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# **Planning Report**

Proposed Master Plan Amendment

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## **Fair Share Plan**

**Lopatcong Township  
Warren County, New Jersey**

Prepared for: Lopatcong Township Planning Board

*Under the supervision of:*

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# The Fair Share Plan

## **INTRODUCTION**

The Council on Affordable Housing (COAH) requires that a municipality develop a Fair Share Plan to address its total 1987-2018 fair share obligations pursuant to the requirements contained in its Substantive Rules N.J.A.C. 5:97. The Fair Share Plan shall identify the strategies to be utilized by the municipality to meet the projected growth share need and affordable housing obligations carried forward from previous rounds that are detailed in the municipal Housing Element. The Fair Share Plan shall be adopted by the planning board and endorsed by the governing body prior to the municipal petition for substantive certification.

The most recent Fair Share Plan for Lopatcong Township was adopted on December 12, 2005. The Fair Share Plan that follows responds to the need for affordable housing in Lopatcong Township based upon that which has been identified in the Housing Element completed in March 2010. It complies with requirements of the revised New Jersey Council on Affordable Housing Procedural Rules and Substantive Rules for round three, which became effective on June 2, 2008.

COAH has provided municipalities with their fair share obligations for prior rounds and projected growth share. The projected need for growth share is for the years 1999 to 2018. Growth share for residential and non-residential development for the period is added to the municipality's rehabilitation share and prior round new construction obligation to arrive at their pre-credited fair share obligation for the third round.

## **AFFORDABLE HOUSING NEED**

Lopatcong Township has an obligation of 67 units from prior rounds consisting of 11 rehabilitation units and 56 units of new construction. Growth share obligations are generated by new residential and non-residential construction during the period January 1, 2004 to December 31, 2018 and based on individuals projected to need affordable housing from 1999 through 2018. The Township's affordable housing need based on growth share has been projected by COAH as 95 units of affordable housing. Combining the three components used to determine the pre-credited affordable housing obligation for round three — rehabilitation share, prior round obligation and growth share — Lopatcong Township's obligation is 162 units comprised of 151 new construction units and 11 units of rehabilitation. Table 1 summarizes Lopatcong Township's 1987-2018 pre-credited affordable housing need.

Table 1: Pre-credited Round Three Affordable Housing Need

Rehabilitation Share	11 units
Prior Round Obligation 1987-1999 (new construction)	56 units
Growth Share 1999-2018 (new construction)	95 units
Pre-credited Fair Share Obligation	162 units

Lopatcong Township has undertaken affordable housing activity that has generated units that may be utilized as credit against the pre-credited fair share obligations. The total is 84 credits, 72 of which are new construction and the remaining 12 credits are for rehabilitated units. The new construction credits have been applied to the prior round obligation first pursuant to COAH’s rules. Surplus credits have been carried forward to the growth share obligation. After application of certified and proposed credits, Lopatcong Township’s affordable housing obligation for round three is reduced to 79 units as illustrated later in Table 2. The following section describes the strategies that will be employed by Lopatcong Township to address this affordable housing obligation.

**COMPLIANCE STRATEGIES**

The Council on Affordable Housing requires that the municipality applying for substantive certification present a plan that meets its overall obligation. COAH has provided municipalities with several options for providing affordable housing. The following sections describe the existing affordable units in the Township and the mechanisms chosen by Lopatcong Township to address its unmet affordable housing obligations.

**Existing Affordable Housing**

Subsequent to COAH’s grant of substantive certification for round two, the Township contracted with the Warren County Housing Program to rehabilitate deficient units in the municipality. Three units were rehabilitated via that program between 2003 and 2004. These rehabbed units were verified by COAH. The owners of two of those units have since satisfied their liens and the affordability controls have been extinguished. The Township no longer contracts with the County and now self-administers the program. Nine units have been rehabilitated under the municipal program since 2005. Lopatcong Township has documented the 12 rehabilitation units, three Warren County Housing Program unit and 9 Lopatcong Township Rehabilitation Program units, and applied them as credit toward the 11-unit rehabilitation share specified by COAH. The 9 units rehabbed by the Township are subject to verification by COAH.

Forty (40) new construction credits accrue to a prior cycle project known as Lopatcong Senior Housing (Clymer Village) located on Red School Lane. Additionally, the certified second round fair share plan included 22 units of affordable housing set aside in Overlook at Lopatcong, an inclusionary ownership development. COAH verified these credits in its grant of the second round substantive certification. In 2004, one of the Overlook units was foreclosed on and the affordability controls were removed. That unit is no longer eligible for COAH credit. All 40 of the Clymer Village affordable units and 16 Overlook affordable units will be applied to the 56-unit prior round obligation. The 5 unused Overlook credits will be applied to the Township's growth share obligation.

Lopatcong Township will seek credit for three (3) group homes completed in the Township subsequent to 1997. All of the units were occupied by low-income individuals prior to 2004. None are age-restricted. Group homes fall under the category of supportive and special needs housing (formally known as alternative living arrangements) where the unit of credit is the bedroom. The 3 homes described below provide an aggregate of 11 bedrooms; therefore, the Township will seek 11 credits toward its growth share obligation. Further, the Township should be eligible for 2 rental bonus credits for the group homes which shall accrue to the growth share obligation.

*Group Home – Alternatives, Inc.- 150 S. 7th Street*

Alternatives, Inc. operates a group home for mentally ill persons at 150 S. 7th Street in Lopatcong Township. The home provides facilities for 3 very low-income persons with mental disabilities. Facilities include three bedrooms, a common food preparation area and dining facilities, and shared bathrooms. The facility is licensed with the NJ Department of Human Services, Division of Mental Health Services. Affordability controls are provided through HUD, which provided funding for the project via its Section 811 program.

The unit of credit for group homes, which is a supportive and special needs housing facility, is the bedroom. Therefore the Township is eligible for three (3) affordable housing credits upon verification by COAH.

*Group Home – Alternatives, Inc - 20 James Avenue*

Alternatives, Inc. operates a group home for developmentally disabled persons at 20 James Avenue in Lopatcong Township. The home provides facilities for very low-income persons with developmental disabilities and includes four bedrooms, common food preparation and dining facilities, and shared bathrooms. The facility is licensed with the NJ Department of Human Services, Division of Developmental Disabilities. Affordability controls are provided through HUD via its Section 811 program.

The unit of credit for group homes, which is a supportive and special needs housing facility, is the bedroom. Therefore the Township is eligible for four (4) affordable housing credits upon verification by COAH.

*Group Home – The ARC of Warren County*

The ARC Warren purchased a home at 17 Hampton Court in Lopatcong Township in January 1997. The ARC Warren operates the facility as a group home for adults with developmental disabilities. The home contains four (4) bedrooms, common cooking and dining facilities, and shared bathrooms. All of the tenants are low-income. Since the operational costs are partially recouped through a Medicaid waiver from the federal government, all residents must maintain fiscal eligibility for this program. ARC Warren purchased the home with a capital grant from the State of New Jersey, which obligates them to operate the facility as a group home for at least twenty (20) years.

Since the unit of credit for this supportive and special needs housing facility is the bedroom, the facility will qualify for four (4) affordable housing credits upon verification by COAH.

Lopatcong Township will seek a total of 83 credits toward its 162-unit affordable housing obligation for existing low and moderate-income units created within the Township. Table 2 provides a summary of the credits subject to COAH's verification.

Table 2: Existing Affordable Housing Credits

Affordable Housing Obligations (Table 1)	162 units
Credits	
Deficient units rehabilitated after 4/1/2000	11 units
Lopatcong Senior Housing (Clymer Village)	40 units
Inclusionary Development (Overlook at Lopatcong)	21 units
Group Home – Alternatives, Inc.- 150 S. 7th Street	3 units
Group Home – Alternatives, Inc - 20 James Avenue	4 units
Group Home – The ARC of Warren County	4 units
Remaining Fair Share Obligation	79 units

After application of credits for affordable units that have been built, rehabilitated and occupied, the Township has a remaining fair share obligation of 79 units. The shortfall is comprised entirely of new construction which should be completed during round three. The Township will seek credit toward this shortfall by proposing additional affordable housing units to be created by various programs described below.

