

**RESOLUTION GRANTING CLINTON TOWNSHIP'S APPLICATION TO WAIVE
CENTER DESIGNATION REQUIREMENT OF N.J.A.C. 5:93-5.4 FOR ITS
MUNICIPALLY SPONSORED CONSTRUCTION PROJECT AT BLOCK 61, LOTS 4
AND 4.01**

WHEREAS Clinton Township received first round substantive certification from the Council on Affordable Housing (COAH) on February 3, 1993 and second round substantive certification on March 7, 2001; and,

WHEREAS Clinton Township's second round fair share housing obligation is 392 units, including 57 units of rehabilitation and 335 units of new construction; and,

WHEREAS on April 2, 2004, COAH received Clinton's petition to amend its second round substantive certification, which seeks to remove the Windy Acres site from its plan and replace it with two municipally sponsored construction projects and an RCA with the City of Lambertville; and,

WHEREAS the Council heard oral argument on motions to revoke Clinton Township's second round substantive certification and to dismiss the Township's petition to amend its second round substantive certification on August 11, 2004; and,

WHEREAS the Council issued an opinion denying the above motions, and requiring the Township to re-petition with a new amendment to its certified plan within 60 days (the Council's opinion dated November 22, 2004 and is attached and incorporated by reference herein) ; and,

WHEREAS one of the municipally sponsored construction sites proposed by the Township in its April 2, 2004 petition to amend is in an Environmentally Sensitive Planning Area 5 (PA5); and,

WHEREAS pursuant to N.J.A.C. 5:93-5.4, inclusionary developments which are proposed to be developed in Environmentally Sensitive Planning Areas 4 or 5 (PA's 4 or 5) are required to be located in designated centers in PA's 4 or 5, as designated in the State Development and Redevelopment Plan (SDRP); and,

WHEREAS Mark R. Peck, Esq. on behalf of Clinton Township, submitted a motion on September 3, 2004 for a waiver from the center designation requirement of N.J.A.C. 5:93-5.4, as that requirement applied to Clinton's municipally sponsored construction project (Block 61, Lots 4 and 4.01) which was included in Clinton's April 2, 2004 amendment to the Township's second round substantive certification; and,

WHEREAS the Council received briefs in opposition to this motion from Henry L. Ken-
Smith, Esq., on behalf of SJM Communities, LLC (SJM), and from Henry T. Chou, Esq. on behalf of P & H Clinton Partnership (P&H), as well as a brief submitted in support of Clinton's motion from Thomas A. Borden, Esq. on behalf of the Clinton Township Community Coalition (CTCC), and a brief in response from the Township; and,

WHEREAS the Council reviewed and considered the arguments set forth in these briefs and formed a task force to consider and make recommendations on the same; and,

WHEREAS Clinton's motion seeks a waiver from the center designation requirement of N.J.A.C. 5:93-5.4 for one of the municipally sponsored construction projects (Block 61, Lots 4 and 4.01) that was included in the Township's April 2, 2004 amendment to its second round substantive certification; and,

WHEREAS the Township claims that the site in question meets the general requirements and criteria for the creation of new affordable housing construction, in that the Township owns the site; the site is located four lots from the village of Annandale; the Township has received letters of commitment from Clinton Township Sewerage Authority and Clinton Town Water Company for sufficient sewer and water; the Township has submitted conceptual site plans showing that the necessary number of units can be developed pursuant to the Township's zoning and all rules and regulations of all agencies with jurisdiction over the site regarding its development; and therefore the Township claims that the site is available, suitable and approvable under COAH's rules; and,

WHEREAS the Township asserts that the site in question has adequate sewerage capacity allocated to it by the Clinton Township Sewerage Authority, and has submitted a letter from the Clinton Township Sewerage Authority indicating a commitment to provide 20,250 gallons per day (g.p.d.) for the two municipally sponsored construction projects; and,

WHEREAS the Township states that the two sites will require 23,288 g.p.d., explaining that while there will be 90 affordable units total between the two sites, the actual number of units that will be constructed at each of the locations has not been decided yet; and the Township asserts that the figure of 23,288 g.p.d is the result of adding 15 percent more units to each of the sites, noting that if the units on one of the sites is increased, the equivalent number of units will be decreased on the other site. Therefore, the Township claims that the sites will only require 20,250 g.p.d, which is the amount the sewerage authority has allocated; and,

