

BOROUGH OF FRANKLIN

**2010**

**AMENDED HOUSING PLAN AND  
FAIR SHARE PLAN**



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The Franklin Borough Planning Board  
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MAY 13, 2010

# ACKNOWLEDGEMENTS

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This document was adopted by the Franklin Planning Board on

5/17/10

*This copy conforms to the original of this report, which was signed and sealed by Kenneth P. Nelson PP/AICP – New Jersey Professional Planners License #1314; as required by NJSA 45:14A*



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# 1. Introduction – Purpose and Scope of the 2010 Amended Housing Plan and Fair Share Plan

This document is intended to be utilized in conjunction with Franklin Borough’s 2005 Housing Plan and Fair Share Plan. It is not a stand alone document and does not replace the aforementioned document adopted by the Planning Board in 2005. In short, this **Amended Housing Plan and Fair Share Plan** relies on much of the material contained in the 2005 document, particularly the demographic, housing and employment data, as well as several maps, most of which are still relevant and valid. This document, then, readopts the contents of the 2005 Housing Plan and Fair Share Plan, except where amended. Furthermore, this document, in conjunction with the 2005 Housing Plan and Fair Share Plan will be used to re-petition COAH for substantive certification, if the borough Council chooses to do so.

Since five years have elapsed since the adoption of the 2005 Housing Plan and Fair Share Plan, it was decided to begin this document with a general overview of the Borough, which sets the stage for what will follow. The following paragraphs, which are reproduced below in italics, are taken from the opening pages of the recently adopted 2009 Franklin Borough Master Plan Reexamination Report. They provide a very quick but accurate description of a community that is unique in many respects but also typical of the many small municipalities, throughout New Jersey, struggling with the variety of issues that are confronting communities in the early part of the 21<sup>st</sup> century.

*“The Borough of Franklin is a community of approximately 4.49 square miles located in the east central portion of Sussex County. Franklin can be described as a “rural” center that owes its existence and identity to iron and zinc mining operations, which dominated the Borough’s socio economic fabric for many decades, from the late 19<sup>th</sup> century to the middle of the 20<sup>th</sup> century. The Borough’s identity has also been closely linked to the many fluorescent minerals that are unique to Franklin and because of which the Borough is known as the “Fluorescent Mineral Capital of the World”. However, the mining operations are no longer in existence and the Borough has been in the process of forging a new identity in recent decades. Nevertheless, part of Franklin’s identity is still and probably always will be associated with mining and the fluorescent mineral deposits. And that association is perpetuated by the historical archives, features and remnants from that industry. It should also be noted that the Borough’s past land development policies and*

*current land use pattern were greatly influenced by how and where the actual mining occurred, who worked in the mines and who controlled them.*

*However, the Borough's current land use policies were established and have been governed by a series of master plans and other planning and zoning related documents dating back to the 1960's. The most recent comprehensive master plan for the Borough was adopted in 2003 and served as the basis for a number of zoning changes that were subsequently enacted by the Borough Council".*

*The 2003 Borough Master provides an in depth analysis of the Borough's demographics, based on the 2000 census data and earlier census information, the demographic data will only be briefly summarized here. Specifically, in terms of the total resident population, the 1990 number was 4,977 and earlier population levels were 4,486 in 1980, 4,236 in 1970 and 3,624 in 1960. However, the 1960 population represented a decrease from the population level ten years earlier and in fact the population levels in 1940 and 1930 were all higher than the 1960 number. So, the Borough's pre WW II population level steadily decreased through the 1940's, 50's and 60's, until rebounding when the 1970 census recorded more Franklin residents than anytime since 1930. Subsequently, over the next thirty years, the population of the Borough increased by approximately 17% and is now at the highest level (5,160 residents) that it has ever been. This increase, without question, has had some impact on the appearance and socio-economic characteristics of the community. The issues now facing the Borough are how much more the Borough will grow, in terms of the resident population, how will the community plan for that growth and how will it be accommodated.*

Among the most difficult and frustrating matters confronting Franklin, as well as many other municipalities in New Jersey, is the affordable housing issue and the rules and regulations of the NJ Council on Affordable Housing (COAH). This document, The Borough's 2010 Amended Housing Plan and Fair Share Plan is a response to COAH's revised Third Round Rules and the Borough's intention to remain under COAH's jurisdiction or the jurisdiction of any other governmental agency that may supersede COAH with respect to the oversight responsibilities concerning Franklin's affordable housing obligation.

