute a "commitment" of affordable housing trust funds are set forth and include spent funds (consistent with applicable COAH rules, including spending plan approval) or an executed contract or legally enforceable agreement which must include a municipal resolution or ordinance, policy and procedures manual and completion of monitoring forms. For administrative expenses, the municipality must provide a resolution or ordinance and an executed contract or agreement.
- Quarterly reporting on use/commitment of four year old trust funds is required.

Attachment: COAH Package 2014 (2014-135 : Coah)

Implications on Flemington's Existing Affordable Housing Programs

There are various implications for Flemington's planned and constructed affordable housing projects. See below for each affordable housing program and a summary discussion of any implications.

Implications on Flemington's Existing Affordable Housing Programs - Summary			
Program	Units	Status	Implications
Herman E. Kapp Senior Rentals	59	Complete	Unclear, see below
Martin Village (Allen Street) Family Sales	4	Complete	None; units will be eligible for credit.
Anderson House Special Needs Rentals	6	Complete	None; units will be eligible for credit.
Luster / Dodger Blues Family Rental	1	Complete	None; units will be eligible for credit.
Flemington Electric Family Rental	1	Complete	None; units will be eligible for credit.
Market to Affordable Family Rental	7	None	Program eliminated from the prospective need
Flemington Cut Glass Family Rentals	7	Approved & unbuilt	Economic Feasibility Study must be completed
Rehabilitation Program	n/a	Ongoing	Some revisions may be implemented

Regarding the Herman E. Kapp senior rentals, it is unclear if the Borough will be required to provide no more than 25% senior units toward its satisfaction of the unanswered prior obligation or if it may count all completed units against the obligation, regardless of whether they are senior. Unfortunately, it is not clear at this time whether the Borough may simply rely on COAH's report of completed units. COAH's rules conflict in that they state both the obligation shall be reduced by completed units with no reference to family, senior, rental or sale *and* that municipalities must adhere to *N.J.A.C.* 5:93 in its satisfaction of the unanswered prior obligation which permits no more than 25% of units to be senior. Furthermore, it is unclear if the senior limitation will be calculated based on the previously received vacant land adjustment which provided the Borough an RDP of four units. *N.J.A.C.* 5:93 clearly states that the RDP must be used in

the calculation; however, this is in conflict with the proposed rules which make no mention (in this context) of previously granted vacant land adjustments. A question on this topic will be submitted to COAH as part of comments on the proposed rules. **COAH's response to this issue, and perhaps others, may change the Borough's unanswered prior obligation.**

The **market to affordable** program is no longer permitted to satisfy any portion of the prospective need; it was eliminated from the proposed rules. However, the Borough may use this program to satisfy a portion of the unanswered prior obligation. At the time of the 2008 Housing Element, the Borough proposed to offer a subsidy to apartment building owners in exchange for 7 units to be deed restricted for low and moderate income housing.

COAH's proposed rules require an economic feasibility study (EFS) to be completed for any inclusionary housing site that is not constructed or that was not approved by the Court; this includes projects such as **Flemington Cut Glass** which has been approved but is not yet constructed. The EFS must support the density and affordable housing set-aside proposed for the site in order for the Borough to receive credit. One of the comments to COAH is that the proposed rules should eliminate the need for an EFS where a development has received site plan approvals.

The Borough's **rehabilitation program** is currently managed by NORWESCAP. This program may continue largely as is. However, the Borough may make changes to the program if so desired, such as eliminating rental units from being eligible for participation. Note that only rehabilitations which take place after July 1, 2014 are eligible for credit.

In addition to these previously discussed affordable housing programs, the Borough may wish to consider the other options available. The proposed COAH rules allow for the second round rules to satisfy any unanswered prior round obligation. As such, the following programs may satisfy that portion of the obligation:

- Municipally sponsored construction
- Community residences
- Inclusionary zoning
- Accessory apartments
- Write-down / buy-down (market to affordable program)
- Assisted living

The proposed COAH rules state that only four programs are available to satisfy the Borough's 5 unit prospective need:

- Municipally sponsored construction
- Community residences
- Inclusionary zoning
- Redevelopment or rehabilitation

Lastly it is unclear what steps the Borough will need to take to maintain its vacant land adjustment, which in 2000 reduced the Borough new construction obligation from 38 units to an RDP of four and an unmet need of 38. Additionally, the proposed rules (*N.J.A.C.* 5:98-3.4(c)) state any municipality that received a vacant land adjustment must repetition every time a site for development or redevelopment becomes available. This is a potentially burdensome and troublesome requirement and this office will provide comments to COAH seeking clarity on the section.

