

①

Susan Gouveia

From: Masser, Michelle
Sent: Monday, May 06, 2013 2:03 PM
To: Susan Gouveia
Subject: Correspondence - FW: Affordable Housing, COAH, Trust Fund Dollars

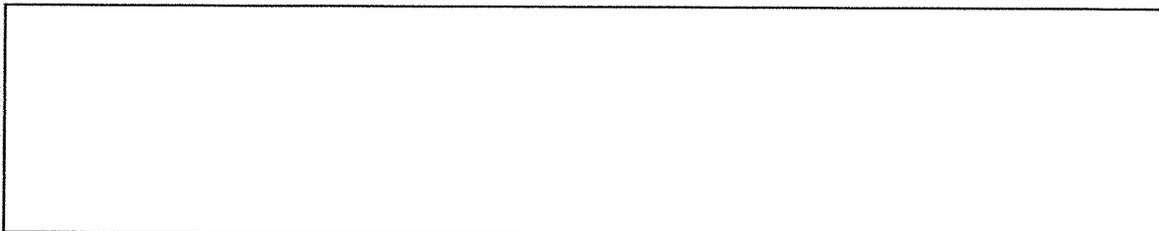
Michelle Masser

Deputy Clerk
Mount Olive Township
204 Flanders Drakestown Road
PO Box 450
Budd Lake, NJ 07828
973-691-0900 x7292
mmasser@mtolivetwp.org

From: Lashway, Lisa
Sent: Monday, May 06, 2013 1:55 PM
To: Canning, Sean; Masser, Michelle
Subject: FW: Affordable Housing, COAH, Trust Fund Dollars

Lisa Lashway
Mt. Olive Twp. Clerk
973-691-0900 Ext. 7291
FAX 973-691-2080
PO Box 450
Budd Lake, NJ 07828

From: NJLM to Municipal Officials [mailto:njlm-clerks@njslom.org]
Sent: Monday, May 06, 2013 11:57 AM
To: Lashway, Lisa
Subject: Affordable Housing, COAH, Trust Fund Dollars



Mayors Advisory

May 6, 2013

RE: Affordable Housing, COAH, Trust Fund Dollars

Dear Mayor,

As we indicated in our May 1 letter, despite vocal opposition by a long list of stakeholders including the League, the Council on Affordable Housing (COAH), in its first meeting in over two years, authorized its Executive Director to begin the process of seizing “uncommitted” municipal affordable housing trust funds. The COAH resolution is online at: <http://www.njspotlight.com/assets/13/0501/2052>.

COAH Resolution 2013-1, which passed by a 4-1 vote with one member absent, authorized its Acting Executive Director Sean Thompson to write letters to municipalities requiring them to provide information by May 22, 2013 concerning their “commitment to expend” trust fund monies and to forfeit any uncommitted trust funds by May 22. COAH later issued another similar letter to municipalities, which COAH advises was because there were errors in some letters so corrected letters were sent out.

COAH is, by statute, a 12-member board, but only has six current members. Four seats are for local government representatives, but only one of those seats is currently filled. The current COAH board members and their respective votes on the resolution are:

- 1) **Richard Constable**, Chair, Ex Officio, Commissioner of Department of Community Affairs, voted yes;
- 2) **Timothy Doherty**, Special Needs Housing seat, voted no;
- 3) **Theodore King**, Public Interest seat, voted yes;
- 4) **Anthony Marchetta**, Ex Officio, Executive Director of the Housing Mortgage Finance Agency, voted yes;
- 5) **Suzanne Walters**, Elected Officials Seat, Mayor, Stone Harbor, absent;
- 6) **John Winterstella**, Vice Chair, Public Interest seat, voted yes.

The League would like to express its appreciation and thanks to Tim Doherty for his “no” vote.

The May 1 COAH letter to municipalities asks for verification and certification for the amounts in your trust funds, how much you believe is committed and how much is uncommitted. The COAH Acting Executive Director and staff will review the municipal submissions and make recommendations to the COAH board. At the conclusion of the COAH meeting, COAH board members and Commissioner Constable stated that COAH will reconvene and that the COAH board will render a decision in any contested case. No information has been provided as to when the board will meet next and COAH’s resolution does not reflect these representations.

