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MEMBERS NJ AND NY BARS

March 10, 2014

Mr. Mark Neary, Clerk  
Supreme Court of New Jersey  
Hughes Justice Complex  
25 West Market Street  
P.O. Box 970  
Trenton, NJ 08625

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SUPREME COURT  
CLERK'S OFFICE

**RE: In Re the Adoption of N.J.A.C. 5:96 and 5:97 by the  
New Jersey Council on Affordable Housing  
Docket No. 67,126 (Opposition to Stay Application)**

Honorable Chief Justice and Associates Justices:

We represent Martin and MTAE, Inc. (MM), respondents to the March 10, 2014 emergent application filed by the Attorney General in the name of the New Jersey Council on Affordable (COAH)\*\* for a Stay of the Appellate Division's March 7, 2014 Order directing the adoption of COAH third round regulations on an expedited basis. For myriad reasons set forth below, the application should be denied. \*\* (As explained below, calling this COAH's application is a misnomer. There is no evidence that COAH has authorized or approved of this application.)

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PROCEDURAL HISTORY

Respondents Martin and MTAE (MM) incorporate by reference the procedural history contained in this Court's September 26, 2013 opinion In re Adoption of N.J.A.C. 5:96 and 5:97 by COAH, 215 N.J. 578 (2013) (In re 5:96 and 5:97).

In addition, at about 4:09 P.M. on February 26, 2014, the Attorney General filed an application to extend the five month deadline set forth in that decision.

In addition, MM incorporate by reference the procedural history recited in the March 7, 2014 Order of the Appellate Division in this matter.

STATEMENT OF FACTS

Respondents MM incorporate by reference the statement of facts contained in In re 5:96 and 5:97, except that COAH did not file a petition to this Court seeking to reverse the Appellate Division, cf. 215 N.J. at 598, but was a respondent. MM also incorporate by reference the statement of facts recited in the March 7, 2014 Order of the Appellate Division in this matter.

In addition, MM incorporate by reference the statement of fact and findings recited in the March 7, 2014 Order of the Appellate Division in this matter.

Further, MM point to the averments set forth in the February 26, 2013 of Commissioner Richard Constable, filed in support of the Attorney General's application for an extension of time.

The Constable Certification is almost entirely in the passive voice (e.g., "has been reviewed," "has been evaluated"), and uses mostly present participles. It is a concatenation of jargon. It is utterly deficient as evidence to support the application. There is no averment that it is made on personal knowledge. There is no specificity in any of its statements as to how he knows these facts, when these activities commenced and occurred ("has been and continues to review," "has been and continues to be used," etc.), how far along are these activities, and who precisely is undertaking them. The

certification lacks the statement "I am aware that if any of the foregoing statements made by me is wilfully false, I am subject to punishment."

Further, the March 7, 2014 Order of the Appellate Division held that "COAH has failed to offer any plausible explanation for its failure to carry out this Court's order" and adopt regulations as prescribed by the Appellate Division the Supreme court with the 5 month period following each court's decision. (The Constable certification had been submitted to the Appellate Division.)

To be sure, all five members of this Court who participated in In Re 5:96 and 5:97 acknowledged that the majority affirmed and endorsed the five month deadline of the Appellate Division, see 416 N.J. Super. 462 (App. Div., October 8, 2010), for COAH to *adopt* third round regulations, by employing the first and second round methodology that the agency used before it embarked in 2004 on its now decade-long failed insistence on the repeatedly invalidated growth share methodology. See 215 N.J. at 620 ("we endorse the Appellate Division's quick deadline for reimposing third-round obligations based on the previous rounds' method of allocating fair share obligations on municipalities. Fn18... "); at 620 ("We endorse the remedy imposed by the Appellate Division."); at 628, 631 (Hoens, J.,

dissenting) (observing that majority's remedy directs COAH to adopt regulations mirroring first two rounds).

Yet, the Constable Certification fails to explain precisely: (a) why COAH *failed* to meet the deadline, despite having more than three years to consider how to deploy its staff to meet this timeframe, and faced anew with the 5 month deadline; (b) why, given all the rationales the Appellate Division and this Court offered to justify the need for swift COAH action, COAH is deserving of an extension; (c) why, in the past 5 months, COAH has never met; (d) why COAH Chairman Constable waited until 51 minutes shy of 5 months to seek an extension; (e) when valid regulations would be *adopted*, not simply proposed and initially promulgated.

