

RESOLUTION GRANTING CEDAR BROOK PROPERTIES A WAIVER OF THE OCTOBER 29, 2008 SCARCE RESOURCE RESTRAINT IMPOSED UPON WINSLOW TOWNSHIP, CAMDEN COUNTY

COAH DOCKET # 08-2021

WHEREAS, on October 29, 2008 the Council on Affordable Housing (Council or COAH) issued an opinion imposing a scarce resource restraint upon Winslow Township, Camden County, In Re Petition for Substantive Certification Filed by Winslow Township, Camden County, Motion for Scarce Resource Restraints, COAH Docket No. 08-2011 (Restraint); and

WHEREAS, the Restraint was imposed in response to a motion filed by Taylor Woods, LLC, which requested that the Council issue an order restraining Winslow Township from allocating available or future sewer capacity in the Township and also requesting that Taylor be given priority for remaining sewer capacity; and

WHEREAS, the Council stated in its decision,

“Winslow is restrained from allocating sewer capacity until such time that the Council grants substantive certification to Winslow’s third round Housing Element and Fair Share Plan. The Winslow Planning Board is restrained from acting upon any development applications other than developments proposed to include affordable housing. Single and two family residences shall be exempted from this scarce resource restraint. Based on the facts presented to COAH, Taylor [Woods] is also exempt from the scarce resource restraint. Any other affordable housing developer that seeks an exemption from the scarce resource restraint may move before COAH for relief until such time as Winslow receives third round substantive certification.”; and

WHEREAS, on December 10, 2008 COAH amended the October 29, 2008 decision to exempt the construction of cell phone antennae on already existing structures; and

WHEREAS, Cedar Brook Properties LLC (Cedar Brook), the owner and developer of a property located on Pump Branch Road in Winslow Township, identified on the municipal tax map as Block 4403, part of Lot 2, Lots 11& 12, and part of Lot 10, and Block 3901, Lots 10, 12, part of lot 11 and part of Lot 9 submitted its motion for a waiver on October 9, 2008; and

WHEREAS, Cedar Brook received Final Major Subdivision Approval for the development of a 274-lot subdivision from Winslow Township Zoning Board in December 2004 and in January 2005; and

WHEREAS, at the time the approvals were granted, there was no affordable housing obligation associated with the development because Winslow did not have a growth share ordinance in place; and

WHEREAS, at or about the time the *de facto* sewer moratorium in Winslow was imposed, Cedar Brook initiated litigation against Winslow, which was settled with Winslow adopting a resolution (R-429-05) that created a waiting list for sanitary sewer capacity which placed Cedar Brook at the top of the priority list; and

WHEREAS, at the time of the litigation an additional 188,000 gallon per day (gpd) of capacity for the Cedarbrook section of Winslow was the subject of an Amendment to the Tri-County Water Quality Management Plan (WQMP) under review by DEP; and

WHEREAS, DEP adopted the Amendment to the Tri-County WQMP on January 28, 2009, increasing the wastewater flow allocation and sewer service area of the Cedarbrook section of Winslow by 188,000 gallons per day, eliminating the Sicklerville Sewage Treatment Plant and conveying the flow to Camden City, conditioned upon endorsement from the Pinelands Commission, and eliminating the Ancora Sewer Treatment Plant in Winslow Township and conveying its flow to Camden City; and

WHEREAS, as a result of the amendment, Winslow's wastewater flow capacity in the Cedarbrook section of Winslow is increased by 188,000 gpd, resulting in Cedar Brook requesting that the Council act on its motion so that it may exercise its priority; and

WHEREAS, in its motion papers, Cedar Brook argues that COAH should grant its motion for a waiver from the Restraint because principles of comity and settlement require that COAH recognize the sanitary sewer allocation which resulted from Cedar Brook's Superior Court litigation against Winslow Township; and

WHEREAS, Cedar Brook specifically argues that COAH is required to respect the settlement reached in prior Superior Court litigation between Cedar Brook and Winslow wherein Winslow recognized that Cedar Brook possessed first priority right to sanitary sewer capacity once it became available; and

WHEREAS, Cedar Brook also states that the combined sanitary sewer capacity gallonage required for the Taylor Woods project and Cedar Brook's subdivision total less than

the 188,000 gpd released by DEP, and that as a result Taylor Woods will still have the ability to construct its housing in the event that COAH grants Cedar Brook the requested waiver; and

WHEREAS, Taylor Woods submitted papers in support of Cedar Brook's request for a waiver noting that Cedar Brook's priority rights are pursuant to a settlement of litigation, and that given the circumstance, coupled with the fact that there is sufficient sewer treatment allocation to serve both the Cedar Brook and Taylor Woods projects, Taylor does not object to Cedar Brook being entitled to its full allocation of 82,000 gpd; and

WHEREAS, at the Council's March 12, 2009 meeting Cedar Brook stated that it would be able and willing to provide an eight percent on-site affordable housing set-aside.

NOW, THEREFORE, BE IT RESOLVED that the Council hereby grants Cedar Brook's request for a waiver of the Restraints due to Cedar Brook agreeing to provide an eight percent set-aside on-site;

BE IT FURTHER RESOLVED the Council permits Cedar Brook to exercise its priority for sewer capacity, conditioned upon the development providing an eight percent set-aside, totaling twenty-two on-site low and moderate income units; and

BE IT FURTHER RESOLVED that the affordable units shall be provided in accordance with COAH's rules, including the phasing schedule set forth at N.J.A.C. 5:97-6.4(d), which is as follows:


<u>Percentage of Market-rate Units Completed</u>	<u>Minimum Percentage of Low- and Moderate-Income Units Completed</u>
25	0
25 + 1 unit	10
50	50
75	75
90	100; and

BE IT FURTHER RESOLVED that the affordable units shall also be provided in accordance with the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq; and

BE IT FURTHER RESOLVED the Council does not require Cedar Brook to amend or otherwise have its subdivision approvals changed as a result of the inclusion of the eight percent

affordable housing set-aside, nor shall Winslow Township impose such requirement upon Cedar Brook as a change to the affordable housing percentage provided in the development does not affect the approvals granted pursuant to the Municipal Land Use Law.

I hereby certify that this Resolution was duly adopted by the Council on Affordable Housing at its meeting on April 8, 2009.


Renee Reiss
Council Secretary