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To: Mayor and Borough Council
CC: Robert Bruschi
From: Maeve E. Cannon, Esq.
Date: September 28, 2010
Re: Princeton Borough Revaluation Concerns

The recent revaluation of real property in Princeton Borough (“Borough”) has garnered a considerable amount of attention and concern from residents due to the magnitude of the change in some valuations, and a seemingly disproportionate impact on smaller properties that had historically been assessed at much lower values. Concerns have been raised as to the methodology of the assessment, itself, as well as the ultimate impact on many taxpayers who face large tax increases as a result of the increased assessment on their home. As a result, the Mayor and Borough Council has asked this firm to research its decisional options as to the current revaluation, whether it may be thrown out and a new revaluation conducted, and, in the alternative, what options may the Borough pursue to mitigate the effects of the revaluation on the citizens most impacted, including a reverse mortgage or other loan type program. The questions arising out this inquiry are answered below, following an overview of New Jersey law relating to property taxation and conducting revaluations of tax districts.

I. BACKGROUND

The New Jersey Constitution requires that all property be assessed uniformly “according to the same standard of value.” N.J.Const. art. VIII, § 1. “Taxpayers must be treated in a manner comparable to other similarly-situated taxpayers.” Regent Care Center, Inc. v. Hackensack City, 8362 N.J.Super. 403, 412 (App. Div. 2003) (citing Township of West Milford v. Van Decker, 120 N.J. 354, 361 (1990)). In other words, all property within a tax district is taxed at the same rate based upon its assessed value. When land values rise in an area, they begin to exceed the assessed value and the ratio of the assessed value to actual value begins to skew. Properties that are assessed at values closer to their actual value begin to subsidize properties with assessments that are far below the market value, since a uniform tax rate is applied to both properties based on the assessed value, which in one case becomes understated. When a long time passes before that disparity in value is corrected, the resulting impact on the homeowner may be significant.

A revaluation is a procedure for totally revaluing all of the line items on the assessment lists at the same time to a common level. 35 N.J. Prac., Local Government Law § 16:16 (4th ed.). Revaluations must comply with regulations promulgated by the Director of the Division of Taxation and must be conducted by an outside contractor pursuant to a contract approved by the Director of the Division of Taxation and the County Board of Taxation. N.J.S.A. 54:1-35.35, 54:1-35.36. see also Schumar v. Borough of Bernardsville, 347 N.J.Super. 325 (App.Div. 2001).

Revaluations may be voluntarily undertaken by the municipality or the County Board of Taxation may order a revaluation with approval of the Director of the Division of Taxation. N.J.A.C. 18:12A-1.14(a), (b); N.J.S.A. 54:1-35.36. Whether the revaluation is necessary is determined pursuant to standards promulgated by the Director, Division of Taxation. N.J.S.A. 54:1-35.35; N.J.A.C. 18:12A-1.14(b)(1). Here, the Borough was ordered by the County Board of Taxation to conduct a revaluation after its average tax assessment valuation ratio fell to 39.53%. According to ASI, values of higher end properties were assessed at an average of 40.71% of market value. Entry level properties were assessed at an average of 29.82% of value. As a result, in some cases, when a property sold, its assessed value was only 29.82% of its sale price. For these reasons, the County's decision to Order the Borough to conduct the revaluation appears to have been supported by the sales data. It is our understanding that the Borough's previous revaluation occurred some 14 years ago.

With respect to voluntary revaluation, when a taxing district (i.e. municipality) proposes a revaluation, it must notify, in writing, the assessor and the county board of taxation of its intent and must obtain approval of the contract for revaluation from the Director, Division of Taxation as required by law. N.J.A.C. 18:12-1.14(a); N.J.S.A. 54:1-35.35, et seq.; N.J.A.C. 18:1203; N.J.S.A. 54:4-23. Thus, other than notifying the County and State of its intent, and having the revaluation contract itself approved, nothing prevents a municipality from conducting a voluntary revaluation, if it chooses to do so. However, if the county board of taxation determines that there is a need to order a district to revalue all real property, it must submit the proposed order to the Director, Division of Taxation for approval and outline the reasons for revaluation. N.J.A.C. 18:12-1.14(a). Should the order be approved, the board is charged with implementing the revaluation. Id.