#### ARGUMENT

THE APPLICATION FOR A STAY OF THE APPELLATE DIVISION ORDER SHOULD BE DENIED BECAUSE THERE IS NO AUTHORITY OR STANDING OF THE APPLICANT TO BRING THE APPLICATION, AND THERE IS NO BASIS OR SUPPORT FOR THE STAY BECAUSE, AMONG OTHER REASONS, THE APPLICANT HAS UNCLEAN HANDS, IS BARRED BY LACHES, AND ANY PURPORTED IRREPARABLE HARM IS BOTH SELF-CREATED AND ABLE TO BE SELF-REMEDIED

This application must be understood in the context of certain well established legal principles. First, government must "turn square corners." In F.M.C. Stores v. Borough of Morris Plains, 100 N.J. 418, 426-27 (1985), this Court wrote:

"We have in a variety of contexts insisted that governmental officials act solely in the public interest. In dealing with the public, government must "turn square corners." Gruber v. Mayor and Tp. Com. of Raritan Tp., 73 N.J. Super. 120 (App.Div.), aff'd., 39 N.J. 1 (1962). This applies, for example, in government contracts. See Keyes Martin v. Director, Div. of Purchase and Property, 99 N.J. 244 (1985). Also, in the condemnation field, government has an overriding obligation to deal forthrightly and fairly with property owners. See Rockaway v. Donofrio, 186 N.J. Super. 344 (App.Div. 1982); State v. Siris, 191 N.J. Super. 261 (1983). It may not conduct itself so as to achieve or preserve any kind of *bargaining or litigational advantage* over the property owner. Its primary obligation is to comport itself with compunction and integrity, and in doing so government may have to forego the freedom of action that private citizens may employ in dealing with one another.

Similarly, the statutory provisions governing substantive standards and procedures for taxation, including the administrative review process, are premised on the concept that *government will act scrupulously, correctly, efficiently, and honestly*. It is to be assumed that the municipality will exercise its governmental responsibilities in the field of taxation conscientiously, in good faith and without ulterior motives." [emphasis added]

Second, in order to seek equitable relief, the applicant must come before the Court with clean hands.

Third, the hardship or harm asserted cannot be self-created, or capable of self-remedy.

Fourth, an opinion contains a holding; it may contain *dicta*. They are distinct.

This stay application must also be viewed with the court's eye on the Attorney General's answer to question 18 on the Emergent Application questionnaire.

A. This Court Lacks Jurisdiction to Consider the Application

This Court lacks jurisdiction to hear, let alone adjudicate, the application unless and until such an application is made to the Appellate Division. The Attorney General has never made such an application - although the March 7 Order effectively provides that Court's answer to such an application.

This Court affirmed and endorsed the Appellate Division remedy, which ordered COAH to adopt regulations within 5 months based on first and second round methodology. This Court did not retain jurisdiction. Consequently, any alteration or modification of this 5 month deadline must first be brought to the Appellate Division, which ordered it.

Primary jurisdiction over agency action or inaction lies in the Appellate Division. As well, in the same way that an application to alter or modify a trial court order and remedy that has been affirmed by the Appellate Division must be filed with the trial court (unless it was a motion for reconsideration, which must be filed within 20 days of the Order), so, too, a similar application to alter an Appellate Division order and remedy that has been endorsed by the Supreme

Court must be filed with the Appellate Division. (Of course, COAH did not timely move for reconsideration before this Court.)

Therefore, independent of any other consideration, the application must be denied.

Yet, with the March 7 Order having been issued, this Court can move on to the other reasons for why the Attorney General's stay application should be denied.

B. The Application Has Not Been Authorized By COAH

The Application lacks the authority of COAH, the party in interest. The Application is a nullity. It is an illegitimate and unauthorized exercise of power by the Attorney General and COAH's Chairman, who, each acting individually, lack standing and authority to act for, and speak on behalf of, the agency.

