

**RESOLUTION GRANTING WASHINGTON TOWNSHIP'S MOTIONS TO APPROVE
THE TOWNSHIP'S PLAN TO PHASE OUT REDUCED HOMEOWNER
ASSESSMENTS FOR AFFORDABLE UNITS IN ANDOVER GLEN AND HAMPTON
CHASE AT FOXMOOR CONDOMINIUM ASSOCIATION: 04-1612 and 04-1612(a)**

WHEREAS, Washington Township received first round substantive certification from the Council on Affordable Housing (COAH) on September 6, 1988 and second round substantive certification on May 6, 1998; and

WHEREAS, Washington Township's second round fair share housing obligation is 305 units, including 16 units of rehabilitation and 289 units of new construction; and

WHEREAS, by two separate motions filed November 18, 2004, Peter G. Sheridan, Esq. of Graham, Curtin & Sheridan, on behalf of Washington Township, requested that COAH approve Washington's plan to phase out the reduced homeowner assessments (which include the homeowner association fees and any special assessments) for the affordable units in Andover Glen (first motion) and Hampton Chase (second motion) at the Foxmoor Condominium Association by:

- Approving the phasing out of the reduced homeowner assessments for the affordable units upon transfer so long as affordability is maintained through other affordability assistance; and
- Permitting an affordable housing unit owner to voluntarily release his/her right to the reduced homeowner assessment so long as affordability is maintained through other affordability assistance; and

WHEREAS, COAH did not receive any replies to the motions; and

WHEREAS, the Foxmoor Condominium development, the subject of the motions, was included in the Township's first round substantive certification and remained in the second round plan; and

WHEREAS, Andover Glen is a 280-unit project with 32 moderate-income sale units and Hampton Chase is a 140-unit project with 33 low-income sale units; and

WHEREAS, the development is divided into five sections, of which Andover Glen and Hampton Chase are two; and

WHEREAS, at the time the Master Deeds were filed for Andover Glen and Hampton Chase, Washington Township, as permitted by COAH's rules, required the affordable unit owners to pay homeowner assessment fees (which includes homeowner association fees and special assessments) in an amount equal to 50 percent of the market rate unit owners; and

WHEREAS, Washington Township states that this reduced homeowner assessment has caused friction among neighbors in the development, and this has caused needed capital repairs and maintenance to be deferred; and

WHEREAS, on January 22, 2002, COAH approved a one-time affordability assistance subsidy in the amount of \$20,000 to Hampton Chase to be used for capital improvements; and

WHEREAS, Washington Township also states that Andover Glen has received previous reimbursement from the Township's Affordable Housing Trust Fund for capital repairs and improvements; and

WHEREAS, in June 1992, Andover Glen submitted a motion to COAH requesting approval to void the reduced homeowner assessment for the affordable units in that particular section of the development (In re Washington Township, Mercer County Motion to Increase Assessments on Moderate-Income Units, Docket No. COAH 92-400); and

WHEREAS, COAH denied the motion because the increased fee would cause a hardship to the moderate-income homeowners, and that such a hardship could lead to a foreclosure, at which time COAH's rules provide that the unit's affordability controls would extinguish; and

WHEREAS, On October 1, 2001, the Uniform Affordability Controls (N.J.A.C. 5:80-26.6) were amended to require that the master deeds of affordable developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers; and

WHEREAS, Washington Township deleted any reference to reduced assessments in the Township's ordinance to avoid the reduced homeowner assessment issues in future inclusionary developments; and

WHEREAS, On October 6, 2004, COAH met with representatives of the Township to discuss a permanent solution to the reduced homeowner assessment issues the condominium association is facing; and

WHEREAS, Washington Township states in the motions that a permanent solution is necessary for three reasons:

- (1) The dissension among homeowners must be resolved;
- (2) The condominium association is in a constant financial crisis. The financial problems are related to both capital repairs and operating costs such as the cost of insurance; and
- (3) The Township seeks a long-term solution where Township financial support is not required; and

WHEREAS, Washington Township proposes to phase out the reduced homeowner assessment at Andover Glen and Hampton Chase; and

WHEREAS, under Washington Township's proposal, as affordable units are transferred, the reduced homeowner assessment (50 percent of the total assessment) will be increased to 100 percent; and

WHEREAS, Washington Township proposes to maintain affordability of each unit through affordability assistance from the Township's Affordable Housing Trust Fund such as down payment assistance or buying down the mortgage amount, which would result in an overall lowering of the financing cost of the unit to the new owner; and

WHEREAS, Washington Township also proposes to offer incentives to permit current owners to voluntarily release their rights to a reduced homeowner assessment in exchange for other affordability assistance; and

WHEREAS, Washington Township maintains that COAH regulations at N.J.A.C. 5:92-12.12(a), are sufficiently flexible to accommodate such a proposal; and

WHEREAS, on October 15, 2004, the Washington Township Committee authorized a letter recommending to the Township Affordable Housing Committee that the Affordable Housing Committee support the proposal; and

