

RESOLUTION AUTHORIZING THE BOROUGH OF TINTON FALLS, MONMOUTH COUNTY, TO RELEASE FUNDS FROM ITS AFFORDABLE HOUSING TRUST FUND TO BENEFIT THE AFFORDABLE UNITS LOCATED WITHIN THE FOX CHASE AT TINTON FALLS II CONDOMINIUM ASSOCIATION

WHEREAS, the Borough of Tinton Falls ("Borough" or "Tinton Falls") received a Judgment of Compliance on January 18, 1991 from the Honorable Eugene Serpentelli, J.S.C., to address a 590-unit obligation, consisting of a 42-unit rehabilitation component and a 548-unit new construction component; and

WHEREAS, Tinton Falls petitioned the Council on Affordable Housing (COAH) with its second round Housing Element and Fair Share Plan on March 26, 1999, addressing its 12-year cumulative affordable housing obligation of 634 units, including a rehabilitation obligation of 12 units and a new construction obligation of 622 units; and

WHEREAS, Tinton Falls received second round substantive certification on December 15, 2004; and

WHEREAS, Tinton Falls' second round certified plan included credits for 112 affordable housing units in an inclusionary development known as FoxChase at Tinton Falls II ("FoxChase II"), in which approximately 38 percent of the housing units have been designated as low and moderate income subject to 30 - year controls on affordability and which was included in the 1991 Judgment of Compliance; and

WHEREAS, the affordable units in the FoxChase II development are assessed homeowner association fees that are significantly less than market-rate units within the development; and

WHEREAS, the Borough and Foxchase II assert that the combination of a high percentage of affordable units and their corresponding reduced association fees has caused financial difficulties for the entirety of the FoxChase II Condominium Association; and

WHEREAS, Tinton Falls submitted a motion dated May 3, 2006 to COAH requesting the following relief:

- 1) Provide a loan to FoxChase II in the amount of \$200,000 from Tinton Falls' collected development fees;
- 2) To permit Tinton Falls to purchase a limited number of low and moderate income units when the units are placed on the market for sale;
- 3) To provide for an increase in the condominium association fees for the current low and moderate unit owners to the full market rate;
- 4) To permit Tinton Falls to intercede with the current deed restrictions and contract sales to allow for the raising of condo fees; and
- 5) For such other relief as COAH deems just and reasonable; and

WHEREAS, replies were received from the FoxChase II Condominium Association and from a number of the residents of FoxChase II, represented by separate counsel, who occupy the low and moderate income units; and

WHEREAS, a task force reviewed the relief requested in a meeting on September 6, 2006; and

WHEREAS, oral argument was heard at the September 13, 2006 COAH Board meeting; and

WHEREAS, Tinton Falls proposed the following solutions to the difficulties faced by the condominium development:

- 1) A loan to FoxChase II of \$200,000 from the Borough's development fee fund to repair problems faced by the low and moderate income units. The Borough would require a condominium lien upon the individual affordable housing units in the amount of \$1,770 per unit, to be repaid upon the sale of the units or expiration of controls;
- 2) Exercising the right of first refusal when affordable units are put on the market for sale by purchasing a limited number of low and moderate income units to be sold on the open market, thus allowing the Borough to replenish the money from the development fee account utilized to buy the units to be used for future affordable housing activities, and for long term capital improvements to FoxChase II. The Borough would be required to replace any low and moderate income units that are lost by the selling of the affordable units in the open market;
- 3) Exercising the right of first refusal on additional units upon re-sale at the restricted price and deed restrict these units for 30 years, as though they were purchased when the controls had expired, and set the affordable unit condo fees at the market unit rate with the sale price remaining within the 28 percent affordability range for the principle, interest, taxes, homeowner and private insurance and association fees for the new owner. The Borough would provide a subsidy to buy down the units using development fee funds if so needed and would request that COAH consider the units as additional new construction credits due to the new 30 - year deed restrictions and possible buy down subsidy given, even if they are purchased before existing controls expire;
- 4) The Borough proposes to intercede with the current deed restrictions and contract sales to allow for the raising of condo fees. As a result of increased income levels, the Borough states that many affordable unit residents have the economic ability to pay the market-rate association fees and remain within the 28 percent affordability range. Under this proposal, the households that currently reside in the affordable units would be required to undergo income certification with an assessment of their current monthly incomes, and if able to do so, would be required to pay the market rate fees. Those who are not able to pay the market rate fees would have that portion subsidized by the Borough. The Borough proposes to provide gap funding for as many of the units as economically feasible until the expiration of said units. The gap funded households would be reassessed on a yearly basis, and the subsidy changed accordingly; and

WHEREAS, the FoxChase II Condominium Association ("Association") submitted a notice of motion to intervene dated May 31, 2006; and