WHEREAS the Township has submitted a certification from Paul W. Ferriero, the Township's municipal engineer clarifying the total g.p.d. amount required for the two sites, and although the letter indicates that the sewerage authority did not know the locations for the two project and therefore conditioned the sewer capacity upon whether the two sites being within the Township's sewer service district, and the Township has stated in its motion that the sites are located within sewerage treatment areas in the Wastewater Management Plan; and,

WHEREAS Clinton Township submitted a letter from the Town of Clinton with its amendment indicating the Town's commitment to provide up to 16,250 gallons of water per day for the two municipal construction projects, which meets the estimated water demand; and,

WHEREAS the Township argues that N.J.A.C. 5:93-5.4(d) does not preclude certification of a suitable PA5 site, and claims that because there are no suitable sites for the construction of affordable housing in the PAs 1, 2, or 3 districts in the Township, the Township may use PAs 4 and 5 for such development; and,

WHEREAS the Township asserts that if a waiver is deemed necessary to include the site in

question in the Township's Amendment, then the waiver ought to be granted pursuant to N.J.A.C. 5:93-15.1, as the Township states that the waiver will foster the production of low-and moderate-income housing because it will permit the Township to expeditiously proceed with the construction of the two municipally sponsored construction sites; and,

WHEREAS SJM responded to Clinton's request for a waiver of center designation claiming the same would violate COAH principles regarding the location of inclusionary developments; and,

WHEREAS SJM claims that the municipally sponsored construction site at issue is located in PA5 and is isolated, encumbered by wetlands and steep slopes, is adjacent to prime farmlands and that the design of the housing does not meet the Residential Site Improvement Standards; and,

WHEREAS SJM also claims that the Township had ample opportunity to designate the site in question as PA2, but intentionally excluded the site; and,

WHEREAS SJM claims that it has a developable site in a PA2, and claims that its site (Block 1103, Lots 4 and 4.03) meets all COAH criteria for inclusionary development,

WHEREAS SJM also claims that its site is not environmentally sensitive and that it will provide an appropriate design and location for a variety of housing types; and although SJM points out that there are wetlands on the site, SJM asserts that its site can easily be developed for a high-density residential development that is consistent with DEP regulations; and,

WHEREAS SJM argues that the waiver should not be granted because it claims that the Township has not submitted hardship proof or other planning reasons to COAH that the waiver should be granted; and,

WHEREAS P & H argues that COAH cannot presently grant a waiver because COAH's rules require a determination that there are no available sites in PA2, an issue which P&H claims is contingent upon the Appellate Division's decision as to whether Windy Acres, which is located in a

PA2, is entitled to sewer service from the Readington-Lebanon Sewerage Authority; and,

WHEREAS P & H also argues that the waiver request should be denied because it would allow Clinton to delete a PA2 site in favor of a PA5 site which P & H claims that such a waiver would contravene the constitutional and legislative mandates on sound planning and regional considerations as implemented by the SDRP, COAH regulations and MOU between COAH and the SPC.

WHEREAS P & H asserts that Clinton Township is not entitled to a waiver from center designation based on the criteria in N.J.A.C. 5:93-15.1, claiming that the waiver will not foster the production of low-and moderate-income housing, because the site will merely enable the Township to obtain credit for the site while impeding the development of affordable units at the COAH-certified Windy Acres site; and,

WHEREAS the Clinton Township Community Coalition ("CTCC") argues that there is no prohibition to constructing a municipally sponsored project on PA5 without a center designation, and therefore does not object to Clinton's motion for the waiver; and

WHEREAS the CTCC asserts that COAH's analysis of PA5 concerns requires simultaneous analysis of the environmental constraints of the proposed Windy Acres development; and,

WHEREAS Clinton Township responded to the opposition to its waiver request, explaining that although PA5 sites are near the bottom on the hierarchy set forth in N.J.A.C. 5:94-5.4, the site in question does have characteristics that favor the proposed development and merit the site's inclusion into the Township's affordable housing plan; and,

WHEREAS the Township argues that although PA2 locations are favored for affordable housing, the Township also argues that when a PA2 site lacks sewer service, a PA5 location with sewer service is an appropriate substitute, and thus, the Township claims that PA2 sites are encouraged but not required under COAH's rules; and

WHEREAS Clinton Township argues that the Windy Acres site lacks sewer and water, but that the Township's site has sewer and water; and,

WHEREAS the Township asserts that there are no other feasible or realistic sites in PA2 for affordable housing, and notes that SJM has provided no proofs that its site is appropriate for development; and,

