

**IN RE MOTIONS FOR CLARIFICATION AND RECONSIDERATION OF THE
COUNCIL'S OPINION AND RESOLUTION ADOPTED ON NOVEMBER 22, 2004
REGARDING CLINTON TOWNSHIP, HUNTERDON COUNTY 04-1603(a)**

WHEREAS the Council adopted an opinion requiring Clinton Township to repetition the Council for amended substantive certification within 60 days on November 22, 2004; and,

WHEREAS the Council also adopted a resolution granting Clinton Township a waiver of the center designation requirement on November 22, 2004; and,

WHEREAS on December 17, 2004, COAH received a motion seeking clarification of the Council's November 22, 2004 Opinion and Resolution, from Mark Peck, Esq., on behalf of Clinton Township; and,

WHEREAS on December 17, 2004, COAH received a motion seeking clarification or reconsideration of the Council's Opinion and Resolution from Stephen Eisdorfer, Esq., on behalf of P&H Clinton Partnership ("P & H").

WHEREAS both the Township and P&H (the "parties") requested clarification and/ or reconsideration because, they assert, there is an inconsistency between the Opinion and Resolution relating to the sequence of events to implement the Township's Second Round Plan; and,

WHEREAS the language in the Resolution that the parties assert requires clarification is as follows:

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;

WHEREAS both parties assert that the above language is contrary to the Council's November 22, 2004 opinion because it requires the Township to begin construction of the municipal construction projects and proceed with the RCA regardless of the Appellate Division's decision on the Windy Acres appeal; and,

WHEREAS the language in the Opinion that the parties assert conflicts with the resolution is as follows:

However, the Township is hereby ordered to re-petition the Council with a new

amendment to its certified plan. That amendment shall include the Windy Acres site in the Township's plan. As explained above, N.J.A.C. 5:93-5.13(b), does not allow Clinton Township to remove the Windy Acres site from its Housing Element and Fair Share Plan without a signed agreement between the Township and P & H. Therefore, the Council directs Clinton Township to re-petition for amended substantive certification with a Housing Element and Fair Share Plan that includes the Windy Acres site in conformance with N.J.A.C. 5:93-5.13(b). However, because the suitability of the site is still unresolved pending the Appellate Division's decision regarding sewer capacity, it remains questionable whether or not the Council will be able to continue to grant the Township a reduction for this site. If the Appellate Division decision provides P & H with sewer capacity for its site, the Township may receive credit for the actual number of affordable units that are approved on the site. However, the Township is directed to provide for additional mechanisms in its Housing Element and Fair Share plan, in the event that the Appellate Division decision does not provide for such sewer capacity to the Windy Acres site. The Township shall re-petition within 60 days; and,

WHEREAS the parties assert that the Opinion does not suggest that the Township must proceed with its alternative plan prior to resolution of the Windy Acres appeal; and,

WHEREAS the parties assert that the alternative plan comes into play only to the extent that Windy Acres does not satisfy the outstanding Second Round Obligation; and,

WHEREAS Clinton Township maintains that while COAH stated in its Opinion that the April 2, 2004 petition is not dismissed, that COAH is, in actuality, dismissing the petition by directing the Township to re-petition with another amendment, and therefore, Clinton Township maintains, that the Resolution granting a waiver from the center designation requirement is moot because the April 2, 2004 petition is moot, also making that waiver void; and,

WHEREAS Clinton Township's motion notes concern that if the Township fully implements its affordable housing plan, and Windy Acres secures sewer service and the 145 affordable units are also constructed on that site, that the Township will have a 145-unit surplus; and,

WHEREAS P&H's motion notes concern that if the Township constructs the municipal construction projects and proceeds with the RCA with Lambertville, that the Township will have fully effected construction of its second round affordable housing obligation and under the Fair Housing Act, will be free to unilaterally delete Windy Acres from its Housing Element and Fair Share Plan [N.J.S.A. 52:27D-311(g)]; and,

WHEREAS Clinton Township requests that COAH clarify its November 22, 2004 resolution and P&H requests that COAH clarify and/or reconsider its November 22, 2004 resolution to make clear that the alternative mechanisms proposed by Clinton Township take effect only in the event and after it is ultimately determined by the Court that Windy Acres is infeasible due to lack of sanitary sewer service; and,

WHEREAS Clinton Township's motion also requests a stay of the Opinion's required 60-day submission period until the Council acts on its request for clarification; and,

