

**RESOLUTION GRANTING RIVER VALE TOWNSHIP, 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 RIVER  
VALE TO USE DEVELOPMENT FEES ON AN EMERGENT AFFORDABLE  
HOUSING OPPORTUNITY  
COAH DOCKET #08- 2026**

**WHEREAS**, on November 17, 2008, River Vale Township, Bergen County, ("River Vale" or "Township") 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 three parcels totaling 4.23-acres and upon which a municipally sponsored construction project will create approximately 31 age-restricted rental units to be built and administered by the Bergen County Housing Authority (BCHA); and

**WHEREAS**, River Vale's affordable housing plan was originally the subject of litigation, leading to the Township entering into two settlement agreements, one with the River Vale Realty Co., Inc. and one with U.S.C. Realty of River Vale, Inc. and LaSala and Higgins Joint Venture for which a settlement was reached with River Vale Realty, Inc., (Docket No. L-40622-89PW) dated April 22, 1991, which created the Township's Multi-Family Affordable Housing Zone (MFAH), permitting a density of seven units per acre with a 20 percent set-aside for affordable housing and the developers were given the option of making a payment in lieu of construction for up to 50 percent of the total affordable units; and

**WHEREAS**, the agreement with U.S.C. Realty of River Vale, Inc. (Docket No. W-35296-88) and LaSala and Higgins Joint Venture (Docket No. L-33645-89) dated December 3, 1990, established the Single-Family Affordable Housing Zone (SFAH) which permits single-family detached homes on 6,000 square foot lots and this SFAH zone requires an affordable

housing set-aside of 20 percent and includes an option for developers to make a payment in lieu of construction for the affordable units; and

**WHEREAS**, following the settlement of these cases, River Vale petitioned COAH for substantive certification on October 30, 1992 and on November 10, 1993, River Vale received COAH approval of its development fee ordinance, and later, on October 24, 2006, the Township received approval of an amendment to this ordinance.

**WHEREAS**, River Vale received COAH approval of its development fee spending plan on January 10, 1996, that called for the Township to use development fees on COAH approved housing activities; and

**WHEREAS**, the housing plan was not perfected and the Township filed a motion pursuant to N.J.A.C. 5:91-14.2 on May 19, 1994 requesting it be permitted to amend its Housing Element and Fair Share Plan to address its cumulative second round obligation and COAH granted this request on July 20, 1994, with the requirement that the Township re-petition COAH with a new plan by March 6, 1995 and River Vale did so on February 27, 1995, and received second round substantive certification on January 10, 1996; and

**WHEREAS**, the second round affordable housing obligation for River Vale Township was 121 units, all new construction and the plan certified by COAH included a total of 136 credits, bonus credits, and reductions for zoning in place, yielding a 15-unit new construction surplus and zoning in place represented 76 units and options for up to 44 payments in lieu of constructing units pursuant to the terms of the Township's settlement agreements; and

**WHEREAS**, on July 20, 1998, River Vale Township filed a petition with COAH amending the Housing Element and Fair Share Plan which would have given River Vale the right to determine the number of units, within a range, to be transferred or built on the site and the Township proposed to remove the payment in lieu option and replace it with a Township

determined range of off-site and on-site units, which is contrary to the court settlement, however, two objections were filed in response to the Township's amendment, one from United Properties and one from a civic group known as the River Vale Neighborhood Association (RVNA) and mediation concluded on February 6, 1999 and no agreement was reached with either party, and as a result a COAH Mediation Report was presented at the June 2, 1999 COAH Board meeting, which addressed the issue of determining the mix of units built and units transferred with the following statement:

A municipality may zone an inclusionary site to produce a range of affordable units and a corresponding range of payment in lieu of construction as per N.J.A.C. 5:93-8.10(c). However, once the range has been established, the developer, not the municipality, chooses how many units will be built on site; and

**WHEREAS**, on the grounds that the proposed amendment was both contrary to the court settlement and to the implementing ordinance approved by COAH, River Vale's substantive certification amendment was denied on May 3, 2000; and

**WHEREAS**, on February 3, 2001, River Vale Township requested an extension of substantive certification from COAH in accordance with N.J.A.C. 5:91-14.3 and on November 7, 2001, COAH granted River Vale Township extended substantive certification, however, COAH's interim procedural rule was then the subject of several appeals and on August 31, 2004, the Appellate Division of the Superior Court of New Jersey issued a consolidated opinion on these related appeals and determined that while COAH does have the authority to grant extended substantive certifications, it must provide for adequate public notice; and

**WHEREAS**, the court further opined that COAH must "engage in a principled review of each municipality's compliance and conduct before it can qualify for an extended certification" and directed COAH to adopt rules governing the process municipalities must follow to secure extensions, pursuant to In re Six Month Extension of N.J.A.C. 5:91-1 et seq., 372 N.J. Super. 61 (App. Div. 2004); and