Firms engaged in revaluating real property in a municipality must comply with the administrative regulations setting standards for revaluation. See N.J.A.C. 18:12-4.8. Revaluation firms are the agents of the municipal tax assessor and all determinations by the firm must be submitted to the tax assessor and approved thereby. Id. "All determinations made by the firm shall be submitted to, and approved by, the municipal tax assessor." Id. By statute in New Jersey, the municipal tax assessor "shall have the duty of assessing property for the purpose of general taxation." N.J.S.A. 40A:9-148.1.

"Where a municipality disagrees with the assessments of its assessor, the appropriate recourse is by way of appeal of those assessments." Freehold Borough v. WNY Properties L.P., 20 N.J.Tax. 588, 602 (Tax Court 2003) (citing Arace v. Town of Irvington, 75 N.J.Super. 258 (Law Div. 1962)). "Moreover, it is the municipality and not the assessor which controls the decision to appeal . . ." Freehold Borough, 75 N.J.Tax. at 602 (citing Clinton Township Citizen's Comm., Inc. v. Mayor of Clinton Twp., 185 N.J.Super. 343 (Law Div. 1982)). However, Local governing bodies or officials cannot interfere with the tax assessor in performance of his or her

duties. Freehold Borough, 75 N.J.Tax. at 602 (citing Jeffers v. City of Jersey City, 8 N.J.Tax. 313 (1986)).

When an “assessment ratio applied to a parcel substantially exceeds the assessment ratio generally applied in a municipality, the taxpayer is entitled to relief.” M.I. Holdings, Inc. v. Jersey City, 12 N.J.Tax 129 (Tax Ct. 1991). Generally, “when a taxpayer seeks discrimination relief, the courts generally apply the rules set down in N.J.S.A. 54:51A-6 . . . (commonly referred to as ‘Chapter 123’). Brown v. Borough of Glen Rock, 19 N.J.Tax. 336, 373 (Tax Ct. 2001). N.J.S.A. 54:51A-6 “provides for a presumptive common level of assessment, i.e., the Director’s average ratio.” Id. However, this statute is inapplicable in revaluation years. Id. (citing N.J.S.A. 54:51A-6(d)); M.I. Holdings, Inc., 12 N.J.Tax 129. Its inapplicability arises from the presumption that in revaluation years, “all properties are assessed at true value, i.e., 100% of fair market value.” Brown, 19 N.J.Tax at 373.

However, New Jersey courts have found that despite the inapplicability, “the Legislature did not intend to deny a taxpayer relief from a discriminatory assessment in a revaluation year.” M.I. Holdings, 12 N.J.Tax. at 142 (citing Sunshine Biscuits, Inc. v. Sayreville, 4 N.J.Tax 486 (Tax Ct. 1983)). “Indeed, no statute could foreclose a taxpayer’s constitutional right to discrimination relief.” M.I. Holdings, 12 N.J.Tax at 142 (citing Murnick v. Asbury Park, 95 N.J. 452 (1984)). “Relief from a discriminatory assessment may be afforded under “Chapter 123” in a revaluation year but only in ‘the most extreme or severe circumstances.’” Id. (quoting Murnick v. City of Asbury Park, 95 N.J. 452, 462 (1984)).

For example, in M.I. Holdings, Inc. v. Jersey City, 12 N.J.Tax 129 (Tax 1991), the challenging taxpayer was able to overcome the 100% presumption in a revaluation year and obtain relief from the revaluation. The taxpayers overcame this presumption by presenting to the court a two-year ratio study that demonstrated a common level of assessment below 100%. Id. at 142-43. Moreover, the Director, Division of Taxation conducted a six-month study of the subject municipality, analyzing 769 property sales. Id. at 141. The study showed the “absence of a common level” in that period, meaning that the assessments, for the tax year at issue, were not uniformly made at value Id. 141-42 (citing Sunshine Biscuits, 4 N.J.Tax 486; Highview Estates v. Englewood Cliffs Boro., 6 N.J.Tax 1983)). Accordingly, the court found the taxpayers entitled to relief. M.I. Holdings, 12 N.J.Tax at 142. As a remedy, the court declined to apply the ratio presented by the taxpayers and instead applied the Chapter 123 ratio to the court’s finding of true value of the property. Id.

