

## ADMINISTRATIVE ORDER

WHEREAS, on December 13, 1990, the New Jersey Supreme Court issued a decision, Holmdel Builders Assn. v. Holmdel Tp., \_\_\_ N.J. \_\_\_ (1990) in which the Supreme Court determined that the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. as well as the Municipal Land Use Law, N.J.S.A. 40:55D-1 et seq., and the police power, provided authority for municipalities to adopt ordinances that required mandatory fees for development; and

WHEREAS, that decision further stated that while the municipalities had the authority to adopt such ordinances, they could not exercise this authority until the Council on Affordable Housing (COAH) adopted regulations that set forth the standards and criteria for such ordinances. The Court reasoned that COAH, pursuant to the Fair Housing Act, was charged with reviewing and approving specific methods for compliance with the constitutional obligation and therefore it was appropriate to defer to COAH to set criteria to govern the use of mandatory developers fees as a way of providing affordable housing; and

WHEREAS, while the Court invalidated the ordinances before it, it did not order the municipalities to return the funds already collected pursuant to the ordinances; and

WHEREAS, it has been reported that approximately 75 municipalities have collected approximately \$30 million in fees pursuant to mandatory fee ordinances; and

WHEREAS, the League of Municipalities has advised COAH that developers are pressing some municipalities to return the fees collected prior to Court's Holmdel decision; and

WHEREAS, COAH recognizes that most of the fees collected were imposed during a robust building period and that, today, the economy has slowed considerably and construction was decreased dramatically; and

WHEREAS, in light of the above, COAH is of the opinion that it is premature for municipalities to return the collected fees before COAH has promulgated regulations to address this issue; and

WHEREAS, if these fees are returned at this time while COAH is developing its comprehensive regulations to set standards for mandatory fees ordinances, those fees may be forever lost to the municipalities; and

WHEREAS, COAH finds that a return of these funds could have a deleterious effect on a municipality's ability to provide affordable housing since the municipalities will have lost a significant resources dedicated specifically to affordable housing; and

WHEREAS, COAH further finds that without some COAH action to preserve the status quo pending promulgation of comprehensive COAH regulations, the developers who paid fees will institute numerous lawsuits against the individual municipalities for return of the fees; and

WHEREAS, COAH finds that this would be detrimental as it would cause the parties to expend considerable time and resources on the lawsuits; and

WHEREAS, the Supreme Court invalidated the ordinances not for lack of authority but for lack of implementing regulations; and

WHEREAS, the Supreme Court has stated that COAH has broad power to regulate the use of these mandatory fee ordinances; and

WHEREAS, COAH will promulgate regulations to deal with the standards and criteria for mandatory developer fee ordinances and those regulations will address how fees collected prior to the Holmdel decision are to be handled; and

WHEREAS, it is COAH's intent in issuing this order to preserve the status quo pending promulgation of comprehensive regulations on this issue; and

WHEREAS, many of the ordinances previously authorizing the assessment and collection of fees may satisfy the standards which may ultimately be adopted by COAH and may thus subject the fees heretofore collected to subsequent authorization and ratification by COAH and the municipalities; and

WHEREAS, COAH further will require that each municipality that has collected fees submit to COAH a duly adopted resolution that expresses the municipality's intent to submit its ordinance to COAH immediately upon COAH promulgation of the comprehensive regulations;

NOW THEREFORE BE IT ORDERED that any municipality that has collected fees for affordable housing pursuant to a mandatory development fee ordinance adopted prior to the New Jersey Supreme Court's decision in Holmdel Builder Assn v. Holmdel Tp., \_\_\_ N.J. \_\_\_ (1990) may keep those fees in a separate, interest bearing account provided that the municipality adopts and submits to COAH a duly adopted resolution of the municipal governing body expressing its intent to submit its ordinance to COAH immediately upon COAH promulgation of comprehensive regulation that set standards for such ordinances.

  
CHARLES GRIFFITHS  
Chairman

DATED: *January 28, 1991,*