## **Proposed Affordable Housing**

Following is a description of the programs/mechanisms identified by the Township to meet its remaining 79-unit fair share obligation. The Rehabilitation Program will be suspended following completion of one additional unit in 2010, as the third round obligation has been satisfied. To offset the 79-unit new construction obligation, Lopatcong Township has adopted an inclusionary zoning ordinance. The remaining obligation will be satisfied with affordable units created by the proposed Affordable Accessory Apartment Program and rental bonuses.

### *Rehabilitation Program*

Lopatcong Township has an obligation to rehabilitate eleven (11) deficient units to meet its round three rehabilitation share. The Township initiated a rehabilitation program in 2000 to meet its second round obligation. The program has been funded with monies drawn from its Affordable Housing Trust Fund, which has grown from fees collected from developers. Twelve (12) units have been completed and one unit is under construction.

The primary source of funds allocated to the Trust Fund for the rehabilitation program is the payments in lieu of constructing affordable units derived from the developer of Warren Heights, a 414-unit multi-family residential project, pursuant to a Developers Agreement entered into by all parties on January 4, 1999. The payments will continue until the last certificate of occupancy has been issued. The Township adopted a Development Fee Ordinance on September 1, 1999, which also contributes monies to the Trust Fund.

Lopatcong Township will continue to enforce its development fee ordinance and collect monies from the developer of Warren Heights. The funds collected from developers of residential and non-residential projects in Lopatcong Township will be added to the balance of monies in the Township's Affordable Housing Trust Fund. Any fees in excess of those required by Lopatcong Township to fund the rehabilitation program shall be used to fund other affordable housing activity to meet its fair share of affordable housing obligation.

### *Inclusionary Zoning*

Lopatcong Township's new construction obligation that remains unfulfilled after application of credits for existing affordable housing is 79 units. To address this shortfall, the Township has established a new zoning district named MFI-Multi Family Inclusionary, which will require developers to provide an affordable housing set aside. Further, the ordinance requires that the affordable units are constructed

on site and that each affordable unit shall be unrestricted and otherwise meet the definition of a “family unit” as set forth in N.J.A.C. 5:97-1.4.

The ordinance applies to one parcel in the Township located in the southwestern quadrant of the US Route 22 corridor. The subject parcel, which is currently undeveloped, is shown on the Lopatcong Township Tax Maps as Block 102/Lot 3 and contains 20.6 acres. The tract is a through-lot having frontage on east bound US Route 22 and Lock Street. The parcel adjoins the Phillipsburg Mall property to the east and the Warren Canal located on County owned property to the west.

The MFI Zone permits multi family residential dwellings comprised of garden apartments on a lot with a minimum area of 15 acres. The maximum density is 12 units per acre for rental projects and 6 units per acre if ownership units are developed. The maximum number of dwelling units within a single building is 24. The minimum bulk requirements for principal buildings include a front yard of 100’, 50’ side yard (100’ combined), 50’ rear yard, and 300’ lot frontage. Buildings cannot exceed a height of 45’ or 3-stories. Impervious cover is limited to 60% of the lot area. There is no requirement for building coverage.

#### Development Proposal—Sycamore Landing

A proposal to develop the site pursuant to the MFI Zone requirements has been submitted to the Planning Board. The applicant proposes to develop a multi-family community comprised of 240 rental apartments located in 11 buildings. An affordable housing set aside of 20 percent or 48 units will be provided by the developer on-site. The development will include a clubhouse, swimming pool and walks. Parking will be provided in open air lots and within 1-story garages. The development will be served with public water and sewer. A stormwater retention pond will be constructed where the remains of the Warren Canal exist. The plan proposes to provide vehicular access to the development from US Route 22. Additionally, access will be via a road that connects to the existing Mall perimeter road. An access drive connecting the site to Lock Street will provide ingress/egress to the proposed retention basin. The applicant has provided testimony at several public hearings and approval is expected in May 2010.

#### *Affordable Accessory Apartment Program*

COAH defines an Accessory Apartment as “a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory

building”. The Fair Share Plan may include up to 10 accessory apartments, available to low and moderate-income households, to address its housing obligation pursuant to COAH rules.

A large percentage of Lopatcong Township’s housing stock is comprised of single-family dwellings (81%) the majority of which are located in the older residential neighborhoods adjacent to the Town of Phillipsburg. Because of age, location and availability of a public sanitary sewer system, these dwellings are ideal candidates for construction of accessory apartments. Therefore, it has been determined that there is a realistic opportunity to provide accessory apartments in Lopatcong Township. The Township will encourage the development of eight (8) accessory apartments within the municipality and provide funds toward the creation of these units. The units will be affirmatively marketed to low and moderate-income households pursuant to COAH rules.

The Township has established a zoning ordinance to provide for affordable accessory apartments in certain specified districts. The ordinance requires that the units be rental family units. The ordinance is attached to this Fair Share Plan as Appendix B. If approved by COAH, it will be adopted by the Township within 45 days of the grant of substantive certification pursuant to COAH’s third round rules.

### **Affordable Housing Requirements and Distribution**

The substantive rules promulgated by COAH provide specific thresholds for distribution of a municipality’s affordable housing units. Using the minimum and maximum thresholds and formulas provided in the rules, requirements for family housing, very low income units, age-restricted units and rental units can be determined. Following are the calculations for Lopatcong Township based upon the information provided in this Fair Share Plan.

#### *5:97-3.4 Rental housing requirement*

*(a) In addressing the fair share obligation, every municipality shall create a realistic opportunity to construct rental units pursuant to the applicable formula set forth in this subchapter.*

The Township has completed 3 group homes that contain a total of 11 rental units. All of these units will be used to meet the Township’s growth share rental requirement.

The MFI Zone requires an affordable housing set aside of 20% of the development for rental units. A proposed development—Sycamore Landing— will provide 48 affordable rental units. All of these dwelling units will be used as credit toward the growth share obligation. Eight rental units created in proposed affordable accessory apartments will also be credited to the required rental obligation for growth share.



*(b) At least 50 percent of the rental housing requirement for the projected growth share obligation addressed within a municipality shall be met with family housing in the Fair Share Plan.*

*Rental Family Housing Requirement = 50 percent of rental housing requirement for the projected growth share obligation (see calculation below);*

*Rental Family Housing Requirement = .5(24);*

*Rental Family Housing Requirement = 12 units*

All of the proposed rental units in the MFI Zone and the proposed affordable accessory apartments shall be family housing units as prescribed by ordinance. This amounts to 56 family rental units.

*5:97-3.5 Rental bonuses for the prior round obligation*

*(a) A municipality may receive two units of credit for each rental unit addressing its prior round rental obligation, provided the unit was or will be created and occupied in the municipality or received preliminary or final approval, on or after December 15, 1986, is not age-restricted and has controls on affordability for at least 30 years. No rental bonuses shall be granted for rental units in excess of the prior round rental obligation.*

The Township is not eligible for rental bonuses addressing the prior round obligation pursuant to the above rule.

*(b) A municipality may receive 1.33 units of credit for each age-restricted rental unit addressing its prior round rental obligation, provided the unit was or will be created and occupied in the municipality or received preliminary or final approval, on or after December 15, 1986, and has controls on affordability for at least 30 years. No rental bonuses shall be granted for age-restricted rental units in excess of 50 percent of the prior round rental obligation.*

The rental units applied to the prior round obligation are in the Lopatcong Senior Housing development, an age-restricted project. The development is a prior cycle project not eligible for rental bonuses.

*(c) If the affordable units have not been constructed as of the date of petition, the municipality shall submit evidence of a firm commitment for the construction of the units in conformance with N.J.A.C. 5:94-3.6(a)3ii.*

No such units are proposed for the prior round obligation.

*5:97-3.6 Rental bonuses for the growth share obligation*

*(a) A municipality may receive bonuses for rental units in excess of its growth share rental obligation subject to the following:*

1. *A municipality may receive two units of credit for each rental family or permanent supportive housing unit provided pursuant to N.J.A.C. 5:97-6.4, 6.5, 6.6, 6.7, 6.9, 6.10, 6.13 or 6.15;*

Of the 67 rental units proposed for the growth share obligation, 56 are family housing units that are applied to the rental obligation for calculating eligible rental bonuses.

2. *A municipality may receive 1.25 units of credit for each bedroom in supportive and special needs housing provided pursuant to N.J.A.C. 5:97-6.10, where the unit of credit is the bedroom;*

The fair share plan includes 11 bedrooms in 3 group homes. All are rental units that may be counted against the rental obligation in determining eligible rental bonuses.

