

**Resolution Granting Community Investment Strategies a Waiver from the
Requirements of the Uniform Housing Affordability Controls at N.J.A.C. 5:80-
26.3(a), N.J.A.C. 5:80-26.3(d) and N.J.A.C. 5:80-26.11
COAH Docket 08-2008**

WHEREAS, Lacey Township, Ocean County (“Lacey” or “Township”), petitioned the Council on Affordable Housing (“COAH”) for second round substantive certification in June 2000; and

WHEREAS, pursuant to N.J.A.C. 5:95-15.1(b), Lacey submitted a resolution from its governing body dated February 10, 2005 committing to petition for third round substantive certification by December 20, 2005; and

WHEREAS, the Township proposed to meet its 580-unit prior round fair share obligation through age-restricted units on the Stugart Site (Heritage Village at Seabreeze Development), an Accessory Apartment Program, rental bonuses, and a Regional Contribution Agreement; and

WHEREAS, Lacey filed a petition for third round substantive certification on May 16, 2006; and

WHEREAS, the third round Fair Share Plan proposed to meet the Township’s 237-unit growth share obligation through age-restricted units from Heritage Village at Seabreeze Development (“Seabreeze”) and a growth share ordinance; and

WHEREAS, the Seabreeze development is a 100-unit, 100 percent affordable age-restricted development, proposed by Lacey to address the obligation generated by a market rate senior development on Block 19.01, Lot 18 in Lacey Township; and

WHEREAS, Toll Brothers partnered with Community Investment Strategies, Inc. (“CIS”) to construct the 100-unit affordable senior rental project on Block 1901.25, Lot 1, an area designated as PA2 in the State Development and Redevelopment Plan; and

WHEREAS, Toll Brothers sold CIS the site for \$1.00 and has agreed to provide a \$3.5 million subsidy toward the construction of the affordable units; and

WHEREAS, Lacey Township approved the CIS project for a Payment in Lieu of Taxes (“PILOT”), and in an August 7, 2007 letter to COAH, the Township’s affordable housing planner clarified that some of the affordable age-restricted units would address the prior round obligation with the balance addressing the Township’s growth share obligation; and

WHEREAS, on June 24, 2008, CIS submitted a motion pursuant to N.J.A.C. 5:95-12, requesting a waiver of certain requirements governed by N.J.A.C. 5:97-9, specifically those portions of the Uniform Housing Affordability Controls (“UHAC”) set forth at N.J.A.C. 5:80-26.3(a) (a minimum of 50% of the restricted units within each bedroom distribution in a development must be low-income with the remainder being moderate-income), N.J.A.C. 5:80-26.3(d) (the average rent for low- and moderate-income units must be affordable to households earning no more than 52% of regional median income) and N.J.A.C. 5:80-26.11 (control period for rental units); and

WHEREAS, CIS states that Seabreeze is proposed to be financed through 4% tax credits, tax exempt bond financing and HOME Express funds; and

WHEREAS, Seabreeze received preliminary and final site plan approval in July 2003, and in January 2004 CIS entered into a purchase agreement for the property and issued the PILOT and resolution of need; and

WHEREAS, in September 2004 the project received a Declaration of Intent for tax exempt bond financing and Home Express funding using the 60% rent structures proposed by CIS; and

WHEREAS, CIS submitted for tax credits in 2004; and

WHEREAS, CIS argues that in late 2004 litigation between the Department of Environmental Protection (DEP) and the Rutgers Environmental Law Clinic regarding DEP’s issuance of the individual CAFRA permit stalled development, but that litigation has concluded and the project is now ready to proceed; and

WHEREAS, CIS states that it has all development approvals and has secured commitments from Boston Capital for tax credit equity and the construction loan and that CIS has had to obtain recommitment for the tax exempt bond financing; and

