

## **Housing Victory for West Cape May Borough**

*by Lorissa Whitaker, Senior Associate, Triad Associates*

On October 9, 2009, West Cape May Borough's Housing Element and Fair Share Plan was approved by the Honorable Judge William E. Nugent, Judge of Superior Court (J.S.C.) after four (4) years of litigation imposed by Sixth Street Partners, who filed under the provisions known as a "Builder's Remedy". This promising decision paves a way for this small, rural municipality to finally provide realistic opportunities for affordable housing that is within the context of the Borough's character and contributes to the State's overarching goal to fulfill a critical demand for affordable housing.

The Borough and the Council on Affordable Housing (COAH), as established by the Fair Housing Act, projected a Third Round Fair Share Obligation, which provided the following breakdown:

- 11-unit Rehabilitation Share;
- 7-unit Prior Round Obligation; and
- 5-unit projected Growth Share Obligation (COAH projected zero).

In 2005, Sixth Street Partners filed a Builder's Remedy which alleged that the Borough was not in compliance with the *Mount Laurel* decisions, the Fair Housing Act and the regulations promulgated pursuant to the Fair Housing Act. The litigation was a reactionary response to the Borough's denial of Sixth Street Partners' proposal for a 70-unit housing complex, which was to be situated on approximately 6 acres.

In the Court's ultimate decision, it was concluded that while the Borough's zoning ordinance may have been unconstitutional, the proposed development was not located and designed in accordance with sound zoning and planning concepts and that, in fact, the proposal was quite contrary to those concepts. Judge Nugent therefore continued to provide that the Borough had carried their burden of proof in that regard and thusly, denied the Builder's Remedy..

Concurrent to the denial of the Builder's Remedy, and subsequent to the denial of Sixth Street Partners appeal, Judge Nugent ordered the Borough's Special Court Master to expeditiously and thoroughly review the Borough's proposed Housing Element and Fair Share Plan and make a determination as to its compliance with the *Mount Laurel* decisions and the Fair Housing Act. As such, the Borough, with the assistance of Triad Associates, prepared their Plan and Program Operating Manuals for review by the Special Court Master, who ultimately verified the Plan's compliance and recommended it for approval by the Court.

The main components of the Borough's Third Round Plan include an 11-unit rehabilitation program; one eligible credit without control; a 7-unit supportive shared living housing development eligible for two prior round rental bonuses and an accessory apartment program for up to 10 units. Triad Associates has been designated as the Borough's Administrative Agent and will implement both the Housing Rehabilitation Program and the Accessory Apartment program.