

**RESOLUTION GRANTING HAMILTON TOWNSHIP, MERCER COUNTY, WAIVERS  
FROM N.J.A.C. 5:94-6.1(a) AND N.J.A.C. 5:94-6.2(c)  
CO AH 07-1928**

**WHEREAS**, on November 22, 2004, Hamilton Township, Mercer County, received second round certification of a Housing Element and Fair Share Plan from CO AH; and

**WHEREAS**, on December 20, 2005, Hamilton Township petitioned CO AH with its third round Housing Element/Fair Share Plan on December 20, 2005; and

**WHEREAS**, both petitions included spending plans; and

**WHEREAS**, the Township was subsequently approached by HomeFront TLC, a New Jersey non-profit corporation, with a new eight-unit affordable housing proposal called Project Home VI; and

**WHEREAS**, on September 5, 2006, the Hamilton Township Council adopted Resolution No. 06-364 "Authorizing the Commitment of Affordable Housing Trust Fund Monies to HomeFront TLC for the Development of Eight Affordable Housing Units, Subject to COAH Approval (\$226,800.00);" and

**WHEREAS**, the proposed project involving the creation of eight affordable rental units in two existing buildings, specifically at 87 Newkirk Avenue (four units) and 141 Francis Avenue (four units), is in neither the second nor the third round Fair Share Plan or spending plan; and

**WHEREAS**, on January 25, 2007, the Appellate Division issued a decision on COAH's third round rules, which decision stayed the grant of substantive certification pending the process of amending COAH's regulations; and

**WHEREAS**, because Hamilton had petitioned for third round certification, COAH determined that the Township could not amend its second round Fair Share Plan and spending plan to incorporate the HomeFront project; and

**WHEREAS**, because of the court's stay on third round petitions, COAH did not have a procedure to entertain an amendment to Hamilton's third round petition; and

**WHEREAS**, on September 21, 2007, Hamilton Township submitted a motion pursuant to N.J.A.C. 5:95-12, requesting a waiver of the requirements set forth in N.J.A.C. 5:94-6.1(a) (development fees may be used only for projects in a Fair Share Plan) and N.J.A.C. 5:94-6.2(c) (a municipality must have substantive certification of its Fair Share Plan before spending development fees); and

**WHEREAS**, as part of its motion the Township explained its rationale for the waivers as follows:

1. HomeFront has established itself as an innovator in affordable housing in the region and Hamilton is pleased that they are developing additional units in Hamilton; and

2. HomeFront has agreed to affirmatively market the units and remove the previously proposed kinship family restriction; and
3. HomeFront moved forward with the purchase and rehabilitation of the eight affordable units after the Township passed the resolution on September 5, 2006; and
4. Bridge loans payments are now threatening the vitality of the project since HomeFront did not intend to pay debt service for such a long period; and
5. Since Hamilton does not have sufficient general funds available to fund the program until such time as it can be reimbursed from the affordable housing trust fund, there is a possibility that the eight affordable units will be lost and the low -income families will be displaced; and

**WHEREAS**, in a letter dated September 24, 2007, COAH acknowledged the receipt of Hamilton's motion and stated that any opposing briefs should be filed with COAH not later than October 1, 2007; and

**WHEREAS**, no replies in opposition were received by COAH; and

**WHEREAS**, pursuant to N.J.A.C. 5:95-14.1, COAH's review of a waiver shall consider whether the strict application of the rule would create an unnecessary financial, environmental or other hardship, or that such a waiver fosters the production of low- and moderate-income housing, fosters the intent of if not the letter of COAH's rules and whether the Fair Share Plan provides a mix of housing options; and

**WHEREAS**, Hamilton has demonstrated that the proposed use of development fees meets the conditions for the waivers set forth in N.J.A.C. 5:95-14.1 and fosters the production of affordable housing; and

**WHEREAS**, the Township has also committed to include the Project Home VI development in its revised third round Fair Share Plan and spending plan, to be completed within the period required following the effective date of COAH's revised third round rules; and

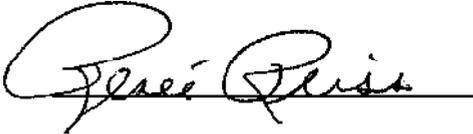
**WHEREAS**, COAH staff prepared a report dated October 5, 2007, recommending that the waivers from N.J.A.C. 5:94-6.1(a) and N.J.A.C. 5:94-6.2(c) be granted.

**NOW THEREFORE BE IT RESOLVED** that COAH approves the waivers from N.J.A.C. 5:94-6.1(a) which requires that development fees may be used only for projects in a Fair Share Plan and from N.J.A.C. 5:94-6.2(c) which requires a municipality to have substantive certification of its Fair Share Plan before spending development fees; and

**BE IT FURTHER RESOLVED** that COAH staff concludes that the waivers permitting the allocation of development fee monies to HomeFront fosters the production of affordable housing and fosters the intent if not the letter of COAH's rules; and

**BE IT FURTHER RESOLVED** that, as a condition of this approval, Hamilton shall include the Project Home VI development in its revised third round Fair Share Plan and spending plan, to be completed within the period required following the effective date of COAH's revised third round rules.

Date: Oct. 10, 2007

A handwritten signature in black ink, appearing to read "Lenee Reiss", written over a horizontal line.

Lenee Reiss, Council Secretary  
Council on Affordable Housing