WHEREAS, in its waiver request, CIS maintains that UHAC should not apply to Seabreeze because it is being developed pursuant to N.J.A.C. 5:80-1 which states, “Unless expressly stated otherwise herein...the rules do not apply to units qualifying for the Federal Low-Income Housing Tax Credit under Section 42 of the Internal Revenue Code, units that receive Balanced Housing funds under the Agency’s Home Express program or to units receiving assistance under the Federal HOME program, 24 C.F.R. §92.252(e), §92.254(a)(4); HUD 202 program, 24 C.F.R. Part 891; HUD 811 program, 24 C.F.R. Part 890; HUD HOPE VI program; or Federal Home Loan Bank, Affordable Housing Program, 12 C.F.R. Part 60”; and

WHEREAS, on July 15, 2008, the Lacey Township Administrator/CFO sent to COAH a letter supporting the request for a waiver by Community Investment Strategies, Inc., stating that the Seabreeze Project “is an important part of (Lacey’s) Fair Share Plan

and we fully support CIS's request for a waiver, which will allow the project to move forward."; and

WHEREAS, CIS states that nonetheless it needs waivers from UHAC in order to proceed with its project as the project is scheduled to receive revised funding from HMFA subject to the waiver being granted; and

WHEREAS, CIS argues in support of its waiver request that it can neither meet the requirements of N.J.A.C. 5:80-26.3(a), which requires that in each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be low-income units and the remainder may be moderate-income units because application of the low-moderate unit split would affect the financial feasibility of the project nor the requirements of N.J.A.C. 5:80-26.3(d), that the average rent for low- and moderate-income units must be affordable to households earning no more than 52 percent of median income; and

WHEREAS, CIS argues that although Seabreeze does not meet the requirements of N.J.A.C. 5:80-26.3(a) and 5:80-26.3(d), the project fosters the intent of COAH's rules because the 13 very low income units to be provided will be affordable at 30 percent of median income and therefore go beyond the UHAC requirement that they be affordable to households earning 35 percent of median income; and

WHEREAS, CIS states that it cannot meet the requirements of N.J.A.C. 5:80-26.11(a) which states each restricted rental unit shall remain subject to the requirements of this subchapter until the municipality in which the unit is located elects to release the unit from such requirements, but no less than 30 years; and

WHEREAS, CIS argues that as a 4 percent tax credit project, Seabreeze will be subject to the federal regulations for Low Income Housing Tax Credits, which require 30 year affordability controls, and that UHAC is intended to provide controls for affordable housing units not otherwise subject to such controls; and

WHEREAS, a task force convened on August 7, 2008 to review the waiver request submitted by CIS, and after reviewing the papers submitted and the arguments contained therein, the task force recommended that the Council grant CIS's motion and require the following:

1. The moderate income units in the Seabreeze project shall be priced so that they are affordable to households earning 57.5 percent of average median income which would result in an affordability average of 54.5 percent;
2. Lacey is to provide in its revised third round petition a mix of housing options and a plan-wide low-moderate unit split;
3. Lacey is to submit a resolution within 45 days of the date of the Council's decision committing to petition COAH for revised third round substantive certification by December 31, 2008.

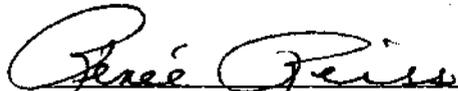
NOW THEREFORE BE IT RESOLVED the Council finds that the Seabreeze project meets the waiver criteria as set forth at N.J.A.C. 5:96-15.2; and

BE IT FURTHER RESOLVED the moderate income units in the Seabreeze project shall be priced so that they are affordable to households earning 57.5% of average median income as provided in the HMFA mortgage commitment; and

BE IT FURTHER RESOLVED Lacey shall provide in its new third round petition a mix of housing options and a plan wide low-moderate unit split; and

BE IT FURTHER RESOLVED Lacey shall submit to COAH a resolution within 45 days of the date of the Council's decision committing to petition COAH by December 31, 2008.

DATED: August 13, 2008.



Renee Reiss, Council Secretary