

**RESOLUTION GRANTING IN PART AND DENYING IN PART LUTHERAN SOCIAL MINISTRIES OF NEW JERSEY'S WAIVER REQUESTS FROM THE PROVISIONS OF N.J.A.C. 5:97-2.5(b) AND N.J.A.C. 5:97-2.5(b) 2.iv, IN BOROUGH OF NEW PROVIDENCE, UNION COUNTY**

**COAH DOCKET # 09-2161**

**WHEREAS**, on August 5, 1998, the Borough of New Providence, Union County (Borough) received second round substantive certification and on May 11, 2005 received extended substantive certification; and

**WHEREAS**, on December 31, 2008 the Borough petitioned COAH for third round substantive certification; and

**WHEREAS**, objections to the Borough's Housing Element and Fair Share Plan (HEFSP) for the third round were filed by Fair Share Housing Center (FSHC) and Linde North America Inc. (Linde Group); and

**WHEREAS**, on November 25, 2009 a Pre-Mediation Report Requesting Additional Information was issued by COAH; and

**WHEREAS**, mediation has been scheduled in the third round substantive certification process for January 19, 2009; and

**WHEREAS**, New Providence and Lutheran Social Ministries of New Jersey (LSM) file this motion seeking waivers from the provisions of N.J.A.C. 5:97-2.5(b) and N.J.A.C. 5:97-2.5(b) 2.iv; and

**WHEREAS**, LSM is the contract purchaser of a commercially zoned site located at 535 Mountain Avenue in the Borough, identified as the K-Line site and office building; and

**WHEREAS**, the K-Line site is 20.71 acres with a 145,874 square foot office building, four stories in height that is unoccupied; and

**WHEREAS**, LSM seeks to demolish the existing building and construct a 574,378 square foot continuing care retirement community (CCRC) facility including a parking garage; and

**WHEREAS**, LSM seeks waivers to use a projected job count and an actual job created count for the CCRC, instead of compliance with the provisions of N.J.A.C. 5:97-2.5(b) and N.J.A.C. 5:97-2.5(b) 2.iv; and

**WHEREAS**, LSM maintains that the waiver requests are based upon financial hardship pursuant to N.J.A.C. 5:96-15.2(a); and

**WHEREAS**, LSM cites the economic recession and the recently passed New Jersey Economic Stimulus Bill in support of its contention that it is facing financial hardship; and

**WHEREAS**, LSM advises that it is committed to producing up to 50 affordable housing units within New Providence; and

**WHEREAS**, LSM maintains that New Providence should only be responsible for 15.5 affordable housing units, instead of 48.6 affordable housing units, based on estimates it derives from another CCRC it presently operates in West Caldwell Township, Essex County; and

**WHEREAS**, LSM also seeks further deductions in the non-residential affordable housing growth share obligation by applying the demolition calculation associated with the razing of the existing K-Line site building; and

**WHEREAS**, LSM seeks to have the one year from occupancy requirement under N.J.A.C. 5:97-2.5(b) 2.iv, waived, so the jobs lost based on demolition figure, will yield a debit of 25.63 affordable housing units, which can be applied against the affordable housing obligation generated from the construction of the CCRC; and

**WHEREAS**, FSHC and the Linde Group filed objections to the waiver requests made by LSM; and

**WHEREAS**, FSHC maintains that the Borough fails to support the waiver requests being made by LSM and LSM's proposed CCRC is not part of the HEFSP; and

**WHEREAS**, FSHC maintains that there are numerous development, implementation and funding issues that need to be addressed to fully understand how the LSM proposal and waiver requests fit into the Borough's Fair Share Plan; and

**WHEREAS**, FSHC maintains there are factual disputes with LSM as to how long ago the K-Line building was actually abandoned; and

**WHEREAS**, FSHC maintains that LSM fails to demonstrate a particularized harm that justifies a claim for waiver based on financial hardship under N.J.A.C. 5:96-15.2(a); and

