

**AMENDED RESOLUTION DENYING MOTION OF LEAGUE OF
MUNICIPALITIES TO STAY DECEMBER 31, 2008 THIRD ROUND FILING
DEADLINE AND FURTHER DENYING CROSS-MOTIONS OF FAIR SHARE
HOUSING CENTER AND SJM COMMUNITIES AND DENYING TOMS RIVER,
BRICK AND JACKSON TOWNSHIPS' MOTION FOR STAY, WAIVER AND
OTHER RELIEF
COAH DOCKET #08-2009**

WHEREAS, on December 17, 2007, the New Jersey Council on Affordable Housing (COAH or the Council) approved the publication of revised third round affordable housing regulations consistent with the Appellate Division's decision dated January 25, 2007, remanding COAH's initial third round rules to COAH for further analysis and revision; and

WHEREAS, on January 22, 2008, the proposed third round rules were published in the New Jersey Register for public comment; and

WHEREAS, the proposed third round rules included a staggered filing schedule for municipal third round plans from September 30 through December 31, 2008, dependant upon the county in which a municipality is located; and

WHEREAS, on May 6, 2008, COAH adopted its revised third round rules and, as a result of comments received to those revised regulations, COAH also proposed amendments to those rules, which included providing a single deadline of December 31, 2008 for all municipalities to file their third round plans with COAH; and

WHEREAS, on June 11, 2008, the Council adopted a resolution waiving the requirement for municipalities to file a revised third round plan prior to December 31, 2008; and, thus required all municipalities to file their revised plans by December 31, 2008. In so doing, all municipalities have been provided sufficient time to prepare their third round plans in accordance with the adopted rules at N.J.A.C. 5:96 and 5:97, as well as the proposed amendments to those rules; and

WHEREAS, on July 24, 2008, the New Jersey State League of Municipalities (The League) filed a motion with COAH seeking a stay of the December 31, 2008 deadline for the submission of third round plans until such time that the appeals challenging the validity of COAH's revised third

round rules have been decided by the Appellate Division;
and

WHEREAS, to date, twenty-four appeals have been filed with the Appellate Division challenging various aspects of COAH's revised third round rules, N.J.A.C. 5:96 and 5:97, adopted on May 6, 2008 and effective on June 2, 2008; and

WHEREAS, the League did not serve any other parties with its motion including the other appellants challenging COAH's revised third round rules of which the League seeks to stay COAH's December 31, 2008 deadline; and

WHEREAS, by letter dated July 25, 2008, COAH staff stated that it would be appropriate for all current appellants challenging COAH's revised third round rules at N.J.A.C. 5:96 and 5:97 to have the opportunity to file papers and respond to the League's motion seeking a stay of the December 31, 2008 filing deadline, as these other appellants had the status of interested parties to the League's motion; and

WHEREAS, by correspondence dated July 28, 2008 the League re-asserted its position that no other parties were properly a part of the consideration of its motion and that it would oppose the participation of any other parties; and

WHEREAS, by letter dated July 31, 2008, the League once again re-asserted that no other party could participate in COAH's consideration of the League's motion to stay the December 31, 2008 third round plan filing deadline; and

WHEREAS, in a response to the League's July 31, 2008 letter, on August 1, 2008, COAH staff wrote to the League and all appellants, once again stating that it was deemed to be in the best interest of the Council to hear from all appellants as interested parties affected by the League's motion to stay the third round plan filing deadline; and

WHEREAS, COAH received several responses from various appellants to the League's motion including two cross-motions and an alternative Motion for a stay, waiver and other relief on behalf of three municipalities; and

WHEREAS COAH received opposition and a cross-motion from the Fair Share Housing Center (FSHC) opposing the League's motion and seeking the following additional relief: 1) a filing date for third round plans of October 15, 2008 for municipalities with the 100 hundred largest affordable housing obligations, and 2) a filing date of October 15, 2008 for any municipality that has been granted or that may be seeking a vacant land or durational adjustment; and 3) finally, FSH requested that if the Council granted the League's motion, that municipalities that do not have continuing substantive certification should no longer receive COAH's protection from builder's remedy actions; and

WHEREAS, COAH also received opposition and a cross-motion to the League's motion from SJM Communities (SJM), asking the Council to once again review its prior motion dated April 26, 2007 seeking to have COAH provide an expedited review of Clinton Township's affordable housing plan; and

WHEREAS, COAH also received a Notice of Motion for Stay, Waiver and Related Relief, dated August 5, 2008, on behalf of the Townships of Toms River, Jackson and Brick supporting the League's request for a stay and, alternatively, seeking a waiver from N.J.A.C. 5:96-16.2 so as to allow it 180 days from the adoption of the proposed amended and final rules in which to file their plans; and

WHEREAS, those Townships state that they presently are under the court's jurisdiction for satisfaction of their fair share need; and

WHEREAS, all submissions to COAH were required to be filed no later than August 5, 2008 and thereafter, all such submissions were provided to a task force; and

WHEREAS, on August 7, 2008, a COAH task force met to review the papers submitted, including the League's motion and the cross-motions of FSHC, SJM and Toms River, Jackson and Brick Townships' motion; and