WHEREAS, the Association was created in 1989, and is comprised of 300 residential units currently including 56 low income units, 54 moderate income units (110 affordable units)¹, 90 market rate garden units, and 100 market rate townhouses, with the affordable units making up 37 percent of the total units; and

WHEREAS, New Jersey's Condominium Act mandates that the Association assess its unit owners as set forth by the Master Deed, N.J.S.A. 46:8B-17, and in this case, each unit's maintenance fee assessment for common expenses is in proportion to its interest in the common elements. To implement the affordable housing plan, the Master Deed established the percentage interests in the common elements, and hence, the percentage of the common expenses paid by the units is as follows:

Market rate townhouse:	0.5435%
Market rate garden apartment:	0.3805%
Moderate Income:	0.1631 %
Low Income:	0.05435%; and

WHEREAS, when the Association imposes an assessment, it must impose it against all units in the respective portions specified in the Master Deed; and

WHEREAS, the townhouse units currently pay a monthly maintenance fee of \$210.00; the market rate garden apartments pay \$147.00 per month; the moderate income units pay \$63.00 per month; and the low income units pay \$21.00 per month; and

WHEREAS, the Association states that the discrepancy between the amount paid by the market rate and affordable unit owners has caused resentment on the part of the market rate unit owners, and that more importantly, the reduced fee has created a serious financial deficit for the Association resulting in necessary repairs to both affordable and market rate units not being completed; and

WHEREAS, a recent Department of Community Affairs ("DCA") inspection pursuant to the Hotel and Multiple Dwelling Law has revealed a number of other items requiring repair which the Association has been ordered to complete; and

WHEREAS, the Association has estimated it needs \$420,000 for necessary repairs for the affordable units only, and it does not presently have such funds available; and

WHEREAS, the Association states that the proposed loan of \$200,000 to the Association, secured by liens against affordable units, is objectionable because the amount is insufficient; placing the burden of repayment on condominium unit owners substitutes one financial debt of Association members for another; and there is no legal authority to impose liens against affordable housing units; and

¹ In the Borough's brief, it states that the Master Deed created 113 affordable units. This is incorrect. The Master Deed created 112 affordable units, at least 2 of which have been lost through foreclosure proceedings.

WHEREAS, the Association argues that securing a loan and placing liens on the affordable units is unnecessary, as with COAH's permission, the Borough could require that as a condition of sale the loan be repaid, and suggests that CO AH mandate a surcharge to the sale price over what regulations would otherwise permit in an amount necessary to pay that unit's proportionate share; in the case of 110 affordable units, this would amount to \$1,818.18 per unit, an amount that would not have a significant impact on the marketability of a unit or on the affordable price; and

WHEREAS, the Association argues that the Borough's proposal to purchase a limited number of affordable units and resell them as market rate units should be granted because it would enable the Borough to provide a grant or to repay the loan without creating a further financial burden on the condominium owners; and

WHEREAS, the Association further argues the Borough's proposal to purchase a limited number of affordable units but resell them subject to a new 30 - year affordable housing plan and subject to a full rate condo assessment is acceptable but less useful than the Borough's proposal to raise the assessments immediately; and

WHEREAS, the Association states that the Borough's proposal to purchase a limited number of affordable units and resell them subject to new 30 - year affordability controls allows the affordable units to remain affordable and has no immediate impact of the current affordable owners, but that the disadvantage is that its implementation would be slow. The Association notes that this proposal would require an amendment of the Master Deed in order to compel the former affordable units to pay market rate assessment fees; and

WHEREAS, the Association supports the Borough's proposal to increase the assessments of the affordable units to the market rate assessment level immediately, subject to subsidies by the Borough for those owners who still qualify for affordable housing noting that owners who no longer qualify for affordable housing should not be permitted to escape appropriate obligations through loopholes; and

WHEREAS, the affordable unit residents of Fox Chase II ("RFC") submitted a reply letter brief dated June 1, 2006, stating that in Concerned Citizens of Fox Chase II Mount Laurel Affordable Housing v. FoxChase at Tinton Falls II Condominium Association, Docket No. L-233-04, the Association attempted to increase the maintenance fees paid by the affordable unit owners as much as 350 percent, and in a disproportionate amount to their percentage of ownership, and by Order dated November 3, 2004, the 2004 maintenance fees were declared unlawful and void, and the Appellate Division affirmed by a decision dated June 30, 2005; and

WHEREAS, RFC states that there is approximately \$420,000 worth of necessary repairs, itemized as follows:

<u>Item</u>	<u>Cost</u>
Wood Trim	\$116,015.63
PVC aluminum	\$155,640.63
Roof Replacement	\$129,370.72 - \$147,420.72
DC A Repairs	\$20,771.25; and

