

**RESOLUTION CONTINUING SCARCE RESOURCE RESTRAINT UPON
THE BOROUGH OF RED BANK, MONMOUTH COUNTY
COAH DOCKET NO.:08-2017**

WHEREAS, the Council on Affordable Housing (COAH or Council) granted the Borough of Red Bank (Red Bank or Borough), Monmouth County, a second round substantive certification of its Housing Element and Fair Share Plan on March 5, 1997; and

WHEREAS, the Borough's second round affordable housing obligation consisted of a 54-unit rehabilitation component and a 428-unit new construction component; and

WHEREAS, Red Bank's certified Plan consisted of a vacant land adjustment that reduced its new construction obligation of 428 units to zero due to a lack of vacant available land; and

WHEREAS, to address its unmet affordable housing need of 428 units, Red Bank proposed 37 age-restricted units created through adaptive reuse of the River Street School and redevelopment programs and proposals in identified "Areas of Residential Redevelopment"; and

WHEREAS, the redevelopment programs and proposals consisted of garden apartments and townhouses along the river, mid-rise apartments near the train station and the river, rehabilitation and reoccupancy of units over stores and offices, and continued gut rehabilitation and infill development in existing residential units; and

WHEREAS, COAH granted Red Bank an extension of its second round substantive certification on April 15, 2005 pursuant to N.J.A.C. 5:91-14.3 and N.J.A.C. 5:95-15.2; and

WHEREAS, Red Bank's extended certification continued the terms of the second round substantive certification and allocated six surplus units from affordable units created at the Locust Landing site toward its unmet affordable housing need; and

WHEREAS, Red Bank petitioned COAH for third round substantive certification on December 19, 2005; and

WHEREAS, Red Bank's third round Housing Element and Fair Share Plan continued the terms of its second round substantive certification and proposed to address its growth share obligation through a 100 percent affordable 36-unit municipally-sponsored project. In addition, Red Bank's third round plan proposed the use of a spending plan, a development fee ordinance, and a growth share ordinance that included the option of participating in a write-down/buy-down program, a rental acquisition/rent-down program and an accessory apartment program in addition to on-site construction of affordable units; and

WHEREAS, Red Bank's growth share ordinance, Ordinance No. 2005-46, was meant to capture growth share opportunities based on the previous ratios of one affordable dwelling unit for every eight market rate residential unit and one affordable unit for every 25 jobs; and

WHEREAS, on September 28, 2008, the Fair Share Housing Center (FSHC) filed a motion requesting that COAH impose a scarce resource restraint upon Red Bank to prevent it from granting any development approvals, to recalculate Red Bank's realistic development potential (RDP) of zero, and to void Red Bank's second round substantive certification; and

WHEREAS, FSHC included a list of four redevelopment applications that Red Bank's Planning and/or Zoning Board approved recently that either did not contain any affordable housing or contained less than a 20 percent set-aside in its motion; and

WHEREAS, Red Bank approved the MW Red Bank, LLC site (Block 37, Lot 6.01 Z7174), the West Front Street Partners, LLC (Block 30, Lot 10.01 Z7672), the RB Monmouth LLC and RB West LLC site (Block 42, Lots 1-4 and 19-21 P8370), and the RW @River's Edge, LLC site (Block 82, Lot 17 and Block 83, Lots 5-6.02 Z8589), all with less than a 20 percent affordable housing set-aside; and

WHEREAS, FSHC argues that Red Bank's approval of 145 residential units and 7,750 plus square feet of non-residential space with only an 11 percent set-aside captured in four redevelopment projects is evidence of the Borough's disregard of its second round substantive certification which requires at least a 20 percent set-aside pursuant to N.J.A.C. 5:93-5.6(b)1; and

WHEREAS, FSHC also provided COAH a list of three pending redevelopment applications: Siros at Monmouth, LLC (Block 33, Lot 9.01), RW @ River's Edge, LLC (Block 82, Lot 17 and Block 83, Lots 5-6.02 Z8589), and Grandview at Navesink (Block 4, Lot 11.01 Z8332), that FSHC contends may further exhaust scarce land resources for affordable units absent a scarce resource restraint; and

WHEREAS, COAH staff reviewed the Borough's second round substantive certification and determined that the following sites are located within the "Areas of Residential Redevelopment" identified in the Borough's certified Housing Element and Fair Share Plan which requires a 20 percent affordable housing set-aside: MW Red Bank, LLC site (Block 37, Lot 6.01 Z7174), the West Front Street Partners, LLC (Block 30, Lot 10.01 Z7672), the RB Monmouth LLC and RB West LLC site (Block 42, Lots 1-4 and 19-21 P8370); and

WHEREAS, on September 3, 2008, COAH staff met with Borough representatives to discuss continued implementation of the terms of its second round substantive certification; and

WHEREAS, pursuant to N.J.A.C. 5:96-12.1, COAH may, upon its own determination or upon the application of any interested person, impose scarce resource restraints, requiring that a municipality take appropriate measures to reserve scarce resources that may be essential to fulfill the municipality's fair share obligation; and