WHEREAS, it is the recommendation of the COAH task force that the Council permit all appellants who have submitted papers to participate in the League's motion and

the cross-motions of FSHC, SJM, and the motion of Toms River, Jackson Brick Townships; and

WHEREAS, the courts have held that a party is entitled to the remedy of a stay only if it can be demonstrated that: 1) there is a reasonable likelihood of eventual success on the merits; 2) the party will suffer irreparable harm if the stay is not granted; 3) the grant of the stay will not work an inequitable result considering the hardships to the parties against whom the relief is sought, and 4) the restraint sought will not harm the public interest. See Crowe v. DeGioia, 90 N.J. 126 (1982); and

WHEREAS, the courts have also held that loss of money alone is not enough to warrant the granting of a stay. See Crowe v. DeGioia, supra. 90 N.J. at 132-33; Zoning Bd. Of Adj. v. Service Elec. Cable TV., 198 N.J. Super. 370, 381 (App. Div. 1985); Morton v. Beyer, 822 F.2d 364, 372 (3d Cir. 1987); and

WHEREAS, COAH has permitted municipalities to use up to twenty percent of the funds in their affordable housing trust funds for the preparation of housing elements and fair share plans; and

WHEREAS, it is also the recommendation of the task force that municipalities required to submit third round plans by December 31, 2008 will not suffer any irreparable harm and do not otherwise meet the legal standard necessary for granting of a stay of this filing deadline; and

WHEREAS, it does not know when a decision by the Appellate Division concerning the appeals filed by the League and the other appellants will be issued; and

WHEREAS, granting the League's motion would likely result in the loss of affordable housing opportunities in the municipalities of the State of New Jersey and the loss of potential inclusionary development opportunities during any period of a stay of the December 31, 2008 filing deadline; and

WHEREAS, FSHC's cross-motion to have municipalities file earlier than December 31, 2008, places too great of a burden on municipalities seeking to plan and submit

realistic, comprehensive third round affordable housing plans; and

WHEREAS, the cross-motion of SJM to have the Council review Clinton Township's affordable housing plan is best dealt with within the context of COAH's adopted third round rules at N.J.A.C. 5:96 and 5:97; and

WHEREAS, Toms River, Jackson and Brick Townships are under the jurisdiction of the Court and it does not serve the interests of the provision of affordable housing to allow a stay or waiver for three municipalities thereby creating separate municipalities whose date for submission of third round plans to satisfy their fair share need will be uncertain.

NOW, THEREFORE, BE IT RESOLVED THAT COAH hereby grants all appellants that have filed papers in response to the League's motion, the status of parties to the motion and that their papers have been fully considered in the context of reviewing the League's motion and the cross-motions of FSHC and SJM; and

BE IT FURTHER RESOLVED THAT the Council deems it appropriate to consider the cross-motions of FSHC and SJM, together with the League's motion, since all three motions have a common basis related to the League's motion to stay the Council's December 31, 2008 filing deadline for municipal third round housing plans; and

BE IT FURTHER RESOLVED THAT the Council accepts the task force's recommendation that no irreparable harm will be suffered by requiring municipalities to submit a fair share plan for Council review by December 31, 2008 as that term has been defined by the courts, See Crowe v. DeGioia, supra. 90 N.J. at 132-33; Zoning Bd. Of Adj. v. Service Elec. Cable TV., 198 N.J. Super. 370, 381 (App. Div. 1985); Morton v. Beyer, 822 F.2d 364, 372 (3d Cir. 1987) and, furthermore, the Council does not deem the planning for affordable housing to be in any way harmful to municipalities; and

BE IT FURTHER RESOLVED granting the League's motion for a stay would cause greater harm to the public interest, than any harm alleged to be suffered by the League, as such a stay would likely result in the loss of affordable housing opportunities in the State; and

BE IT FURTHER RESOLVED as a result of the above findings of the Council, the League's motion seeking a stay of the third round filing deadline of December 31, 2008 is hereby DENIED; and

BE IT FURTHER RESOLVED THAT FSHC's cross-motion to have municipalities file third round plans prior to December 31, 2008 places too great a burden upon municipalities attempting to file complete and comprehensive third round plans and therefore FSHC's cross motion is hereby denied in its entirety; and

BE IT FURTHER RESOLVED THAT the review of Clinton Township's affordable housing plan is best accomplished through the procedure established pursuant to the third round adopted rules at N.J.A.C. 5:96 and 5:97, and through an expedited review process that is sought by SJM's cross-motion, and therefore, SJM's cross-motion is denied in its entirety.

BE IT FURTHER RESOLVED THAT COAH denies the motion of Jackson, Brick and Toms River Townships for the same reasons it has denied the League's request for a stay of the December 31, 2008 petition deadline; and

BE IT FURTHER RESOLVED THAT COAH also denies Toms River, Jackson and Brick Townships' Motion because those municipalities are under the court's jurisdiction and because the provision of affordable housing is best served by requiring municipalities to submit their third round plans for the provision of the fair share need by December 31, 2008 and not by creating a separate group of municipalities with an uncertain deadline for filing plans.

I hereby certify that this resolution was duly adopted by the Council on Affordable Housing at its meeting on 9/22/08.



Renee Reiss, Secretary
Council on Affordable Housing