

**ROCKAWAY TOWNSHIP, MORRIS COUNTY**  
**RESOLUTION REQUIRING ROCKAWAY TOWNSHIP TO TAKE ACTIONS**  
**CONSISTENT WITH ITS SUBSTANTIVE CERTIFICATION AND THE**  
**COUNCIL'S ORDER TO SHOW CAUSE REGARDING THE POSSIBLE**  
**DISMISSAL OF ROCKAWAY FROM COAH'S JURISDICTION**

**WHEREAS**, Rockaway Township ("Rockaway") received a judgment of compliance on November 20, 1985 for the first round; and

**WHEREAS**, on March 2, 1995, Rockaway petitioned the New Jersey Council on Affordable Housing ("COAH") for second round substantive certification, proposing to rezonc the Pondview site (the subject of the within motion) to reduce the number of units on the tract from 1,600 total units, to 1,100 multi-family units with 100 affordable units; and

**WHEREAS**, Pondview objected to the proposed rezoning of its site for a lesser density and set-aside, and mediation began on April 15, 1986 and concluded on June 20, 1996 with a signed agreement between the parties; and

**WHEREAS**, Rockaway Township received second round substantive certification on April 2, 1997, and received amended second round certification on July 16, 2002, containing the Pondview development and including a total of 142 credits, leaving a remaining obligation of 270 units consisting of a 247-unit new construction obligation and a 23-unit rehabilitation obligation; and

**WHEREAS**, Pondview was the subject of litigation in the first affordable housing round which resulted in a settlement agreement that required inclusion of rental units that qualify for a two - for - one bonus credit pursuant to the limitations of N.J.A.C. 5:93-5,15(d); and

**WHEREAS**, at the time of extended substantive certification, construction was pending, subject to New Jersey Department of Environmental Protection (DEP) approval of water services (Water Allocation Permit); and

**WHEREAS**, pilot testing on the site had commenced, and as a result ii was determined by COAH that the Pondview Estates site represented a realistic opportunity for affordable housing, and accordingly, Rockaway Township was granted 100 zoned family unit credits and 92 bonus credits for the site; and

**WHEREAS**, Rockaway Township filed a motion with COAH on December 8, 2004 requesting extended substantive certification, prior to the December 13, 2004 deadline established by N.J.A.C. 5:91-14.3 and N.J.A.C. 5:95-15.2; and

**WHEREAS**, Rockaway petitioned COAH for third round substantive certification on December 9, 2005; and

**WHEREAS**, the Pondview Estates project is included in Rockaway's third round Housing Element and Fair Share Plan, as is a site owned by Morris Commons, another party to this action, whose site provides a total of 198 age restricted units, 27 of which will be affordable, and will be developed at a rate of 8 units per acre; and

**WHEREAS**, on December 19, 2006, Guliet Hirsch submitted a motion on behalf of Pondview requesting the following:

1. That Rockaway reserve all existing" unallocated water supply capacity from the Morris County Municipal Utility Authority ("MCMUA") and all other sources, for the purpose of providing water supply to the Pondview development;
2. That the Township reserve any new water supply capacity for the Pondview development; .
3. Restraining Rockaway from allocating or committing any further water supply capacity to any applicant within the Township other than Pondview until sufficient capacity is reserved for the entire Pondview development;
4. Directing Rockaway to give priority status to the Pondview project for any water capacity that becomes available to the Township as a result of any revocation or recoupment of water capacity held by third parties for projects in the Township that have failed to obtain the required approvals, failed to proceed with construction or otherwise abandoned or failed to utilize their water supply within reasonable time periods ("lapsed projects");
5. Directing Rockaway to immediately proceed to take all actions necessary in order to recoup and revoke water supply gallonage previously allocated by the Township to any project meeting the definition of a lapsed project as set forth in Paragraph 4 above and to reallocate said water capacity to the Pondview development;
6. Directing Rockaway to diligently pursue discussions with both MCMUA and member municipalities with respect to the transfer at cost of any unused water capacity held by either MCMUA or any MCMUA member municipality, for allocation by the Township to Pondview Development;
7. Directing the Township to consent to Pondview's use of water available from Wharton Borough pursuant to the November 28, 2005 Agreement without any additional payment; and
8. Directing the Township to take all necessary actions to pursue and obtain the water allocation permit previously applied for the on-site wells for the Pondview development and to take all other necessary steps to assure the provision of potable water service to said project.; and