3. *The unit meets one of the following conditions:*
  - i *The unit was or will be created and occupied in the municipality or received preliminary or final approval, after June 6, 1999; or*
  - ii *The municipality has provided or received a firm commitment for the construction of the unit. A municipality may lose the rental bonus if the municipality has not constructed the rental unit within the time period established as a condition of substantive certification; has not granted preliminary or final approval for the construction of the rental unit within the time period established as a condition of substantive certification; or if the preliminary or final approval is no longer valid.*
4. *A minimum of 50 percent of the rental housing requirement has been addressed with family rental units provided pursuant to N.J.A.C. 5:97-6.4, 6.5, 6.6, 6.7, 6.9, 6.13, 6.14 or 6.15.*

The Fair Share Plan includes 67 rental units comprised of 56 family units and 11 bedrooms of supportive and special needs housing. Only rental units in excess of the growth share rental obligation are used to determine the rental bonuses for growth share. The Township's rental obligation is 24 units (see calculation for 5:97-3.10(b)3 below); therefore rental bonuses are calculated as follows:

*Rental Bonuses = (100 percent of Family Rental Units + 25 percent of Supportive and Special Needs Rental Units) - Rental Obligation;*

*Rental Bonuses = [56 + .25(11)]-24;*

*Rental Bonuses = (56 + 2)-24;*

*Rental Bonuses =58-24;*

*Rental Bonuses = 34*

The Township should be eligible for 34 rental bonus credits pursuant to the calculation above. COAH rules limit the number of rental bonuses to no more than 25 percent of

the projected growth share obligation (5:97-3.20, Bonus caps); therefore, only 23 of the 34 bonuses will be eligible for credit.

*5:97-3.7 Very low income bonuses for the growth share obligation*

- (a) A municipality may receive two units of credit for each affordable unit addressing its growth share obligation that was or will be created and occupied in the municipality or received preliminary or final approvals, after June 6, 1999 and is deed restricted to be affordable and only available to a very low income household, provided that, in the case of rental housing, only very low income rental units in excess of 10 percent of the total number of affordable units shall be eligible for a bonus.*
- (b) Very low income bonuses may only be granted for family units provided pursuant to N.J.A.C. 5:97-6.4, 6.5, 6.6, 6.7, 6.9, 6.13 or 6.15;*
- (c) If the unit has not been constructed as of the date of petition, the municipality shall submit evidence of a firm commitment for the construction of the unit in conformance with N.J.A.C. 5:94-3.6(a)3ii.*

Not applicable. No bonus credits for very low income units.

*5:97-3.8 Age-restricted housing*

*In addressing the fair share obligation, each municipality may provide age-restricted housing pursuant to the applicable formula set forth in this subchapter.*

No new age-restricted housing is proposed.

*5:97-3.9 Family housing*

*At least 50 percent of the units within the municipality addressing the growth share obligation shall be family housing units.*

*Family Housing Requirement = 50 percent of projected growth share;*

*Family Housing Requirement = .5(95);*

*Family Housing Requirement = 48 units.*

The Township includes 61 family housing units in its Fair Share Plan comprised of 5 completed units at Overlook at Lopatcong; 48 units for the proposed Sycamore Landing project; and 8 affordable accessory apartments proposed for round three.

*5:97-3.10 Formulas for municipalities that have not included a vacant land adjustment in any previous or pending Fair Share Plan*

- (a) This section sets forth formulas for rental units, age-restricted units, units transferred through RCAs, and age-restricted units transferred through RCAs, for municipalities that have not included a vacant land adjustment in any previous or pending Fair Share Plan.*
- (b) Rental units shall be provided as follows:*

1. *The rental requirement for the prior round obligation shall be based on the following formula:*

*Rental Requirement = 25 percent (Prior Round Obligation – Prior Cycle Credits – Impact of 20 percent cap – Impact of the 1,000-unit limitation);*

*Rental Requirement = 25 percent (56 – 40– 0 – 0);*

*Rental Requirement = .25(16);*

*Rental Requirement = 4 units*

The Township will apply all 40 of the rental credits from the existing Clymer Village senior housing project to satisfy the prior round rental requirement.

2. *(Not applicable)*

3. *The rental requirement for the growth share obligation shall be based on the following formula:*

*Rental Requirement = 25 percent (Growth Share Obligation);*

*Rental Requirement = .25(95);*

*Rental Requirement = 24 units*

The Fair Share Plan provides for 67 rental units that will be credited toward the growth share rental requirement of 24 units.

*(c) Age-restricted units may be provided as follows:*

1. *The age-restricted maximum for the prior round obligation shall be based on the following formula:*

*Age-Restricted Maximum = 25 percent (Prior Round Obligation + Rehabilitation Share - Prior Cycle Credits - Rehabilitation Credits - Impact of 20 percent cap - Impact of the 1,000-unit limitation - Transferred or Proposed RCA Units Addressing the Prior Round Obligation);*

*Age-Restricted Maximum = .25(56 + 11 - 40 - 9 - 0 - 0 - 0);*

*Age-Restricted Maximum = .25(67-49);*

*Age-Restricted Maximum = .25(18)*

*Age-Restricted Maximum = 4 units*

The 40 age-restricted units in Clymer Village used as credit toward the prior round obligation are prior cycle units that are not subject to the maximum age-restricted requirement.

*2. The age-restricted maximum for the growth share obligation shall be based on the following formula:*

*Age-Restricted Maximum = 25 percent (Growth Share Obligation - Transferred or Proposed RCA Units Addressing the Growth Share Obligation);*

*Age-Restricted Maximum = .25(95 - 0);*

*Age-Restricted Maximum = .25(95);*

*Age-Restricted Maximum = 23 units*

The Township has not proposed any age-restricted units for round three growth share.

*(d) Units may be transferred through RCAs as follows: (not applicable)*

RCAs are not included in Lopatcong Township's plan.

*(e) Age-restricted units may be transferred through RCAs as follows: (not applicable)*

RCAs are not included in Lopatcong Township's plan.

*P.L.2008, c.46. Very low-income units*

*At least 13 percent of the municipal growth share obligation is to be restricted to very-low income households (30% or less of median income)*

*Very Low-Income Requirement = 13 percent of growth share obligation;*

*Very Low-Income Requirement = .13(95);*

*Very Low-Income Requirement = 13 units*

Two of the existing group homes provide 7 units that are restricted to very low-income households. The remaining 6 units required hereunder shall be provided in the MFI Zone.

## **Summary**

Lopatcong Township's pre-credited round three affordable housing obligation is 11 rehabilitation units, 56 prior round obligation units and 95 growth share units for a total of 162 units. Lopatcong Township will seek credit for 12 rehabilitation units and 72 new construction units that have been created in the Township and occupied by low and moderate income households.

The rehabilitation program begun in 2000 will continue until the current unit under construction has been completed and certified by COAH. As for the growth share obligation, 48 new affordable units will be constructed within the Township's MFI-Multi Family Inclusionary Zone. Additionally, 8 affordable apartments will be provided via an Affordable Accessory Apartment Program, which will be effectuated pursuant to a zoning

ordinance. In total, Lopatcong Township's Fair Share Plan accounts for 160 units. A surplus of one unit accrues to the rehabilitation share. There are 11 surplus rental bonus credits attributed to the growth share units. The excess units will be used as credit toward future affordable housing obligations. Table 3 provides the summary of the obligations and credits for round three.

Table 3: Fair Share Summary

Third Round Fair Share Obligation Analysis	
Rehabilitation Obligation	11
Credits	
Warren County Housing Program	3
Lopatcong Township Rehabilitation Program	9
Total Rehabilitation Credits	12
Remaining Rehabilitation Obligation	0
Prior Round Obligation	56
Credits	
Prior Cycle (Clymer Village age-restricted rental units)	40
Inclusionary Zoning (Overlook at Lopatcong (ownership family housing))	16
Total Prior Round Credits	56
Remaining Prior Round Obligation	0
Growth Share Obligation	95
Credits	
Prior Round Surplus Units (Overlook at Lopatcong family housing ownership units)	5
Supportive Needs Housing (Group Homes)	
Alternatives, Inc 150 S. 7th St. (very low-income rental units)	3
Alternatives, Inc 20 James St. (very low-income rental units)	4
ARC of Warren County (rental units)	4
Inclusionary Zoning (family housing rental units)	48
Affordable Accessory Apartments (family housing rental)	8
Rental Bonuses	23
Total Growth Share Credits	95
Remaining Growth Share Obligation	0
Round Three Fair Share Obligation Summary	
Rehabilitation Units (surplus)	1
New Construction Units (satisfied)	0
Rental Bonus Surplus	11

Lopatcong Township is committed to providing its fair share of affordable housing pursuant to the programs described in this Fair Share Plan. The Township intends to fund the proposed programs with current revenue contained in its Affordable Housing Trust Fund and future fees collected from developers pursuant to the Lopatcong Township Development Fee Ordinance. Details of the available and anticipated funds and the funding program are contained in the Lopatcong Township Development Fee Spending Plan.

