

**ADRIAN HUMBERT ASSOCIATES**  
**Adrian P. Humbert, AICP/P.P.**  
**8 Rickland Drive**  
**Randolph New Jersey 07869**

Voice 973 989 8200  
Fax 973 989 2553  
Email: ahaplan2design@optonline.net

**KINNELON HOUSING ELEMENT**  
**&**  
***FAIR SHARE PLAN***

May, 2010

This report has been signed and sealed in  
the original in accordance with  
N.J.A.C. 13:41 - 1.3



Adrian P. Humbert, AICP/P.P.

## INTRODUCTION

In 1988 the Borough of Kinnelon prepared and adopted its first Housing Element and Fair Share Plan. The Borough acted in response to the Mount Laurel II decision, which was handed down by the New Jersey Supreme Court in January 1983. The decision required that all municipalities in the State provide a realistic opportunity for the construction of housing affordable to those households of lower income. The plan was submitted to the Council on Affordable Housing (COAH) and the Council granted the Borough its original six-year substantive certification. This certification covered the years 1987 through 1993, the first round obligation.

In 1996 the Borough, responding to COAH second round fair share housing numbers covering the 1993 to 1999 period, prepared and adopted a new fair share plan. COAH granted certification of the Borough's plan on May 1, 1996. This plan included a fair share obligation for low and moderate income housing of 81 units including a rehabilitation obligation of 9 units.

The plan was implemented by rezoning property now known as Kinnelon Ridge/Kinnelon Heights (Gabrellian tract, Block 133, Lot 16). The rezoning allowed a total of 295 dwelling units, 241 market units and 54 affordable units including a rental bonus of 18 units. On March 9, 2005 the second round certification was extended by COAH until December 20, 2005. COAH's resolution granting certification found that the Borough has complied with all the terms of the 1987-1999 Substantive Certifications.

COAH issued its initial Third Round (1987-2014) substantive rules on December 20, 2004. In 2005 the Borough submitted its first petition for Third Round Substantive Certification but this petition was never acted on by COAH. Subsequently, the 2004 rules were invalidated in part by the Appellate Division of the New Jersey Superior Court in 2007. As a result of the

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

Court's decision, COAH drafted new Third Round Rules, NJAC 5:97, which were adopted on June 2, 2008 and shortly thereafter amended them. These amendments became effective on October 20, 2008. In addition, PL 2008 Chapter 46 made changes to municipal affordable housing obligations under the Fair Housing Act.

It is the intent of this new Housing Element and Fair Share Plan to maintain the Borough's substantive certification and address its obligations under the new substantive rules as they have been modified by the Borough of Kinnelon's location within the Preservation Area of the Highlands Regional Master Plan (RMP).

In 1985 the New Jersey Fair Housing Act created the Council on Affordable Housing (COAH) to provide an administrative alternative to the courts in reviewing fair share housing plans and mediating fair housing litigation. COAH adopts rules governing the periodic calculation of fair share obligations and the methods by which the obligation may be addressed by communities. Participating in COAH's administrative process and receiving substantive certification of a municipal fair share plan gives a municipality legal protection from Mt. Laurel litigation during the period of certification, now until 2018.

### **THIRD ROUND RULES**

COAH's third round rules are based on a "growth share" approach to affordable housing. This is a significant departure from the first and second round methodologies. It links the production of affordable housing to municipal development and growth.

Three components comprise the Borough's third round obligation as follows:

- Rehabilitation share - any units needing rehabilitation as of 4/1/00. The

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

Borough's rehabilitation share is 14 units based upon U.S. Census data and as calculated by COAH and stated on page 13 of the chart prepared by COAH entitled "Rehabilitation Share, Prior Round Obligation & Growth Projections", effective October 20, 2008.

- Prior round obligation - any remaining prior round obligation for the period 1987-1999 that has not been addressed
- Growth share - generated by residential and non-residential growth during the period from 1999 through 2018 and delivered from January 1, 2004 to December 31, 2018. Under "growth share" one (1) affordable housing unit among every five (5) new dwellings and for every sixteen (16) new jobs created in the Borough is required.

### **HOUSING ELEMENT REQUIREMENTS**

The Municipal Land Use Law (MLUL) was amended in 1985 to require that a housing element be part of the municipal Master Plan. The housing element must provide the following information:

- an inventory and analysis of the municipality's housing stock, demographic characteristics and existing and future employment characteristics;
- a projection of future housing construction;
- a determination of the municipality's present and prospective fair share of low and moderate income housing and its capacity to accommodate low and moderate income housing; and

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

- consideration of the land that is most appropriate for the construction of low and moderate income housing including land owned by developers who have expressed a commitment to provide affordable housing.

In addition to the above, COAH's 2008 rules require that the housing element contain the following:

1. A projection of the municipality's probable future construction of housing and employment growth for fourteen (14) years covering the period January 1, 2004 through December 31, 2018 based on either required 2004-2018 COAH projections, and resulting growth share, or optional 2004-2018 municipal projection resulting in a higher growth share.
2. An analysis of the existing jobs and employment characteristics of the municipality.
3. An analysis of how existing zoning or planned changes in zoning provide adequate capacity to accommodate residential and non-residential growth projections.
4. The number of new affordable units the municipality was obligated to provide during the period 1987 to 1999 and the number of affordable units actually provided.
5. The number of deficient units occupied by low and moderate income households that the municipality is obligated to rehabilitate.
6. The projected growth share affordable housing need.
7. A general description of any sites slated for affordable housing including acreage, owner, block and lot, current zoning, surrounding land uses and street access.

**FAIR SHARE PLAN REQUIREMENT**

The Fair Share Plan of the Borough must be adopted by the Planning Board and endorsed by the governing body prior to the municipality's petition for substantive certification. The fair share plan must address the municipality's total 1987-2018 fair share obligation including implementing ordinances designed to insure that the fair share of affordable housing for the 1987-2018 period is met.