As already noted, in 2003, the Franklin Borough Planning Board adopted a new master plan. Furthermore, in July of 2005 the Planning Board adopted and the Borough Council accepted a Housing Plan and Fair Share Plan, which subsequently served as the basis for the Borough's petition to COAH for substantive certification. That petition was accepted by COAH, however, before substantive certification could be obtained, an objection to the Borough's Plan was filed and the administrative remedies prescribed by COAH's rules resulted in months of delay, which ultimately derailed the Borough's substantive certification process. The details of the aforementioned objection or the identity of the objector are unimportant. Suffice it to say, that the Borough, the objector and COAH ultimately reached a consensus regarding the objector's concerns. However, by the time that matter was resolved COAH was no longer granting substantive certification because revisions to the Third Round Rules had been adopted by COAH and most municipalities, including Franklin, were required to comply with the provisions of those new rules.

Originally the deadline for compliance with COAH's revised Third Round Rules had been 12/31/08. However, any "Highlands" community was granted an extension to 12/8/09. This extension was based on an agreement reached between two state agencies - COAH and the Highlands Council - which was necessitated by the fact that the Highlands Regional Master Plan could have an impact on the development potential of many of the communities under the Highlands Council's jurisdiction. Furthermore, the Highlands Council and many of the Highlands municipalities were embarking at that time on what is known as the Plan Conformance process. So, the 12/8/09 extension was granted and it was further extended to 6/8/10.

However, as a result of the 2009 New Jersey gubernatorial election results, as well as proposed legislation (Senate Bill S-1) currently being debated by the NJ Senate and Assembly, the future of COAH and the whole approach to the affordable housing issue, is still in a state of confusion. Nevertheless, COAH's revised Third Round Rules and the 6/8/10 deadline are still in effect and if a municipality chooses not to comply, it runs the risk of losing the legal protections that COAH provides and subjecting itself to a possible "builders remedy" lawsuit

Franklin Borough has decided to comply with the 6/8/10 deadline, by preparing this document, even though the possibility exists that it may be necessary, yet again, at some future date to prepare another document in response to the Borough's affordable housing obligation. Recognizing that many changes may be on the horizon regarding the affordable housing issue, the Borough has chosen not to prepare an entirely new Housing Plan and Fair Share Plan in response to the revised Third Round Rules. Instead, in an effort to minimize the costs and time associated with the COAH compliance process, the Borough is basically readopting the 2005 Housing and Fair Share Plan and using this document, the 2010 Amended Housing Plan and Fair Share Plan to note where and how the revised Third Round Rules necessitate some modifications to the 2005 document.



In summary, this document's primary purpose is to bring the Borough into compliance with the provisions of N.J.A.C. 5:96 and 5:97, better known as COAH's Procedural and Substantive Rules. In doing so, the affordable housing issues and strategy specific to Franklin Borough will be addressed and presented herein and the intent of the Borough to meet its affordable housing obligation will thereby be clarified and updated, as per the provisions of the aforementioned regulations

## **2. The Highlands Regional Master Plan and It's Implications**

The NJ State Legislature created the NJ Highlands Council in 2004. Subsequently, the Highlands Council adopted the Highlands Regional Master Plan (the RMP) in 2008. The Highlands Region is divided into two categories – The Preservation Area, where the provisions of the RMP are mandatory and the Planning Area, where the RMP provisions are voluntary. Franklin is in the Planning Area category. However, the provisions of the RMP are being used by other state agencies to guide their policies and decisions and this is especially true with respect to the issue of affordable housing and compliance with COAH's revised Third Round Rules.