COAH is an independent agency in, but not of, the Department of Community Affairs. In re a Plan for the Abolition of COAH, etc., 214 N.J. 444 (2013). Mr. Constable is the agency's chairman. He is merely one member of the agency's board, which is statutorily mandated to have 12 members representing diverse constituencies. N.J.S.A. 52:27D-305a; In re a Plan for the Abolition of COAH, etc. (Fair Housing Act requires that Council membership represent balanced, cross-section of community and State interests representing different



perspectives). Currently, COAH has only 6 members, 6 vacancies, and several unrepresented constituencies. See [www.nj.gov/governor/admin/search/html](http://www.nj.gov/governor/admin/search/html), (last visited March 10, 2014).

However, it is the independent agency, acting as a board, not any single individual, which is empowered to act. COAH's By-laws authorize the Council - not any individual, nor the Attorney General - to act. See Article I, section 5, of COAH's By-laws, "General Powers" ("The property, affairs and business of the Council shall be managed by the Council." [emphasis added]). Further, COAH's Executive Director - not the Chairman - is granted certain duties under the By-laws, with respect to litigation. Yet, Article 4, section 5e of the By-laws provides:

"Legal Advice and Litigation. The Executive Director may request legal counsel to provide and, *subject to the Council's approval*, request legal counsel to initiate, intervene, or take any other action with regard to litigation on behalf of the Council." [emphasis added]

Unless the Council has met secretly, without notice, and in flagrant disregard of the Open Public Meetings Act, N.J.S.A. 10:4-6 et seq., there is no evidence that: (1) the *Council* approved any request by the Executive Director (let alone, any action by the Chairman) to file this stay application; (2) the *Council* approved the Executive Director's delegation of authority to file this stay application to anyone, as required

by the By-laws; and (3) the *Council*, itself, approved the filing of this stay application.

The Council's last meeting was May 2013. Neither the Council, which is directed at its annual meeting in January to give notice of its meetings, see By-laws, Article 2, sections 1-2, nor, inexplicably, the Chairman, who under Article 2, sections 3-4, is authorized to call special or emergency meetings, respectively, has convened any meeting of COAH since this Court's decision more than 5 months ago.

Consequently, the Application is a nullity because it lacks the Council's required authorization and approval - absent evidence to the contrary. The Attorney General has provided none.

C. The Application Should Be Denied on Its Merits.

The State and the Attorney General have not "turned square corners" and dealt scrupulously and forthrightly with the citizenry, especially the protected class of low and moderate income households, let alone, the Courts, unless and until the Attorney General can give answers in plain, simple English to the several questions left unanswered by the Constable certification, as set forth above, infra, at the end of the Statement of Facts section.

In its Order, the Appellate Division held that there was no plausible explanation for COAH's failure to meet the 5 month deadline. A last minute application to extend time might be explained if the applicant were very close to meeting the deadline, and at the very end realized it needed a few more days. In contrast, here, the application requests nine additional weeks just to *propose* regulations, 13 more weeks to promulgate them in the New Jersey Register, and it offers no definite date - or even an educated estimated date - for when the regulations might be adopted. (If past practice and experience are any guide, under the best case scenario, if proposed regulations were published in the June 2, 2014 New Jersey Register, there might be final adopted regulations published around September 2014. Of course, the agency's modus operandi and track record these past years undercuts any rationale expectation that this best case scenario will ensue.)

Yet, this Court noted that COAH's counsel - who has represented COAH for about the past twenty years, and is familiar with its rulemaking procedures and experiences - represented to this Court at oral argument in November 2012 that it would take about 30 days to propose new regulations based on the earlier rounds's methodology, and that the Court noted this representation. See 215 N.J. at 620, n.18.

Without answers to these basic questions, the Attorney General reaches with unclean hands for equitable relief. As noted above, the myriad deficiencies and unanswered questions in the lone Constable certification are glaring and manifest. In addition, the certification lacks the averment that it was made on personal knowledge, R. 1:6-6, and gives no indication that it was made on personal knowledge. The certification lacks the necessary language respecting wilfully false statements. See R. 1:4-4(b). The certification is altogether vague and imprecise. In sum, the certification fails to offer competent, credible evidence to support the underpinnings of this application that the Attorney General has dealt scrupulously and forthrightly, and not sought simply to obtain a litigational advantage.

