

**RESOLUTION GRANTING WOODCLIFF LAKE BOROUGH, BERGEN COUNTY, A
WAIVER OF N.J.A.C. 5:97- 8.1(d) AND N.J.A.C. 5:97-8.7(a), PERMITTING
WOODCLIFF LAKE TO USE DEVELOPMENT FEES ON AN EMERGENT
AFFORDABLE HOUSING OPPORTUNITY
COAH DOCKET #08-2018**

WHEREAS, on September 26, 2008, Woodcliff Lake Borough, Bergen County, (“Woodcliff Lake” or “Borough”) submitted to COAH a motion in the form of a letter requesting a waiver from the requirements of N.J.A.C. 5:97-8.1(d) and N.J.A.C. 5:97-8.7(a), in order to permit the municipality to utilize affordable housing trust funds for the purchase of a 2.05-acre parcel upon which a municipally sponsored construction project will create approximately 24 rental units to be built and administered by Community Housing in Partnership (CHIP) of Bergen County; and

WHEREAS, Woodcliff Lake received substantive certification for its second round Housing Element and Fair Share Plan on November 6, 2002, which addressed the Borough’s 170-unit obligation, including a rehabilitation obligation of zero units and a new construction obligation of 170 units; and

WHEREAS, Woodcliff Lake’s certified plan included a vacant land adjustment of 88 units, 22 family for-sale units, 12 age-restricted rental units, six family rental units, nine rental bonuses, a 39-unit regional contribution agreement (RCA) with the City of Paterson, Union County, and two mechanisms to address the unmet need generated by the vacant land adjustment: a development fee ordinance and a residential overlay zone and this plan resulted in a six-unit surplus; and

WHEREAS, on November 29, 1993, Woodcliff Lake received COAH approval of its development fee ordinance and on June 8, 2006, the Borough received approval of an amendment to this ordinance; and

WHEREAS, Woodcliff Lake received COAH approval of its development fee spending plan on January 18, 2000, that called for the Borough to use development fees on COAH approved housing activities; and

WHEREAS, based on COAH monitoring records the Borough's Affordable Housing Trust Fund contained a balance of \$1,134,406.14 as of December 31, 2007, however as of the date of the waiver request the balance was \$805,536 and this full amount will be pledged towards the purchase of these lots and the balance shall be reimbursed to the Borough through the future collection of development fees; and

WHEREAS, on September 26, 2008, The Honorable Joseph T. LaPaglia, Mayor of Woodcliff Lake, submitted a request for a waiver from the requirements of COAH's regulations at N.J.A.C. 5:97-8.1(d) and N.J.A.C. 5:97-8.7(a); and

WHEREAS, N.J.A.C. 5:97-8.1(d) mandates that a municipality may not spend development fees until such time as the municipality obtains approval of its spending plan from COAH and N.J.A.C. 5:97-8.7(a) provides that funds generated by the collection of development fees may only be applied toward housing activity identified in a COAH approved spending plan; and

WHEREAS, Woodcliff Lake proposes to spend development fees on an emergent affordable housing opportunity that is not included in the Borough's previously submitted third round Housing Element and Fair Share Plan, nor in its COAH approved spending plan; and

WHEREAS, Woodcliff Lake seeks approval from COAH to spend previously collected development fees, and fees to be collected in the future, toward the purchase of a 2.05-acre parcel at Block 2602, Lots 1 and 2, at 230 Broadway Avenue in the Borough and the Borough has recently been able to enter into a \$ 1,018,000 contract of sale with the land owner; and

WHEREAS, the pending contract of sale is to be conditioned on the Borough's receipt of COAH's approval of Woodcliff Lake's expenditure of \$1,018,000 in collected and anticipated development fees; and

WHEREAS, Woodcliff Lake proposes to deed the property to Community Housing in Partnership (CHIP) of Bergen County in return for approximately 24 COAH creditable family rental units, and

WHEREAS, in a letter dated October 8, 2008, the President of CHIP, Robert Halsch, submitted a letter of support for this waiver and expressed CHIP's support for this project and the support letter is attached as Appendix 1 to the accompanying report by COAH staff, (which is attached to this resolution as Exhibit A); and

WHEREAS, on October 10, 2008, CHIP filed a funding application for Bergen County Community Development grant funding, contingent on funds being available through this waiver request; and

WHEREAS, CHIP is the owner and administrator of a previously completed affordable housing development known as Broadway Village, which created 18 COAH creditable affordable housing units for the Borough; and

WHEREAS, on October 6, 2008, the Governing Body of Woodcliff Lake Borough adopted a resolution stating that the project at 230 Broadway, which is the subject of the instant development fee waiver request, is included in the Borough's recently amended Housing Element and Fair Share Plan for which the Borough intends to seek substantive certification; and

WHEREAS, on October 20, 2008, the Governing Body of Woodcliff Lake Borough adopted a resolution in support of the Housing Element and Fair Share Plan and requested COAH's review and approval of its third round petition; and

WHEREAS, specifically, Woodcliff Lake proposes to utilize \$805,536 toward the purchase of these parcels on Broadway Avenue and to reimburse the Borough with future development fees, in the amount of \$212,464; and

WHEREAS, currently pending development fee payments total \$750,000; and

WHEREAS, pursuant to N.J.A.C. 5:96-15.2, COAH shall grant a waiver from specific provisions of its rules if it determines that: 1) strict application of the rules would impose an unnecessary hardship; 2) the waiver would foster the production of affordable housing; 3) the waiver would foster the intent of COAH's rules; and 4) the Housing Element and Fair Share Plan provides a mix of housing options; and

WHEREAS, strict application of COAH's rules would impose an undue hardship on the Borough by preventing it from taking steps toward meeting its affordable housing obligations and denial of the waiver request would prevent the municipality from realizing this opportunity; and

WHEREAS, granting the requested waiver would foster the production of affordable housing, would serve the intent of the COAH rules to ensure that municipalities address their fair share obligation through the creation of family rental units and would further diversify an affordable housing stock that includes rentals, sales, family and age-restricted units; and

WHEREAS, no replies in opposition to the waiver request were received; and

WHEREAS, a COAH task force met on October 21, 2008 and recommended that the full Board grant this waiver on the condition that Woodcliff Lake spends development fees in an amount equal to or less than the appraised value of the parcels in question at 230 Broadway, Block 2602, Lots 1 and 2; and

WHEREAS, Woodcliff Lake will forward to COAH a copy of the appraisal as soon as it is completed.

NOW THEREFORE BE IT RESOLVED that the Council approves Woodcliff Lake's request for a waiver from the requirements of N.J.A.C. 5:97-8.1(d) and N.J.A.C. 5:97-8.7(a) with the following conditions:

- 1) Woodcliff Lake may spend development fees in an amount equal to or less than the appraised value of the parcels in question at 230 Broadway, Block 2602, Lots 1 and 2; and
- 2) Woodcliff Lake shall include this site in a revised third round fair share plan and spending plan to be submitted by November 6, 2008, which is the expiration date of its second round substantive certification.

DATED: *October 29, 2008.*


Renee Reiss
Council Secretary