WHEREAS, on October 26, 2004, the Washington Township Affordable Housing Committee unanimously adopted a Resolution in support of the proposal; and

WHEREAS, Dennis Miller, Esq., of Fidelity National Title has submitted a letter stating that the proposal will not cause any title insurance concerns; and

WHEREAS, the Master Deed and the By-Laws of the Association for Andover Glen do not specifically mention the reduced homeowner assessment, therefore the Township states that no amendment to the Master Deed or By-Laws is necessary and is no need for the condominium association to approve the proposal; and

WHEREAS, the only requirement in the By-Laws of the Association for Andover Glen is that moderate-income unit owners comply with the Township's Housing Plan; and

WHEREAS, at the time of the filing of the Master Deed, March 11, 1987, the units were subject to a housing plan which included the reduced assessments as a means of achieving the affordability standard; and

WHEREAS, Washington Township maintains that the current housing plan accommodates the Township's proposal; and

WHEREAS, the Master Deed of Hampton Chase does refer to the specific reduced homeowner assessment, therefore requiring an amendment to the Deed, which must be

approved by COAH, the Hampton Chase unit owners and Washington Township's Affordable Housing Committee; and

WHEREAS, the Master Deed allows the Association to amend the Master Deed, provided the Township's Affordable Housing Committee approves an amendment; and

WHEREAS, the proposed amendment to Section 17.04 of the Master Deed would read (new proposed language underlined):

A. Any and all Common Expense assessments, including Special Assessments, upon the designated Lower Income Units shall be limited to fifty (50%) of the total individual Unit assessment which would have been levied upon all Units had such an assessment been allocated equally upon all Units in the condominium. Notwithstanding the foregoing, commencing (date), upon resale, or conveyance of an affordable housing unit any and all common expense assessments shall be paid on the same basis as those units which are not designated affordable housing units. In addition, the owner of any affordable housing unit may voluntarily release and waive his/her right to the reduced assessment upon receipt of other affordability assistance from the Washington Township Affordable Housing Committee.

WHEREAS, the Master Deed and By-Laws of the Association require that the Master Deed must be amended by a vote of at least two-thirds of all owners at any meeting of the Association; and

WHEREAS, Washington Township states that the amendment will be voted upon by the unit holders at a meeting or by ballot by resolution of the Board of Trustees; and

WHEREAS, Washington Township states that this amendment would be in conformance with the Township's current ordinance; and

WHEREAS, the Council has reviewed and considered the arguments set forth in Washington Township's Motion; and

WHEREAS, Washington Township's proposal could serve as a permanent solution to the difficulties described in its Motions.

NOW THEREFORE BE IT RESOLVED that COAH hereby grants Washington Township's Motions to:

1. Approve the phasing out of the reduced homeowner assessments for affordable units upon transfer provided that affordability is maintained through other affordability assistance;
2. Permit an affordable housing unit owner to voluntarily release his/her right to the reduced homeowner assessment provided that affordability is maintained through other affordability assistance; and
3. Approve the proposed amendment (subject to the conditions listed below) to the Master Deed of Hampton Chase and require that the amendment be approved by the unit owners of Hampton Chase as required by the Master Deed and the Association's By-Laws, and that the approved amendment be duly filed with the Mercer County Clerk and COAH.

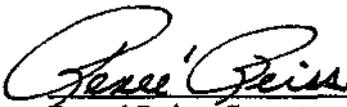
BE IT FURTHER RESOLVED that the Motions are granted based on the following conditions:

1. The Township shall re-file the individual deeds, at the Township's expense, with the Mercer County Clerk upon the transfer of each affordable unit and/or the voluntary release of the current homeowner's right to the reduced homeowner assessment for both Andover Glen and Hampton Chase, with specific language requiring that the affordable unit owner on the deed pay the same homeowner assessment as the market rate units in the development;
2. The Township shall submit an affordability assistance program procedures manual to COAH within 60 days of this decision, which shall describe the different affordability assistance options and the amount of assistance that will be available to new owners upon transfer and current homeowners who may voluntarily release their right to the reduced homeowner assessment, as well as the procedures for obtaining this assistance. This manual shall include how the program will be administered. Moreover, this manual shall detail the options that are available to those unit owners who have completed payments of

their mortgage, if any. Finally, the program procedures manual shall contain sample re-filed deeds, an application and waiver release forms for the voluntary release of the current owner's rights to the reduced assessment;

3. The Township shall submit an amended spending plan to COAH within 60 days of this decision, specifying the anticipated expenditures associated with the affordability assistance programs as well as an analysis of funding availability;
4. No expenditures from the Township's Affordable Housing Trust Fund shall be permitted nor any deeds altered prior to COAH's approval of the Township's affordability assistance program procedures manual and amended spending plan; and
5. Maintenance of the affordability of the units shall comply with N.J.A.C. 5:80-26.6 in the Uniform Housing Affordability Controls. This citation shall be referred to in the amendment to the Master Deed of Hampton Chase, the individual deeds for units in both developments and in the Township's affordability assistance program procedures manual

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