Further, in this particular case; in this particular field of affordable housing; and with this agency's track record of inexplicable delay, it is no answer for the Attorney General to argue that since the application to extend time was filed within the 5 month period, it was timely to effectively stay 5 month period.

Under all of these particular and exceptional facts and circumstances, this approach is gaming the system. It does not accord with the guidance and direction of FMC Stores, let alone general jurisprudence, and litigational strategy and conduct

expected of the State's highest ranking law officer and advocate. The Stay application, bootstrapped on to the application for an extension, is effectively a demand for a stay of undefined length and automatic reconsideration of the Court's 5 month deadline. For if the application is denied, then what? Would not the Attorney General ask for a re-setting of deadlines?

As a matter of fairness, especially to the protected class, the denial of a stay and/or the application for an extension of time should leave the Attorney General with no remedy at all, and instead involve treating COAH as the dysfunctional body it is, until COAH decides to act, while the Court directs that all towns shall be given protection from builder's remedy suits for a short time to file for declaratory judgments under N.J.S.A. 52:27D-313, and that any immunity orders entered by trial courts expire with the deadline to file for declaratory judgments.

The same facts also demonstrate that the need for a stay and the claimed irreparable harm are all self-created and can all be self-remedied.

What harm is there if COAH has to meet and has to begin to complete promptly work on the remand order, while the Court considers the motion for extension of time?

In this respect, the Attorney General's answer to question 18 is telling. While noting that this Court observed that there could be other lawful methodologies beside the one used in the first and second rounds, "contrary" to this Court, the Appellate Division ordered the use of the first and second round methodology in order to fashion third round regulations.

Suffice it to say, this answer conflates an opinion's holding and *dicta*. As noted above, not a single Justice who participated in In re N.J.A.C. 5:96 and 5:97 agrees with the Attorney General. Rather, all read the majority holding as affirming and endorsing the Appellate Division remedy that COAH adopt third round regulations, based on the methodology of the first and second rounds, within 5 months of the issuance of the opinion.

The predicament of the Attorney General is entirely self-created. It slept on its rights. It waived its rights. It failed to move timely for reconsideration or for an extension when it would have prudent, reasonable, and tenable to do so.

Further, the entire purported irreparable harm is able to be self-remedied. By convincing COAH to moving forward and build on the purported work that the Constable certification claims to have been done already, the Attorney General can assist COAH to

take self-help steps and avoid any further harm that he states awaits them.

Still further, insofar as balancing the relative hardships and inequities, the Attorney General ignores the continuing harm to the constitutional interests of the protected class, the harm to the continued delay in municipalities' addressing their fair share obligations.

Further, with respect to the balance of hardships, the Stay application only further burdens and harms the protected class via untenable delay. The admonition in Hills Development Co. v. Bernard Tp., 103 N.J. 1, 23 (1986), that if the Act achieves nothing but delay, the judiciary will be forced to act, was reiterated by this Court in In Re 5:96 and 5:97. COAH's inexplicable delays - including its latest during the past 5 months - have become notorious. The rights of the protected class of low and moderate income households and the constitutional obligations of municipalities to provide their fair shares of affordable housing clearly predominate over the absence of any rationale that the Attorney General offers for further delay. These rights and obligations should no longer be held hostage to the continuing delays occasioned by COAH's recalcitrance to comply with Court orders, let alone to plainly explain its delays.

## CONCLUSION

The Attorney General's Stay Application in the name of COAH should be denied. This Court lacks jurisdiction. Further, the Application is without authorization, and COAH lacks standing. Moreover, for numerous reasons discussed above, the Application is untenable, fails to justify the Attorney General's burden of showing that it is entitled to equitable relief and that its purported hardships predominate over those suffered by the protected class from further delay.