Specifically, COAH and The Highlands Council have reached an agreement that because the development constraints are so extensive throughout the Highlands Region (both the Preservation Area and Planning Area) great care must be taken not to direct inappropriate amounts of growth into environmentally sensitive areas, just to meet the affordable housing obligations of the respective Highlands municipalities. Consequently, the Highlands Council, in conjunction with many of the Highlands municipalities, has undertaken a detailed, municipality by municipality, analysis to determine the extent of new growth that may be possible, given the aforementioned constraints. Furthermore, related to this detailed analysis and as part of the Highlands Council's planning and implementation efforts, a process known as Plan Conformance has been established, which is intended to coordinate the planning policies at the local level, with those established by the Highlands Regional Master Plan.

Franklin Borough has decided to participate in the Plan Conformance process but has not as yet concluded if it will follow this effort to the end and bring its planning policies into full compliance with the Highlands Regional Master Plan. And since Franklin is a Planning Area municipality, there is no requirement that it do so, unlike the Preservation Area municipalities that are required to pursue and complete the Plan Conformance process.

One of the advantages to a municipality of fully complying with the Plan Conformance process is the real possibility that its affordable housing obligation will be reduced because of the aforementioned environmental constraints. However, in the case of Franklin, the Borough's affordable housing obligation,

based on the revised Third Round Rules, is not as onerous as it is for many municipalities. The reasons for this are several including the fact that Franklin has diligently addressed its affordable housing obligation in years past and so its “rehab” and “prior round” obligations are minimal, as well as the fact that COAH has already considered, to a certain extent, the environmental constraints that are present in Franklin. So, although it is not yet known the full extent to which the Borough’s affordable housing obligation might be reduced by completing The Highlands Council’s Plan Conformance process, it is anticipated that the reduction will not be that great. Consequently, the Borough is not relying, at this time, on any reductions in its affordable housing obligation for which it might be eligible because of the constraints identified in the Highlands Regional Master Plan. However, the Borough reserves the right to pursue this option at a later date, if it decides to enter into a Plan Conformance agreement with the Highlands Council.

Nevertheless, at this time, the Borough agrees in principle with the Goals and Objectives of the Highlands Regional Master Plan and adopts them as part of this Amended Housing Plan and Fair Share Plan. Those Goals and Objectives are as follows:

#### **HIGHLANDS RMP GOALS AND OBJECTIVES**

*In furtherance of Franklin Borough’s 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, houses, shopping, recreation, entertainment and multiple modes of transportation.*

### **3. The 2005 Franklin Borough Housing Plan and Fair Share Plan and It's Relationship To COAH's Revised Third Round Rules**

In 2006, Franklin submitted the 2005 Housing Plan and Fair Share Plan prepared under the original Third Round Rules to COAH for substantive certification. However, prior to obtaining substantive certification, as already noted an objection to the Borough's substantive certification petition was filed that halted COAH's review of the Franklin Plan. A separate lawsuit was also filed by that same objector. Although the lawsuit was subsequently settled, by that time, COAH was no longer approving substantive certification petitions, because of various legal challenges to COAH's rules, as well as new legislation that was being considered.

After 2006, both COAH's procedural and substantive rules were revised in response to the aforementioned litigation and legislation. This has resulted in a recalculation, by COAH, of the affordable housing obligation numbers at the municipal level. Generally, the municipal affordable housing numbers, in terms of the rehab obligation and the prior round obligation, have now increased for most municipalities. This is the case with respect to Franklin but the increases are not substantial. And with respect to the growth share obligation, the requirements have changed significantly with one (1) affordable unit now required for every four (4) market rate units built and one (1) affordable unit for every sixteen (16) new jobs created.