WHEREAS the Township asserts that the SJM site has not been engineered and does not have a concept plan, and the Township claims that SJM's site is not suitable for residential development because it is located on heavily traveled Route 31, is predominantly zoned for Research, Office and Manufacturing and does not have sewer capacity because the Clinton Township Sewerage Authority has allocated the remaining capacity to the municipal sites; and,

WHEREAS the Township suggests that a workable solution would be for COAH to keep Windy Acres in the Township's plan, with a contingent approval of the municipal sites if Windy Acres does not get sewer service from the Readington-Lebanon Sewerage Authority; and,

WHEREAS the Township asserts that municipal site is suitable for the proposed municipally sponsored construction project, and noting that other than a PA5 designation, the site does not have any significant environmental constraints, and thus, the Township asserts that its concept plan addresses the environmental limitations and demonstrates that the site can be developed as proposed; and,

WHEREAS a COAH task force was convened to review and discuss the issues raised herein, and make a recommendation on the same to the entire Council; and,

WHEREAS the COAH task force did so convene and thereafter made its recommendations to the full Council; and,

WHEREAS COAH has also received a recommendation from Adam Zellner, Executive Director of the Office of Smart Growth ("OSG"), that COAH grant the waiver based on the following

conditions:

- 1) Clinton schedules a pre-petition meeting with OSG staff within six months after the waiver is granted;
- 2) Clinton submits a petition for plan endorsement to OSG within one year after the waiver is granted; and
- 3) Clinton has an endorsed plan from the State Planning Commission that includes the municipally sponsored construction site (Block 61, Lots 4 and 4.01) as a PA 2 site or within a center within 2 years.

NOW THEREFORE BE IT RESOLVED THAT the Council hereby grants a waiver from the center designation requirement of N.J.A.C. 5:93-5.4 for the municipally sponsored construction project located at Block 61, Lots 4 and 4.01, which was included in Clinton Township's April 2, 2004 amendment to its second round substantive certification; and,

BE IT FURTHER RESOLVED THAT this waiver is granted based on the conditions recommended by the OSG and that:

- 1) Clinton shall schedule a pre-petition meeting with OSG staff within six months after the waiver is granted;
- 2) Clinton shall submit a petition for plan endorsement to OSG within one year after the waiver is granted; and
- 3) Clinton shall obtain an endorsed plan from the State Planning Commission that includes the municipally sponsored construction site (Block 61, Lots 4 and 4.01) as a PA 2 site or within a center within 2 years; and,

BE IT FURTHER RESOLVED THAT the Council finds that this waiver fosters the production of affordable housing in Clinton Township as the waiver will allow the Township to complete a 100% affordable housing development in an expeditious fashion; and,

BE IT FURTHER RESOLVED THAT the Council will not condition the construction of the municipal construction projects and the transfer of the funds for the Regional Contribution

Agreement (RCA) set forth in the Township's April 2, 2004 amendment, upon the condition that Windy Acres does not get sewer service from the Readington-Lebanon Sewerage Authority. Construction must begin within two years on the grant of amended substantive certification pursuant to N.J.A.C. 5:94-5.5(a)4 and the transfer of funds for the RCA must be consistent with the payment schedule in the contract; and,

BE IT FURTHER RESOLVED THAT the Council finds that this waiver fosters the intent if not the letter of its rules as the Township has demonstrated that the municipal construction site at issue here, although currently located in a PA5, nonetheless has sufficient sewer and water capacity available to the site; and that in light of the conditions noted above, this site will be re-designated into a PA2 or towncenter within 2 years; and,

BE IT FURTHER RESOLVED THAT for the reasons set forth in the Council's opinion regarding the motions to revoke the Township's substantive certification and to dismiss the Township's petition to amend (attached and incorporated herein by reference) the Township has been ordered to re-petition with an amendment which includes the Windy Acres site at issue in those motions, as such, the Council notes that present waiver will remain in effect for such re-petition with regard to the municipal construction project at issue herein; and,

BE IT FURTHER RESOLVED THAT once the Township has re-petitioned with its amendment pursuant to the Council's directive noted above, the amendment to the Township's certified plan will be reviewed in its entirety for compliance with COAH's rules and directives.

I hereby certify that this
resolution was duly adopted
by the Council on Affordable
Housing at its meeting on
November 22, 2004 .



Renee Reiss, Secretary
Council on Affordable Housing