

RESOLUTION ADOPTING THE INITIAL DECISION IN IN THE MATTER OF
PETITION FOR SUBSTANTIVE CERTIFICATION OF SCOTCH PLAINS TOWNSHIP,
PURSUANT TO N.J.S.A. 52:27D-301 ET SEQ.

WHEREAS, by Resolution adopted October 30, 1989, the Council on Affordable Housing (COAH) referred the issue of the suitability of the Woodland Estates site to the Office of Administrative Law (OAL) for a hearing;

WHEREAS, COAH received the Initial Decision on July 17, 1991;

WHEREAS, COAH requested and was granted an extension of time in which to render its Final Decision, until October 14, 1991;

WHEREAS, COAH received exceptions to the Initial Decision from John J. Garibaldi (Garibaldi) and the City of Plainfield (Plainfield);

WHEREAS, COAH has considered the exceptions filed and finds them to be without merit for the reasons set forth in the Initial Decision as well as for the reasons stated below:

1. Both Garibaldi and Plainfield dispute numerous factual findings of the Administrative Law Judge (ALJ) regarding the ability of the Woodland Estates site to be developed as proposed and its compliance with COAH regulations. COAH agrees with the findings of the ALJ and relies on the Initial Decision for the factual findings and conclusions.

2. Both Garibaldi and Plainfield complain that the ALJ improperly placed the burden of proof on the objectors. COAH agrees with the ALJ's conclusion as to the burden of proof. Indeed, COAH recently adopted N.J.A.C. 5:91-4.5(a) which specifically provides that the burden of proof is on the objector if an objection is referred to the OAL for hearing. Furthermore, the ALJ did not simply state that the objectors failed to carry the burden of proof, but rather actually found that the site was suitable under COAH regulations. Thus, the ALJ considered and ruled on the important issue of suitability.

3. Garibaldi and Plainfield also argue that Scotch Plains initially excluded the site from consideration in its 1987 draft housing element and should not be permitted now to include the site. They further argue that Scotch Plains did not comply with the Fair Housing Act and consider sites appropriate for development. This argument overlooks the fact that the Fair Housing Act is intended to allow the municipality discretion in fashioning its affordable housing plan. The Fair Housing Act also contemplates that plans may change as a result of mediation, which is exactly what happened here. Scotch Plains should not be

precluded from including the Woodland Estates site simply because it initially did not include the site. It must be remembered, as the ALJ so concluded, that the development of the site still is subject to planning board review and will have to receive any necessary approvals.

4. Garibaldi and Plainfield argue that N.J.S.A. 52:27D-311.1 renders the site ineligible for development because there are existing residential structures on the site. This amendment precludes COAH from requiring a municipality to include such a site in its plan. The amendment intends to leave such a decision to the municipality. In this case, Scotch Plains voluntarily has included the Woodland Estates site in its plan. The proscription set forth thus is inapplicable.

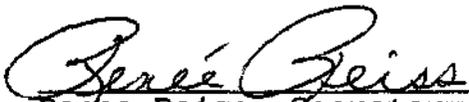
WHEREAS, although not specifically stated in the findings, it is apparent that the ALJ concluded that the Woodland Estates site is suitable at the proposed density of eight units per acre since the Initial Decision does not state otherwise and the original referral called for a proposed density of eight units per acre;

WHEREAS, after consideration of the Initial Decision and the exceptions filed, COAH adopts the Initial Decision in its entirety, including the finding that the Woodland Estates site is suitable for development at eight units per acre;

NOW THEREFORE BE IT RESOLVED that COAH hereby adopts in its entirety the Initial Decision in this matter;

BE IT FURTHER RESOLVED that Scotch Plains shall adopt any and all ordinances necessary to implement use of the Woodland Estates site as a component of its plan within 45 days of the date of this Resolution.

I certify that this Resolution was duly adopted by the Council on Affordable Housing at its public meeting on October 2, 1991.



Renee Reiss, Secretary