Furthermore, a new set of forms must accompany each municipal housing plan and a significant amount of additional documentation may be needed, depending on the strategy employed in a municipality's Housing Plan and Fair Share Plan. The municipal obligation can be reduced, as it has been possible to do in the past, via the use of credits, bonuses and other adjustments that COAH has devised. And an intricate web of interconnected provisions that establish a variety of maximums, minimums and assorted restrictions, must also be factored into any municipal plan.

In responding to the provisions of the revised Third Round Rules, it was decided, as already noted, to use the previously prepared and adopted 2005 Housing Plan and Fair Share Plan, as the core document in connection with the Borough's new submission to COAH. This approach, rather than restructuring the 2005 document and creating an entirely new Housing Plan and Fair Share Plan is being utilized for several reasons. First, at least two thirds or more of the 2005 document contains material that is relevant to the revised Third Round Rules, although it was prepared in response to the original Third Round Rules.

Secondly, it is unknown at this time if actions at the state level will require the preparation of yet another affordable housing document, in the very near future, thereby requiring the Planning Board to focus again, soon, on this issue. It was therefore decided to limit the amount of time that the Planning Board would have to expend on this current exercise.

Next, because of the uncertainties regarding COAH, at the state level that have existed since late 2009, the Borough was uncertain if the 6/8/10 deadline was a real one. By the time the Borough concluded that the 6/8/10 deadline must be met, it left little time to prepare an entirely new document.

Finally, given the fiscal constraints facing the Borough, it seemed that the best and most cost effective approach, from a financial and time management perspective, would be to prepare a relatively brief Amended Housing Plan and Fair Share Plan that would simply build on the 2005 document and continue to retain the 2005 document as part of the Borough's Master Plan.

Following is a summary of the COAH situation as it affects Franklin. The summary is divided into three parts and is presented as a review of:

- The Previous Obligation
- A Summary of the Previous Strategy
- The New Obligation

The details of the summary follow:

**A. The Previous Obligation**

The 2005 document was based on the following obligation that the Borough was required to meet

• Rehab Obligation	13 units
• Prior Round Obligation	6 units
• The Growth Share Obligation	<u>127 units</u>
<b>Total Obligation</b>	<b>146 units</b>

**B. Summary of the Previous Strategy**

The previous strategy used a combination of mechanisms to address the Borough’s obligation. Specifically, several 100% affordable projects – Concetta Towers, the Franklin House Senior Apartments project etc – according to the 2005 document would provide the Borough with a sufficient number of credits and bonuses, thereby significantly reducing the obligation. In addition, the Borough enacted a development fee provision and a growth share ordinance that will require all new projects to address their obligation, either “on site” or via an alternative acceptable to the Borough.

In short, the 2005 document took the position that the Borough’s affordable housing obligation was being fully addressed by the strategy outlined in the Housing Plan and Fair Share Plan and in fact the Borough’s strategy included additional credits that might be applied to any future obligation.

In connection with the Borough’s petition for substantive certification, COAH issued a report dated 4/13/06. The Borough Planning Consultant at the time, then prepared a “response report” dated July 2006. However, because the COAH review process was short circuited, it is unknown if all of the calculations and arguments, contained in the 2005 Housing Plan and Fair Share Plan and the 2006 COAH Response Report would have led to substantive certification, without further modification of the 2005 document.

### C. The New Obligation

As already noted, the Borough's rehab and prior round obligations have increased. However, COAH is now projecting less growth for the Borough, so the growth share obligation has been reduced. The new numbers then for Franklin are:

• Rehab Obligation	21 units
• Prior Round Obligation	9 units
• The Growth Share Obligation	<u>77 units</u>
<b>Total Obligation</b>	<b>107 units</b>

The Borough has not yet determined if it is in full agreement with the aforementioned numbers and may still challenge the growth share numbers in particular. However, at this time the Borough's amended strategy utilizes these numbers

The Borough's amended strategy, in response to these new numbers follows in the next section of this document.