The fair share plan must also include a strategy for insuring the development of one (1) affordable housing unit for every four (4) market rate units of new construction and/or one (1) affordable unit for every sixteen (16) newly created jobs as measured by new or expanded non-residential construction within the municipality. Recent trends in the Borough as reported by Morris County Planning Board indicate a significant slowing in the rate of residential development in the Borough. The County reports that only eleven (11) single-family lots from major subdivisions have been recorded at the Office of the County Clerk between 2004 and 2008. Five (5) of these lots were recorded in 2005 and six (6) in 2006.

Actual residential growth in the Borough as reported by the New Jersey Department of Community Affairs (DCA) is summarized herein below in Module 3, Draft Housing Element, Borough of Kinnelon, dated March 2010.

**POPULATION CHANGES**

Between 1990 and 2000 the Borough's population grew by 895 persons, a gain of 10.6%. As a result of this growth, the density of population increased from 460 to 524 persons per

KINNELON BOROUGH  
 HOUSING ELEMENT & FAIR SHARE PLAN  
 May, 2010

square mile, a gain of 35.7%. The Borough's male population grew by 454, a gain of 10.8%. The number of females increased by 451 or 10.4%. Meanwhile, over the 90's decade, the Borough's median age increased by 1.8 years from 37.8 to 39.6 years of age. This represents an increase in median age of 4.8%.

**TABLE 1  
 POPULATION DATA  
 KINNELON BOROUGH**

	1990	2000	CHANGE
Total Population	8,470	9,365	895
Land Size (sq. mi.)*	18.4	17.9	-0.5
Density (persons/sq. mi.)	460	524	64
Male	4,219	4,673	454
Female	4,251	4,692	441
Median Age	37.8	39.6	1.8

\*Reduction in land area is as reported in Morris County 2000 Census Profiles, p. 32

Source: U.S. Census, 1990 & 2000

In 1990 the Census reported that 684 Kinnelon residents were age 65 and over. By 2000 this age group had grown to 841 persons or 9% of the total population. This represents a gain of 157 seniors in the community or growth of 23% in this age group. In its existing certified fair share plan, in addition to the 54 lower income units, the Borough's ordinance also provides for 25 market rate sales units which are restricted to households where one adult is age 52 or older.

KINNELON BOROUGH  
 HOUSING ELEMENT & FAIR SHARE PLAN  
 May, 2010

<b>TABLE 2                      AGE GROUPS                      KINNELON BOROUGH</b>		
	2000	%
18 years & over	6,556	70.0
male	3,210	34.3
female	3,346	35.7
65 years and over	841	9.0
male	400	4.3
female	441	4.7

Source: U.S. Census, 1990 & 2000

**HOUSING CHARACTERISTICS**

At the time of the 2000 Census the vast majority, 3,083 or 98.7% of the 3,123 total housing units, were single-family detached housing. There are only 25 single-family attached units and 15 duplex units reported. With the completion and occupancy of the Kinnelon Ridge and Kinnelon Heights affordable housing projects these numbers will increase at the time of the 2010 Census.

Between 1990 and 2000 only 293 new housing units were constructed in the Borough. This represents 9.4% of the Borough's housing stock. This average of 29 new units per year between the censuses has dropped to 20 units per year based upon the number of residential



KINNELON BOROUGH  
 HOUSING ELEMENT & FAIR SHARE PLAN  
 May, 2010

certificate of occupancies issued. Further construction declines, as anticipated and noted, have occurred since 2007. This trend is likely to continue as the Borough is 97% in the Highlands Preservation Area and intends to opt into the Preservation Area for the remaining 3%.

<p style="text-align: center;"><b>TABLE 3</b>  <b>YEAR STRUCTURE BUILT: 2000</b>  <b>KINNELON BOROUGH</b></p>		
YEAR STRUCTURE BUILT	NUMBER	PERCENT
1999 to March 2000	59	1.9
1995 to 1998	120	3.8
1990 to 1994	114	3.7
1980 to 1989	486	15.6
1970 to 1979	454	14.5
1960 to 1969	685	21.9
1940 to 1959	987	31.6
1939 or earlier	218	7.0

Source: U.S. Census, 1990 & 2000

KINNELON BOROUGH  
 HOUSING ELEMENT & FAIR SHARE PLAN  
 May, 2010

<b>TABLE 4                      UNITS IN STRUCTURE: 2000                      KINNELON BOROUGH</b>		
Subject	Number	Percent
Total housing units	3,123	100.0
<b>UNITS IN STRUCTURE</b>		
1-unit detached	3,083	98.7
1-unit attached	25	0.8
2 units	15	0.5
3 or 4 units	0	0
5 to 9 units	0	0
10 to 19 units	0	0
20 or more units	0	0
Mobile home	0	0

Source: U.S. Census, 1990 & 2000

**HOUSING CHARACTERISTICS CHANGES**

Kinnelon's housing inventory increased by 220 units from 2,903 to 3,123 between 1990 and 2000. This represents growth of 7.6%. Occupied units increased by 286 units, a gain of 10.3%. Owner-occupied units increased by 311 while renter-occupied units declined by 25 from 115 to 90 units. The average size of households in owner-occupied units remained unchanged at

KINNELON BOROUGH  
 HOUSING ELEMENT & FAIR SHARE PLAN  
 May, 2010

3.07 while the household size in renter-occupied grew slightly from 2.51 to 2.60 persons per household. The number of vacant units declined by 66 and the number of seasonal or occasional use units declined by 10 between 1990 and 2000.