The purpose of the development fees and payments made in lieu of constructing affordable units for the Warren Heights development is to fund the rehabilitation program and 8 affordable accessory apartments. Any funds collected and deposited in the Lopatcong Township Affordable Housing Trust Fund in excess of the amount needed for this purpose shall be used to assist the Township in addressing its entire fair share responsibilities.

Should there be a shortfall in the funds necessary for the Township to fulfill its affordable housing obligations; Lopatcong Township is committed to fully funding its affordable housing programs regardless of the availability of grants, developer fees or voluntary contributions which the Township can expect to receive.



# APPENDIX A

MFI-Multi Family Inclusionary Ordinance

Adopted

## TOWNSHIP OF LOPATCONG

An Ordinance to Amend Chapter 243, "Zoning & Land Use", Article XIV, "Zoning District and Use Regulations", Article XII, "Establishment of Zones; Applicability of Zoning Regulations", Section 243-57, "Enumeration of zones", of the Code of the Township of Lopatcong and the "Zoning Map of Lopatcong Township", to add a residential zoning district — MFI Multifamily Inclusionary Zone — and to amend the zoning classification of a certain parcel to conform to the recommendations contained in the Master Plan Amendment, "Land Use Plan Element Proposed Amendment HB Highway Business Zone Lot 3 in Block 102".

**WHEREAS**, the Planning Board of the Township of Lopatcong has adopted a Master Plan amendment that recommends adding a new residential zoning district which provides for low and moderate-income housing on a parcel now zoned HB Highway Business; and

**WHEREAS**, the affected parcel is identified on the Lopatcong Township tax maps as Lot 3 in Block 102 and is located adjacent to the Phillipsburg Mall; and

**WHEREAS**, the governing body (Council) of Lopatcong Township has determined that the Planning Board's findings and recommendations regarding the zoning amendment are in the best interests of the Township.

**NOW THEREFORE, BE IT ORDAINED** by the Council of the Township of Lopatcong, County of Warren, and State of New Jersey that Article XII and Article XIV of the Zoning & Land Use Ordinance for Lopatcong Township are hereby amended as follows:

**SECTION ONE.** Article XIV of the Zoning & Land Use Ordinance shall be amended to include a new residential zoning district as follows:

### **Section 243-68.1. MFI Multifamily Inclusionary Zone.**

- A. Intent. The intent of the multifamily inclusionary residential zone is to provide multifamily housing options, while at the same time assisting the Township in meeting its affordable housing obligation through an inclusionary zoning program. Within the MFI Zone, new multifamily development will be allowed only as part of an inclusionary development in which affordable units will be constructed for occupancy by income-qualified households as allowed and regulated by the Council on Affordable Housing (COAH).
- B. Permitted principal use: Multifamily residential dwellings.
- C. Permitted accessory uses shall be as follows:
  - (1) Sales or rental office.
    - (a) A sales/rental office of a temporary nature is permitted. Such temporary office shall not extend beyond the occupancy of the last dwelling in the project.
    - (b) A permanent sales or rental office may be provided within the multifamily inclusionary development provided the office shall not be used as a dwelling.
    - (c) Such sales/rental office shall be used only for the sale or rental of dwellings within the multifamily inclusionary development.
  - (2) Recreation and cultural facilities for the use of the public and the residents of the community and their guests including picnic areas and other active and passive recreation facilities.
  - (3) Construction office and/or trailer during the time the project is being constructed.
  - (4) The following uses shall be exclusively and solely devoted to the use and benefit of the residents of the multifamily inclusionary development.

- (a) Off-street parking areas and garages.
- (b) Maintenance facilities.
- (c) Utility facilities.
- (d) Fences
- (e) One non-illuminated identification sign for each entrance, provided that the sign shall not exceed 32 square feet in area and is located not less than 10 feet from any street line or 15 feet of an adjacent property line. The height of such a sign shall be limited to five (5) feet.

D. Provisions and Requirements. The following provisions shall be satisfied before a multifamily inclusionary development is approved:

- (1) Sewer and Water Service. Every dwelling unit and the community building within the development shall be connected to a public sewage disposal and central potable water service system. The sewage and water capacity provided shall be sufficient to accommodate the uses as approved by the Board.
- (2) Location of Buildings. All dwellings and other buildings within the development shall have frontage on and vehicular access to an internal roadway.
- (3) Open Space. Open space and recreation facilities shall be governed and regulated by the provisions of § 243-82 and the following requirements:
  - (a) At least 40% of the development tract shall be planned and maintained as open space for public or private recreational use, nature conservation areas, stormwater detention or retention, decorative landscaping and/or community serving facilities, not counting as open space any lands in internal roadways, drives and parking areas except as provided for in § 243-68.1.D.(3)(c) below.
  - (b) At least 50% of the open space shall be common open space as defined in § 243-5.
  - (c) Not more than 20% of common open space provided may be devoted to a community center/recreation building complex and associated parking areas; and at least 25% of the common open space shall be developed for active recreation, such as swimming pools, playing fields, tennis, bocce or basketball courts, tot-lots, trails, gazebos and community garden plots.

E. General Requirements. Every multifamily inclusionary development shall be designed in accordance with the standards set forth in the appropriate sections of the Zoning and Land Use regulations of Lopatcong Township pertaining to subdivision and site plan approval except that in addition the following requirements shall apply:

- (1) Density. The density of multifamily residential development shall be calculated by dividing the number of units in the development by the gross acreage of the tract, excluding the area of public street right-of-way, in accordance with the following schedule:
  - (a) Ownership units: Maximum 6 dwelling units per gross acre.
  - (b) Rental units: Maximum 12 dwelling units per gross acre.
- (2) Unit type. Garden apartment as defined in the Zoning and Land Use ordinance of Lopatcong Township.
- (3) Area and Bulk requirements. The following requirements shall apply to the entire contiguous portion of the tract:

- (a) Total land area. Any site plan for the development of multifamily units shall not be approved unless the property consists of a minimum of fifteen (15) contiguous acres, provided that the total site area shall be of sufficient size to provide for all required off-street parking, usable recreation space, yards and other requirements consistent with the projected number of dwelling units to be constructed and the development shall be designed as a single entity.
- (b) Lot frontage: 300 feet minimum
- (c) Coverage: The maximum lot coverage shall be 60% of the tract area. Building coverage is not regulated in the MFI Zone.
- (d) Yards (minimum).
  - [1] Principal buildings:
    - [a] Front: 100 feet from Route 22 right-of-way; 50 feet elsewhere
    - [b] One side: 50 feet
    - [c] Both sides: 100 feet
    - [d] Rear: 50 feet
  - [2] Accessory structures.
    - [a] Side: 25 feet
    - [b] Rear: 25 feet
- (e) Height ( maximum for all structures)
  - [1] Feet: 45
  - [2] Stories: 3
- (4) Building setbacks and distances between buildings.
  - (a) Within the tract, buildings shall be set back from the curb line of private roads or the right-of-way line of public streets the following distances:
    - [1] From internal roadway or drive: 35 feet.
    - [2] From parking area: 15 feet.
  - (b) Minimum distance between buildings shall be:
    - [1] Front to front: 35 feet.
    - [2] Front to side: 35 feet.
    - [3] Front to rear: 50 feet.
    - [4] Side to side: 25 feet.
    - [5] Side to rear: 35 feet.
    - [6] Rear to rear: 50 feet.
  - (c) No dwelling unit shall be closer than 50 feet to any community center/recreation building complex.
- (5) Screening. Wherever a multifamily residential development shall abut a lot or lots developed as or subdivided for single-family detached homes, the setback area required shall contain screening such as dense hedges, decorative fencing or

landscaped earth berms as further prescribed in § 243-62. Existing vegetation, along or with additional plantings if needed, may be used for screening, if sufficiently dense.