**WHEREAS**, Morris Commons LLC submitted a brief in opposition dated January 17, 2007, and is the owner of an affordable housing site located in Rockaway Township that has immediately available sewer, water, electric, gas and other utilities, and is ready to provide affordable housing; and

**WHEREAS**, Ed Buzak, Esq., on behalf of Rockaway Township, submitted a cross - motion on January 17, 2007, asking COAH to compel Pondview to implement its water supply agreement with the Borough of Wharton and to restrain the construction of an onsite water supply system; and

**WHEREAS**, Rockaway requests the following relief from COAH:

1. An Order compelling Pondview to implement the November 28, 2005 Agreement between the Borough of Wharton and Pondview as amended in August 2006;
2. Compelling third parties, including, but not limited to the Borough of Wharton and Morris County Municipal Utilities Authority to show cause before COAH as to why they should not be simultaneously ordered to implement and assist in implementing the aforesaid Agreements by and between the Borough of Wharton and Pondview;
3. Compelling Pondview to make available to Rockaway 1.2 million gpd of water capacity, less the necessary capacity for the Developer's project;
4. Alternatively, compelling the Developer to provide adequate compensation and consideration to Rockaway for the Developer's inability to fulfill this obligation that was assumed on or about November 13, 1989;
5. Enjoining and restraining Pondview from proceeding with any further activities related to an application to install wells on-site, the result of which can result in the contamination of the water system to service the project as well as the entire Rockaway water system; and
6. Any other such relief as COAH may determine; and

**WHEREAS**, the parties argued their position before COAH at the March 14, 2007 COAH meeting, and at the Council's suggestion, agreed to enter into mediation in an attempt to resolve the issues; and

**WHEREAS**, mediation has been ongoing\* taking place on April 5, May 3 and May 31, 2007; and

**WHEREAS**, on March 23, 2007, Pondview Estates filed a Verified Complaint against Rockaway Township in the Superior Court of New Jersey, Law Division, concerning the water supply for the Pondview site to be provided for by Rockaway; and

**WHEREAS**, while COAH maintains jurisdiction over Rockaway's affordable housing obligation pursuant to its grant of second round substantive certification, COAH also notes that the Superior Court of New Jersey maintains jurisdiction over any disputes concerning any contractual agreements or municipal applications or approvals; and

**WHEREAS**, on May 24, 2007, a task force recommended that the matter be brought before the Council, and that the Board consider the relief requested in Pondview's December 20, 2006 motion, and depending on the status of mediation, that a scarce

resource restraint be issued, and an Order to Show Cause as to why Rockaway should not be dismissed from COAH's protective jurisdiction; and

**WHEREAS**, on June 13, 2007, the Council imposed a scarce resource restraint upon Rockaway Township on public water, finding that it is questionable whether there is sufficient water capacity available to the Pondview Estates affordable housing development or other elements of Rockaway's affordable housing plan and if there is not available water capacity for the elements of Rockaway's affordable housing plan, Rockaway no longer has a plan that meets the criteria of its substantive certification as granted by COAH; and

**WHEREAS**, the scarce resource restraint upon public water in Rockaway Township would remain in effect until such time as COAH issues a decision that it has been provided with credible information from Rockaway that there is sufficient water capacity to service Pondview and any other element of Rockaway's Housing Element and Fair Share Plan; and

**WHEREAS**, the Rockaway Township Board of Adjustment, Planning Board and Council are restrained from acting on any development application that requires public water and that the scarce resource restraint does not prevent Rockaway from issuing development approvals or water allocation to any project included in its housing element and fair share plan, including the Morris Commons property; and

**WHEREAS**, Rockaway was also ordered to show cause as to why the Council should not dismiss Rockaway's third round petition, specifically demonstrating that there is sufficient water capacity to service' Pondview and any other clement of its Housing Element and Fair Share Plan, including all sources of water supply, gallonage and allocation of water to each affordable housing project; and

