

**RESOLUTION DENYING TOLL BROS., INC. MOTION FOR PARTIAL
RECONSIDERATION OF COAH'S RESOLUTION REGARDING THE COUNTRY
ARCH DEVELOPMENT EXTENDING UNION TOWNSHIP'S SUBSTANTIVE
CERTIFICATION**

WHEREAS, on August 11, 2005, COAH received a motion from Tracy A. Seibold, Esq., on behalf of Toll Bros., Inc.. (Toll Bros.) seeking partial reconsideration of the Council on Affordable Housing (COAH)'s Resolution adopted on June 8, 2005 granting Union Township, Hunterdon County, (Union) extended substantive certification (Resolution); and

WHEREAS, Toll Bros., the contract purchaser for the Country Arch development, has requested that COAH modify the language which reduces the number of credits Union is receiving for the proposed Country Arch development; and

WHEREAS, on August 18, 2005, Howard D. Cohen, Esq., on behalf of Union, submitted a response to Toll Bros.'s motion; and

WHEREAS, on August 30, 2005, Toll Bros. submitted a letter reply to Union's response; and

WHEREAS, Union's second round affordable housing obligation is 101 units, consisting of 78 new construction units and 23 rehabilitation units; and

WHEREAS, Union received second round substantive certification on October 2, 1996, an amendment to the certified plan was approved on December 6, 2000 and extended substantive certification was granted on June 8, 2005; and

WHEREAS, as part of the principled review completed by COAH, COAH requested information from the parties as to why the Country Arch development had not been constructed at the time of Union's motion for extended substantive certification on December 9, 2004; and

WHEREAS, the certified plan for Union included zoning on Block 25/Lot 18.04, which was to produce 240 total units including 48 affordable rental units, known as Country Arch

residential health care facility, for which Union received 24 reductions and 3 rental bonuses for the site because of the age-restricted cap; and

WHEREAS, Country Arch received preliminary approvals in 1987 and received a two-year extension on that approval in 1996; and

WHEREAS, an application for final approval has not been filed for Country Arch; and

WHEREAS, while the site is still zoned Country Residential, which allows continuing care facilities, the site is also in the Highlands Preservation Area; and

WHEREAS, on June 8, 2005, COAH issued a determination that the Country Arch development site no longer presents a realistic opportunity for the construction of affordable housing, based on the restrictions of the Highlands Water Protection and Planning Act, N.J.S.A. 13:20-1 et seq. (Highlands Preservation Act) and the emergency Department of Environmental Protection (DEP) regulations adopted on May 9, 2005 (N.J.A.C. 7:38-1 et. seq.); and

WHEREAS, while Country Arch no longer presented a realistic opportunity due to its location in the Highlands Preservation Area, COAH also determined that all other components of Union's certified plan continued to present a realistic opportunity and that Union submitted an amendment to its certified plan in a timely manner subsequent to the adoption of the Highlands Preservation Act; and

WHEREAS, on August 11, 2005 Toll Bros. filed a motion objecting to the following language in the resolution granting Union extended substantive certification:

WHEREAS, Country Arch no longer presents a realistic opportunity for the construction of affordable housing, based on the restrictions of the Highlands Preservation Act and the emergency DEP regulations adopted on May 9, 2005 (N.J.A.C. 7:38); and

WHEREAS, Toll Bros. argues that this language provides for the unilateral elimination of the Country Arch development in Union's Housing Element and Fair Share Plan; and

WHEREAS, Toll Bros. maintains that COAH assumed that Country Arch is no longer a viable project simply because it is now in the Highlands Preservation Area without any factual input from Toll Bros; and

WHEREAS, Toll Bros. states that it is currently in the process of seeking a Highlands Preservation Act exemption from DEP pursuant to N.J.S.A. 13:20-28 and N.J.A.C. 7:38-2.3; and

WHEREAS, Toll Bros. also argues that pursuant to N.J.A.C. 5:93-10.4(d), COAH must support Toll Bros. in its application for an exemption; and

WHEREAS, Toll Bros. further argues that the elimination of an inclusionary development cannot be achieved by a simple motion by the Township or by COAH and that Union must file a petition for an amendment to remove the Country Arch development from its plan pursuant to N.J.A.C. 5:91-13.1, because it is a fundamental change in approach; and