Importantly, and consistent with one of the recommended mitigation strategies included in the next section, the municipality’s tax assessor undertook a reassessment in the year following the revaluation year in response to his dissatisfaction with the revaluation firm, which was then challenged as an impermissible “spot assessment.” Id. at 144. The court affirmed the reassessment by the assessor, reasoning that the assessor made assessment revisions for “legitimate reasons.” Id. at 145. The court explained:

[The municipality’s] assessor was confronted with a poorly done revaluation for 1988. An indication of the poor quality of the coefficient of deviation after the revaluation firm’s work, but before the assessor’s corrections of 34%. . . The assessor did not single out any property or even any class of property for special

treatment. His changes were made across the entire spectrum of property classes. Moreover, his change in the subject property's land assessment was based upon his knowledge of the market in the area in which the subject was located.

Id.

Thus, where the assessor has valid reasons for dissatisfaction with a revaluation, he/she may undertake a reassessment in the following year.

II. QUESTIONS AND ANSWERS

1. Is the Borough required to conduct a revaluation?

- a. Under New Jersey law, a taxing district can voluntarily undertake a revaluation, or the county board of taxation may find it necessary to conduct a revaluation and seek to order the district to do so. In such case, the county board must obtain approval from the Director, Division of Taxation to order the taxing district to conduct a revaluation. N.J.A.C. 18:12-1.14(a). It is our understanding that the County Board ordered the Borough to conduct the revaluation here. If ordered to conduct the revaluation, the Borough must do so.

2. Can the Borough reject the results of the revaluation? Can the Borough modify the revaluation?

- a. The Borough does not have the authority to reject or modify the revaluation. Such determination is under the province of the municipal tax assessor pursuant to New Jersey statute. Governing bodies have "exclusive power to act in the name of the municipality except where the duties of certain officers are fixed by statute." Clinton Tp. Citizen's Comm., Inc. v. Mayor of Clinton Tp., 185 N.J.Super. 343 (Law. Div. 1982). "[T]he powers and duties of an assessor are prescribed by the Legislature, which has directed that the assessor independently determine the full and fair value of all real property in a taxing district." Freehold Borough, 20 N.J.Tax at 602. New Jersey courts have emphasized that "the municipality and the assessor have distinct and separate roles in the assessment and taxation of property." Id. at 601. As such "local municipal governing bodies may not interfere with the assessor in the performance of his or her duties." Id. (citing Jeffers, 8 N.J.Tax at 317; Arace, 75 N.J.Super. at 268-69).
- b. By statute, the municipal tax assessor has the duty to assess property for the purpose of general taxation. N.J.S.A. 40A:9-148.1. The final determination as to the ultimate assessment on any property in a revaluation is solely within the discretion of the tax assessor of the jurisdiction. Id.; N.J.A.C. 18:12-4.8.
- c. Accordingly, the municipality may not alter or reject the revaluation because it is within the duties specifically delegated by the Legislature to the municipal tax assessor. "Where a municipality disagrees with the assessments of its assessor, the appropriate recourse is by way of appeal of those assessments." Arace, 75

N.J.Super. at 268-69. An appeal must be filed by May 1 of the year in question, or within 45 days of the bulk mailing of the notification of assessment.

3. Can the Borough conduct another revaluation?

- a. The Borough may voluntarily propose to conduct a revaluation. It must notify in writing the assessor and the county board of taxation of its intent and must obtain approval of the contract for revaluation from the Director, Division of Taxation as required by law. N.J.A.C. 18:12-1.14(a); N.J.S.A. 54:1-35.35, et seq.; N.J.A.C. 18:1203; N.J.S.A. 54:4-23. The Borough is free to conduct a second revaluation in the following year. However, a second revaluation may be costly, and may not provide better results if the methodology of the original revaluation is not in question.