W:\5000's\Flemington Borough\Applications & Projects\5210.FS\2014 Rules\140709 Prelim Review.docx

Attachment: COAH Package 2014 (2014-135 : Coah)

Mayor and Common Council
38 Park Avenue
Flemington, NJ 08822

Meeting: 07/28/14 07:30 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Rebecca Newman
Initiator: Rebecca Newman
Sponsors:
DOC ID: 1608

SCHEDULED

RESOLUTION 2014-133

Authorizing the Return of a Demolition Bond to Countryside Plaza for Block 35 Lot 32

BOROUGH OF FLEMINGTON
COUNTY OF HUNTERDON

WHEREAS, Country Side Affordable Housing applied for a demolition permit; and

WHEREAS, the Borough requires that a bond be held by the Borough to ensure the demolition is completed in a satisfactory manner; and

WHEREAS, Country Side Affordable Housing gave the Borough $5,250.00 to be held in the form of a bond; and

WHEREAS, Country Side Affordable Housing completed the demolition; and

WHEREAS, Jeffrey Klein, Construction Official, has determined the demolition was completed in a satisfactory manner and approved the release of the $5,250.00 bond held by the Borough of Flemington.

NOW, THEREFORE, BE IT RESOLVED that the Mayor and Council of the Borough of Flemington in the County of Hunterdon, State of New Jersey, hereby releases the demolition bond in the amount of $5,250.00 to Country Side Affordable Housing for the demolition at One Reasoner Lane in Flemington Borough.

ATTEST: BOROUGH OF FLEMINGTON

BY:

Rebecca P. Newman
Borough Clerk

Erica Edwards, Mayor

Dated: July 28, 2014

CERTIFICATION

I, Rebecca P. Newman, Borough Clerk of the Borough of Flemington, County of Hunterdon, do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the governing body on July 28, 2014.

Rebecca P. Newman
Borough Clerk

Mayor and Common Council
38 Park Avenue
Flemington, NJ 08822

Meeting: 07/28/14 07:30 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Rebecca Newman
Initiator: Rebecca Newman
Sponsors:
DOC ID: 1606

SCHEDULED

RESOLUTION 2014-134

Authorizing the Renewal of Plenary Retail Consumption with Broad Package Liquor License Number 1009-44-004-007 for Flemington Central Liquors for the Year 2014-2015

BOROUGH OF FLEMINGTON
COUNTY OF HUNTERDON

WHEREAS, application has been received from Flemington Central Liquors to Renew Plenary Retail Consumption with Broad Package Privilege Liquor License (1009-44-004-007); and

WHEREAS, said application is complete and accompanied by the required fees, affidavits, and tax clearance certificate from the New Jersey Division of Taxation; and

WHEREAS, no written objection to the renewal of this license was received by the Borough Clerk;

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Common Council of the Borough of Flemington, County of Hunterdon, State of New Jersey, as follows:

1. That the license as referenced above be renewed for the 2014-2015 license year and that the Borough Clerk be directed to forward a certified copy of this Resolution and the renewal application and accompanying fee to the Division of Alcoholic Beverage Control, Department of Law and Public Safety, for processing, and to the applicants; and;

2. That the Borough Clerk be authorized to issue the 2014-2015 license to the proper holder with the effective date of July 1, 2014.

3. This Resolution shall take effect immediately.

Adopted: July 28, 2014

ATTEST:

By: _____
Rebecca P. Newman
Borough Clerk

By: _____
Erica Edwards, Mayor

CERTIFICATION

I, Rebecca P. Newman, Borough Clerk of the Borough of Flemington do hereby certify the foregoing to be a true and correct copy of a Resolution adopted by the Borough Council on July 28, 2014.

_____

Rebecca P. Newman
Borough Clerk

Mayor and Common Council
38 Park Avenue
Flemington, NJ 08822

Meeting: 07/28/14 07:30 PM
Department: Clerk of the Borough
Category: Board Policy
Prepared By: Rebecca Newman
Initiator: Rebecca Newman
Sponsors:
DOC ID: 1607

SCHEDULED

RESOLUTION 2014-135

Adopting the Borough Planner's Comments on the Council on Affordable Housing's (COAH's) Proposed Rules