**WHEREAS**, the Linde Group maintains that LSM provides no credible evidence or explanation to assert a claim for financial hardship; and

**WHEREAS**, the Linde Group maintains that there are a myriad of unanswered factual issues raised pertaining to the LSM proposal including the number of units in the proposed facility, the mix of independent versus assisted living and skilled nursing beds, which renders the waiver requests premature; and

**WHEREAS**, the Linde Group notes that the Borough does not support these waiver requests; and

**WHEREAS**, the Borough of New Providence subsequently submitted correspondence supporting the waiver requests being made by LSM; and

**WHEREAS**, by letter dated November 17, 2009, the Borough of New Providence advises that LSM has filed a development application before the New Providence Zoning Board of Adjustment; and

**WHEREAS**, the former K-Line building lessee Alcatel-Lucent provides correspondence from Corporate Counsel dated XXX advising that Alcatel-Lucent and its sub-tenants were out of the building by March 31, 2004, and Alcatel-Lucent continued to pay rent until the lease expired in March 2008; and

**WHEREAS**, a Task Force met on November 23, 2009 to discuss the waiver requests; and

**WHEREAS**, the Task Force noted that the Alcatel-Lucent job loss took place during the third round 2004-2018 period during which employment growth is counted, and the Task Force recommended that a demolition credit could therefore be applied as a measure of actual job loss during the period; and

**WHEREAS**, although the project is in the conceptual stage, LSM has indicated that it is prepared to move forward and as such, the expectation is that the demolition will occur by New Providence's first biannual review; and

**WHEREAS**, LSM has not provided the Council a site plan for the proposed project; and

**WHEREAS**, LSM has not provided the Council actual numbers and projected figures for employment for the site; and

**WHEREAS**, COAH's comment and response document at 40 N.J.R. 6038 indicates that actual jobs are more appropriately considered for CCRC uses at the time when the structure is fully occupied; and

**WHEREAS**, LSM has not provided the Council a monetary calculation to show how a change in the affordable housing obligation as required pursuant to N.J.A.C. 5:97-2.5(b) and N.J.A.C. 5:97-2.5(b) 2.iv, and calculated pursuant to Appendix D would cause LSM financial hardship; and

**WHEREAS**, LSM has failed to provide the Council sufficient information to make a determination that might demonstrate that a strict application of specific provisions of COAH's rules would create an unnecessary financial hardship; and

**WHEREAS**, the Task Force recommended that the waiver for the demolition credit be granted at such time as the demolition takes place and the waiver for the actual job count be denied without prejudice as premature and for the additional reasons set forth above; and

**WHEREAS**, the Task Force noted that New Providence may submit additional information as to the actual job count when the building is fully occupied and as that information becomes available.

**NOW THEREFORE BE IT RESOLVED** that the Council finds that New Providence and LSM have not demonstrated that by complying with the non-residential growth share calculation requirements under N.J.A.C. 5:97-2.5(b) and Appendix D, that it will incur an unnecessary financial hardship; and

**BE IT FURTHER RESOLVED** that the Council finds that insufficient information was provided regarding actual jobs to be created at the facility and that such information is more appropriately provided at such time as the structure is fully occupied; and

**BE IT FURTHER RESOLVED** that the Council finds that the demolition credit pursuant to N.J.A.C. 5:97-2.5(b) 2.iv is appropriately applied and granted as a measure of actual job loss during the third round period and anticipates that the demolition will occur by New Providence's first biannual review and the demolition offset would be measured at that time; and

**BE IT FURTHER RESOLVED** that the motion for waiver from the requirements of N.J.A.C. 5:97-2.5(b) is hereby denied without prejudice for the reasons set forth above and the waiver from the requirements of N.J.A.C. 5:97-2.5(b) 2.iv is hereby granted.

I hereby certify that this Resolution was  
Duly adopted by the Council on Affordable  
Housing at its meeting on December 9, 2009

A handwritten signature in black ink that reads "Renee Reiss". The signature is written in a cursive, flowing style.

Renee Reiss  
Council Secretary