4. Can anybody legally challenge a revaluation?

- a. Pursuant to N.J.S.A. 54:3-21, in a taxing district (like Princeton Borough) where a municipal-wide revaluation has been implemented, **a taxpayer or a taxing district** may appeal before or on May 1 to the county board of taxation by filing a petition of appeal. If the assessed valuation of the subject property is greater than \$1,000,000, the complaint may be filed directly with the State Tax Court. Any party dissatisfied with the county board's judgment may seek review of that judgment in the tax court pursuant to the provisions of the State Tax Uniform Procedure Law. N.J.S.A. 54:3-26b.

5. What can we do to require ASI to disclose information to taxpayers?

- a. Regulations also provide for a taxpayer review procedure whereby taxpayers are provided with an opportunity to review the proposed assessment of the property. N.J.A.C. 18:12-4.9. This regulation provides that "[t]he firm shall provide taxpayers with an opportunity to review the proposed assessment of their property." N.J.A.C. 18:12-4.9(a). The revaluation firm is required under this statute to mail a written notice, approved by the tax assessor, "indicating the appraised value of the property and advising the taxpayers of their right to attend an individual informal review held at a designated location within the municipality." N.J.A.C. 18:12-4.9(b)-(c). ASI was retained under contract with the Borough, and the Borough retains the purse strings. If ASI has not been forthcoming with information on individual assessments and the methodology for determining those values, the Borough can consider withholding payment under the contract and putting ASI on notice that the Borough considers it to be in breach of its contract.

6. How to mitigate the effects of revaluation?

- a. Reduce interest rates on delinquent property taxes and annual delinquent assessments: The Council has already done this by Resolution.

- b. Statutory phase –in program: As raised by Councilwoman Crumiller in previous communications, the Revaluation Relief Act of 1993 permits any municipality to phase in extreme property tax increases arising from a revaluation over a three-year period. 43 N.J.Prac., State and Local Taxation § 9.8. The tax impact of the revaluation would be distributed over a three year period through credits issued to eligible property owners. Id. Eligible property is defined as any parcel containing a structure or building “located in an area declared in need of rehabilitation.” Such an area is defined as: (1) a municipality or portion thereof in which at least 60% of the housing units are at least 30 years of age; (2) an area which has been determined to be an area in need of rehabilitation pursuant to the “Local Redevelopment and Housing Law”; (3) a blighted area under the Blighted Area Act; (4) or any area in need of rehabilitation pursuant to the “Five-year Exemption and Abatement Law.”Id.
- i. Accordingly, the phase-in program may apply to some parts of Princeton Borough since the Borough has a redevelopment area. Prior to implementing this remedy, a municipality implementing a revaluation phase-in program must conduct a revaluation management analysis prior to using the revaluation as a basis for tax billing. See N.J.S.A. 54:1-35.42(a), (d).
 - ii. Alternatively, the Borough could consider developing and proposing amendments to this legislation to provide more efficacious relief to public entities experiencing this problem, however, unfortunately, this will not likely provide immediate relief to homeowners in need now.
- c. Overall review of values. There are several permissible ways to revisit the property valuations arising out of this revaluation. They include Assessment Maintenance, District-wide reassessment by the tax assessor and the conduct of a new revaluation.
- i. Assessment Maintenance: This refers to the practice by which an assessor changes some assessments, less than 49%, after looking at all the assessments, during a year in which a district-wide revaluation or reassessment is not performed. Regent Care, supra, 362 N.J.Super. at 411-12. Case law states that the assessor’s authority for such maintenance is derived from N.J.S.A. 54:4-23, which obligates the assessor to make an annual determination of value. Id.; BASF Corp. Coating & Ink Division v. Town of Belvidere, 22 N.J.Tax. 550, 564 (Tax Court 2005). Thus, next year, the tax assessor may seek to reassess real property in areas in which the valuation factors are thought to be skewed. However, he has to be cautious to avoid “spot assessment,” whereby the assessor focuses only on certain taxpayers, without legitimate reasons. Note that there are regulations governing assessment maintenance that may be discussed in more detail upon request.