WHEREAS on January 11, 2005, Thomas A. Borden, Esq., on behalf of Clinton Township Community Coalition ("CTCC"), submitted a letter brief in response to the motions filed by Clinton Township and P&H, which states the Council's November 22, 2004 Opinion and Resolution properly asserted jurisdiction, and properly decided not to continue to grant a reduction for the Windy Acres site until it can be shown that the site is suitable and developable; and,

WHEREAS CTCC states that the Windy Acres site is undevelopable at the proposed density and that COAH is required to conduct a complete analysis of the environmental constraints on the site to determine whether Windy Acres should remain in the Township's plan; and,

WHEREAS on January 11, 2005, Henry L. Kent-Smith, Esq., on behalf of SJM Communities (SJM), submitted two separate letter briefs in opposition to the motions filed by Clinton Township and P&H; and,

WHEREAS SJM maintains that the two-year limitation for the municipal construction project imposed by the Resolution is required by COAH regulations and is entirely appropriate pursuant to COAH's regulation at N.J.A.C. 5:93-5.5(a)4; and,

WHEREAS SJM also argues that if the Windy Acres site is developable, resulting in the Township having a surplus of affordable housing units, that this would not be detrimental to the general welfare; and,

WHEREAS SJM maintains that COAH must compel the production of affordable housing in the Township within the next two years and that SJM is ready, willing and able to produce the required affordable housing within two years; and,

WHEREAS the Council has reviewed the submissions of the parties, as well as its previous determinations; and,

WHEREAS the Council directed Clinton Township to re-petition within 60 days of November 22, 2004, for amended substantive certification with a Housing Element and Fair Share Plan that included the Windy Acres site in conformance with N.J.A.C. 5:93-5.13(b); and,

WHEREAS the suitability of the Windy Acres site remains unresolved pending the Appellate Division's decision regarding sewer capacity, and the Council cannot, therefore grant any reductions for the site, at this time; and,

WHEREAS if the Appellate Division decision provides P & H with sewer capacity for its site, the Township may receive credit for the actual number of affordable units that are approved on the site; and,

WHEREAS the Council also directed the Township to provide for additional mechanisms in

its amended Housing Element and Fair Share Plan to address the potential shortfall if Windy Acres is not able to be developed; and,

WHEREAS any additional mechanisms utilized by the Township to address this potential shortfall, including the municipal construction projects that were initially set forth in the Township's April 2, 2004 amendment, must comply with COAH's rules; and,

WHEREAS construction on municipal construction projects must begin within two years of the grant of substantive certification pursuant to N.J.A.C. 5:94-5.5(a)4; and

WHEREAS any RCA utilized by the Township as an alternative mechanism, such as the RCA with Lambertville initially set forth in the Township's April 2, 2004 amendment, must be consistent with the payment schedule set forth in the RCA contract; and,

WHEREAS the Council's grant of a waiver of its center designation requirement was in connection with the Township's proposed April 2, 2004 amendment, the Council, nonetheless, included the following language in its Resolution dated November 22, 2004:

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,

NOW THEREFORE BE IT RESOLVED that the Council finds that the directives provided to Clinton Township in its Opinion and Resolution dated November 22, 2004 were clear and consistent with the objective of providing affordable housing pursuant to the Council's rules; and,

BE IT FURTHER RESOLVED THAT the waiver previously granted by the Council will carry forward to the Township's amended plan and re-petition if such plan includes the same municipal construction project at issue in the Council's November 22, 2004 Resolution, and, therefore, has not been rendered void; and

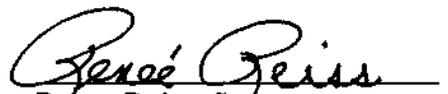
BE IT FURTHER RESOLVED THAT P&H's motion for reconsideration is hereby denied; and

BE IT FURTHER RESOLVED THAT Clinton's Township request for a stay of the sixty-day submission period of the amended Housing Element and Fair Share Plan is also denied.

BE IT FURTHER RESOLVED THAT the Township shall submit a re-petition for amended substantive certification pursuant to the Council's previous directives of November 22, 2004, as such, the Township's re-petition shall:

1. Include the Windy Acres site pursuant to N.J.A.C. 5:93-5.13(b), but shall not receive any reductions at this time; and,
2. Provide for additional mechanisms to address the potential 145-unit shortfall from the Windy Acres site; and,
3. The additional mechanisms in the re-petition shall not be contingent upon P&H's success, or lack thereof, in its appeal regarding sewer service to the Windy Acres site.

I hereby certify that this
resolution was duly adopted
by the Council on Affordable Housing
at its meeting on *January 12, 2005*


Renee Reiss, Secretary
Council on Affordable Housing