

**RESOLUTION GRANTING TEMPORARY RESTRAINTS
ON THE GIULIANI TRACT IN THE
BOROUGH OF ATLANTIC HIGHLANDS, MONMOUTH COUNTY**
COAH#06-1807

WHEREAS the Borough of Atlantic Highlands, Monmouth County, petitioned COAH for second round substantive certification on July 23, 2003; and

WHEREAS COAH did not receive any objections to the Borough's petition during the 45-day objection period; and

WHEREAS on July 6, 2005, COAH received correspondence from K. Hovnanian Shore Acquisitions, L.L.C., regarding Atlantic Highlands' petition; and

WHEREAS K. Hovnanian's factual comments regarding Atlantic Highlands affordable housing plan were not afforded objector status, but were nonetheless considered by COAH staff in reviewing the Borough's plan; and

WHEREAS Atlantic Highlands did not receive second round substantive certification from COAH, but did file a petition seeking third round substantive certification from COAH on December 20, 2005, which sought to address the Borough's 1987 to 2014 affordable housing obligation; and

WHEREAS on January 19, 2006, COAH heard an emergent application for scarce resource restraints from K. Hovnanian seeking a scarce resource order restraining the Borough from taking any further steps toward the condemnation of property within the Borough known as the "McConnell" tract; and

WHEREAS on January 19, 2006, COAH granted in part and denied in part K. Hovnanian's application for relief and restrained the Borough from purchasing, condemning or taking any other irreversible action with regard to the McConnell tract in Atlantic Highlands; and

WHEREAS on March 8, 2006, COAH issued an opinion memorializing the emergent action

taken at COAH's January 9, 2006 meeting; and

WHEREAS on April 12, 2006, COAH amended its March 8, 2006 opinion to allow the Borough to proceed upon K. Hovnanian's Board of Adjustment application, and also directed COAH staff to expedite review of the Borough's plan and to schedule mediation upon the receipt of additional information sought from Atlantic Highlands; and

WHEREAS COAH issued a Pre-Mediation Report Requesting Additional Information from Atlantic Highlands on May 9, 2006, wherein COAH staff conducted a vacant land analysis and established the Borough's realistic development potential ("RDP") at 16 units; and

WHEREAS on July 27, 2006, COAH issued a Addendum to COAH's previous Pre-Mediation Report based on additional information obtained from K. Hovnanian and the New Jersey Department of Environmental Protection ("DEP"); and

WHEREAS in the July 27, 2006 Addendum to the Pre-Mediation Report, Atlantic Highlands' RDP was increased from 16 to 32 affordable units based on the inclusion of property known as the "Giuliani tract" which had previously been excluded from COAH's vacant land analysis; and

WHEREAS on May 2, 2006, K. Hovnanian filed a motion seeking scarce resource restraints which would prevent the Borough of Atlantic Highlands from proceeding with any condemnation of the Giuliani tract; and

WHEREAS the Borough of Atlantic Highlands filed opposition to K. Hovnanian's motion seeking such restraints; and

WHEREAS COAH heard oral argument on the motion for restraints at its August 9, 2006 Board Meeting; and

WHEREAS in support of the motion for restraints on the Giuliani tract K. Hovnanian repeats many of the same arguments made in support of its emergent application for restraints vis-a-vis the McConnell tract; and

WHEREAS in opposition to K. Hovnanian's motion, the Borough relies on many of the same arguments made in regard to the first motion seeking restraints; and

WHEREAS K. Hovnanian asserts the restraints sought should be provided because the Giuliani tract is one of the only pieces of land capable of producing affordable housing in the Borough of Atlantic Highlands, and should therefore be held available for this purpose; and

WHEREAS the Borough asserts that COAH does not have the requisite jurisdiction to restrain the Borough from proceeding with the condemnation of the Giuliani tract; and

WHEREAS in response to COAH's reports requesting additional information, the Borough of Atlantic Highlands has indicated that it intends to address its entire RDP through the use of various affordable housing mechanisms including, but not limited to, the construction of a municipally sponsored affordable housing site and a regional contribution agreement; and

WHEREAS COAH is currently awaiting receipt of additional information from Atlantic Highlands regarding the Borough's ability to comply with N.J.A.C. 5:94-4.6, which requires the Borough to demonstrate that the Borough has control or the ability to control the proposed municipally sponsored site; and

WHEREAS COAH has reviewed all the information and arguments submitted by the parties in regard to the present motion, and information submitted regarding the petition currently pending before COAH, as well as COAH's previous motion decisions in this matter; and

WHEREAS based upon the information which has been submitted to COAH to date, COAH is unable to determine if the Giuliani tract will be necessary for the Borough to satisfy its entire

affordable housing obligation.

NOW THEREFORE BE IT RESOLVED that COAH hereby restrains the Borough of Atlantic Highlands from condemning, purchasing or taking any other irreversible steps toward the condemnation of the Giuliani tract; and

BE IT FURTHER RESOLVED that these restraints shall remain in effect until COAH acts upon the Borough's petition; and

BE IT FURTHER RESOLVED that COAH orders these restraints based in large part upon the same reasoning as set forth in COAH's discussion of the restraints at issue in COAH's March 8, 2006 opinion (attached and incorporated by reference herein); and

BE IT FURTHER RESOLVED that COAH has ordered the restraints noted above because there is a lack of available land suitable for affordable housing within the Borough of Atlantic Highlands, and as such, COAH seeks to maintain the *status quo* as to the availability of property which may be suitable for affordable housing while its review of the Borough's petition continues, and therefore deems the restraints entered herein to be in compliance with the Supreme Court's decision in Hills Dev. Co. v. Bernards Tp., 103 N.J. 1 (1986); and

BE IT FURTHER RESOLVED that at this time COAH shall not restrain the Planning Board/Board of Adjustment from acting upon any development applications on the Giuliani tract which provide for affordable housing pursuant to N.J.A.C. 5:93-5.6(b)(1).

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on September 13, 2006.


Renee Reiss, Secretary
Council on Affordable Housing