

**RESOLUTION GRANTING OHB HOMES' MOTION FOR A WAIVER FROM  
THE SCARCE RESOURCE RESTRAINT FOR SEWER IN WINSLOW  
TOWNSHIP, CAMDEN COUNTY**

COAH # 09-2136

WHEREAS, on October 29, 2008, the Council on Affordable Housing (COAH) found that sewer service capacity is a scarce resource in Winslow Township, Camden County (Winslow or Township); and

WHEREAS, as a result of this determination, in In re Petition for Substantive Certification Filed by Winslow Township, Camden County, Motion for Scarce Resource Restraints, COAH Docket No. 08-2011, COAH restrained the allocation of sewer capacity to all development, with the exception of single and two-family homes and developments providing affordable housing; and

WHEREAS, in In Winslow Township Amendment and Clarification of Scarce Resource Restraint, COAH Docket No. 08-2029, COAH found that:

The Scarce Resource Restraint is applicable to all development applications in both the Cedarbrook and Sicklerville Service Areas, regardless of whether the project is proposing the use of individual septic systems. Applicants on the Township's waiting list for sewer capacity are not exempt from the Restraint, and individual projects seeking a waiver of the restraint may apply to COAH pursuant to N.J.A.C. 5:96-13 and N.J.A.C. 5:96-15;

and

WHEREAS, Winslow petitioned COAH for third round certification under N.J.A.C. 5:97 and N.J.A.C. 5:96 on December 31, 2008; and

WHEREAS, the petition was deemed complete on June 24, 2009, and notice was published on July 1, 2009, commencing the public comment period; and

WHEREAS, OHB Homes, Inc. (OHB) submitted a motion for a waiver of the Scarce Resource Restraint on June 19, 2009; and

WHEREAS, OHB requests a waiver of the scarce resource restraint for the limited purpose of seeking an extension to OHB's vested Preliminary Subdivision Approval; and

WHEREAS, OHB is the owner of property located at Apple Street and Center Avenue, Block 3105, Lot 5 and a portion of Lot 4 (Property), located within the boundaries of the Pinelands; and

WHEREAS, OHB states that it received preliminary subdivision approval from the Winslow Township Planning Board (Planning Board) for a 102-lot residential development project on the Property on June 15, 2006; and

WHEREAS, OHB states that it is unable to obtain adequate sewer capacity due to the scarce resource order but that at this point in time OHB is only seeking a waiver to allow it to request an extension of its Preliminary Approval from the Planning Board; and

WHEREAS, OHB maintains that that the Pinelands Commission has taken the position that the Permit Extension Act does not protect municipal approvals for Property located within Pinelands boundaries should Pinelands Standards change; and

WHEREAS, in order to protect its approvals, OHB sent a letter to the Planning Board requesting that the Planning Board schedule OHB's request for a two-year extension of OHB's preliminary subdivision approval; and

WHEREAS, OHB states that the Planning Board scheduled the request for May 21, 2009 and that prior to the hearing, Shirley Grasso, attorney for the Planning Board advised OHB that it must receive a waiver from the Restraint prior to the Planning Board hearing and acting upon the pending extension request; and

WHEREAS, OHB argues that rights conferred by the grant of a preliminary approval of a major subdivision or site plan are set forth in the MLUL at N.J.S.A. 40:55D-59; and

WHEREAS, OHB maintains that under that statute, preliminary approvals receive protection from zoning changes for an initial three-year period and that the statutory provision also allows an applicant to apply for and receive extensions to the preliminary approval in order to preserve the applicant's vested rights in the development approvals; and

WHEREAS, OHB further maintains that N.J.S.A. 40:55D-21 permits extensions to be retroactive, and the tolling of the period of statutory protection where a developer is prevented from proceeding with the development; and

WHEREAS, no opposition was received to OHB's waiver request; and

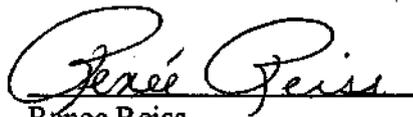
WHEREAS, a task force convened on July 23, 2009 and considered OHB's arguments; and

WHEREAS, the task force recommends that OHB's motion be granted as it is not proposing to use any sewer capacity; and

WHEREAS, the task force further recommends that the Council require that at such time that OHB does require sewer capacity that it be required to appear before the Council for such allocation if the Scarce Resource Restraint is still in effect.

NOW THEREFORE BE IT RESOLVED THAT the Council grants OHB's request for a waiver from the scarce resource restraint since it is not requesting an allocation of sewer capacity.

I hereby certify that this Resolution was  
duly adopted by the Council on Affordable  
Housing at its meeting on *August 12, 2009.*

A handwritten signature in cursive script, reading "Renee Reiss", written over a horizontal line.

Renee Reiss  
Council Secretary