

**RESOLUTION DENYING VILLA CONTRACTING COMPANY'S MOTION FOR AN
ORDER REFERRING SECOND ROUND MEDIATION TO THE OFFICE OF
ADMINISTRATIVE LAW**

Clark Township, Union County
COAH 05-1707

WHEREAS, Clark Township, Union County, received first round substantive certification from the New Jersey Council on Affordable Housing ("COAH") on September 4, 1991, for a period of six years; and

WHEREAS, Clark received a vacant land adjustment that reduced its new construction obligation to 23 units, leaving the Township with a first round obligation of 50 units (23 new construction units and 27 rehabilitation units), which the Township proposed to meet through a combination of inclusionary development and a rehabilitation program; and

WHEREAS, Clark's second round affordable housing obligation was 105 units (92 new construction units and 13 rehabilitation units) which was reduced to 36 units (23 new construction units and 13 rehabilitation units) based upon Clark's first round vacant land adjustment; and

WHEREAS, Clark filed its second round fair share plan with COAH on September 4, 1997, and COAH received a resolution from Clark on August 23, 1999, petitioning COAH for second round substantive certification; and

WHEREAS, Clark re-petitioned COAH for second round substantive certification on March 1, 2001, and filed a third amendment to its housing element and fair share plan on December 11, 2001, and re-petitioned COAH on January 4, 2002; and

WHEREAS, COAH received two objections during the 45-day objection period, which led to a mediated agreement with Garden Homes, Inc., for the rezoning of Block 58, Lot 4, for an age-restricted affordable housing overlay on the Tycom site, permitting a maximum of 300 units, with 20 percent being affordable units; and

WHEREAS, Clark filed a re-petition on September 13, 2004, as a result of the mediated

agreement, to include the age-restricted overlay zoning on Block 58, Lot 4, and an increase in the permitted density on Block 57, Lot 1, known as the Schwarz Farm; and

WHEREAS, COAH's second round ended on December 20, 2004, with the implementation of COAH's third round rules, effective December 20, 2004; and

WHEREAS, COAH continued second round mediations for municipalities that had petitioned COAH for second round substantive certification prior to December 20, 2004, but had not received second round substantive certification by that date, for the purposes of aiding a municipality and any objectors in an attempt to resolve any differences, as well as providing guidance to all parties, through the existing mediation, for the submission of a municipality's third round petition to COAH; and

WHEREAS, COAH received seven objections to Clark's plan submitted by Robert S. Ellenport, Villa Contracting Co. (Villa), William T. Fidurski, Department of Environmental Protection (DEP) Commissioner Bradley Campbell, Dennis Miranda of the Rahway River Association, L'Oreal USA, Inc., and Mastertaste, Inc; and

WHEREAS, Villa objected to the rezoning of the Tycom site for residential uses, asserting that the Tycom site is located in an industrial zone, surrounded on three sides by industrial uses, and on the fourth side by railroad tracks, thereby making the Tycom site inappropriate for residential housing; and

WHEREAS, Villa contends that other sites in Clark are more appropriate for a residential overlay; and

WHEREAS, Villa filed a motion with COAH on July 29, 2005, seeking an order from COAH to cease the mediation and review of Clark's second round petition and directing Clark to file a third round fair share plan and housing element, or, in the alternative, to have COAH transfer the

second round mediation to the Office of Administrative Law ("OAL") for an evidentiary hearing regarding the suitability of the Tycom site for residential housing; and

WHEREAS, Clark responded on August 9, 2005, to Villa's motion, and Clark asserted that it would be premature for COAH to direct Clark to file a third round plan since the second round mediation should be allowed to continue to completion before filing a third round plan, and that Clark would be filing its third round petition no later than December 20, 2005, and that the mediation should not be transferred to OAL because COAH was the proper entity to make factual findings based upon the facts submitted by the parties; and

WHEREAS, Clark Developers, the owner of the Tycom site, filed a letter brief with COAH on September 16, 2005, asserting that Villa's motion should be denied and the mediation should not be transferred to the OAL because there are no contested issues of material fact, that the site's characteristics, the adjacent uses and the adjacent structures are not in dispute, that the site provides a realistic opportunity for affordable housing, and that the zoning of the site for residential housing is presently the subject of litigation in the Superior Court of New Jersey, which should disallow Villa from challenging the zoning in the OAL; and

WHEREAS, COAH staff presented the mediation report to the Council on December 14, 2005, finding that no contested issues of material fact exist, and that the proposed sites in Clark's second round plan must comply with all State regulations, including, but not limited to, DEP rules governing environmental constraints; and

WHEREAS, Clark committed, by resolution adopted January 18, 2005, to submit its third round petition to COAH by December 20, 2005; and

WHEREAS, Clark submitted its third round petition on December 20, 2005; and

WHEREAS, Villa may receive objector status to Clark's third round plan, if it so desires.

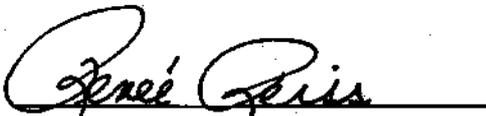
NOW THEREFORE BE IT RESOLVED that a COAH planner conducted three site visits, and found that the surrounding uses, which include various manufacturers, medical equipment and transport service, a children's day care center, a nursing home and a bank branch, were not incompatible with the proposed residential development and that the site is adjacent to a residential zone, which abuts the rear side of the property to the north; and

BE IT FURTHER RESOLVED with respect to Villa Contracting's environmental concerns, that both the NRC and DEP have approved the site for development, however, if new information is revealed subsequent to the issuance of the mediation report, COAH will re-visit the issue of site suitability; and

BE IT FURTHER RESOLVED that Villa's motion to require Clark Township to file a third round petition prior to December 20, 2005 is hereby denied; and

BE IT FURTHER RESOLVED that Villa's motion to transfer the mediation of Clark's petition for second round substantive certification to the Office of Administrative Law based on the assertion that there exists issues of material fact is also hereby denied.

I hereby certify that this Resolution was duly adopted by the Council on Affordable Housing at its meeting on March 8, 2006.



Renee Reiss, Secretary
Council on Affordable Housing