

## **RESOLUTION DENYING SUBSTANTIVE CERTIFICATION WITH CONDITIONS**

WHEREAS, the Borough of Roseland, Essex County petitioned the Council on Affordable Housing (COAH) to address its first round fair share number on January 5, 1987; and

WHEREAS, there were three objectors to the Roseland housing element and fair share plan: the Public Advocate, Essex Glen/Winchester Construction Company and Alan C. Green; and

WHEREAS, after COAH reviewed Roseland's housing element and fair share plan, COAH denied Roseland's petition on July 5, 1988 with 10 conditions; and

WHEREAS, Roseland addressed the conditions and COAH granted substantive certification on October 17, 1988, which was amended by COAH on December 19, 1988; and

WHEREAS, included in the first round certified plan was a site known as the Bobst site (now known as the Winchester Construction Company site) which contained 47 acres and was to be zoned at six units to the acre with a 20 percent setback for low/moderate income units; and

WHEREAS, the certification stated that the site was impacted by wetlands and the final unit yield would be dependent on the extent of the wetlands; and

WHEREAS, the Borough of Roseland petitioned COAH for substantive certification of a housing element and fair share plan to address its 1987-1999 cumulative need in accordance with N.J.S.A. 52:27D-313 and N.J.A.C. 5:93-1 et seq.; and

WHEREAS, pursuant to N.J.A.C. 5:93-5.13(b), the second round plan included the Winchester site; and

WHEREAS, COAH has established a 1987-1999 precertified need for Roseland of 182 units, all new construction; and

WHEREAS, Roseland received a vacant land adjustment for its 1987-1993 fair share obligation that established a new construction obligation of 162 units; and

WHEREAS, the Borough of Roseland published notice of its petition in the Star Ledger, which is a newspaper of general circulation within the county, on May 23, 1996 pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:91-3.3; and

WHEREAS, the petition for substantive certification initiated a 45-day objector period as per N.J.A.C. 5:91-1 et seq.; and

**WHEREAS, COAH received one objection to the plan filed by Winchester; and**

**WHEREAS, Winchester filed a preliminary site plan application with the Roseland Borough Planning Board on May 1993 to build 218 market townhouses and 56 low/moderate income units on the Winchester site; and**

**WHEREAS, in the Winchester application, the 56 low/moderate income units were to be in apartments; and**

**WHEREAS, the Roseland ordinance required that the low/moderate income units be constructed in a two-story townhouse design to which Winchester objected; and**

**WHEREAS, COAH issued a COAH Report (attached as Exhibit A) dated August 20, 1996, that reviewed the housing element and fair share plan submitted by Roseland; and**

**WHEREAS, the COAH Report listed nine changes to Roseland's proposed fair share ordinances that were necessary; and**

**WHEREAS, mediation began on October 15, 1996 and concluded on May 13, 1997 and resulted in no agreement between the parties (see Mediation Report, dated June 20, 1997, attached hereto as Exhibit B and incorporated herein); and**

**WHEREAS, Winchester filed a motion with COAH dated June 9, 1997 in which Winchester requested accelerated denial of Roseland's petition for substantive certification, issuance of a builder's remedy and other relief; and**

**WHEREAS, COAH in its motion decision of December 3, 1997 which is attached as Exhibit C and incorporated herein, transferred the matter to the Office of Administrative Law (OAL) to determine if Roseland's actions met the requirements of N.J.A.C. 5:93-10.5 Revocation of Substantive Certification; and**

**WHEREAS, after a hearing at OAL, the Honorable Margaret M. Hayden, ALJ, issued an Initial Decision on May 15, 1998; and**

**WHEREAS, exceptions were filed by Roseland on June 11, 1998 and by Winchester on June 12, 1998; and**

**WHEREAS, after careful consideration of the Initial Decision, the exceptions and the material submitted with the exceptions, COAH, at its August 5, 1998 meeting, accepted the Initial Decision as modified by the COAH Opinion dated August 5, 1998 as its final decision (attached as Exhibit E ); and**

**WHEREAS, COAH concludes that Roseland delayed action on Winchester's inclusionary**

development application and required unnecessary cost generating standards both of which resulted in the obstruction of the construction of the Winchester site in a timely manner; and

WHEREAS, based upon the facts as set out in its final Decision of August 5, 1998, COAH revokes Roseland's petition for substantive certification.

NOW THEREFORE BE IT RESOLVED that COAH finds that the housing element and fair share plan submitted by the Borough of Roseland do not comport to the standards set forth at N.J.S.A. 52:27D-314 and are not consistent with the rules and criteria adopted by COAH; and

BE IT FURTHER RESOLVED that pursuant to COAH regulations, Roseland shall have 60 days from today to grant final site plan and subdivision approval to Winchester that is consistent with COAH's Opinion of August 5, 1998 ; and

BE IT FURTHER RESOLVED that Roseland shall have 60 days from today to remove from its ordinance all cost generating conditions as set forth in COAH's final decision; and

BE IT FURTHER RESOLVED that Roseland shall also have 60 days from today to address the nine changes to Roseland's proposed fair share ordinances as stated in the COAH Report dated August 20, 1996; and

BE IT FURTHER RESOLVED that if Roseland meets the conditions outlined above by October 5, 1998, COAH shall grant substantive certification.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on August 5, 1998

  
Renee Reiss, Secretary  
Council on Affordable Housing