- (6) Unit and building requirements.
  - (a) No single building may contain more than 24 garden apartment units. The number of units in a building shall be considered those which share a common entrance in a discrete building component.
  - (b) No building facade shall continue in the same plane for a length of more than 100 feet without offsets or building projections from the plane totaling at least five feet, and, in any case, all buildings or building components shall be so arranged that, when viewed from any one direction, the overall length (even though not at the same plane) shall not exceed 240 feet.
  - (c) Dwelling units in basements are prohibited.
- (7) Improvements and utilities.
  - (a) All utility lines, including power, telephone and cable television lines shall be installed underground and adequately shielded.
  - (b) Television antennas mounted on the exterior of buildings shall not be permitted.
  - (c) Fire hydrants shall be installed by the developer in adequate number and at locations recommended by the Township Engineer and Fire Chief.
  - (d) The overall development shall be served by functioning storm drains and other utility systems; all streets and parking areas shall be paved to finish grade; and lawns in the immediate vicinity of the subject building shall be established before a certificate of occupancy may be issued for any dwelling unit in the building.
  - (e) All site improvements shall conform to Residential Site Improvement Standards (N.J.A.C. 5:21-1 et al)
- (8) Laundry and clothes-drying equipment. If not provided in each individual unit, laundry and clothes-drying equipment shall be provided in each building or group of attached buildings. The equipment shall be provided in a room specifically designed as a laundry area. The laundry room shall be readily accessible and shall be adequately ventilated and soundproofed so as not to create a nuisance to adjoining dwelling units. Laundry facilities shall be provided in the relationship of one commercial-type washer for each four apartments and one commercial-type dryer for each two washers. The equipment and the laundry room shall be maintained in good working order and shall be kept clean. No exterior clothesline or laundry-drying equipment shall be permitted on any part of the premises.
- (9) Storage facilities. In addition to any storage area contained within the dwelling unit, a minimum of 250 cubic feet of storage space shall be provided for each dwelling unit within the multifamily inclusionary development for the purpose of storing bicycles, furniture and similar items. Such storage space shall be specifically allocated among the units.
- (10) Soundproofing. Each dwelling unit shall be insulated for sound by the installation of adequate soundproofing materials according to reasonable building practices within all walls separating said unit from abutting residential units, hallways or other areas devoted either to common use or reserved for the landlords use in conformance with state standards.

- F. Refuse collection. Included in the development application for any garden apartment development shall be a plan for the collection, removal and disposition of all garbage, refuse and debris from the property during both construction and operation. Such plan shall provide adequate receptacles at convenient locations within the site area, including facilities for the recycling of recyclable materials.
- G. Affordable housing requirements. All units developed for sale or rental to qualified low and moderate-income households shall comply with all applicable provisions of COAH's Substantive Rules (N.J.A.C. 5:97-1 et seq.) and Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.) and the following:
- (1) The requirements of Article XVII, "Low and Moderate-Income Housing" of the Zoning and Land Use ordinance of Lopatcong Township.
  - (2) The affordable units may be for sale units (ownership) or rental units, at the developer's option.
  - (3) Minimum affordable housing set aside:
    - (a) Ownership units: 25% of the units developed in the project.
    - (b) Rental units: 20 percent of the units developed in the project.
  - (4) Inclusionary zoning for rental units shall provide that at least 10 percent of the affordable units are to be affordable to households earning 30 percent or less of median income for COAH Region 2.
  - (5) The tract shall comply in all ways with COAH's site suitability criteria as set forth in N.J.A.C. 5:97-3.13.
  - (6) Bedroom distribution for affordable units shall comply with the requirements set forth in COAH's Uniform Housing Affordability Controls (N.J.A.C. 5:80-26.1 et seq.).
- H. Morris Canal buffer. The developer shall provide a buffer from the portion of the former Morris Canal located on adjoining Lot 2 in Block 102. The width of the buffer and any additional requirements shall be as prescribed by the Warren County Planning Department.

**SECTION TWO.** Article XII of the Zoning & Land Use Ordinance shall be amended to add the following zoning district:

**Section 243-57. Enumeration of zones.**

MFI Multifamily Inclusionary Zone

**SECTION THREE.** The "Zoning Map of Lopatcong Township" dated June 2, 2005 shall be amended to conform to the zoning revision depicted on the map titled "Proposed Zoning Map Amendment" prepared by Ritter & Plante Associates, LLC dated November 2, 2009 and attached hereto.

**SECTION FOUR.** All ordinances or part of ordinances inconsistent with this ordinance are hereby repealed to the extent of such inconsistency.

**SECTION FIVE.** If any section, paragraph, subdivision, clause or provision of this ordinance shall be adjudged invalid, such adjudication shall apply only to the section, paragraph, subdivision, clause or provision and the remainder of this ordinance shall be deemed valid and effective.

**SECTION SIX.** This ordinance shall take effect upon its passage and publication according to law.

# APPENDIX B

Affordable Accessory Apartment Ordinance

Proposed

#### § 243-77.4. Affordable accessory apartments

A. Findings and purpose. The purpose of this article is to provide housing opportunities to fulfill the Lopatcong Township's affordable housing obligation. The intent is to encourage the creation of affordable accessory apartments within new or existing dwellings in Lopatcong Township.

B. Definitions. The following words and terms, when used in this section, shall have the following meanings unless the context clearly indicates otherwise:

“Affordable accessory apartment” means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building and which is occupied by a low or moderate-income household.

“Applicant” means the person or persons applying for funds to create an affordable accessory apartment in accordance with the provisions of this Ordinance.

“Council on Affordable Housing” means the Council established by the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301 et. seq., also known as COAH.

“Family unit” means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is available to the general public and not restricted to any specific segment of the population.

“Housing Administrator” means the person or agency hired, appointed or contracted by the Township to perform the duties as described in the Ordinance. If an outside person or agency is hired, these duties may be split as best serves the intent of this ordinance and the duties described herein between said outside agency or person and other Township appointee.

“Low-Income Household” means a household with a gross household income equal to 50 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located as determined by the Council on Affordable Housing in N.J.A.C. 5:97-1 et. seq., or its subsequent rules and regulations.

“Moderate-Income Household” means a household with a gross household income equal to 80 percent or less of the median gross household income for households of the same size within the housing region in which the housing is located as determined by the Council on Affordable Housing in N.J.A.C. 5:97-1 et. seq., or its subsequent rules and regulations.

C. Apartment within principal dwelling or accessory structure permitted. In all residential zones an affordable accessory apartment may be created within a



principal dwelling or in an accessory structure located on the same lot as the principal dwelling, subject to the standards set forth herein.

- D. Preference for family housing. The affordable accessory apartment shall be a “family unit” as defined in the Substantive Rules of the New Jersey Council on Affordable Housing, N.J.A.C. 5 97-1.4, as supplemented and amended.
- E. Number of dwelling units on a lot. No lot shall contain more than two dwelling units. A lot shall contain a principal dwelling unit and not more than one affordable accessory apartment which may be located in the principal residence or in an accessory structure.
- F. Minimum lot area. An affordable accessory apartment shall be permitted within a principal dwelling, provided that the lot conforms to the area and bulk requirements of the residential zone district in which it is located. If the affordable apartment is to be located in an accessory structure, the structure containing the affordable unit shall conform to the bulk standards for an accessory structure.
- G. Design standards. An affordable accessory apartment shall be subject to the following design standards.
  - (1) The floor area of an affordable accessory apartment shall not comprise more than 30% of the aggregate floor area of the dwelling in which it is located, except that an affordable unit located in an accessory structure on the same lot as the principal dwelling shall not exceed 1,000 square feet of floor area. In no case shall an accessory apartment contain less than 350 square feet of floor area.
  - (2) Access to any affordable accessory apartment shall be provided with an exterior entrance separate from the principal dwelling entrance.
  - (3) There shall be no sign, separate driveway access, separate exterior entrance or other visible evidence of an accessory apartment which is observable from any abutting street.
  - (4) Off-street parking shall be provided for any vehicles used by the occupants of the affordable accessory apartment in accordance with New Jersey Residential Site Improvement Standards.
  - (5) The affordable accessory unit shall include living/sleeping space, cooking facilities and a complete sanitary facility for the exclusive use of its occupants. It shall consist of not less than two rooms, one of which shall be a full bathroom, but shall have no more than one bedroom.
  - (6) The dwelling structure, if occupied by two households, shall comply with all requirements for a two-family dwelling in accordance with the New Jersey Building Code and all other applicable laws and housing regulations of the state and township.
- H. Deed restrictions. Upon approval of an application to create an affordable accessory apartment, the township, on behalf of the property owner, shall file a deed recorded in the Warren County Clerk's office containing a restriction in the form adopted by COAH and set forth in N.J.A.C 5.80-26.1, Appendix E, to the effect that the unit shall

remain available and affordable to a low or moderate-income household for a period of at least 10 years. The county filing fee is to be paid by the owner of the property. If the affordable accessory apartment is not occupied by a low or moderate-income household as defined herein or by a member of the general public as required by § 243-77.4D, it shall be removed and the structure shall comply with all the requirements for a single-family detached dwelling.