## 4. The Borough's Amended Affordable Housing Strategy Based On The Revised Third Round Rules

The revised Third Round Rules have instituted a number of changes governing the preparation of Housing Plans and Fair Share Plans but not all of them have directly affected Franklin Borough. One example of a change that does not affect Franklin is the elimination of the Regional Contribution Agreement (RCA) provision, which was never a part of Franklin's affordable housing strategy. Other changes, however, do affect Franklin such as the significant increase in the number of affordable units required as a result of both projected residential and commercial growth, as noted earlier in Section 3 of this document. Of course if the projected growth does not materialize, then the increased obligation need not be addressed.

Franklin is still relying on the 100% affordable housing projects and the alternative living arrangements, described in the 2005 Housing Plan and Fair Share Plan, to address a substantial portion of the Borough's obligation. However, the COAH Response Report submitted by the Borough in 2006, indicates that the West Wind Hall complex is not part of the Borough's strategy, at this time because of the inability to verify the required information for that facility.

The 2005 Housing Plan and Fair Share Plan concluded that the Borough had a 0 obligation because of all of the credits available to it. In fact, there would be enough credits to apply to future obligations based on COAH's rules. It does not appear that the revised Third Round Rules change the Borough's situation appreciably. As already noted, the Borough's rehab obligation has only increased by 8 units and that

increased obligation, in addition to the original obligation of 13 units are being addressed via Franklin's active rehab program.

In terms of the increased prior round obligation, again the actual number is minimal and the three additional units required can be met via the credits available from the 100 % affordable and alternative living arrangements that exist within the Borough. It should also be noted that the 93 unit, BEBP 100 % affordable project, now known as Franklin House Senior Apartments, which was in the planning stages in 2005, has been constructed and is partly occupied.

With respect to the Borough's Growth Share obligation, the number has been reduced from 127 to 77. Of course, this number may be accurate or it may not be and based on what is known about approved projects, not yet built, it could actually be on the low side. There are a number of residential and commercial projects that have been approved within the Borough in recent years that suggest as many as 175 market rate units may be constructed at some future date. Furthermore, it is possible that as much as 300,000sq ft of commercial space may be developed, during the next several years based on approvals that have already been granted. Beyond these approved projects, there are virtually no additional development projects, of any significance, that are known to the Borough, with the exception of one proposal. That proposal involves a multi family project to be located in the Munsonhurst District portion of the Borough. The number of potential units is in excess of 500. However, no approvals have been granted and no development applications have been submitted as of this date. The only action that has been taken by the Borough has been to rezone this area, in accordance with a court ordered settlement agreement between the Borough and the property owners. It should also be noted that any development that occurs as a result of this rezoning will have a 20% affordable housing component associated with it.

The 2005 Housing Plan and Fair Share Plan did not include growth projections beyond 2013, which was all that was required at that time. The revised Third Round Rules now require projections to 2018. This document does not provide those projections – other than those in the preceding paragraph - partly because of existing time constraints but more importantly because of the complete uncertainty related to state and nationwide economic factors, as well the possibility that many of the approved projects will never proceed because of NJDEP and / Highlands Council restrictions

Suffice it to say, that whatever growth occurs within Franklin Borough between now and 2018 will have an affordable housing obligation attached to it. The Borough has addressed this issue in all of the resolutions of approval granted in recent years. And to reiterate a previous comment, the Borough also has sufficient credits from the 100 % affordable projects and alternative living arrangements, to partially offset any growth share requirements.

## 5. Summary

The Borough of Franklin has been an active “affordable housing” participant. It has not been a municipality that has avoided its responsibility. In fact, the Borough’s activities have actually resulted in the production of affordable housing within its boundaries, rather than just promising such housing, as described in some plan. At this time, this Amended Housing Plan and Fair Share Plan clarifies how the Borough will respond to the revised Third Round Rules, should those rules continue to remain in force. However, should the entire affordable housing obligation be restructured, Franklin is equally committed to absorbing more affordable housing, as per whatever new rules are enacted in the future, that apply to the Borough.