- ii. District-wide reassessment: The assessor of a municipality may propose to implement a district-wide reassessment and must submit an application to perform such a reassessment with the county board and the Director of the Division of Taxation. N.J.A.C. 18:12-1.14(c). Here the assessor looks at 100% of the assessments and determines that more than 50% require changes. Prior to filing the application, the assessor must notify the mayor and governing body, Division of Taxation, county board of taxation and the county tax administrator of the basis for his determination that the reassessment is needed. Id.
 - iii. Revaluation in following year: The Borough may voluntarily perform a second revaluation. However, this is a costly approach that may not result in better results. A first step may be the retention of an expert to review a sampling of the valuations, including some of the areas that have been of concern and determine whether there is a basis to conclude that the methodology or processes employed were in error. Councilman Martindell has proposed a resolution for the formation of a Study Commission to look into the revaluation process. Such a Commission could work with an expert to determine if the values are based on a sound methodology and report back to the Council with a recommendation as to whether another revaluation is an advisable course. Further, if the conclusion of the expert and the Commission is that the values are, in large part, flawed, the Borough may have a basis to pursue ASI for relief including the performance of a corrective revaluation or reimbursement of funds expended.
- d. Using affordable housing program funds to provide relief to taxpayers.
- i. Forgivable loans over some period of time: Loans for property owners to pay property taxes is not among the 13 categories of items for which expenditures from the affordable housing fund is allowed under COAH's regulations at N.J.A.C. 5:97-8.7(a)(1). Additionally, any "loan" that is forgiven over a period of time is instead a gift from the Borough. Such practice likely would violate the gift provision of the New Jersey Constitution, which states "No county, city, borough, town, township, or village shall hereafter give any money or property, or loan its money or credit, to or in aid of any individual, association or corporation, or become security for, or be directly or indirectly the owner of, any stock or bonds of any association or corporation. (N.J. Const. Art. VIII, §3, ¶2).
 - ii. Use of COAH program for Eligible Homes: The Borough could use the Affordable Housing Trust Fund monies to offer grants ranging from approximately \$25,000 to \$30,000 in exchange for property owners agreeing to deed restrict their homes as low or moderate income housing

for the next 30 years. This is an option that could work for residents who intend to stay in their homes over the long term. Unlike a gift or a forgivable loan, there is a *quid pro quo* in which the Borough receives a deed restriction for the next 30 years, the property is re-assessed at the lower value (approximately in the \$100,000 to \$150,000 range) and the property owner pays taxes at that value. The tradeoff and negative consideration for the property owners is that their property values would be reduced by virtue of the deed restriction, and they will not make any money if they try to sell their properties during the period of the deed restriction. However, their property taxes will be reduced for the next 30 years to that property value. The property would have to be inspected, and the homeowner income eligible (earning approximately in the range of \$54,000), and although the income of the property owner can rise, the property cannot subsequently pass through an estate to a family member who is not income eligible. The details are in the COAH regulations, found in the appendix at the end of this memo. Finally, the Borough's housing plan doesn't currently have an existing Market-to-Affordable program. The program would have to be approved by COAH as an amendment to the Borough's spending plan.

- e. Public/Private Partnership providing low-interest loans and administered by the Borough: This idea has also been considered by the Township, and the Borough may want to consider joining with the Township, if this idea is implemented. The source of this fund would be donated funds that would be administered by the municipality. Princeton University could be solicited for participation in such a program, as well as other entities, such as developers or other businesses. Rather than the Borough administering a private loan program to residents, we would recommend that such a program be administered on a private basis through a foundation or nonprofit, with the Borough serving as an informational and referral resource. It is our understanding that the Borough is affiliated with an existing nonprofit that in the past has funded affordable housing projects in the Borough. That nonprofit might serve as a vehicle to accomplish a type of program discussed in 6(d)(ii) above, when COAH eligibility is an issue.