<b>TABLE 5 HOUSING TENURE: 1990 &amp; 2000 KINNELON BOROUGH</b>			
	1990	2000	CHANGE
Total housing units	2,903	3,123	220
Occupied units	2,776	3,062	286
Owner occupied	2,661	2,972	311
Renter occupied	115	90	-25
Average size owner-occupied	3.07	3.07	0
Average size renter-occupied	2.51	2.60	0.09
Vacant units	127	61	-66
Seasonal or occasional use	29	19	-10

Source: U.S. Census, 1990 & 2000

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

**HOUSEHOLDS**

The 2000 U.S. Census reports that there were 3,062 total households living in the Borough in the year 2000. Family households comprise 2,685 units or 87.7% of the total. Less than half of those, 45.4% or 1389 families, had children under 18 years old living at home. Married couple households comprise 2,467 of the family households or 80.6%.

Single female heads of households number 163 or 5.3% of Kinnelon's households.

The average family size at 3.27 members was larger than the average household size at 3.06 members.

KINNELON BOROUGH  
 HOUSING ELEMENT & FAIR SHARE PLAN  
 May, 2010

<b>TABLE 6 HOUSEHOLD BY TYPE KINNELON BOROUGH</b>		
	2000	%
Total households	3,062	100.0
Family households	2,685	87.7
with children under 18	1,389	45.4
Married couple	2,467	80.6
with children under 18	1,299	42.4
Female householder, no husband	163	5.3
with children under 18	70	2.3
Non-family households	377	12.3
Householder living alone	287	9.4
Householder 65 and over	111	3.6
Households w/indiv. under 18	1,440	47.0
Households w/indiv 65 & over	586	19.1
Average household size	3.06	
Average family size	3.27	

Source: U.S. Census 2000

KINNELON BOROUGH  
 HOUSING ELEMENT & FAIR SHARE PLAN  
 May, 2010

AVERAGE HOME VALUES

In 1990 the average value of single-family detached owner-occupied housing in the Borough was \$333,719. In 2000 the median reported value had increased to \$354,000.

<p style="text-align: center;"><b>TABLE 7</b>  <b>VALUE OF OWNER-OCCUPIED HOUSING: 2000</b>  <b>KINNELON BOROUGH</b></p>		
VALUE	NUMBER	PERCENT
Less than \$50,000	12	0.4
\$50,000 to \$99,999	11	0.4
\$100,000 to \$149,999	56	2.0
\$150,00 to \$199,999	182	6.4
\$200,00 to \$299,999	817	28.6
\$300,00 to \$499,999	1,128	39.5
\$500,00 to \$999,999	564	19.7
\$1,000,000 or more	89	3.1
Median (dollars)	\$354,000	

Source: U.S. Census, 2000

**EMPLOYMENT CHARACTERISTICS OF RESIDENTS**

The 2000 Census reports that there were 4,664 persons, or 56.4% of the Borough's population 16-years and over (6,820 persons), in the civilian labor force. Of these, 4,578 or 67.1% of the population 16 years and over, were employed. The unemployment rate at the time of the Census was 1.3%.

Out of 4,459 workers 16-years and over, 3,758 or 84.3% commuted to work alone. Another 139 or 3.1% car pooled. Only 4.6% (203 persons) took public transportation and another 0.9% (40 persons) walked to work. Those who worked at home, 7.0%, numbered 314. The average commuter travel time for Kinnelon Borough residents was 34.1 minutes.

Management, professional and related occupations (2,701 persons) constituted 59.0% of the civilian labor force. The next largest group by occupation, 1,164 employees or 25.5% of the labor force, worked in sales and office occupations. Service occupations accounted for 302 persons or 6.6% of the total while construction, extraction and maintenance personnel totaled 214 or 4.7% of the labor force. Another 192 persons, 4.2%, worked in production, transportation and material moving activities.

A detailed break-down of employment by industry follows:

KINNELON BOROUGH  
 HOUSING ELEMENT & FAIR SHARE PLAN  
 May, 2010

**TABLE 8  
 EMPLOYMENT BY INDUSTRY: 2000  
 KINNELON BOROUGH**

Industry	Number	Percent
Agriculture, forest, fishing hunting and mining	11	0.2
Construction	148	3.2
Manufacturing	813	17.8
Wholesale trade	249	5.4
Retail trade	436	9.5
Transportation, warehousing and utilities	175	3.8
Information	183	4.0
Finance, insurance, real estate and rental/leasing	439	9.6
Professional, scientific, management, administrative and waste management services	689	15.1
Educational, health & social services	947	20.7
Arts, entertainment, recreation, accommodation and food services	171	3.7
Other services (except public administration)	213	4.7
Public administration	104	2.3

Source: U.S. Census 2000



KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

Private wage and salary workers constituted 3,682 persons or 80.4% of the labor force. Only 11.6% of the Borough's workers (532 persons) were in government employment. Self-employed workers totaled 353 persons or 7.7% of the labor force.

Median family income in 2000 was \$110,593 and median household income was \$105,991 as reported by the Census. Full-time male workers had median earnings of \$79,870 while full-time female workers earned \$45,069. One hundred fifteen (115) Borough families (4.3%) earned less than \$25,000 per year in 2000.

#### CURRENT PLAN COMPLIANCE

As stated in the introduction of this report the Borough of Kinnelon was granted substantive certification on May 1, 1996. By action of COAH on March 9, 2005 this substantive certification was extended to December 20, 2005.

The Borough's cumulative 1987-1999 obligation was 81 units consisting of 72 new construction units and 9 rehabilitation units.

The Borough's original new construction component has been addressed by completion of the Kinnelon Ridge/Kinnelon Heights inclusionary development (Block 133, Lot 16). This rezoning provides a total of 295 dwelling units with 241 market units and 54 affordable units including a rental bonus of 18 units. All 54 low/moderate units required have been constructed and issued certificates of occupancy by the Borough.