Respectfully,

*Jeffrey Kantowitz*

Jeffrey Kantowitz

Cc: Service List



# APPENDIX

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COAH By-Laws

1a

Kevin Walker  
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BY-LAWS  
OF THE  
NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING

PREAMBLE

The New Jersey Council on Affordable Housing was created by the "Fair Housing Act", P.L. 1985 Chapter 222, N.J.S.A. 52:27D-301, et seq., (the Act), and pursuant to S6A of the Act, N.J.S.A. 52:27D-306, is authorized to establish and from time to time alter such plan of organization as it may deem expedient for its operation and internal management and for the conduct of its affairs and business. The following shall constitute and comprise the full and complete by-laws of the Council on Affordable Housing.

ARTICLE ONE - THE COUNCIL ON AFFORDABLE HOUSING

Section 1. Name. The official name of the Council shall be the "New Jersey Council on Affordable Housing," (the "Council").

Section 2. Seal of the Council. The seal of the Council shall be in the form of a circle and shall bear the words "New Jersey Council on Affordable Housing-Established 1985" and shall be of such design as determined by the Council.

Section 3. Office of the Council. The principal office of the Council shall be located at 101 South Broad Street, Trenton, New Jersey 08625. The Council may have offices at such other places within the State of New Jersey as the business of the Council may require and as it may from time to time designate by resolution.

Section 4. Fiscal Year. The fiscal year of the Council shall be the same as that of the State of New Jersey, which includes the 12 month period commencing at 12:01 a.m. on July 1 of each year and ending at 12:01 a.m. the succeeding July 1.

Section 5. General Powers. The property, affairs and business of the Council shall be managed by the Council to the extent of the powers and authority allocated to the Council by the Act.

## ARTICLE TWO-COUNCIL MEETINGS

Section 1. Regular Meetings. All regular meetings of the Council shall be conducted in accordance with the provisions of the Open Public Meetings Act, P.L. 1975 c. 231, N.J.S.A. 10:4-6 et seq., at a time and place to be designated by the Council. Adequate notice as defined under the Open Public Meetings Act, shall be given by the Secretary/Treasurer.

Section 2. Annual Meeting. The annual meeting of the Council shall be held at the principal office of the Council in January at which the Council shall take the following actions:

a. Adopt the annual notice of meetings required by the Open Public Meetings Act; and

b. Elect a Vice-Chairperson, a Second Vice-Chairperson and Secretary/Treasurer; and

c. Authorize delegations of power and authority to the Executive Director; and

d. Transact such other business as may properly come before the meeting.

Section 3. Special Meetings. Special meetings of the Council may be called at any time by the Chairperson and must be called by the Chairperson or upon receipt of the request of three other members of the Council. The Chairperson may fix any time and place as the time and place for holding any special meeting. The Executive Director shall be informed of the call of such special meeting sufficiently in advance to permit the Secretary/Treasurer to give adequate notice as defined in the Open Public Meetings Act. Notice of such meetings shall be in writing and shall be given personally or by mailing to each member of the Council at an address as it appears in the records of the Council.

Section 4. Emergency Meetings. Emergency meetings may be called by the Chairperson at any time in accordance with the Open Public Meetings Act.

Section 5. Quorum. At any meeting of the Council a quorum shall constitute a majority of the appointed members for all purposes. No vacancy in the membership of the Council shall impair the right of a quorum of the members to exercise all the powers and perform all the duties of the Council.

Section 6. Manner of Acting. On any question presented, the number of members present shall be recorded by the Secretary/Treasurer. Actions may be taken and motions and resolutions adopted by the Council upon the affirmative vote of a majority of the members present.

Section 7. Resolutions to be in Writing. All resolutions adopted by the Council shall be set down or memorialized in writing and shall be copied in or attached to a journal of the proceedings of the Council with a certification of authenticity by the Secretary/Treasurer or other authorized officer of the agency.

Section 8. Certification of Resolutions. Each member of the Council and each officer of the Council is authorized to certify, when required, the records, proceedings or resolutions of the Council.

### ARTICLE THREE-OFFICERS

Section 1. Officers. The officers of the Council shall be a Chairperson, a Vice-Chairperson, a Second Vice-Chairperson, a Secretary/Treasurer and an Executive Director and such other officers as may be designated from time to time by the Council. The Vice-Chairperson, Second Vice-Chairperson and Secretary/Treasurer shall be elected annually. These officers shall hold their offices for such terms as shall be determined by the Council and shall exercise such powers and perform such duties as shall be determined from time to time by the Council.

