

RESOLUTION DENYING BAMM HOLLOW LLC'S MOTION REQUESTING COAH  
DENY AND DISMISS MIDDLETOWN'S PETITION FOR SUBSTANTIVE  
CERTIFICATION OR IN THE ALTERNATIVE, REQUESTING THAT COAH  
GRANT SITE SPECIFIC RELIEF TO BAMM HOLLOW

WHEREAS, Middletown Township received substantive certification from the Council on Affordable Housing (COAH) for its first round Housing Element and Fair Share Plan on March 14, 1994; and

WHEREAS, on March 13, 2000, Middletown petitioned COAH for substantive certification of a Housing Element and Fair Share Plan to address its 12-year cumulative 1987-1999 affordable housing obligation which was not certified; and

WHEREAS, in July 2003, December 2003 and again in January 2004, Middletown re-petitioned COAH for substantive certification of its 1987-1999 plan; and

WHEREAS, on October 7, 2005, COAH issued a Report Requesting Additional Information reviewing Middletown's January 2, 2004 submission and noting several deficiencies in its plan; and

WHEREAS, Middletown petitioned COAH for its 1987-2014 cumulative affordable housing obligation on December 20, 2005; and

WHEREAS, Middletown's third round obligation consists of the Township's recalculated cumulative second round obligation of 1,622 units plus the Township's third round growth share obligation and rehabilitation share of 25 units; and

WHEREAS, objections were received by Mountain Hill, L.L.C. and Bamm Hollow; and

WHEREAS, on January 6, 2006 Middletown moved before COAH for a determination that it was exempt from COAH's RCA minimum, or in the alternative, for a waiver, which was denied by COAH on April 6, 2006; and

WHEREAS, on December 27, 2006 COAH staff issued a premediation report requesting additional information (incorporated by reference herein) that concluded that Middletown's plan fell 74 units short of meeting its 1987-99 housing obligation, was 66 units short of meeting its growth share obligation and made 71 requests for additional information; and

WHEREAS, Middletown submitted documents in response to the premediation report on October 9, 2007, and COAH staff met with the Middletown planner on October 19, 2007 to discuss the documents submitted; and

WHEREAS, Bamm Hollow submitted a motion dated June 5, 2007 asking COAH to deny and dismiss Middletown's petition for substantive certification or in the alternative, requesting that COAH grant site specific relief to Bamm Hollow; and

WHEREAS, Bamm Hollow ("BH") argues that COAH has authority to deny petitions for substantive certification at any point in the proceedings if a municipality is not acting in good faith to create sufficient affordable housing to satisfy its fair share of the unmet regional need but is instead acting to thwart, avoid, or delay meeting its obligation; and

WHEREAS, BH points to In re Little Silver. COAH Docket 85-119 (October 1988) where the Council concluded that after extensive administrative proceedings, including mediation, over a period longer than a year and a half, the town repeatedly failed to provide a plan that could be evaluated and implemented and that the Council had no choice but to deny the petition on an accelerated basis; and

WHEREAS, BH maintains that Middletown's actions are more egregious than those of Little Silver as Middletown has filed three separate amended plans over a period of six years and has had numerous opportunities to create a plan that meets its fair share obligation, which it has not done; and

WHEREAS, BH requests in the alternative that COAH order site specific relief to its project which consists of approximately 277 acres currently used as a private 27 hole golf course and country club site that BH wishes to develop with multi family housing including low and moderate income housing; and

WHEREAS, BH finally argues that the court's stay did not intend to bar the Council's ability to deny and dismiss Middletown's petition as the court specifically stated in its opinion that municipalities that have acted in good faith would be protected and that Middletown has not acted in good faith; and

WHEREAS, Middletown submitted opposition dated July 13, 2007 stating that it is committed to addressing the needs of low and moderate income households and that it has satisfied roughly 85 percent of its approximately 1800 unit obligation; and

WHEREAS, Middletown argues that COAH has the authority to dismiss a municipality's petition for certification or to grant a builder's remedy, but has made clear that these powers should be utilized only in the most extreme cases; and

WHEREAS, Middletown cites to Hills Development Co. v. Bernards Tp., 103 N.J. 1, 56 (1986), arguing that the effect of an accelerated denial is to remove a municipality from the administrative process prior to the conclusion of that process and runs counter to the Fair Housing Act ("Act"); and

WHEREAS, Middletown states that the use of site specific relief is an extraordinary remedy as it may result in the use of a site not chosen by a municipality; and

WHEREAS, Middletown states that its case is distinguishable from that of Little Silver as Middletown has not refused to provide COAH with the information sought, and that it has worked with COAH to provide COAH with the information sought in the December 27, 2006 pre mediation report; and

WHEREAS, Middletown states that it received COAH's pre mediation report on January 10, 2007 and immediately began working on a response, but that shortly thereafter, on January 25, 2007 the Appellate Division decided In re Adoption on N.J.A.C. 5:94 and 5:95, resulting in confusion regarding what standards municipalities would have to comply with; and

WHEREAS, Middletown argues that COAH's March 9, 2007 letter to all municipalities stating that the Court stayed the grant of substantive certification pending COAH's regulations being amended made it clear that municipalities had no obligation to respond to reports issued prior to the Appellate Division's decision; and

WHEREAS, Middletown states that the Act does not require any municipality to adopt ordinances to implement its plan until 45 days after COAH certifies the municipality's affordable housing plan but that it has regularly taken a proactive approach by adopting many of the ordinances contemplated by its plan and implementing many of the techniques embodied in the plan; and

WHEREAS, the Township argues that it has already zoned fifteen of the sixteen properties set forth in its plan as affordable housing sites, and as a result has satisfied about 85 percent of its affordable housing obligation for all three cycles; and

WHEREAS, no replies were received; and

WHEREAS, this matter was heard by COAH at its October 10, 2007 meeting and was referred to a task force; and

WHEREAS, a task force convened on October 23, 2007 and made the following recommendations:

1. That Bamm Hollow's motion be denied without prejudice pending Middletown submitting the documentation and information requested in the premediation report;
2. That Middletown be given 45 days from the date of this resolution to submit the information; and
3. That it be requested that the parties enter into mediation.

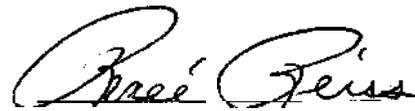
NOW THEREFORE BE IT RESOLVED that while COAH has the authority to deny Middletown's petition for substantive certification, such an action would require a finding by the Council that Middletown has not acted in good faith to create sufficient affordable housing in satisfaction of its fair share obligation and has instead acted to thwart, avoid, or delay meeting its obligation; and

BE IT FURTHER RESOLVED that the Council does not find Middletown's actions to be so egregious as to warrant dismissing the Township from COAH's jurisdiction, evidenced by the municipality submitting documents and information in response to COAH staffs premediation report requesting additional information, Middletown's planner meeting with COAH staff regarding the Township's submissions and the Township's adoption of ordinances implementing its Housing Element and Fair Share Plan in advance of the statutorily required time period for doing so; and

BE IT FURTHER RESOLVED that as such, the Council hereby denies Bamm Hollow's motion without prejudice pending Middletown responding in full to COAH staffs December 27, 2006 premediation report within 45 days of this resolution; and

BE IT FURTHER RESOLVED the Council believes that the parties would benefit from participation in the mediation process, and while not requiring such participation, the Council strongly recommends mediation be scheduled.

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on



Renee Reiss, Secretary  
Council on Affordable Housing

November 7, 2007