WHEREAS, Red Bank submitted opposition to FSHC's motion on October 24, 2008 and FSHC submitted a reply on October 31, 2008; and

WHEREAS, at its October 29, 2008 Board meeting, COAH imposed a temporary scarce resource restraint upon Red Bank's approval of development applications, exempting single and two family homes, pending the outcome of oral argument scheduled for the November 12, 2008 Board meeting; and

WHEREAS, FSHC and Red Bank subsequently entered into negotiations and requested that oral argument scheduled for the November 12, 2008 COAH Board meeting be adjourned, stating

that they intended to enter into a settlement agreement prior to the Council's December 10, 2008 meeting; and

WHEREAS, on December 9, 2008, Red Bank and FSHC provided COAH with a settlement agreement which, among other things, provides that Red Bank shall adopt a 20 percent set aside for affordable housing, with a minimum density of six units per acre for all development applications consisting of five (5) or more residential units within the areas of residential redevelopment identified in its second round Housing Element and Fair Share Plan; and

WHEREAS, the agreement further states that with respect to the Borough's Third Round Plan, if the Borough continues to request a vacant land adjustment or growth projection adjustment for its Prior Round obligation, Third Round obligation, or both, the Borough shall calculate an updated RDP, and, as part of developing a compliance plan to meet both the RDP and unmet need, examine whether the 20 percent set aside should be extended into other areas of the Borough and in addition assess the use of other compliance mechanisms; and

WHEREAS, the agreement additionally provides a list of the types of development applications that would be exempt from the scarce resource restraint; and

WHEREAS, the Council finds that once Red Bank adopts an ordinance requiring the appropriate zoning within the areas of residential redevelopment identified in its second round Housing Element and Fair Share Plan that the municipality will be in compliance with the terms of its second round certification; and

WHEREAS, the Council also finds that until such time as the Borough adopts the appropriate ordinances, the scarce resource restraint shall remain in effect subject to specific exemptions, listed below.

NOW, THEREFORE BE IT RESOLVED that the scarce resource restraint upon Red Bank shall be lifted upon Red Bank's adoption of an ordinance requiring a 20 percent set-aside for affordable housing with a minimum density of six units per acre for all development applications consisting of five (5) or more residential units within the areas of residential development described

at page 18 of the Borough's second round Housing Element and Fair Share Plan dated April 10, 1995, titled "Residential Redevelopment Strategy"; and

BE IT FURTHER RESOLVED that, upon adoption of the ordinance, any "rehabilitation and infill" developments described in the aforementioned Housing Element and Fair Share Plan that lie outside the boundaries of the residential redevelopment area shall not be required to provide the twenty percent affordable housing obligation on site, but shall accrue a growth share obligation; and

BE IT FURTHER RESOLVED that until the Borough adopts the appropriate ordinance, Red Bank shall continue to be restrained from approving development applications; and

BE IT FURTHER RESOLVED that the following types of development applications shall be exempt from the scarce resource restraint, and shall not be required to obtain a waiver:

- a. Projects consisting of a 20% (or greater) setback;
- b. Single or two family homes on existing lots;
- c. Commercial development applications seeking to re-occupy existing commercial spaces;
- d. Extensions of any prior approvals that do not modify the terms of the prior approval, or that are covered by the exemptions listed herein;
- e. Changes of occupancy;
- f. Interior or exterior renovations, unless new residential units are proposed;
- g. Demolition of non residential structures only, except for imminent hazard situations;
- h. Requests for interpretations;
- i. Permits for signage;
- j. Applications for site improvements that are not related to new construction or development;
- k. Appeals of decisions by the Administrative Officer;
- l. Applications for subdivisions not related to new construction or development (e.g., lot line adjustments, consolidations, minor subdivisions);
- m. Applications for development required by an Order of the Fire Marshal, Construction Official, or Code Enforcement Officer to address conditions cited pursuant to the Uniform Fire Code, the Uniform Construction Code, or the adopted Property

- Maintenance Code, or other standards, for remediation of conditions affecting public health, public or occupant safety, structural safety, or accessibility hazards; and
- n. Construction of accessory structures only;
 - o. Cell phone antennae on existing structures;
 - p. Lot line adjustments where no new building envelope is created;
 - q. Development proposals that involve properties less than 0.10 acres in area;
 - r. Subdivisions necessary to settle the estate of a decedent;
 - s. Applications to the Zoning Board of Adjustment for 'a' and 'b' variances under N.J.S.A. 40:55D-70; and

BE IT FURTHER RESOLVED that upon a showing by Red Bank to COAH's Executive Director that the appropriate Ordinances have been adopted by the Borough, this scarce resource restraint shall be lifted; and

BE IT FURTHER RESOLVED that the Council shall review the agreement submitted by the parties in detail and shall issue an order regarding the same at its February 2009 Council meeting.

I hereby certify that this Resolution was duly adopted by the Council on Affordable Housing at its meeting on December 10, 2008.

Renee Reiss 

Renee Reiss, Council Secretary