Section 2. Selection and Terms of Office. The Chairperson shall be the Commissioner of the Department of Community Affairs. The Vice-Chairperson, Second Vice-Chairperson and Secretary/Treasurer shall be elected annually by a majority vote and shall serve a term of one year. The Secretary/Treasurer need not be a member of the Council. The Executive Director shall not be a member of the Council and shall be designated at any annual, regular or special meeting and shall hold office for such term or period of time, and at such salary, as the Council shall determine.

Section 3. Vacancies. In case any officer of the Council, other than the office of Chairperson, becomes vacant by death, resignation, removal or any other cause, or in the event additional offices are created by the Council, the members may at a meeting elect an officer to fill such vacancy or additional office, and the officer so elected shall serve until the next annual meeting of the Council and until the election of a successor.

#### ARTICLE FOUR-DUTIES OF OFFICERS

Section 1. Chairperson. The Chairperson shall preside at all meetings of the Council and rule on all questions of order, subject to appeal to the members. The Chairperson shall submit such recommendations as the Chairperson may consider proper concerning the business, duties and affairs of the Council. The Chairperson may execute on behalf of the Council, documents, contracts and other instruments by manual or facsimile signatures and shall have such other powers and shall perform such other duties as the Council may prescribe from time to time by resolution.

Section 2. Vice-Chairperson. The Vice Chairperson shall preside over all meetings in the absence or disability of the Chairperson and shall perform the duties of the Chairperson in the event the office of Chairperson is vacant or in the event the Chairperson is unable to perform such duties by reason of illness, disability or absence. The Vice-Chairperson shall have such other powers, perform such other duties as the Council may prescribe from time to time by resolution.

Section 3. The Second Vice-Chairperson. The Second Vice-Chairperson shall preside over all meetings in the absence or disability of the Chairperson and Vice-Chairperson and shall perform the duties of the Chairperson in the event the offices of Chairperson and Vice-Chairperson are vacant or in the event the Chairperson and Vice-Chairperson are unable to perform such duties by reason of illness, disability or absence. The Second Vice-Chairperson shall have such other powers and perform such other duties as the Council may prescribe from time to time by resolution.

Section 4. Secretary/Treasurer. The Secretary/Treasurer shall act as clerk of all meetings of the Council, record or cause to be recorded all the proceedings of the meetings of the Council, and cause such records to be kept in such a manner as to insure their permanence. The Secretary/Treasurer shall attend to the giving of notices of the Council and shall have charge of such books, documents and papers as the Council may determine and shall have the custody of the Council's seal and the power to affix and attest the same. The Secretary/Treasurer may adopt a facsimile signature to be utilized in the performance of assigned responsibilities. The Secretary/Treasurer shall in general perform all the duties incident to the office of Secretary/Treasurer, subject to the control of the Council and shall have such other powers to do and perform such other duties as the Council may prescribe from time to time by resolution. Under the direction of the Chairperson, the Secretary/Treasurer shall also prepare any reports, for approval by the Council, to be submitted to the Legislature pursuant to the Act. The Secretary/Treasurer shall also keep a record, containing the names alphabetically arranged, of all persons who are members of the Council showing their places of business and places of residence and dates of membership or dates of designation. The Secretary/Treasurer shall have such additional powers and duties as the Council may prescribe from time to time.

Section 5. Executive Director. The Executive Director, subject to the actions of the Council, shall have general supervisory and management responsibility over all the activities of the Council. The Executive Director shall have the following powers and duties in addition to any other duties assigned by these by-laws or by resolution of the Council:

a. Delegation. The Executive Director may delegate, in whole or in part, any power, authority or discretion conferred upon the Executive Director by any of the provisions of these by-laws or by any resolution adopted by the Council, to any other officer or member of the staff, provided however, that the Council must approve in advance any such delegation. The Executive Director shall maintain a permanent record of all such delegations of authority and power.

