

**RESOLUTION GRANTING EDISON TOWNSHIP, MIDDLESEX COUNTY A WAIVER FROM**

**N.J.A.C. 5:97-8.1(d) and N.J.A.C. 5:97-8.7(a)**

COAH Docket 09-2125

**WHEREAS**, on December 2, 2006, Edison Township, Middlesex County, received from the Court a Final Judgment Approving Compliance of its Affordable Housing Element and Fair Share Plan with Conditions; and

**WHEREAS**, on August 16, 2006, Edison received from the Court an Order Approving Affordable Housing Spending Plan and Increase in Affordable Housing Development Fees; and

**WHEREAS**, on December 30, 2008, Edison petitioned COAH with its third round Housing Element and Fair Share Plan; and

**WHEREAS**, Edison Township submitted a third round spending plan with its petition; and

**WHEREAS**, as part of its December 30, 2008 petition, Edison has proposed a market to affordable program as a mechanism to address its projected growth share obligation; and

**WHEREAS**, at the conclusion of its 45-day objection period Edison Township had received four objections to its Housing Element and Fair Share Plan; and

**WHEREAS**, on May 19, 2009 Edison Township submitted a motion seeking 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 spend affordable housing trust funds in the amount of \$3,880,000.00, plus applicable administrative costs, on its Market to Affordable Program; and

**WHEREAS**, N.J.S.A. 52:27D-329.2 and N.J.A.C. 5:97-8.1(d) mandate that a municipality may not spend development fees until such time as the municipality obtains approval of its spending plan from COAH; and

**WHEREAS**, 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 project for which Edison seeks this waiver is in the Township's third round fair share plan and is identified in its proposed third round spending plan; and

**WHEREAS**, Edison states that the only way it may proceed with its Market to Affordable Program is to have access to Affordable Housing Trust Funds; and

**WHEREAS**, N.J.A.C. 5:97-6.9(b)(4) permits a municipality to satisfy 10 percent of its fair share obligation through a Market to Affordable Program; and

**WHEREAS**, the Township is requesting to expend \$3,880,000.00 of its affordable housing trust fund for the Market to Affordable Program; and

**WHEREAS**, the Township had a balance of \$4,552,855.84 in its affordable housing trust fund as of May 4, 2009; and

**WHEREAS**, the waiver is necessary because the affordable housing project on which the Township wishes to spend affordable housing trust funds is identified in its third round Housing Element and Fair Share Plan and the Township's spending plan, however the spending plan has yet to be approved; and

**WHEREAS**, pursuant to N.J.A.C. 5:96-15.2, COAH's review of a waiver request shall consider whether the strict application of the rule would create an unnecessary hardship; or that such a waiver fosters the production of affordable housing, fosters the intent, if not the letter, of COAH's rules, and that the Housing Element and Fair Share Plan provide a mix of housing options; and

**WHEREAS**, granting the waiver requested would foster the production of affordable housing and would serve the intent of COAH's rules by ensuring that Edison addresses its fair share obligation through a variety of affordable housing options including the creation of supportive and special needs housing; and

**WHEREAS**, the project presents a realistic opportunity to create affordable housing units in Edison; and

**WHEREAS**, COAH staff has prepared a report dated June 25, 2009, recommending that the waiver from N.J.A.C. 5:97-8.1(d) and N.J.A.C. 5:97-8.7(a) be granted with amendments; and

**WHEREAS**, COAH received four oppositions to the Township's waiver request; and

**WHEREAS**, a COAH task force met on July 1, 2009 to review Edison's waiver request; and

**WHEREAS**, the task force recommends releasing \$600,000 for the Township to begin its Market to Affordable Program; and

**WHEREAS**, the Township may use funds allocated to administration to contract with an administrative agent to operate the program; and

**WHEREAS**, when the Township has demonstrated that it has successfully acquired and deed restricted 20 units for the Market to Affordable Program, it may request COAH to release additional funds.

**NOW THEREFORE BE IT RESOLVED** that COAH finds that the waiver is necessary for Edison to begin its Market to Affordable Program, thus fostering the production of affordable housing in the Township and fostering the intent of COAH's rules; and

**BE IT FURTHER RESOLVED** that the disbursement of funds from Edison's affordable housing trust fund to Edison Township's Market to Affordable Program is consistent with the goal of promoting affordable housing in the Township; and

**BE IT FURTHER RESOLVED** Edison may expend up to \$600,000.00 of its affordable housing trust fund to begin its Market to Affordable Program; and

**BE IT FURTHER RESOLVED** the Township may use funds allocated to administration to contract with an administrative agent to operate the program; and

**BE IT FURTHER RESOLVED** when the Township has demonstrated that it has successfully acquired and deed restricted 20 units for the Market to Affordable Program, it may request COAH to release additional funds; and

**BE IT FURTHER RESOLVED** that COAH grants the waiver from the requirements of N.J.A.C. 5:97-8.1(d) and N.J.A.C. 5:97-8.7(a).

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



Renee Reiss  
Council Secretary