I. Sewage disposal.

- (1) Public Sewer. The applicant for an affordable accessory apartment permit shall demonstrate that there is sufficient sewer capacity to service the principal dwelling and the accessory apartment.
- (2) On-Site Subsurface Sewage Disposal. Prior to the issuance of a construction permit for any work related to the creation of an affordable housing unit within an existing structure or by an addition to an existing dwelling, the owner of the dwelling shall obtain a determination from the Township Board of Health as to whether modifications to any individual subsurface sewage disposal system will be necessary by reason of the creation of the housing unit. Any required modifications to such a system shall be made in compliance with all applicable laws and regulations.

J. Permits.

- (1) An affordable housing unit shall not be occupied except in accordance with a currently valid affordable housing unit permit issued by the Zoning Official.
- (2) Every affordable housing unit permit shall be valid for a term ending on December 31 of the year in which it is issued and shall, upon application, be renewed annually, provided that the affordable housing unit is occupied by a low or moderate-income household as defined herein and is available to the general public as required by § 243-77.4D. However, an initial permit or any renewal thereafter shall expire immediately in the event that the unit is vacated or a change occurs in the household occupying the unit, which renders the occupant ineligible in accordance with the provisions of this ordinance.
- (3) If an affordable housing unit permit expires by reason of Subsection (1) above, the affordable unit shall be vacated and shall not again be occupied unless and until a new permit is applied for and issued by the Zoning Official
- (4) Application for an affordable housing permit shall be made upon a form provided by the Zoning Official. The application shall require a certification that the above standards and conditions are in effect. Prior to the issuance of an affordable housing permit, the owner-occupant of the dwelling or, in the event that the dwelling is leased, the owner and tenant of the dwelling, or in the case of an affordable housing development, the developer, shall execute an affordable housing unit occupancy agreement with the township prepared by the township in recordable form which shall provide that the affordable housing unit shall be occupied only in accordance with the provisions of a currently valid affordable housing unit permit and that the township may take appropriate legal action to enforce the provisions of the agreement

- K. Submission of plans. The applicant shall provide a plan for the proposed construction which provides sufficient information to determine that all ordinance requirements will be satisfied.
- L. Number of affordable housing units. The maximum number of affordable housing units permitted under this article shall be the number that the township is permitted to apply toward its fair share obligation of low- and moderate-income housing in accordance with the applicable regulations of the New Jersey Council on Affordable Housing.
- M. Waiver of fees. Building permit fees and all similar township fees shall be waived in all cases involving affordable accessory apartment development under this article.
- N. Program Compliance.
- (1) The subsidized accessory apartments program will comply with Article XVII of Chapter 243 and all of the regulations of the Council on Affordable Housing.
  - (2) The provisions of this Section allowing the development of affordable accessory apartments shall expire automatically when funds are no longer available to subsidize accessory apartment conversions and/or when the maximum number of accessory apartments that the Township is permitted to apply toward its fair share obligation of low- and moderate-income dwelling units in accordance with COAH requirements is reached. The Housing Administrator shall keep a record of such units.
- O. Funding.
- (1) The money expended on the affordable accessory apartments program shall be derived from the Township's Affordable Housing Trust Fund.
  - (2) A minimum of \$20,000 shall be provided for each accessory apartment unit to be created. The actual capital costs of creating an individual unit may be less than \$20,000 if, at the end of each two year period, the affordable accessory apartment program as a whole has averaged at least \$20,000 per unit. The property owner shall be obligated for any costs of bringing the rest of the structure up to code standard; the \$20,000 subsidy shall be applied solely to the creation of the affordable accessory apartment unit.

# APPENDIX C

Affordable Housing Ordinance

Proposed

# AN ORDINANCE OF LOPATCONG TOWNSHIP TO ADDRESS THE REQUIREMENTS OF THE COUNCIL ON AFFORDABLE HOUSING (COAH) REGARDING COMPLIANCE WITH THE MUNICIPALITY'S PRIOR ROUND AND THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS

## Section 1. Affordable Housing Obligation

- (a) This Ordinance is intended to assure that low- and moderate-income units ("affordable units") are created with controls on affordability over time and that low- and moderate-income households shall occupy these units. This Ordinance shall apply except where inconsistent with applicable law.
- (b) The Lopatcong Township Planning Board has adopted a Housing Element and Fair Share Plan pursuant to the Municipal Land Use Law at N.J.S.A. 40:55D-1, et seq. The Fair Share Plan has been endorsed by the governing body. The Fair Share Plan describes the ways Lopatcong Township shall address its fair share for low- and moderate-income housing as determined by the Council on Affordable Housing (COAH) and documented in the Housing Element.
- (c) This Ordinance implements and incorporates the Fair Share Plan and addresses the requirements of N.J.A.C. 5:97, as may be amended and supplemented.
- (d) Lopatcong Township shall file monitoring reports with COAH in accordance with N.J.A.C. 5:96, tracking the status of the implementation of the Housing Element and Fair Share Plan. Any plan evaluation report of the Housing Element and Fair Share Plan and monitoring prepared by COAH in accordance with N.J.A.C. 5:96 shall be available to the public at the Lopatcong Township Municipal Building, Municipal Clerk's Office, 232 South Third Street, Phillipsburg, New Jersey, or from COAH at 101 South Broad Street, Trenton, New Jersey and on COAH's website, [www.nj.gov/dca/affiliates/coah](http://www.nj.gov/dca/affiliates/coah).

## **Section 2. Definitions**

The following terms when used in this Ordinance shall have the meanings given in this Section:

"Accessory apartment" means a self-contained residential dwelling unit with a kitchen, sanitary facilities, sleeping quarters and a private entrance, which is created within an existing home, or through the conversion of an existing accessory structure on the same site, or by an addition to an existing home or accessory building, or by the construction of a new accessory structure on the same site.

"Act" means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

"Adaptable" means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

"Administrative agent" means the entity responsible for the administration of affordable units in accordance with this ordinance, N.J.A.C. 5:96, N.J.A.C. 5:97 and N.J.A.C. 5:80-26.1 et seq.

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

“Affordability average” means the average percentage of median income at which restricted units in an affordable housing development are affordable to low- and moderate-income households.

“Affordable” means, a sales price or rent within the means of a low- or moderate-income household as defined in N.J.A.C. 5:97-9; in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

“Affordable development” means a housing development all or a portion of which consists of restricted units.

“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.

“Affordable housing program(s)” means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality’s fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act, credited pursuant to N.J.A.C. 5:97-4, and/or funded through an affordable housing trust fund.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development where the unit is situated are 62 years or older; or 2) at least 80 percent of the units are occupied by one person that is 55 years or older; or 3) the development has been designated by the Secretary of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

“Assisted living residence” means a facility licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing, which is in, but not of, the Department of Community Affairs of the State of New Jersey, that was established under the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301 et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that require the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land proposed to be included in a proposed development including the holder of an option to contract or purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1 et seq.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not necessarily limited to: new construction, the conversion of a non-residential structure to residential and the creation of new affordable units through the reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the median household income.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement or load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable county, as adopted annually by COAH.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the median household income.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary and the transfer of ownership by court order.

“Random selection process” means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by COAH’s adopted Regional Income Limits published annually by COAH.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

“Restricted unit” means a dwelling unit, whether a rental unit or ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as may be amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26.1 et seq.

“Very low-income household” means a household with a total gross annual household income equal to 30 percent or less of the median household income.

“Very low-income unit” means a restricted unit that is affordable to a very low-income household.

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for rehabilitation.

### **Section 3. Affordable Housing Programs**

Lopatcong Township has determined that it will use the following mechanisms to satisfy its affordable housing obligations: Rehabilitation Program, Inclusionary Zoning, Accessory Apartment Program, Supportive and Special Needs Housing and Development Fee Ordinance.