In granting extended second round substantive certification COAH found the Borough compliant with the terms of its 1987-1999 substantive certification (See Appendix "A"-COAH Resolution Granting Kinnelon Borough Extension of Substantive Certification).

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

**RESIDENTIAL & NON-RESIDENTIAL GROWTH PROJECTIONS**

The residential and non-residential growth projections for the Borough are contained in the following section of this report entitled “Module 3, Draft Housing Element, Borough of Kinnelon”, dated March, 2010. The projections have been prepared in accordance with the Workbook D protocols established by COAH and the Highlands Council.

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

**MODULE 3 – HIGHLANDS COUNCIL**  
**DRAFT HOUSING ELEMENT**  
**BOROUGH OF KINNELON**

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

**HIGHLANDS PLAN CONFORMANCE**  
**MODULE 3 - HOUSING ELEMENT AND FAIR SHARE PLAN**  
**APPENDIX A – MODEL HOUSING ELEMENT**

The overriding policy of the Housing Element of the Master Plan is to ensure provision of a variety of housing opportunities sufficient to address the needs of the community and the region, including the need for affordable housing, while at the same time respecting the density limits of the Highlands Element Land Use Plan, the resource constraints applicable to the Highlands Area, and the numerous other policies, goals and objectives set forth by the Borough of Kinnelon Master Plan. The Housing Plan furthers MLUL purposes of zoning (at N.J.S.A.40:55D-2, specifically 2a., 2e., 2g., 2l.) and fulfills the requirements of the New Jersey Fair Housing Act (N.J.S.A.52:27D-301 et seq.) which in keeping with New Jersey Supreme Court doctrine, as expressed in the “Mount Laurel” decisions, recognizes that every municipality in a “growth area” has a constitutional obligation to provide, through its land use regulations, a realistic opportunity for provision of a fair share of its region’s present and prospective needs for housing for low- and moderate-income families.

**GOALS AND OBJECTIVES**

In furtherance of Borough of Kinnelon efforts to ensure sound planning, this Plan incorporates the following goals and objectives with respect to future housing in the Highlands Area:

1. To the extent feasible, the zone plan will guide anticipated new residential development into compact, center-based projects (optional addition: incorporating a mix of housing types and/or mixed residential/commercial uses).
2. To provide a realistic opportunity for the provision of the municipal share of the region’s present and prospective needs for housing for low- and moderate-income families.
3. To the maximum extent feasible, to incorporate affordable housing units into any new residential construction that occurs within the Highlands Area including any mixed use, redevelopment, and/or adaptive reuse projects.
4. To preserve and monitor existing stocks of affordable housing.
5. To reduce long term housing costs through:
  - a. The implementation of green building and energy efficient technology in the rehabilitation, redevelopment and development of housing. Recent innovations in building practices and development regulations reflect significant energy efficiency measures, and therefore cost reductions, through building materials, energy efficient appliances, water conservation measures, innovative and alternative technologies that support conservation practices, and common sense practices such as recycling and re-use.
  - b. The promotion of the use of sustainable site design, efficient water management, energy efficient technologies, green building materials and equipment, and retrofitting for efficiencies.
  - c. Maximizing the efficient use of existing infrastructure, through such means as redevelopment, infill and adaptive reuse.
6. To use a smart growth approach to achieving housing needs:
  - a. Use land more efficiently to engender economically vibrant communities, complete with jobs,

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

houses, shopping, recreation, entertainment and multiple modes of transportation.

- b. Support a diverse mix of housing that offers a wide range of choice in terms of value, type and location. In addition, seek quality housing design that provides adequate light, air, and open space.
- c. Target housing to areas with existing higher densities and without environmental constraints, within walking distance of schools, employment, services, transit and community facilities with sufficient capacity to support them.

RMP HOUSING AND EMPLOYMENT PROJECTIONS

The Housing Element is herewith modified to incorporate RMP provisions as the basis for housing and employment growth projections. These projections have been recalculated using the Highlands Council Municipal Build-Out Analysis results for the Borough of Kinnelon, including consideration of water availability, septic system yield, and water and wastewater utility capacity. Housing and employment projections are required to determine the municipal "Growth Share" component of the overall Fair Share Housing obligation. Consistent with the Substantive Rules (N.J.A.C. 5:97) of the Council on Affordable Housing (COAH), the municipal affordable housing need is measured as a percentage of residential and non-residential growth from 2004-2018. COAH ratios require in general, one (1) affordable unit for every four (4) new market rate housing units and one (1) affordable unit for every 16 new jobs (calculated on the basis of new non-residential square footage by Uniform Construction Code Use Group designation).

Pursuant to COAH Rules, the overall housing obligation also includes a Rehabilitation Share and the Prior Round Obligation; each of these is offset in the final analysis by eligible credits, reductions and adjustments, as appropriate.

INVENTORY OF MUNICIPAL HOUSING STOCK

Highlands Instructions:

- 1. Age;
- 2. Condition;
- 3. Purchase or rental value;
- 4. Occupancy characteristics; and
- 5. Housing type, including the number of units known to be affordable to low and moderate income households, and substandard housing capable of being rehabilitated.

**Kinnelon Reponse: See Housing Element Pages 6-15 herein.**

ANALYSIS OF MUNICIPAL DEMOGRAPHIC CONDITIONS

Highlands Instructions:

*Insert a discussion of demographic characteristics of municipality including:*

- 1. Population trends;
- 2. Household size and type;

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

3. *Age characteristics and trends;*
4. *Income level and trends; and*
5. *Employment status of residents.*

**Kinnelon Reponse: See Housing Element Pages 6-15 herein.**

ANALYSIS OF EXISTING AND FUTURE EMPLOYMENT CHARACTERISTICS

Highlands Instructions:

*Insert a discussion of existing and future employment characteristics of municipality including:*

1. *Most recently available in-place employment by industry sectors and number of persons employed;*
2. *Most recently available employment trends; and*
3. *Employment outlook.*

**Kinnelon Response: See Workbook “D”, Pages 23-27 herein.**

MUNICIPAL NEED FOR AFFORDABLE HOUSING

Highlands Instructions:

*Insert a discussion of the determination of the municipality’s present (prior Round) and prospective fair share for low and moderate income housing based on information provided by the Highlands Council or by the municipality, as relevant, and an analysis of how conformance with the RMP will affect the ability to accommodate residential and non-residential growth projections including:*

1. *The availability of existing and planned infrastructure;*
2. *The anticipated demand for the types of uses permitted by zoning based on present and anticipated future demographic characteristics of the municipality;*
3. *Anticipated land use patterns;*
4. *Municipal economic development policies;*
5. *Constraints on development including the RMP, other State and federal regulations, land ownership patterns, presence of incompatible land uses or sites needing remediation and environmental constraints; and*
6. *Existing or planned measures to address these constraints.*
7. *The plan must include a consideration of lands that are most appropriate (including conformance with the RMP and other State requirements) for construction of low and moderate income housing and of the existing structures most appropriate for conversion to, or rehabilitation for, low and moderate income housing. This shall include a consideration of lands of developers who have expressed a commitment to provide low and moderate income housing and a discussion of the issues related to the development of any such site.*

**Kinnelon Response: See Workbook “D”, Pages 23-27 herein.**

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

RELATIONSHIP TO REGIONAL MASTER PLAN

Highlands Instructions:

*Insert a discussion of the relationship of the Housing Element to the RMP, and a discussion of the status of the municipality's petition for RMP Plan Conformance.*

**Kinnelon Response: See Proposed Fair Share Plan Pages 28-31 herein.**

FAIR SHARE PLAN

The municipal Fair Share Plan has been redrawn to the extent necessary to address the affordable housing obligation, while at the same time complying with Highlands Area density and resource constraints and the referenced changes to the Fair Housing Act. Prior plans for the provision of affordable housing units which have not yet been implemented must be/have been reevaluated for consistency with these provisions and altered accordingly.

CERTIFICATION

The Borough of Kinnelon intends to file a petition for Substantive Certification of its Third Round Housing Element and Fair Share Plan (inclusive of implementing ordinances and supporting documentation) with the Council on Affordable Housing within the deadline set by COAH for conforming Highlands municipalities (June 8, 2010). The municipality will proceed with such action only after the documents prepared in its support have been reviewed and approved by the Highlands Council for consistency with the Highlands Regional Master Plan.

**Summary of Adjusted Growth Share Projection Based On Land Capacity**  
**(Introduction to Workbook D)**

**Municipality Code:**   
Muni Code Lookup

**Municipality Name:** Kinnelon Borough

This workbook is to be used for determining the projected Municipal Growth Share Obligation by comparing growth projected by COAH with actual growth based on certificates of occupancy that have been issued from 2004 through 2008 and the RMP build-out analysis conducted under Module 2 of the Highlands RMP conformance process. Data must be entered via the "tabs" found at the bottom of this spreadsheet which may also be accessed through the highlighted links found throughout the spreadsheet. This workbook consists of five worksheets that, when combined on this introduction page, provide a tool that allows the user to enter exclusions permitted by N.J.A.C. 5:97-2.4 to determine the projected Growth Share Obligation. COAH-generated Growth Projections included in Appendix F(2) of the revised Third Round Rules, Highlands Council build-out figures based on Mod 2 Reports and actual growth based on COs as published by the DCA Division of Codes and Standards in The Construction Reporter are imported automatically upon entry of the Municipal Code.

[Click Here to enter COAH and Highlands Council data.](#)

Municipalities seeking to request a revision to the COAH-generated growth projections based on opting in to the Highlands RMP may do so by providing this comparative analysis of COAH and RMP build-out projections. After completing this analysis, the growth projections may be revised based on the Highlands RMP build-out analysis. Actual growth must first be determined using the Actual Growth worksheet. The RMP adjustment applies only to RMP capacity limitations that are applied to growth projected from 2009 through 2018.

[Click Here to Enter Actual Growth to Date](#)

[Click Here to Enter Permitted Exclusions](#)

[Click Here to View Detailed Results from Analysis](#)

**Summary Of Worksheet Comparison**

	COAH Projected Growth Share	Growth Share Based on Highlands RMP
Residential Growth	264	121
Residential Exclusions	124	124
Net Residential Growth	140	-3
Residential Growth Share	28.00	0.00
Non-Residential Growth	104	157
Non-Residential Exclusions	0	0
Net Non- Residential Growth	104	157
Non-Residential Growth Share	6.50	9.80
Total Growth Share	35	10

The Highlands RMP analysis results in a revision to the COAH-generated growth projection. Kinnelon Borough may file this Workbook and use a Residential Growth Share of 0 plus a Non-residential Growth Share of 9.8 for a total Highlands Adjusted Growth Share Obligation of 10 affordable units



## Affordable and Market-Rate Units Excluded from Growth

Municipality Name: #N/A

### Prior Round Affordable Units NOT included in Inclusionary Developments Built Post 1/1/04

Development Type	Number of COs Issued and/or Projected
Supportive/Special Needs Housing	
Accessory Apartments	
Municipally Sponsored and 100% Affordable	
Assisted Living	
Other	25
<b>Total</b>	<b>25</b>

### Market and Affordable Units in Prior Round Inclusionary Development Built post 1/1/04 N.J.A.C. 5:97-2.4(a)

(Enter Y for yes in Rental column if affordable units are rentals)

Development Name	Rentals? (Y/N)	Total Units	Market Units	Affordable Units	Market Units Excluded
Kinnelon Ridge	Y	99	70	29	70
		0			0
		0			0
		0			0
		0			0
<b>Total</b>		<b>99</b>	<b>70</b>	<b>29</b>	<b>70</b>

### Jobs and Affordable Units Built as a result of post 1/1/04 Non-Residential Development N.J.A.C. 5:97-2.4(b)

Development Name	Affordable Units Provided	Permitted Jobs Exclusion
		0
		0
		0
		0
<b>Total</b>	<b>0</b>	<b>0</b>

- Return to Main Page (Workbook D Intro)
- Return to COAH Data and RMP Module 2 Build-out Data
- Return to Actual Growth
- View Detailed Results from Analysis

KINNELON BOROUGH  
 HOUSING ELEMENT & FAIR SHARE PLAN  
 May, 2010

**COAH Growth Projections and Highlands Buildout Data**

Must be used in all submissions

**Municipality Name: Kinnelon Borough**

The COAH columns have automatically been populated with growth projections from Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq. The Highlands RMP Build-out columns have automatically been populated with residential and non-residential build-out figures from the municipal build-out results with resource and utility constraints found in Table 4 of the RMP Module 2 report. Always check with the Highlands Council for updates. If figures have been updated, enter updated build-out results. Use the Tabs at the bottom of this page or the links within the page to toggle to the exclusions worksheet of this workbook. After entering all relevant exclusions, toggle back to the introduction page to view the growth share obligation that has been calculated based on each approach.

**COAH Projections**

From Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq.  
 Allocating Growth To Municipalities

Residential	Non-Residential
264	104

**Highlands RMP Buildout Analysis**

From Module 2  
 Table 4 – Municipal Build-Out Results With Resource and Utility Constraints  
 Updated as of March 10, 2010

	Preservation Area	Planning Area	Totals
Residential units – Sewered	0	0	0
Septic System Yield	1	0	1
Total Residential Units	1	0	1
Non-Residential Jobs – Sewered	0	0	0

Note: Always check with the Highlands Council for updated municipal Build-out numbers. Enter build-out figures in the appropriate boxes only if revised figures have been provided by the Highlands Council.

[Click Here to link to current Mod 2 Build-Out Reports](#)

Proceed to Enter Prior Round  
 Return to Enter Actual Growth  
 Return to Main Page (Workbook D Intro)

## Growth Projection Adjustment - Actual Growth

Actual Growth 01/01/04 to 12/31/08

**Municipality Name: Kinnelon Borough**

### Residential COs Issued

As Published by D C S	120
Per Municipal Records (if different)	120
<b>Qualified Residential Demolitions</b>	

**Note:** To qualify as an offsetting residential demolition, the unit must be the primary residence of the household for which the demolition permit has been issued, it had to be occupied by that owner for at least one year prior to the issuance of the demolition permit, it has to continue to be occupied by that household after the re-build and there can be no change in use associated with the property. (See N.J.A.C.5:97-2.5(a)1.v.) A Certification Form must be completed and submitted for each qualifying demolition.

### Get Demolition Certification Form

Non-residential CO's by Use Group	Square Feet Added (COs Issued) As Published by D C S	Square Feet Added (COs Issued) per Municipal Records (if different)	Square Feet Lost Demolition Permits Issued)	Jobs Per 1,000 SF	Total Jobs
B	56,003	56,003		2.8	156.81
M	0	0		1.7	0.00
F	0	0		1.2	0.00
S	0	0		1.0	0.00
H	0	0		1.6	0.00
A1	0	0		1.6	0.00
A2	0	0		3.2	0.00
A3	0	0		1.6	0.00
A4	0	0		3.4	0.00
A5	0	0		2.6	0.00
E	30,810	30,810		0.0	0.00
I	0	0		2.6	0.00
R1	0	0		1.7	0.00
<b>Total</b>	<b>86,813</b>	<b>86,813</b>	<b>0</b>		<b>156.81</b>

Return to Main Page (Workbook D Intro)

Proceed to COAH Data and RMP Module 2 Build-out Data

Proceed to Exclusions Tab

### Comparative Analysis Detail For Kinnelon Borough

The following chart applies the exclusions permitted pursuant to N.J.A.C 5:97-2.4 to both the COAH growth projections and the projected growth that results from the Highlands RMP build-out analysis plus actual growth for the period January 1, 2004 through December 31, 2008.

	COAH		Highlands	
	Residential	Non-Residential	Residential	Non-Residential
Projected Growth From COAH Appendix F(2)	264	104		
Residential Exclusions per 5:97-2.4(a) from "Exclusions" tab COs for prior round affordable units built or projected to be built post 1/1/04				
Inclusionary Development	29		29	
Supportive/Special Needs Housing	0		0	
Accessory Apartments	0		0	
Municipally Sponsored or 100% Affordable	0		0	
Assisted Living	0		0	
Other	25		25	
Market Units in Prior Round Inclusionary development built post 1/1/04	70		70	
Subtract the following Non-Residential Exclusions per 5:97-2.4(b) from "Exclusions" tab				
Affordable units	0		0	
Associated Jobs		0		0
<b>Net Growth Projection</b>	<b>140</b>	<b>104</b>	<b>-3</b>	<b>157</b>
Projected Growth Share (Residential divided by 5 and jobs divided by 16)	28.00	6.50	0.00	9.80
<b>Total Projected Growth Share Obligation</b>		<b>35 Affordable Units</b>		<b>10 Affordable Units</b>

[Return to Main Page \(Workbook D Intro\)](#)  
[Return to COAH Data and RMP Module 2 Build-out Data](#)  
[Return to Actual Growth](#)  
[Return to Exclusions](#)

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

**PROPOSED FAIR SHARE PLAN BOROUGH OF KINNELON**

**PETITION FOR SUBSTANTIVE CERTIFICATION -THIRD ROUND**

The Borough of Kinnelon has filed a draft housing element (Module 3) with the New Jersey Highlands Council. In connection with its work with the Highlands Council, the Borough's housing obligation has been reduced from the original COAH calculated obligations under the third round. As a result of the Highlands RMP Build-Out Analysis, the total Borough build-out with resource and utility constraints, yielded one (1) septic system within the Preservation Area of the Borough. The Highlands Build-Out Analysis for the Borough's Planning Area results in a build-out of zero (0) units capacity.