For these reasons, we call your attention to the July 2012 interim Appellate Division opinion. Since COAH has not complied with its requirement to promulgate regulations regarding the administration of trust fund monies (an issue that the League and the Fair Share Housing Center are currently litigating in the Appellate Division), it is relying upon a definition first offered by the Attorney Generals’s office in a brief submitted to the Court in July 2012 that committed means an “executed contract.” The interim Appellate Division order reflects this language. However, the meaning of commit to expend has yet to be finally resolved in the appeal that is still being briefed.

Specifically, in that July interim order the Court also wrote:

“We are nevertheless concerned that, under these circumstances, COAH may seize affordable housing trust funds without giving the affected municipalities adequate notice and an opportunity to contest the transfer. We, therefore, order that before any transfer is effectuated, COAH must provide the affected municipality with written notice describing the exact amount of funds intended for transfer and how such amount was calculated....The municipality shall have the right to contest before COAH the proposed transfer by demonstrating that the funds targeted for transfer have been “committed” to fund an affordable housing project by way of a legally enforceable agreement with a third party, or by such other means that show a firm and binding obligation to spend such funds in a manner consistent with the municipality’s affordable housing obligation. ”

For more on that interim order, please see the League’s letter of July 16, 2013

It is imperative that as you prepare a response to COAH, you create a record to demonstrate what dollars you believe are “committed” and why. The League continues to take the position that “committed” needs to be defined by way of state regulation or state statute. It is important to note the administrative actions of a State agency can be challenged to the Appellate Division, which underscores the importance of creating a sound and defensible record.

As you know, the League has vigorously opposed the seizure of the trust funds. The 2008 law which authorized the forfeiture of uncommitted dollars also required the agency to promulgate regulations concerning the “establishment, administration and enforcement of the expenditure of affordable housing development fees by municipalities.” Although the “committed for expenditure” requirement falls squarely within the broad ambit of the Legislature’s charge, COAH never fulfilled its obligation to promulgate regulations on this new requirement. COAH acknowledged the need to promulgate regulations in a 2008 letter to municipalities. Similarly, the Department of Community Affairs also acknowledged the need for standards by its conduct. Indeed, it even submitted draft regulations to the Office of Administrative Law for publication in the *New Jersey Register*. When the Courts overturned the Governor’s order that abolished COAH, the Department then withdrew the regulations. However, since that Court action, COAH could have certainly reconvened for the purposes of proposing regulations. Indeed, COAH met on May 1 for the first time in over two years to authorize action to penalize municipalities for a failure to comply with regulations that COAH never adopted.

The League is considering all possible options and will advise you of any developments. Questions can be directed to Mike Cerra at mcerra@njslom.com or at 609-695-3481 x120.

Very truly yours,

Janice S. Mironov, President,
New Jersey State League of Municipalities,
Mayor, East Windsor Township

William G. Dressel, Jr.
Executive Director

PLEASE NOTE: As of May 15, 2013 we will no longer fax our Membership Advisories unless you specifically request it. Please contact Shirley Cade at scade@njslom.com or 609-695-3481 ext. 114 ONLY if you choose to continue having our Advisories faxed to your Municipality.

NJLM Advisories are posted daily on our website at www.njslom.org as well as emailed to our clerks

list. If you have not registered to be on our clerks email list you can do so through our website or contact Shirley Cade.

Please be advised that the information you receive is not legal advice. You must consult your town attorney to make sure that any of the material you receive is in accordance with current state law and your particular facts and situation.

Please be advised that the New Jersey State League of Municipalities is subject to the New Jersey Open Public Records Act. As such, any email sent or received by the League may be subject to a records request.

New Jersey League of Municipalities
222 West State Street, Trenton, NJ 08608
609-695-3481
<http://www.njslom.org>

This message was sent to clerk@mtolivetwp.org from:

NJLM to Municipal Officials | 222 West State Street | Trenton, NJ 08608

Unsubscribe | [Forward To a Friend](#)

▪