

# The Leader

*"Pulse of the Meadowlands"*

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## All growth has ties to COAH

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Reporter

As municipal officials struggle to juggle the complicated rules governed by the Council on Affordable Housing, people are left scratching their heads as to what it all means for local growth and development. Although every town must provide affordable housing under the Fair Housing Act, COAH participation is voluntary. Nonparticipation, however, opens the door to possible lawsuits.

COAH asks municipalities who participate to forecast their residential and commercial growth for a decade, then plan to provide affordable housing in proportion to that growth. Lacking COAH-approved crystal balls, planners use sociological trends, developers' agreements and building applications and approvals to determine how many new housing units and new jobs will be added to a municipality before 2014.

Why bother? The cynic may say that a COAH filing today helps keep lawsuits away — developers can file "builder's remedy lawsuits" in towns where affordable housing needs are unmet. But there's another side to the COAH coin: obligation. In separate interviews, two area mayors and the lawyers who represent the Tomu developer all said there is a "societal obligation" to make affordable housing available to low- and moderate-income households.

"You have to provide for affordable housing," said Lyndhurst Mayor Richard DiLascio. "It is an obligation of the community as a whole."

Rutherford Mayor Bernadette P. McPherson likened COAH compliance to "putting the borough's house in order. ... I do think it is something that is a noble and worthwhile pursuit ... We have an obligation, and we should fulfill our obligation." She noted that there are residents of Rutherford right now — senior citizens in particular — who qualify.

Robert Kasuba and Thomas Hall, from the Sills Cummis law firm, represented the Tomu developers in the builder's remedy lawsuit against Carlstadt and East Rutherford. "You (municipalities) shouldn't be able to exclude people through planning and zoning just because they don't have enough money," Hall said.

In this, DiLascio, McPherson, and Hall agree with the New Jersey Supreme Court. Thirty years ago, the court ruled that municipalities had to provide an opportunity for low- and moderate-income housing to be built. The court has consistently upheld that position, allowing “judicial remedies” to ensure municipal compliance, and creating COAH to administer the delivery of affordable housing. According to its handbook, “It is at the front end of the housing delivery system, where local land use, zoning and development ordinances are certified as realistic.”

Participation in COAH is voluntary, but protection from the judicial remedies allowed by the court is a powerful perk for the municipalities who do go through the process. Municipalities who are certified by COAH can’t be subject to builder’s remedy lawsuits, like the one brought against Carlstadt and East Rutherford in the Tomu case. In a builder’s remedy suit, the developer essentially challenges the municipality’s fair housing compliance and seeks permission from the court to remedy the situation by building the affordable units as part of a larger project.

All this talk about affordable housing begs the question: what is affordable? Rutherford’s Fair Share Plan summarizes affordability as COAH’s “basic measure . . . is that gross rent (including utilities) will represent no more than 30 percent of gross household income and that mortgage payments . . . will represent no more than 28 percent of gross household income (including taxes, insurance and association fees).”

Who qualifies? Again, Rutherford’s Fair Share Plan is illustrative. A moderate-income household’s gross income “falls between 50 percent and 80 percent of the median household income within the same housing region,” and a low-income household has an income “equal to or less than 50 percent” of the region’s median. Using COAH’s year 2000 median for a four-person household, moderate income means less than \$53,465 per year, and low income means less than \$33,416.

How much affordable housing has to be built? The third-round obligation is based on the amount of new housing a municipality anticipates will be built in its borders and on the number of jobs the municipality anticipates will be added due to non-residential new construction. A town is obligated to provide one affordable unit for every eight new market rate units and every 25 jobs generated by non-residential new construction.

There are ways to meet the obligation without throwing up affordable houses in municipal parks. McPherson points to four avenues available to municipalities to meet their obligations. Affordable housing can be built on the site of new development; it can be built elsewhere in the municipality; a contribution can be made to a municipal housing fund; or a regional contribution can be made. The regional contribution refers to giving money to other towns to take on another municipality’s affordable obligation. Rutherford’s growth share ordinance specifies that “the provision of the required number of affordable units shall be met and required first through on-site construction, and on-site construction shall be treated as the highest and best preference for provision of affordable units.” Lyndhurst’s growth share ordinance also requires developers that build more than eight residential units or generate more than 25 jobs “to provide on-site production of affordable housing.”

According to Chris Donnelly, spokesman for COAH, both Lyndhurst and Rutherford have filed for certification in the third round. Both municipalities' plans are "under review by COAH staff."

As far as other towns in The Leader coverage area, Wood-Ridge has not yet filed a COAH plan; North Arlington's plan was denied in August and a subsequent petition filed by the borough was denied in September. North Arlington has 60 days to respond before the denial takes effect.

East Rutherford's and Carlstadt's COAH woes have been well publicized. Hall points to the Tomu lawsuit against those boroughs as a pivotal point for the area. In that case, the developers sued for the right to build two 20-story residential towers in the Meadowland's area of both boroughs. Harris ruled in favor of the developer, which plans to sell 140 of the towers' 840 units to low-income families, thus satisfying the boroughs' affordable housing requirements. The suit is pending appeal, and both boroughs have filed overlay plans to satisfy COAH without the project.

According to Hall, towns in the Meadowlands area didn't have a good record of affordable housing compliance for a number of years. Then, Judge Jonathan Harris ruled in favor of the developers in the Tomu builder's remedy lawsuit. Since then, Hall noted, the New Jersey Meadowlands Commission has proposed an amendment that will require COAH regulations to be met as part of its approval process. Hall also pointed out that after the Tomu litigation, a number of municipalities have filed with COAH.

Hall said it's not fair to complain if a builder files a suit against a municipality for not providing affordable housing. "The offer of coming to COAH and ... getting protection, that offer has been there for a number of years ... (saying) 'I didn't know I had an obligation,' is disingenuous," Hall said. "If you don't meet it, there are consequences."

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