WHEREAS, RFC opposes the Borough's proposal to reassess the income qualification of the residents of the affordable units at FoxChase II, stating that the Borough's proposal breaches the covenants that it entered into with the Mt Laurel unit owners at FoxChase II; and

WHEREAS, RFC states that counsel for the Association's reliance on N.J.A.C. 5:80-26.6(e) in support of the affordable unit owners paying the same common expense assessment as the market rate units is incorrect as condominium units subject to a municipal ordinance adopted before October 1, 2001 are not subject to the amendment and that FoxChase II was created in 1989; and

WHEREAS, RFC states that it agrees with the Borough's proposal to purchase a limited number of affordable units and resell them at the market rate provided that the funds used to do so are deemed a grant rather than a loan to be repaid by each owner; and

WHEREAS, the Association replied on June 8, 2007, arguing that raising assessments is equitable as affordable unit owners receive the same services as all other residents, and at present affordable unit owners receive the same services as market rate garden apartment owners but pay less; and

WHEREAS, the Association argues that the respective interests in the common elements are irrelevant because pursuant to the master Deed, each unit owner has one vote regardless of the interest in the common elements, and the Association has no authority to apportion services according to the percentage of ownership interests; and

WHEREAS, the Association states that if the New Jersey Council on Affordable Housing ("COAH" or "Council") approves an increase in the assessment rate, it can be implemented by an amendment to the FoxChase II Master Deed setting forth the new assessment rates, without changing the proportionate common interest; and

WHEREAS, the Council issued resolutions dated November 1, 2006 and July 23, 2007 authorizing the Borough to enter into agreements with the Association so that funds could be released from the Borough's affordable housing trust fund and work on the affordable units completed; and

WHEREAS, a task force met on September 4, 2007 to discuss the relief requested in the Borough's motion as well as a number of alternative solutions proposed as a result of mediation sessions and meetings between the parties and CO AH staff; and

WHEREAS, the task force recommended increasing the controlled maximum restricted re-sale price of the FoxChase II affordable units by \$5,000 in consideration of an increase in association fees to a level that is consistent with market-rate units; and

WHEREAS, the proposed \$5,000 increase in maximum restricted re-sale price of all affordable units maintains affordability due to a general under-pricing of the units that resulted from high interest rates in the late 1980's; and

WHEREAS, the Borough maintains an affordable housing trust fund sufficient in size to offer affordability assistance in the form of subsidization of increased association fees for income-eligible affordable unit owners; and

WHEREAS, in accordance with NJ.A.C. 5:93-2.20, the controlled maximum restricted resale pricing of the FoxChase II affordable units shall be divided equally between low and moderate income households; and

WHEREAS, Tinton Falls has contracted with the Housing Affordability Service (HAS) at HMFA for the administration of all affordable units in the Borough including those located in FoxChase II.

NOW, THEREFORE, BE IT RESOLVED that the relief requested by the Borough in its motion dated May 3, 2006 is denied in its entirety; and

BE IT FURTHER RESOLVED that in accordance with the September 4, 2007 task force recommendations, the Council approves of the Borough entering into an agreement with HAS to administer a program that will add \$5,000 to the maximum restricted re-sale price of all affordable units in exchange for each unit owner's agreement to accept updated affordability controls which include condominium association fees equal to those paid by comparable market-rate units in FoxChase II, as follows:

	<u>Current Fee</u>	<u>New Fee</u>
Low	\$21	\$147
Moderate	\$63	\$147; and

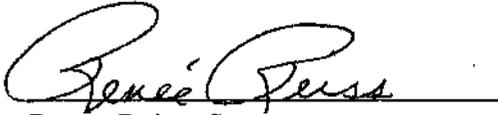
BE IT FURTHER RESOLVED that the Council's approval of the Borough entering into such an agreement with HAS is conditioned upon the Borough submitting an amended spending plan to CO AH for approval and upon the Borough's ability to maintain a low - mod split in accordance with NJ.A.C. 5:93-2.20; and

BE IT FURTHER RESOLVED that in accordance with the September 4, 2007 task force recommendations, the Borough is hereby authorized to establish an affordability assistance program using its affordable housing trust fund to subsidize increased association fees for income-eligible occupants; and

BE IT FURTHER RESOLVED that implementation of the foregoing is conditioned specifically on an amendment to the FoxChase II By-Laws and Master Deed to be ratified by vote of the association membership in accordance with all applicable laws and rules; and

BE IT FURTHER RESOLVED that the parties must present the Council with an executed agreement implementing the program outlined above at the Council's next regularly scheduled meeting.

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

A handwritten signature in cursive script, reading "Renee Reiss", written over a horizontal line.

Renee Reiss, Secretary
Council on Affordable Housing