- f. Using the Senior Resource Center to find reverse mortgages from Borough-approved lenders: The Senior Center could act as a clearinghouse to provide information and options to affected residents who may be in need of financial assistance or are considering a reverse mortgage option on their homes. We do not recommend that the Borough become involved in making determinations as to whether lenders are qualified or have engaged in predatory lending other than in disseminating information provided by licensing authorities as to such lenders. The Borough should be careful to avoid potential liability by "recommending" or "approving" any particular vendor. A reverse mortgage is an option for seniors who want to stay in their homes and is a means to pull the equity out of their homes now, with the debt being repaid later by the estate when the home is sold.

- g. Pursuit of Additional PILOT Funds from Princeton University and review of Exempt Uses: In the package of resolutions proposed by Councilman Martindell is a proposal to reopen PILOT negotiations with Princeton University. One way to provide tax relief to all residents is to find alternate sources of revenue to the Borough. Reopening the PILOT discussions early is one avenue. In addition, the Borough can reexamine all its tax-exempt properties immediately, to ascertain if any portions of them are being utilized for non-exempt purposes rendering the property taxable. For instance, we have been requested by Councilman Martindell to review whether Princeton University professors who also use their offices and research facilities at the University for their private research and consulting pursuits, render some or all of those premises taxable as a result. Aggressively pursuing such revenue is an option, and/or could figure into any discussion of the PILOT in the University's case. It is not confined to the University, however, and would extend to any tax exempt entity that rents or leases or otherwise permits its property to be used for non exempt profit making ventures. Specifically, in the case of the University, N.J.S.A. 54:4-3.6 provides that, "The following property shall be exempt from taxation under this chapter: all buildings actually used for colleges, schools, academies or seminaries, provided that if any portion of such buildings are leased to profit-making organizations or otherwise used for purposes which are not themselves exempt from taxation, said portion shall be subject to taxation and the remaining portion only shall be exempt . . ." In a previous case between the University and the Borough, the Borough successfully attempted to tax a printing press operated by the University. In Princeton University Press v. Borough of Princeton, 35 N.J. 209 (1961), the New Jersey Supreme Court determined that property used by the University as a printing press was not within the tax exemption statute. The Court determined that although the press published scholarly works that other publishers would not because of "insufficient financial returns," it printed other scholarly and non-scholarly works with the express purpose to make a profit and offset losses incurred in the publication of scholarly materials. In fact, the press earned a \$540,000 surplus and made an annual profit of more than \$900,000 per year. As a result, the property was not used for the purposes listed in the statute, and the property was not considered tax-exempt. The assessor's office could review all of the tax exempt property in the Borough with an eye toward determining whether some or all of that property was being used for purposes not exempt for taxation. In such case, an omitted assessment could be filed for the current year and going back one additional tax year.
- h. Appeal of the Borough's Tax Apportionment by the County. For 2010, the taxable valuation in the Borough was set by the County at \$2,220,526,988 and equalized to \$2,596,275,756 using an equalization ratio of 85.86% (not the sales ratio, rather a comparison of the assessment values to last year's adjusted true values). One of the issues that the Revaluation Committee could be charged with examining during its review of the revaluation is whether the Director's Table which sets the sales ratio for the Borough for the year is properly set and whether sales were properly included or excluded. For instance, estate sales, foreclosures

and short sales are normally not included in calculating the sales ratio because they are not considered arms length sales that are reflective of true value. The sales ratio impacts the overall valuation of the Borough and its apportionment of County taxes relative to other towns in the County. Again, an expert looking at the revaluation values and current sales could provide input on this issue to the Committee.

APPENDIX: COAH REGULATIONS FOR MARKET TO AFFORDABLE PROGRAM

N.J.A.C. 5:97-4.3

(e) A municipality may receive one credit for each affordable unit created through a market to affordable program (formerly known as a write-down/buy-down program), subject to the applicable provisions of this subsection.

1. A unit created and occupied on or after June 6, 1994 and before December 20, 2004 shall meet the following criteria:

i. The unit was subject to controls on affordability of not less than 30 years, 10 years for municipalities that received State Aid during that period pursuant to P.L. 1978, c. 14 (N.J.S.A. 52:27D-178 et seq.);

ii. The program demonstrated the appropriate low/moderate income split in accordance with Appendix E;

iii. The average initial sales price of all units in the program, based on the number of bedrooms, was affordable to a household earning no more than 57.5 percent of median income, unless the range of affordability was accommodated elsewhere in the Fair Share Plan;

iv. The unit is administered and affirmatively marketed in accordance with N.J.A.C. 5:97-9 and UHAC, and

v. A minimum of \$20,000 was provided to subsidize the creation of the unit.

2. Market to affordable units created and occupied on or after December 20, 2004 shall meet the criteria in N.J.A.C. 5:97-6.9.

N.J.A.C. 5:97-6.9

(a) A market to affordable program shall include units purchased or subsidized through a written agreement with the property owner and sold or rented to low- and moderate-income households. Subject to the provisions of (b)3 below, market to affordable programs may be designed to produce only low-income units, only moderate-income units or both low- and moderate-income units.

(b) The following provisions shall apply to market to affordable programs:

1. At the time they are offered for sale or rental, eligible units may be new, pre-owned or vacant.

2. The units shall be certified to be in sound condition as a result of an inspection performed by a licensed building inspector.

3. The municipality shall provide a minimum of \$25,000 per unit to subsidize each moderate-income unit and/or \$30,000 per unit to subsidize the each low-income unit, with additional subsidy depending on the market prices or rents in a municipality.

4. No more than 10 for-sale and 10 rental units, or an amount equal to a combined total of 10 percent of the fair share obligation, whichever is greater, may be used to address the fair share obligation, unless the municipality has demonstrated a successful history of a market to affordable program.

(c) The units shall comply with N.J.A.C. 5:97-9 and UHAC with the following exceptions:

1. Bedroom distribution (N.J.A.C. 5:80-26.3(b) and (c)); however, the ordinance shall not restrict the number of bedrooms per unit;

2. Low/moderate income split (N.J.A.C. 5:80-26.3(a)); subject to the provisions of (a) above, units in a market to affordable program shall be exempt from the requirement that at least 50 percent of the units created shall be affordable to households earning 50 percent or less of regional median income. In programs limited only to moderate-income households, an equivalent number of housing units for low-income households shall be addressed through other mechanisms in the Fair Share Plan; and

3. Affordability average (N.J.A.C. 5:80-26.3(d) and (e)); however:

i. The maximum rent for a moderate-income unit shall be affordable to households earning no more than 60 percent of median income and the maximum rent for a low-income unit shall be affordable to households earning no more than 44 percent of median income; and

ii. The maximum sales price for a moderate-income unit shall be affordable to households earning no more than 70 percent of median income and the maximum sales price for a low-income unit shall be affordable to households earning no more than 40 percent of median income.

(d) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality with its petition for substantive certification:

1. Information regarding the program on forms provided by the Council;

2. A demonstration that there are sufficient market-rate units within the municipality, as documented by the multiple listing service;

3. An estimate, based on (d)2 above, of the amount required to subsidize typical for-sale and/or rental units, including any anticipated rehabilitation costs;

4. Documentation demonstrating the source(s) of funding; and

5. A municipal resolution appropriating funds or a resolution of intent to bond in the event of a shortfall of funds.

(e) The following minimum documentation, as detailed further in a checklist provided by the Council, shall be submitted by the municipality prior to the grant of substantive certification:

1. A draft or adopted operating manual that includes a description of the program procedures and administration in accordance with UHAC;
2. An affirmative marketing plan in accordance with UHAC; and
3. Designation of an experienced administrative agent, including a statement of his a her qualifications, in accordance with N.J.A.C. 5:96-18.