

**RESOLUTION MEMORIALIZING COAH'S DECISION OF DECEMBER 14,
2005 DENYING MTAE'S MOTION SEEKING AN ORDER BY THE COUNCIL
DISMISSING FRANKFORD TOWNSHIP, SUSSEX COUNTY, FROM THE
COUNCIL ON AFFORDABLE HOUSING'S JURISDICTION**

COAH - 05 - 1714

WHEREAS, on June 5, 2000, Frankford petitioned the Council on Affordable Housing for substantive certification pursuant to a Housing Element and Fair Share Plan dated May 31, 2000; and

WHEREAS, on March 13, 2002, COAH issued a Report Requesting Additional Information; and

WHEREAS, on November 7, 2002, November 22, 2002 and on April 23, 2003, Frankford submitted correspondence to COAH responding in part to the information requested by COAH in its March 13 report; and

WHEREAS, on February 1, 2005, the Frankford Township Committee adopted a resolution committing to address its Third Round Fair Share obligation by petitioning the Council for Affordable Housing for substantive certification of a newly adopted Housing Element and Fair Share Plan by December 20, 2005; and

WHEREAS, Frankford subsequently submitted a development fee ordinance to COAH for review, which was approved by COAH on October 11, 2005; and

WHEREAS, on October 26, 2005, the Frankford Township Land Use Board adopted a Housing Element and Fair Share Plan which was revised to address the Township's affordable housing obligation under Round Three of the Council's rules and regulations; and

WHEREAS, Frankford petitioned COAH for substantive certification of its 1987-2014 cumulative Third Round Obligation on December 1, 2005, and, therefore, the 45 - day objector period is currently in progress; and

WHEREAS, Jeffrey Kantowitz, Esq, on behalf of MTAE, Inc. (“MTAE”), filed a motion with the Council on October 17, 2005, asking the Council to dismiss Frankford from COAH’s jurisdiction; and

WHEREAS, MTAE states the substance and content of Frankford’s previously filed Housing Element and Fair Share Plan, along with the Township’s subsequent submissions, are evidence to the fact that Frankford should be dismissed from COAH’s jurisdiction; and

WHEREAS, the MTAE Property consists of approximately 80 acres and a portion of the property is located in the Agricultural/Residential (“AR”) zone, and a portion of the property is located in the C-2 Commercial (“C-2”) zone and neither the AR zone, nor the C-2 zone, nor any other zone district in Frankford, permits any type of multi-family housing; and

WHEREAS, MTAE argues that Frankford has not complied with the Mount Laurel II doctrine of taking affirmative steps, through the existence of the Township’s zoning power, to create a realistic opportunity for affordable housing by zoning multi-family units; and

WHEREAS, after MTAE filed a complaint in Superior Court in February 2005, the Superior Court directed plaintiff to move before COAH for a determination as to whether COAH would assert jurisdiction over Frankford; and

WHEREAS, MTAE contends that Frankford should be dismissed from COAH’s jurisdiction because its Housing Element and Fair Share Plan and subsequent documentation, submissions, and conduct do not satisfy the definitions of Housing Element and Fair Share Plan set forth in COAH’s regulations in order for Frankford to remain under COAH’s jurisdiction; and

WHEREAS, MTAE argues that N.J.A.C. 5:91-2.1 as well as N.J.A.C. 5:95-2.1 direct that a town shall fall under COAH's jurisdiction where it files a "housing element" and "fair share plan," and that these submissions must comply with COAH criteria, including that they must provide the necessary and sufficient detailed data and information required under N.J.A.C. 5:93; and

WHEREAS, MTAE additionally argues that in order for Frankford to remain under COAH's jurisdiction it had to have filed a satisfactory Housing Element and Fair Share Plan, resulting in COAH's granting of a second round certification and if the Frankford materials could not have enabled COAH to reach a final decision to either grant or deny Frankford's petition for second round certification, it must be deemed insufficient to meet COAH's criteria and definitions to establish jurisdiction; and

WHEREAS, MTAE states Frankford has never received either Substantive certification or a judgment of repose for its first or second round obligation and therefore Frankford has failed to provide the detail necessary under COAH's regulations; and

WHEREAS, Richard I. Clark, on behalf of Frankford Township submitted a reply letter brief to COAH on November 10, 2005; and

WHEREAS, Frankford sets forth the following in its reply:

- On November 29, 2000, Frankford adopted its current Master Plan.
- On October 26, 2005, the Frankford Township Land Use Board adopted, and the Township Committee endorsed, a Housing Element and Fair Share Plan which had been revised to address the Township's affordable housing obligation under Round Three.
- On October 26, 2005, the Frankford Township Committee adopted a Town Center Plan addressing local, county and OSG concerns and providing additional opportunities for meeting their Third Round Obligation.
- Frankford has adopted the following:
 - Developer Fee Ordinance;
 - Growth Share Ordinance;
- Frankford is in the process of adopting the following:
 - Spending Plan;
 - Affirmative Marketing Ordinance; and

WHEREAS, Frankford submits that MTAE's assertion that the February 1, 2005 Resolution is operative only if Frankford had on file as of December 20, 2004 a "viable, adjudicable and satisfactory" Housing Element and Fair Share Plan, has no legal support; and

WHEREAS, Frankford argues the requirements for remaining under Council jurisdiction are as follows:

1. The filing of a Petition for Second Round Substantive Certification prior to December 20, 2004.
2. No final action by COAH on the Petition for Second Round Substantive Certification by December 20, 2004.
3. Adoption of a Resolution by Frankford no later than February 20, 2005, committing to Third Round Compliance.
4. The filing by Frankford of a new Housing Element and Fair Share Plan by December 20, 2005; and

WHEREAS, Frankford asserts that it has or will meet all of the above stated requirements; and

WHEREAS, MTAE submitted a letter brief in reply to Frankford Township's brief, on November 28, 2005, in which no new arguments were presented; and

WHEREAS, Frankford submitted a reply on December 1, 2005, in which no new arguments were presented.

NOW, THEREFORE, BE IT RESOLVED THAT Frankford submitted a second round plan to COAH on May 31, 2000, which proposed to meet Frankford's obligation through credits for three previously constructed alternative living arrangements, a duplex low and moderate income home, a 60 - unit Class C Boarding home, and rental bonuses; and

BE IT FURTHER RESOLVED THAT Frankford petitioned COAH for third round substantive certification on December 1, 2005, with a plan to address Frankford's

cumulative second and third round obligation and remains under COAH's jurisdiction pursuant to N.J.A.C. 5:95-2.1; and

BE IT FURTHER RESOLVED THAT the 45-day objector period is currently in progress and MTAE will have the opportunity to submit an objection and participate in third round mediation; and

BE IT FURTHER RESOLVED THAT on December 14, 2005, COAH heard this motion on the papers, reviewed and considered the submissions of the parties; and

BE IT FURTHER RESOLVED THAT COAH hereby memorializes the December 14, 2005 motion decision denying in its entirety MTAE's motion seeking an order by COAH dismissing Frankford Township, Sussex County, from COAH's jurisdiction.

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on

JANUARY 19, 2006



Renee Reiss

Secretary

Council on Affordable Housing