The Council authorizes the following delegations of authority and power to the Executive Director that shall be reviewed and approved at the annual meeting:

1. Approval of consistent development fee ordinances and amendments;
2. Approval of consistent development fee spending plans and amendments;
3. Appointment of Council mediators;
4. Approval of one mediation extension for up to 60 days;
5. Signing of Council approved orders at request of Chairperson.

All such actions shall be reviewed by both the Deputy Executive Director and the Deputy Attorney General. A list of all such actions that occurred prior to each Council meeting shall be attached to the monthly agenda of the Council.

b. Personnel. The Executive Director may:

(i) Create, determine and prescribe the duties of new and existing positions and the qualifications for appointments made thereto:

(ii) Make appointments to the Council staff;

(iii) Make promotions and demotions within the staff;

(iv) Terminate appointments to the staff;

(v) Grant or authorize the granting of vacations, sick leave, other leaves of absence and take other necessary actions affecting personnel.

c. Financial. The Executive Director shall supervise the procedures for procurement of all supplies, material and equipment needed for the efficient and effective operation of the Council and shall authorize or arrange for expenditures pursuant to contracts or purchase orders, upon such terms and conditions as may be deemed proper, for said supplies, material and equipment, when such expenditures do not exceed \$7,500.

d. Intervention Before Legislative and Regulatory Bodies. The Executive Director may authorize the intervention and participation on behalf of the Council in any proceeding before Federal and State legislative or regulatory bodies or any other administrative tribunal of the United States or the State of New Jersey or any subdivision thereof.

e. Legal Advice and Litigation. The Executive Director may request legal counsel to provide advice and, subject to the Council's approval, request legal counsel to initiate, intervene or take any other action with regard to litigation on behalf of the Council.

f. Hearings. The Executive Director may, with prior Council approval, authorize and hold hearings as appropriate under the Act or under State law.

g. Scope of Administrative Powers. The powers vested herein in the Executive Director shall not be construed or deemed to affect the power of the Council to act in any case.

Section 6. Removal of Officers. Any officer or agent of the Council other than the Chairperson may be removed by the Council whenever in its judgment the best interests of the Council will be served thereby. The removal of a member of the Council from an office thereof shall in no way constitute such member's removal as a member of the Council.



#### ARTICLE FIVE-COMMITTEES

Section 1. Appointment. The Council may appoint such committees as may be necessary to facilitate its purposes from time to time.

#### ARTICLE SIX-AUTHORIZED SIGNATURES

The Chairperson and in his/her absence the Vice-Chairperson or Second Vice-Chairperson, and such other members or officers as may be authorized by resolution of the Council, or as are authorized by these by-laws, may execute on behalf of the Council all documents, contracts and other instruments as may be authorized by these by-laws, the Act or any resolution of the Council. The Chairperson, Vice-Chairperson and Second Vice-Chairperson and such other members or officers as may be so authorized by the Council or these by-laws may each adopt a facsimile signature to be utilized in the execution of such documents, contracts and other instruments.

#### ARTICLE SEVEN-ADDITIONAL STAFF

The Council shall name and appoint, from time to time, such additional officers, consultants and employees as it may require.

#### ARTICLE EIGHT-ADOPTION, AMENDMENT OR REPEAL OF BY-LAWS

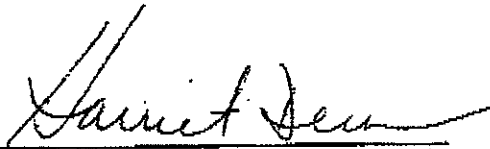
These by-laws may be adopted, altered, amended or repealed at any meeting of the Council by the affirmative vote of a majority of the members present provided that notice of the proposed action shall be given at least seven days prior to the meeting of the Council at which the motion to adopt such resolution is made.

#### ARTICLE NINE-SUSPENSION OF BY-LAWS

Any and all provisions of these by-laws may be suspended by unanimous consent of the members present at any duly constituted meeting of the Council.

**CERTIFICATION**

The foregoing is a true copy of the By-Laws duly adopted by the New Jersey Council on Affordable Housing at a meeting of the Council held on December 16, 1985 and amended on February 7, 1996.

  
\_\_\_\_\_  
Harriet Derman, Chairperson

ATTEST: