

IN RE PETITION FOR SUBSTANTIVE) NEW JERSEY COUNCIL ON
CERTIFICATION BY HOWELL TOWNSHIP) AFFORDABLE HOUSING
UPON REMAND FROM SUPERIOR COURT,)
APPELLATE DIVISION, AFFIRMING IN) ADMINISTRATIVE ORDER
PART AND REVERSING IN PART GRANT)
OF SUBSTANTIVE CERTIFICATION.)

WHEREAS the Township of Howell petitioned the Council on Affordable Housing ("COAH" or the "Council") for second round substantive certification of its housing element and fair share plan on February 27, 1995; and

WHEREAS the Council initially granted second round substantive certification to Howell Township, on October 7, 1998, which was subsequently reversed and remanded back to the Council by the Superior Court, Appellate Division, on March 20, 2001; and

WHEREAS COAH staff prepared a report dated September 9, 2002, re-reviewing Howell's housing element and fair share plan; and

WHEREAS the Council ordered Howell Township to amend its housing element and fair share plan and re-petition for substantive certification by January 31, 2003; and

WHEREAS Howell Township re-petitioned COAH for substantive certification on January 31, 2003; and

WHEREAS the 45-day objection period ended on March 31, 2003, and the Council received four objections during that time; and

WHEREAS a report requesting additional information was issued on May 28, 2004; and,

WHEREAS on July 13, 2004, the Council voted to deny an emergent motion by Howell Township to strike the objection of Foxmoor Development; and,

WHEREAS mediation began on July 20, 2004; and,

WHEREAS a mediation report was issued on September 2, 2004; and,

WHEREAS a compliance report was issued on September 22, 2004, which recommended approval of the Township's plan; and,

WHEREAS opportunity was provided for review and comment upon both of these reports; and,

WHEREAS the Council reviewed the staff recommendations, reports and comments thereto;

WHEREAS on October 5, 2004 COAH voted to grant Howell's request for a waiver to COAH's age-restricted cap formula and also voted to grant substantive certification to Howell's affordable housing plan; and

WHEREAS Elon Associates, LLC, an objector to Howell's January 31, 2003 re-petition, filed an appeal of COAH's decision granting substantive certification to Howell with the Superior Court, Appellate Division; and

WHEREAS on June 28, 2006, the Appellate Division issued an opinion which "affirmed in part, reversed in part and remanded for further proceedings" COAH's grant of substantive certification to Howell Township's fair share plan, finding that COAH had improperly granted a waiver of its age-restricted cap formula to Howell; and

WHEREAS the Appellate Division opinion explains that COAH should not be divested of jurisdiction, but rather that Howell should be afforded the opportunity to amend its plan to address the affordable housing shortfall resulting from the court's decision; and,

WHEREAS COAH's rules at N.J.A.C. 5:95-15.1 explain that as of December 20, 2004, COAH will no longer grant second round substantive certification; and,

WHEREAS COAH's rules at N.J.A.C. 5:94-1.4 further explain that any remaining second round affordable housing obligation will be part of the municipality's third round affordable housing obligation and therefore must be addressed via a petition for third round substantive certification; and,

WHEREAS COAH's rules at N.J.A.C. 5:95-10.3 also permit the Council to issue an administrative order requiring a municipality to take action which will expedite the Council's administrative process and/or the production of affordable housing.

NOW THEREFORE BE IT RESOLVED that the Appellate Division's June 28, 2006 opinion reversed COAH's grant of substantive certification to Howell Township for the second round; and,

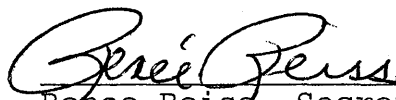
BE IT FURTHER RESOLVED that COAH will not grant substantive certification for the second round pursuant to the mandate of its rules; and,

BE IT FURTHER RESOLVED that the Appellate Division opinion requires Howell Township to address its remaining obligation for affordable housing for the second round; and,

BE IT FURTHER RESOLVED that the only mechanism available for Howell Township to address this remaining second round affordable housing obligation through the COAH process is by way of filing a third round affordable housing plan with COAH; and,

BE IT FURTHER RESOLVED that COAH hereby orders Howell Township, Monmouth County to submit a fair share plan for the third round affordable housing obligation, including the Township's remaining second round obligation, to COAH for review within 120 days of the Appellate Division opinion noted herein or by October 28, 2006.

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on August 9, 2006.



Renee Reiss, Secretary
Council on Affordable Housing