



# COAH ALERT

## FEBRUARY 2009

### Put Higher Density Zoning in New Jersey to Work for You

Read this if you own developable land in New Jersey or are interested in making money in the New Jersey residential real estate market. Starting right now, there is a very powerful but short-lived opportunity to up-zone land from commercial or low-density residential to higher density residential, in exchange for subsidizing a percentage of the development as affordable housing.

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#### What to do

If you own or are eyeing land which could be made more valuable with high-density residential zoning in return for subsidizing a portion as affordable housing, *now* is the time to alert the State that you are available to contribute some housing in return for higher density. This would also apply to land currently zoned industrial or commercial, so long as it is in fact suitable for housing, as many non-residentially zoned parcels are. You need to be aware of the process and track the progress of the municipality you are interested in.

#### How it works

Hundreds of New Jersey towns have filed plans with the Council on Affordable Housing, purporting to have reformed their zoning to comply with New Jersey's constitutional mandates on affordable housing. If a town's "reforms" are illusory, private parties can step in to enforce the mandate. COAH has 45 days from when the towns submit their plans to declare the plans complete and begin reviewing them for substance. Most plans were submitted at the very end of December, 2008. COAH is processing the plans on a rolling basis, has just declared the first few town plans complete, and will declare more and more complete each day. Once a plan is declared complete, the town must publish notice of that fact within 7 days. Within 45 days of the public notice, ANY interested party (need not be a current town landowner or even a resident) may file a letter with COAH "objecting" to the proposed plan and offering to provide housing.

**Example:** You own or could buy land zoned as commercial or at, say, one house to the acre. In return for having the land rezoned at, say, twenty residential units to the acre, you would be willing to provide 25% of those units at a subsidized rate to persons of low or moderate income. In the right case, COAH can force that rezoning.

Multi-family housing and high-density residential development is still in high demand in New Jersey, but many towns prohibit it. Objecting under COAH is an ideal way to increase zoning density, which can multiply the value of the land many-fold. It is not difficult to file an objection, but if you don't do it within the 45-day time period, it is nearly impossible to enter the process later. The next window may not be until 2018.

#### Prospects for success

Filing an objection does not guarantee that your land will be rezoned. However, it is a low-cost way to get a "seat at the table" when COAH assesses the strengths and



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weaknesses of each town's zoning to decide whether it actually provides sufficient housing. Due to political constraints, and in particular to the mad scramble to file plans last year, we expect that few plans will be perfect and "objector-proof." If the plan has flaws, COAH will then examine your land to see whether your proposal would be more likely to provide housing. Importantly, your proposal does *not* have to meet the entire affordable housing need in the town; it just has to make a contribution, usually with a mix of market-rate and subsidized units.

COAH has issued guideline letters stating that such so-called "inclusionary" developments will not be subject to "growth share." This is a technically complex area of rule-making, but in general, landowners can take note that COAH does not intend to penalize towns which accede to higher zoning for inclusionary projects.

If you have any interest in this process, which in the right situation can be extremely valuable even if the rezoned land is banked and not actually built on for years, please contact **Anne Studholme** at **astudholme@herrick.com** or **(973) 274-2538**.

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