**WHEREAS**, on July 2, 2007, COAH received Rockaway Township's reply to the Council's Order to Show Cause in which Rockaway alleges that at a June 11, 2007 meeting with DEP, DEP stated that it did not appear that the Borough of Wharton had sufficient water supply to provide to Rockaway for the Pondview site and that the Township could not provide any assurance to COAH that safe, potable water will become available to the Pondview site; and

**WHEREAS**, Rockaway Township states that it is committed to addressing its fair share obligation and has met with Morris Commons regarding another site to provide a rental development with a setaside equal to that on Moms Commons<sup>1</sup> other site; and

**WHEREAS**, on July 12, 2007, Morris Commons submitted its reply to the Order to Show Cause, and staled that Rockaway has 632,000 gpd of available water, and a reserve of 400,000 gpd, thereby asserting that there is more than enough water supply to meet the demands of the Morris Commons' sites; and

**WHEREAS**, Morris Commons also assents that the wheeling agreements Pondview has entered into with Wharton will supply 100,000 gpd for Phase I and 189,000 gpd for Phase II of Pondview's development; and

**WHEREAS**, on July 12, 2007, Pondview submitted its reply to the Council's Order to Show Cause, stating that Rockaway's reply has been unresponsive to the Council's Order as failing to provide a fact based technical evaluation of the sources of water supply available to Rockaway, including Rockaway's failure to submit the hydraulic barrier system testing report for wells for the Pondview site to DEP for its review; failure to submit a water extension permit for the Pondview site, and failure to execute the wheeling agreement between Wharton Borough and Pondview as well as attempting to reach agreements with the MCMUA and SEMCMUA for additional water supply for Pondview; and

**WHEREAS**, additional correspondence and submissions were received by COAH from Rockaway and Pondview, and the parties having failed to reach an agreement as to what is the existing water supply in Rockaway, as well as what are the available sources and amounts of water available to Rockaway; and

**WHEREAS**, on September 4, 2007, a COAH task force met and recommended that the Council order that Rockaway take the necessary steps to 1) provide COAH with accurate data from the MCMUA and SEMCMUA evidencing the total amount of water supply available in Rockaway, as well as the sites in Rockaway where any water supply, and the amount, is presently committed; 2) immediately submit the on-site well pilot tests to DEP for its review and decision regarding their viability for the Pondview site; and 3) take any and all steps necessary to secure a sufficient water supply for the Pondview site pursuant to the wheeling agreements with Wharton Borough, as well as any other actions necessary to meet this requirement; and

**NOW, THEREFORE, BE IT RESOLVED THAT** COAH finds that as a result of the failure of Rockaway to provide definite data concerning the available water supply to Rockaway, it is necessary to continue to maintain the scarce resource restraint upon Rockaway's water supply; and

**BE IT FURTHER RESOLVED THAT** the Council orders that Rockaway immediately take the necessary steps to 1) provide COAH with accurate data from the MCMUA and SEMCMUA evidencing the total amount of water supply available to Rockaway, and the sites where any water supply has been committed, as well the volume committed; 2) immediately submit the on-site well pilot tests for the Pondview site to DEP for its review and decision regarding their viability; and 3) immediately take any and all steps necessary to secure a sufficient water supply for the Pondview site pursuant to the wheeling agreements with Wharton Borough, as well as any other actions necessary to meet this requirement; and

**BE IT FURTHER RESOLVED THAT** the issuance of this scarce resource restraint in no way precludes the parties from continuing with mediation, and COAH encourages the parties to do so; and

**BE IT FURTHER RESOLVED THAT** the Order to Show Cause concerning dismissal of Rockaway from COAH's jurisdiction shall be carried forward and is returnable on October 10, 2007, at the Council's monthly meeting; and Rockaway shall file any and all supporting documentation with COAH as to the water supply available from the MCMUA and SEMCMUA no later than 15 days from the date of this resolution, and shall serve all parties to the motion with all such documents..

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on *September 12, 2007.*



\*\*\*\*\*Terrie Reiss, Secretary  
Council on Affordable Housing