(a) A Rehabilitation program.

1. Lopatcong Township’s rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
2. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds.



3. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of 10 years (the control period). For owner occupied units the control period will be enforced with a lien and for renter occupied units the control period will be enforced with a deed restriction.
4. Lopatcong Township shall dedicate a minimum of \$10,000 for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
5. Lopatcong Township shall adopt a resolution committing to fund any shortfall in the rehabilitation programs for Lopatcong Township.
6. Lopatcong Township shall designate, subject to the approval of COAH, one or more Administrative Agents to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The Administrative Agent(s) shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of COAH. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
7. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
  - i. If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.
  - ii. If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.
  - iii. Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
  - iv. Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

(b) An Accessory Apartment program.

1. All accessory apartments shall meet the following conditions:
  - i. Accessory apartments are permitted by the Zoning Ordinance for various zoning districts, provided the units are affordable to low- and moderate-income households. Accessory apartments may be developed as low-income or moderate-income units (accessory apartments may be limited to only low- or only moderate-income units as determined in the Fair Share Plan).

- ii. Accessory apartments shall comply with all applicable statutes and regulations of the State of New Jersey in addition to all building codes.
  - iii. At the time of initial occupancy of the unit and for at least ten years thereafter, the accessory apartment shall be rented only to a household which is either a low- or moderate-income household.
  - iv. Rents of accessory apartments shall be affordable to low- or moderate-income households as per COAH and UHAC regulations.
  - v. There shall be a recorded deed or declaration of covenants and restrictions applied to the property upon which the accessory apartment is located running with the land and limiting its subsequent rental or sale of the unit and the accessory apartment.
  - vi. The appropriate utility authority must certify that there is water and sewer infrastructure with sufficient capacity to serve the proposed accessory apartment. Where the proposed location is served by an individual well and/or septic system, the additional capacity necessitated by the new unit must meet the appropriate NJDEP standards.
  - vii. The Lopatcong Township accessory apartment program shall not restrict the number of bedrooms in any accessory apartment.
  - viii. No accessory apartment created as a result of this article or these regulations shall exceed the gross floor area of the existing principal dwelling on the lot.
2. The maximum number of creditable accessory apartments shall be equal to no more than 10 or an amount equal to 10 percent of Lopatcong Township's fair share obligation, whichever is greater (additional units may be approved by COAH if the municipality has demonstrated successful completion of its accessory apartment program.).
3. Lopatcong Township shall designate an administrative entity to administer the accessory apartment program that shall have the following responsibilities:
  - i. The Administrative Agent shall administer the accessory apartment program, including advertising, income qualifying prospective renters, setting rents and annual rent increases, maintaining a waiting list, distributing the subsidy, securing certificates of occupancy, qualifying properties, handling application forms, filing deed restrictions and monitoring reports and affirmatively marketing the affordable accessory apartment program in accordance with the UHAC.
  - ii. The administrative entity shall only deny an application for an accessory apartment if the project is not in conformance with COAH's requirements and/or the provisions of this section/article. All denials shall be in writing with the reasons clearly stated.
  - iii. In accordance with COAH requirements, Lopatcong Township shall provide at least \$25,000 per unit to subsidize the creation of each low-income accessory apartment or \$20,000 per unit to subsidize the creation of each moderate-

income accessory apartment. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates.

4. Property owners wishing to apply to create an accessory apartment shall submit to the administrative entity:
  - i. A sketch of floor plan(s) showing the location, size and relationship of both the accessory apartment and the primary dwelling within the building or in another structure;
  - ii. Rough elevations showing the modifications of any exterior building façade to which changes are proposed; and
  - iii. A site development sketch showing the location of the existing dwelling and other existing buildings; all property lines; proposed addition, if any, along with the minimum building setback lines; the required parking spaces for both dwelling units; and any man-made conditions which might affect construction.

#### **Section 4. Reserved**

#### **Section 5. Reserved**

#### **Section 6. Reserved**

#### **Section 7. Inclusionary Zoning**

- (a) **Presumptive densities and set-asides.** To ensure the efficient use of land through compact forms of development and to create realistic opportunities for the construction of affordable housing, inclusionary zoning permits minimum presumptive densities and presumptive maximum affordable housing set-asides as follows:

1. For Sale Developments

- i. Inclusionary zoning in Planning Area 2 and permits residential development at a presumptive minimum gross density of six units per acre and a presumptive maximum affordable housing set-aside of 25 percent of the total number of units in the development;

The zoning of the MFI Multi Family Inclusionary zone provides for a 25 percent set-aside for restricted units and a density of 6 units per acre.

2. Rental Developments

- i. Inclusionary zoning permits a presumptive minimum density of 12 units per acre and a presumptive maximum affordable housing set-aside of 20 percent of the total number of units in the development and the zoning provides for at least 10 percent of the affordable units to be affordable to households earning 30 percent or less of the area median income for the COAH region.

The zoning of the MFI Multi Family Inclusionary zone provides for a 20 percent set-aside for restricted units and a density of 12 units per acre.

3. Additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in the zoning section of this ordinance or specified in a developer's or redeveloper's agreement.

(b) **Phasing.** In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed Completed	Minimum Percentage of Low- and Moderate-Income Units
25	0
25+1	10
50	50
75	75
90	100

(c) **Design.** In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.

(d) **Payments-in-lieu and off-site construction.** The standards for the collection of Payments-in-Lieu of constructing affordable units or standards for constructing affordable units off-site shall be in accordance with N.J.A.C. 5:97-6.4.

(e) **Utilities.** Affordable units shall utilize the same type of heating source as market units within the affordable development.

### **Section 8. New Construction**

The following general guidelines apply to all newly constructed developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low- and moderate-income housing units.

(a) **Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:**

1. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit shall be a low income unit.
2. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units.
3. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
  - i. The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
  - ii. At least 30 percent of all low- and moderate-income units shall be two bedroom units;
  - iii. At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
  - iv. The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
4. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. The standard may

be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

(b) Accessibility Requirements:

1. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.
2. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
  - i. An adaptable toilet and bathing facility on the first floor;
  - ii. An adaptable kitchen on the first floor;
  - iii. An interior accessible route of travel on the first floor;
  - iv. An interior accessible route of travel shall not be required between stories within an individual unit;
  - v. An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
  - vi. An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-311a et seq.) and the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, or evidence that Lopatcong Township has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
    - A Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
    - B To this end, the builder of restricted units shall deposit funds within Lopatcong Township's affordable housing trust fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
    - C The funds deposited under paragraph B. above shall be used by Lopatcong Township for the sole purpose of making the adaptable entrance of any affordable unit accessible when requested to do so by a person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.
    - D The developer of the restricted units shall submit a design plan and cost estimate for the conversion from adaptable to accessible entrances to the Construction Official of Lopatcong Township.
    - E Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14, and that the cost estimate of such conversion is reasonable,

payment shall be made to the Township of Lopatcong's affordable housing trust fund in care of the Municipal Treasurer who shall ensure that the funds are deposited into the affordable housing trust fund and appropriately earmarked.

- F Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is site impracticable to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free Subcode, N.J.A.C. 5:23-7 and N.J.A.C. 5:97-3.14.

(c) Maximum Rents and Sales Prices

1. In establishing rents and sales prices of affordable housing units, the administrative agent shall follow the procedures set forth in UHAC and in COAH, utilizing the regional income limits established by COAH.
2. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted low- and moderate-income units shall be affordable to households earning no more than 52 percent of median income.
3. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units.
  - i. At least 10 percent of all low- and moderate-income rental units shall be affordable to households earning no more than 30 percent of median income.  
  