**WHEREAS**, in compliance with the directive of the Appellate Division, COAH adopted N.J.A.C. 5:91-14.3 as an emergency rule, which became effective on October 13, 2004, and N.J.A.C. 5:95-15.2 which replaced the October 13<sup>th</sup> rule on December 20, 2004 and these revised procedures required municipalities seeking extended substantive certification to do so by filing a formal motion with COAH, providing adequate public notice and providing documentation from which COAH's review could be based and therefore on December 13, 2004, River Vale again filed a motion for extended substantive certification; and

**WHEREAS**, on July 27, 2005, COAH denied River Vale Township's December 13, 2004 motion requesting extended substantive certification for the following reasons:

1. The Township removed sites 4 and 4A, River Vale Developers, from its certified plan without prior approval from COAH;
2. The Township reduced the number of units generated on or transferred from affordable housing sites in its certified plan;
3. The Township failed to enter into RCA agreements as specified in its certified plan with monies already collected from payments in lieu of construction; and

**WHEREAS**, to remain under COAH's jurisdiction, River Vale petitioned COAH on July 26, 2005 with a third round plan and is expected to formally petition COAH for third round substantive certification on or before December 31, 2008; and

**WHEREAS**, on November 17, 2008, River Vale Township 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 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**, River Vale 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**, River Vale's Business Administrator, Robert Gallione, submitted a motion in the form of a letter requesting waivers pursuant to N.J.A.C. 5:96-15.1 from COAH's regulations at N.J.A.C. 5:97-8.1(d) and N.J.A.C. 5:97-8.7(a) in which River Vale seeks approval from COAH to spend previously collected development fees toward the purchase of three parcels of land totaling 4.23 acres and known as the Kirk site which is located on Block 1301, Lots 38, 39 and 40, and the Township's original waiver request stipulated that this property would create 54 affordable housing units, including seven family for-sale units and 16 family rental units, however, immediately prior to the COAH Task Force meeting of November 26, 2008, River Vale's counsel, Holly Schepisi, informed COAH staff that due to extensive opposition to this proposed project, the Township modified the project to only develop age-restricted units on this site, and stated it would create the family rental and for-sale units elsewhere in the municipality; and

**WHEREAS**, the Township has executed a contract of sale for the purchase of these lots at \$999,500, however, this contract calls for the development of 54 affordable housing units and one townhouse to be the property of the seller and if this site is developed solely with age-restricted rental units, this contract will need to be revised; and

**WHEREAS**, based on COAH records the Borough's Affordable Housing Trust Fund contained a balance of \$947,074 as of December 31, 2007 and the Township's original motion request stipulated that additional purchase and development funds will be provided by the developer, the Bergen County Housing Authority, the Bergen County United Way, and other funding partners, and on December 9, 2008, in support of such development, the Bergen County Housing Authority provided a letter of support for the municipality, though not for this specific project (which is attached to this resolution as Exhibit A); and

**WHEREAS**, granting this waiver would enable this municipality to create affordable housing units in a community where land is a scarce resource and without the waiver, River Vale would have to wait until after it petitions COAH on December 31, 2008 so that COAH could approve both the Borough's Housing Element and Fair Share Plan and spending plan and in as much as these parcels are currently available due to a family bankruptcy and foreclosure proceeding, the opportunity to acquire these parcels may not be available after the municipality petitions; 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**, the pending contract of sale is to be conditioned on the Township's receipt of COAH's approval of River Vale's expenditure of \$947,076 in collected development fees; 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; or 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 Township 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 age-restricted 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 December 9, 2008 and recommended that the full Board grant a waiver with the following conditions:

1. River Vale will use the \$947,074 in development fees to purchase the 4.3-acre Kirk site for the creation of 31 age-restricted rental units, and shall not alter or amend the use of this site without COAH's approval of an amendment to the Township's plan.
2. River Vale shall submit the final appraisal report and the revised contract of sale prior to expending affordable housing trust funds at closing on this property, which is tentatively scheduled for December 19, 2008.
3. River Vale will create the 23 family rental and for-sale units previously attributed to this site elsewhere in the municipality and shall include plans for all 23 of these units in its third round Housing Element and Fair Share Plan, which shall be submitted on or before December 31, 2008 at Noon.
4. River Vale shall include in its third round petition a request for a waiver from COAH's requirement to spend 30% of affordable housing trust funds on affordability assistance and the petition shall further lay out when and in what amounts the municipality anticipates collection of development fees that can, at a later date, be used to provide the requisite affordability assistance.
5. River Vale shall include in its third round petition development schedules delineating specific start and finish dates for both the 31-unit and the 23-unit projects.

6. COAH will recommend the release of the New Jersey DEP's Green Acres funding earmarked for the removal of the previously certified River Vale Developers site at such time as COAH staff determines that the Township's Housing Element and Fair Share Plan addresses the Township's entire prior round and growth share obligation.
  
7. River Vale shall execute developers' agreements, and provide development proformas, for the 31 age-restricted rental units and the 23 family rental and for-sale units within 60 days of a Council report requesting such documentation. If the information is not submitted or the developments are not deemed to create a realistic opportunity for affordable housing, the Township will be required to reimburse COAH \$947,074; and

**NOW THEREFORE BE IT RESOLVED** that the Council approves River Vale'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 above stated conditions.

DATED: *December 10, 2008.*

  
Renee Reiss

Council Secretary