Based upon actual growth determined by CO's issued between 2004 through 2008, the Highlands Council projected a growth share of ten (10) affordable units. COAH for its part had determined the 1987-1999 prior round obligation to be seventy-three (73) units. Based upon its previous affordable housing efforts, the Borough has a total of seventy-two (72) credits (54 units completed and occupied plus 18 bonus credits for the Kinnelon Ridge/Kinnelon Heights projects). This leaves the Borough with an outstanding obligation of eleven (11) units, i.e. ten (10) growth share plus one (1) prior round unit. COAH's third round rehabilitation number for the Borough is fourteen (14) units.

At its meeting of May 13, 2010, the Mayor and Council of the Borough discussed the implications of its reduced affordable housing obligation based upon the Highlands Regional Master Plan (RMP). Following these discussions, Kinnelon has determined that it wishes to

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

continue to fulfill its affordable housing obligations on this reduced basis by several mechanisms which it believes will be consistent with the Highlands RMP.

The following compliance plan is proposed:

1. Re-adoption of a development fee ordinance using COAH's current (October 2009) Sample Development Fee Ordinance (Draft Ordinance included in this submission).  
The Borough had previously adopted a development fee ordinance under its prior COAH certifications, only to rescind it later at the direction of COAH.
2. Initiate a program via a new ordinance to allow the creation of a maximum of ten (10) accessory apartment units within existing or new dwellings. The Borough would use proceeds of any development fees collected to defer or eliminate costs of the program to the Borough. Per NJAC 5:97-6.8, a maximum of ten (10) units is allowed by COAH. However, the Borough may seek to request a waiver of this maximum by COAH based upon the Borough's special circumstances with respect to the Highlands Preservation Area.
3. The accessory apartment program is also intended to address the requirement of NJAC 5:97-3.4 to create a realistic opportunity to construct rental units and to have at least fifty (50%) percent of the rental housing for the growth share as family housing (i.e. not restricted to any specific segment of the population). An ordinance provision to this effect would be adopted.

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

4. The Borough accessory apartment ordinance would also designate two (2) accessory apartments for very-low income housing per NJAC 5:97-3.7, thereby obtaining a 2-for-1 bonus for one (1) unit. This may eliminate the need for a COAH waiver for the eleventh accessory apartment. Similarly, the ordinance would designate per NJAC 5:97-3.8, two (2) of the units (not more than twenty-five (25%) percent) as age-restricted senior housing (62 and over).
5. An ordinance target to create two (2) units per year between 2011 and 2016 is projected in the plan. Since the units would have to be built between now and 2018 this would allow some additional time for flexibility in plan implementation.
6. As an alternative back-up plan for the creation of accessory apartments, the Borough would proactively invite proposals from providers of supportive and special needs housing (e.g. ARC, Allegro School, or Homeless Solutions) for location of a group residential home. The occupancy of an existing home for such housing reduces new development impacts and is consistent with Highlands Preservation Area policies. It is the Borough's intent that the supportive and special needs housing may be implemented in combination with or alternative to accessory apartments to achieve the Borough's growth share and prior round obligation of eleven (11) units as efficiently and expeditiously as possible.
7. Pursuant to NJAC 5:97-8.7 and NJAC 5:97-8.8 the Borough intends to use development fee revenues as permitted and required for its rehabilitation program, to

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

create accessory apartments and to provide affordability assistance to low and moderate income households. The Borough intends to continue use of its present administrative agent of its affordable housing program. Any collected development fee revenues, along with the potential funding of other agencies (e.g. Morris County Community Development Funds for rehabilitation), would also be used as they become available. A draft development fee ordinance per the current COAH model accompanies this plan. A full draft ordinance reciting the above noted implementation mechanisms will be crafted as part of the COAH review and substantive certification process.



## **DRAFT Development Fee Ordinance**

### **BOROUGH OF KINNELON**

#### **1. Purpose**

- a) In Holmdel Builder's Association V. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985 (the Act), N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules.
- b) Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from non-residential development.
- c) This ordinance establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L.2008, c.46, Sections 8 and 32-38. Fees collected pursuant to this ordinance shall be used for the sole purpose of providing low- and moderate-income housing. This ordinance shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:97-8.

#### **2. Basic requirements**

- a) This ordinance shall not be effective until approved by COAH pursuant to *N.J.A.C. 5:96-5.1*.
- b) The Borough of Kinnelon shall not spend development fees until COAH has approved a plan for spending such fees in conformance with *N.J.A.C. 5:97-8.10* and *N.J.A.C. 5:96-5.3*.

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

**3. Definitions**

- a) The following terms, as used in this ordinance, shall have the following meanings:
  - i. **“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.
  - ii. **“COAH”** or the **“Council”** means the New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the State.
  - iii. **“Development fee”** means money paid by a developer for the improvement of property as permitted in *N.J.A.C. 5:97-8.3*.
  - iv. **“Developer”** means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.
  - v. **“Equalized assessed value”** means the assessed value of a property divided by the current average ratio of assessed to true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (C.54:1-35a through C.54:1-35c).
  - vi. **“Green building strategies”** means those strategies that minimize the impact of development on the environment, and enhance the health, safety and well-being of residents by producing durable, low-maintenance, resource-efficient housing while making optimum use of existing infrastructure and community services.