\*\*NOTE: N.J.S.A. 52:27D-329.1 (P.L. 2008, C. 46) includes the requirement that all municipal fair share plans provide for the reservation of at least 13% of the affordable units for very low income households, i.e. households earning 30% or less of the median income. The new statute states that the requirement is not project-specific. Each municipality's version of this ordinance must reflect the determinations made in the Fair Share Plan as to the percentage of units necessary for very low income units in rental projects. Additional incentives to subsidize the creation of affordable housing available to very-low income households may be included in the zoning section of this ordinance or specified in a developer's or redeveloper's agreement.
4. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different prices for each bedroom type, and low-income ownership units must be available for at least two different prices for each bedroom type.
5. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units other than assisted living facilities, the following standards shall be used:

- i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one and one-half person household;
  - iii. A two-bedroom unit shall be affordable to a three-person household;
  - iv. A three-bedroom unit shall be affordable to a four and one-half person household; and
  - v. A four-bedroom unit shall be affordable to a six-person household.
6. In determining the initial rents for compliance with the affordability average requirements for restricted units in assisted living facilities, the following standards shall be used:
  - i. A studio shall be affordable to a one-person household;
  - ii. A one-bedroom unit shall be affordable to a one and one-half person household; and
  - iii. A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
7. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
8. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate household size as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
9. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the administrative agent be lower than the last recorded purchase price.
10. The rent of low- and moderate-income units may be increased annually based on the percentage increase in the Housing Consumer Price Index for the United States. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.
11. Utilities. Tenant-paid utilities that are included in the utility allowance shall be so stated in the lease and shall be consistent with the utility allowance approved by DCA for its Section 8 program.

The following general guidelines apply to all developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low-and moderate-income housing units.

### **Section 9. Affirmative Marketing Requirements**

- (a) Lopatcong Township shall adopt by resolution an Affirmative Marketing Plan, subject to approval of COAH, compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
- (b) The affirmative marketing plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The affirmative marketing plan is also intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs all marketing activities toward COAH Housing Region 2 and covers the period of deed restriction.
- (c) The affirmative marketing plan shall provide a regional preference for all households that live and/or work in COAH Housing Region 2 comprised of Warren, Essex, Union and Warren counties.
- (d) The Administrative Agent designated by Lopatcong Township shall assure the affirmative marketing of all affordable units consistent with the Affirmative Marketing Plan for the municipality.
- (e) In implementing the affirmative marketing plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
- (f) The affirmative marketing process for available affordable units shall begin at least four months prior to the expected date of occupancy.
- (g) The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner, unless otherwise determined or agreed to by Lopatcong Township.

### **Section 10. Occupancy Standards**

- (a) In referring certified households to specific restricted units, to the extent feasible, and without causing an undue delay in occupying the unit, the Administrative Agent shall strive to:
  - 1. Provide an occupant for each bedroom;
  - 2. Provide children of different sex with separate bedrooms; and
  - 3. Prevent more than two persons from occupying a single bedroom.
- (b) Additional provisions related to occupancy standards (if any) shall be provided in the municipal Operating Manual.



## **Section 11. Control Periods for Restricted Ownership Units and Enforcement Mechanisms**

- (a) Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance until Lopatcong Township elects to release the unit from such requirements however, and prior to such an election, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
- (c) Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the administrative agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value.
- (d) At the time of the first sale of the unit, the purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the requirements of this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
- (e) The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
- (f) A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all code standards upon the first transfer of title that follows the expiration of the applicable minimum control period provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

## **Section 12. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices**

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

- (a) The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
- (b) The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
- (c) The method used to determine the condominium association fee amounts and special assessments shall be indistinguishable between the low- and moderate-income unit owners and the market unit owners.

- (d) The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom.

### **Section 13. Buyer Income Eligibility**

- (a) Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's certified monthly income.

### **Section 14. Limitations on indebtedness secured by ownership unit; subordination**

- (a) Prior to incurring any indebtedness to be secured by a restricted ownership unit, the administrative agent shall determine in writing that the proposed indebtedness complies with the provisions of this section.
- (b) With the exception of original purchase money mortgages, during a control period neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of that unit, as such price is determined by the administrative agent in accordance with N.J.A.C.5:80-26.6(b).

### **Section 15. Control Periods for Restricted Rental Units**

- (a) Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance until Lopatcong Township elects to release the unit from such requirements pursuant to action taken in compliance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, and prior to such an election, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented, for at least 30 years.
- (b) Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Warren. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.

- (c) A restricted rental unit shall remain subject to the affordability controls of this Ordinance, despite the occurrence of any of the following events:
1. Sublease or assignment of the lease of the unit;
  2. Sale or other voluntary transfer of the ownership of the unit; or
  3. The entry and enforcement of any judgment of foreclosure.

#### **Section 16. Price Restrictions for Rental Units; Leases**

- (a) A written lease shall be required for all restricted rental units, except for units in an assisted living residence, and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
- (b) No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
- (c) Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.

#### **Section 17. Tenant Income Eligibility**

- (a) Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
1. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of median income.
  2. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of median income.
  3. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of median income.
- (b) The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
1. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
  2. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
  3. The household is currently in substandard or overcrowded living conditions;

4. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
  5. The household documents proposed third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
- (c) The applicant shall file documentation sufficient to establish the existence of the circumstances in (b)1 through 5 above with the Administrative Agent, who shall counsel the household on budgeting.

### **Section 18. Administration**

- (a) The position of Municipal Housing Liaison (MHL) for Lopatcong Township is established by this ordinance. The Township Council shall make the actual appointment of the MHL by means of a resolution [or a letter in the case of a chief executive].
1. The MHL must be either a full-time or part-time employee of Lopatcong Township.
  2. The person appointed as the MHL must be reported to COAH for approval.
  3. The MHL must meet all COAH requirements for qualifications, including initial and periodic training.  
  
\*\*NOTE: if the MHL position is one that will always be included in the job description for a particular position in the local staff, e.g. Township Clerk, that position can be named in this ordinance.
  4. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for Lopatcong Township, including the following responsibilities which may not be contracted out to the Administrative Agent:
    - i. Serving as the municipality's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
    - ii. The implementation of the Affirmative Marketing Plan and affordability controls.
    - iii. When applicable, supervising any contracting Administrative Agent.
    - iv. Monitoring the status of all restricted units in Lopatcong Township's Fair Share Plan;
    - v. Compiling, verifying and submitting annual reports as required by COAH;
    - vi. Coordinating meetings with affordable housing providers and Administrative Agents, as applicable; and
    - vii. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing as offered or approved by COAH.

- (b) Lopatcong Township shall designate by resolution of the Township Council, subject to the approval of COAH, one or more Administrative Agents to administer newly constructed affordable units in accordance with N.J.A.C. 5:96, N.J.A.C. 5:97 and UHAC.
- (c) An Operating Manual shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of COAH. The Operating Manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the Administrative Agent(s).
- (d) The Administrative Agent shall perform the duties and responsibilities of an administrative agent as are set forth in UHAC and which are described in full detail in the Operating Manual, including those set forth in N.J.A.C. 5:80-26.14, 16 and 18 thereof, which includes:
  - 1. Attending continuing education opportunities on affordability controls, compliance monitoring, and affirmative marketing as offered or approved by COAH;
  - 2. Affirmative Marketing;
  - 3. Household Certification;
  - 4. Affordability Controls;
  - 5. Records retention;
  - 6. Resale and re-rental;
  - 7. Processing requests from unit owners; and
  - 8. Enforcement, though the ultimate responsibility for retaining controls on the units rests with the municipality.
  - 9. The Administrative Agent shall have authority to take all actions necessary and appropriate to carry out its responsibilities, hereunder.

### **Section 19. Enforcement of Affordable Housing Regulations**

- (a) Upon the occurrence of a breach of any of the regulations governing the affordable unit by an Owner, Developer or Tenant the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, municipal fines, a requirement for household recertification, acceleration of all sums due under a mortgage, recoupment of any funds from a sale in the violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
- (b) After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
  - 1. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation, or violations, of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is found by the court to have violated any

provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the court:

- i. A fine of not more than [insert amount] or imprisonment for a period not to exceed 90 days, or both. Each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not as a continuing offense;
  - ii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Lopatcong Township Affordable Housing Trust Fund of the gross amount of rent illegally collected;
  - iii. In the case of an Owner who has rented his or her low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the court.
2. The municipality may file a court action in the Superior Court seeking a judgment, which would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- and moderate-income unit.
- (c) Such judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have the right to possession terminated as well as the title conveyed pursuant to the Sheriff's sale.
- (d) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for and to the extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- (e) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- (f) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- (g) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- (h) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

## **Section 20. Appeals**

Appeals from all decisions of an Administrative Agent designated pursuant to this Ordinance shall be filed in writing with the Executive Director of COAH.

## **REPEALER**

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

## **SEVERABILITY**

If any section, subsection, sentence, clause, phrase or portion of this ordinance is for any reason held invalid or unconstitutional by any court 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 portions thereof.

## **EFFECTIVE DATE**

This ordinance shall take effect upon passage and publication as provided by law.