WHEREAS, Toll Bros. also maintains that N.J.A.C. 5:91-13.1(e) requires that all parties relating to the substantive certification, including the municipality and all objectors, must be able to comment on any proposed amendment, and N.J.A.C. 5:91-13.1(f) states that in general, a municipality shall not be able to amend zoning on sites included in the certified Housing Element and Fair Share Plan without the agreement of the affected property owner; and

WHEREAS, on August 18, 2005, Union responded to Toll Bros.'s motion and argues that Toll Bros. is incorrect in its assertion that the Country Arch development was eliminated from the Township's certified plan; and

WHEREAS, Union Township states that it did not remove Country Arch from its certified plan nor does it have any intention of doing so; and

WHEREAS, Union maintains that the Township's certified plan, including its motion for extended substantive certification and pending petition for amended substantive certification, still includes the Country Arch development; and

WHEREAS, on August 30, 2005, Toll Bros. responded to Union and argues that Country Arch is exempt from the Highlands Act because it has a valid preliminary major subdivision approval that was granted before March 29, 2004 and a permit for disposal beds pursuant to the Sewerage and Facilities Act from DEP that is valid until 2009; and

WHEREAS, Toll Bros. states that the site is still zoned Country Residential, which provides for the Country Arch development to be permitted, as approved; and

WHEREAS, Toll Bros. further argues that Country Arch's preliminary approval does not expire unless and until the municipal ordinance contains an explicit provision terminating approvals upon a date certain after the expiration of the Municipal Land Use Law (MLUL) vesting period; and

WHEREAS, Toll Bros. states that Union does not have an ordinance that terminates preliminary approvals if a final approval application is not submitted within three years of preliminary approval, and, therefore, the Country Arch development's preliminary approvals are still valid; and

WHEREAS, COAH's decision that the Country Arch development no longer presents a realistic opportunity was based on the facts before it on June 8, 2005; and

WHEREAS, an exemption application has not been submitted for Country Arch pursuant to DEP's list of exemption applications dated August 22, 2005; and

WHEREAS, on June 8, 2005, there was no documentation presented to COAH that could lead to a determination that Country Arch was or will be exempt from the Highlands Water Protection and Planning Act, as this determination must be made by DEP; and

WHEREAS, no additional information has been submitted to COAH to support Toll Bros.'s position that Country Arch is exempt from the Highlands Preservation Act; and

WHEREAS, the Highlands Council submitted to COAH a response to Toll Bros.'s Motion, supporting COAH's determination that the site no longer presents a realistic opportunity based on the information submitted to date from Toll; and

WHEREAS, contrary to Toll Bros.'s assertion, nowhere in COAH's resolution did COAH unilaterally remove or allow Union to remove the Country Arch development from its plan.

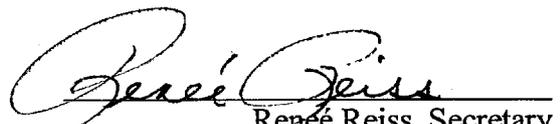
NOW THEREFORE BE IT RESOLVED that COAH hereby denies Toll Bros.'s Motion for Partial Reconsideration of Resolution adopted on June 8, 2005 granting Union Township, Hunterdon County, extended certification; and

BE IT FURTHER RESOLVED THAT COAH's determination on June 8, 2005, that the Country Arch development no longer presents a realistic opportunity for affordable housing shall remain in effect; and

BE IT FURTHER RESOLVED THAT pursuant N.J.A.C. 5:93-5.13, Union shall maintain the Country Arch development site in its Housing Element and Fair Share Plan in that it has received preliminary approval, unless Union obtains consent of the developer to remove the site; and

BE IT FURTHER RESOLVED THAT Country Arch shall receive a zero-unit reduction until such time as DEP issues a determination as to whether the site is eligible for an exemption from DEP from the Highlands Preservation Act.

I hereby certify that this
resolution was duly adopted
by the Council on Affordable
Housing at its meeting on
October 19, 2005.


Renee Reiss, Secretary
Council on Affordable Housing