**4. Residential Development fees**

- a) Imposed fees
  - i. Within the residential zone district(s), residential developers, except for developers of the types of development specifically exempted below, shall

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

pay a fee of one and a half percent of the equalized assessed value for residential development provided no increased density is permitted.

- ii. When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a “d” variance) has been permitted, developers shall be required to pay a development fee of a maximum of six percent of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal one and a half percent of the equalized assessed value on the first two units; and the specified higher percentage up to six percent of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

- b) Eligible exactions, ineligible exactions and exemptions for residential development
  - i. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
  - ii. Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
  - iii. Owner-occupied residential structures demolished and replaced as a result of a fire, flood, or natural disaster shall be exempt from paying a development fee.

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

- iv. Development fees shall not be imposed and collected when an existing structure undergoes a change to a more intense use, is demolished and replaced, or is expanded.

**5. Non-residential Development fees**

a) Imposed fees

- i. Within all zoning districts, non-residential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements, for all new non-residential construction on an unimproved lot or lots.
- ii. Non-residential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures to be used for non-residential purposes, irrespective of whether such additions expand the existing footprint.
- iii. Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.

b) Eligible exactions, ineligible exactions and exemptions for non-residential development

- i. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted below.
- ii. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint,

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

reconstruction, renovations and repairs, which do not constitute an addition, as defined in Section 5a) ii. above.

- iii. Non-residential developments shall be exempt from the payment of non-residential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" Form. Any exemption claimed by a developer shall be substantiated by that developer.
- iv. A developer of a non-residential development exempted from the non-residential development fee pursuant to P.L.2008, c.46 shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the non-residential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the non-residential development, whichever is later.
- v. If a property which was exempted from the collection of a non-residential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid non-residential development fees under these circumstances may be enforceable by the Borough of Kinnelon as a lien against the real property of the owner.

**6. Collection procedures**

- a) Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- b) For non-residential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The developer of a non-residential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the non-residential developer as per the instructions provided in the Form N-RDF. The Tax assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

- c) The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which is subject to a development fee.
- d) Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development.
- e) The construction official responsible for the issuance of a final certificate of occupancy notifies the local assessor of any and all requests for the scheduling of a final inspection on property which is subject to a development fee.
- f) Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the amount of the fee.
- g) Should the Borough of Kinnelon fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (C.40:55D-8.6).
- h) Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.
- i) Appeal of development fees
  - 1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Borough of Kinnelon. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

- 2) A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by the Borough of Kinnelon. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

**7. Affordable Housing trust fund**

- a) There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Borough's chief financial officer for the purpose of depositing development fees collected from residential and non-residential developers and proceeds from the sale of units with extinguished controls.
- b) The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:
  1. payments in lieu of on-site construction of affordable units
  2. developer contributed funds to make ten percent (10%) of the adaptable entrances in a townhouse or other multistory attached development accessible;
  3. rental income from municipally operated units;
  4. repayments from affordable housing program loans;
  5. recapture funds;
  6. proceeds from the sale of affordable units; and
  7. any other funds collected in connection with the Borough of Kinnelon's affordable housing program.
- c) Within seven days from the opening of the trust fund account, the Borough of Kinnelon shall provide COAH with written authorization, in the form of a three-party escrow agreement between the municipality, the bank, and COAH

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:97-8.13(b).

- d) All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH.

## 8 Use of funds

- a) The expenditure of all funds shall conform to a spending plan approved by COAH. Funds deposited in the housing trust fund may be used for any activity approved by COAH to address the Borough of Kinnelon's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to: preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing non-residential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:97-8.7 through 8.9 and specified in the approved spending plan.
- b) Funds shall not be expended to reimburse the Borough of Kinnelon for past housing activities.
- c) At least 30 percent of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30 percent or less of median income by region.
  - i. Affordability assistance programs may include down payment assistance, security deposit assistance, low interest loans, rental assistance,



KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

- assistance with homeowners association or condominium fees and special assessments, and assistance with emergency repairs.
- ii. Affordability assistance to households earning 30 percent or less of median income may include buying down the cost of low or moderate income units in the municipal Fair Share Plan to make them affordable to households earning 30 percent or less of median income.
  - iii. Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- d) The Borough of Kinnelon may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:96-18.
  - e) No more than 20 percent of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20 percent of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

**9. Monitoring**

- a) The Borough of Kinnelon shall complete and return to COAH all monitoring forms included in monitoring requirements related to the collection of development fees from residential and non-residential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Borough of Kinnelon's housing program, as well as to the expenditure of revenues and implementation of the plan certified by COAH. All monitoring reports shall be completed on forms designed by COAH.

KINNELON BOROUGH  
HOUSING ELEMENT & FAIR SHARE PLAN  
May, 2010

**10. Ongoing collection of fees**

- a) The ability for the Borough of Kinnelon to impose, collect and expend development fees shall expire with its substantive certification unless the Borough of Kinnelon has filed an adopted Housing Element and Fair Share Plan with COAH, has petitioned for substantive certification, and has received COAH's approval of its development fee ordinance. If the Borough of Kinnelon fails to renew its ability to impose and collect development fees prior to the expiration of substantive certification, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (C.52:27D-320). The Borough of Kinnelon shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its substantive certification or judgment of compliance, nor shall the Borough of Kinnelon retroactively impose a development fee on such a development. The Borough of Kinnelon shall not expend development fees after the expiration of its substantive certification or judgment of compliance.