

RESOLUTION LIFTING THE HIGHLANDS SCARCE RESOURCE RESTRAINT AS IT PERTAINS TO DIANE MIKELL'S PROPERTY LOCATED AT BLOCK 45, LOT 14 TO CREATE A TWO RESIDENCE SUBDIVISION

COAH DOCKET # 09-2152

WHEREAS, Washington Township, Warren County, received first round substantive certification on May 1, 1991, second round substantive certification on April 26, 1999 and filed a third round petition for substantive certification on November 21, 2005 pursuant to N.J.A.C. 5:94 and N.J.A.C. 5:95 ; and

WHEREAS, the Council on Affordable Housing (COAH) on November 12, 2008 passed a resolution "Granting Extension of Time to file Third Round Petition for Substantive Certification and Imposing Scarce Resources restraint" pertaining to municipalities in the Highlands Region; and

WHEREAS, COAH issued correspondence on December 17, 2008 to clarify the Scarce Resource Restraint setting forth a list of 36 exemptions, which was subsequently memorialized and amended by COAH on October 14, 2009; and

WHEREAS, COAH adopted on August 12, 2009 a Resolution waiving N.J.A.C. 5:97-2.3(a) and N.J.A.C. 5:97-2.4 and Appendix F for Highlands municipalities that conform to the Highlands Regional Master Plan and granting a further extension of time until June 8, 2010 to petition with a third round plan; and

WHEREAS, Washington Township is located in the Highlands Region and filed for an extension of time as of December 16, 2008; and

WHEREAS, Diane Mikell is the owner of an undeveloped site designated as Block 45, Lot 14, Washington Township, Warren County; and

WHEREAS, the site consists of 30.242 acres and is located in the Township's Valley Residential zone district which permits residential development with a minimum lot area requirement of four acres; and

WHEREAS, the site is presently used for agricultural purposes; and

WHEREAS, Diane Mikell purchased the site on October 30, 2008 for residential development after the enactment of the Highlands Act but prior to the date of the imposition of the Scarce Resource Restraint; and

WHEREAS, Diane Mikell maintains that she has no other option but to move forward with development of the property and has incurred professional fees, application fees and review fees in excess of \$55,000; and

WHEREAS, Diane Mikell advises that the property was purchased with a purchase money mortgage and that she continues to incur financing charges over \$25,000; and

WHEREAS, Diane Mikell sought and obtained from the Washington Township Land Use Board minor subdivision approval with conditions on August 12, 2009 for the subdivision of the site into two parcels with a residence on each parcel; and

WHEREAS, each lot will be developed with its own septic system and potable water will be provided by New Jersey American Water; and

WHEREAS, as a condition of the minor subdivision approval Diane Mikell must obtain from COAH an exemption from the Scarce Resource Restraint; and

WHEREAS, as a condition of the minor subdivision approval Diane Mikell must pay a municipal affordable housing fee of one percent of the equalized assessed value resulting from this residential development; and

WHEREAS, Diane Mikell maintains that unless she can secure a waiver from the Scarce Resource Restraint, she will suffer significant and unnecessary financial hardship and therefore seeks a waiver pursuant to N.J.A.C. 5:96-15.2; and

WHEREAS, Washington Township has a third round rehabilitation share of zero; and

WHEREAS, Washington Township has a prior round 1987-1999 obligation of 48 units; and

WHEREAS, the third round 2004-2018 residential growth projection for Washington Township is 297 units; and

WHEREAS, the employment projection for Washington Township is a loss of 163 jobs; and

WHEREAS, the total projected growth share for the third round for Washington Township is 59 affordable housing units; and

WHEREAS, COAH and the Highlands Council entered into a Memorandum of Understanding (MOU) dated October 30, 2008; and

WHEREAS, the MOU provides that COAH shall issue a scarce resource order for all municipalities in the Highlands Region under COAH's jurisdiction in order to preserve scarce land, water and sewer resources and to dedicate these resources on a priority basis for the production of affordable housing until such time as the municipality receives substantive certification from COAH or demonstrates that appropriate measures have been taken to reserve such resources; and

WHEREAS, pursuant to Section C, paragraph 13 of the MOU, the Highlands Council shall prepare adjusted growth projections for the fair share period from 2004 to 2018 through the development of a build-out analysis at a municipal scale for conforming municipalities consistent with the Regional Master Plan; and

WHEREAS, the Highlands Council prepared a Municipal Build-Out Report, posted on the Highlands Council website on October 9, 2009, for Washington Township; and

WHEREAS, based on the build-out results in Table 4- Municipal Build-Out Results with Resource and Utility Constraints as applied in Module 3- Housing Element and Fair Share Plan toward the determination of affordable housing obligations, show the non-residential build-out capacity presented in the Highlands report to be significantly higher than the COAH projection; and

WHEREAS, the residential unit figures in the Municipal Build-Out Report for Washington Township are comparable to COAH's projections; and

WHEREAS, the Highlands build-out results demonstrate that there is no shortage of water or sewer capacity and Washington Township will be able to address its COAH projected growth share obligation; and

WHEREAS, the Highlands Council has advised COAH that Washington Township is submitting further information to amend the Highlands Council's Municipal Build-Out Report; and

WHEREAS, the Council has determined that notwithstanding any changes to the Highlands Council's Municipal Build-Out Report, that there will not be any effect on sewer and water supply in Washington Township by the proposed Diane Mikell subdivision which will be utilizing septic systems and potable water from New Jersey American Water for both parcels; and

WHEREAS, Washington Township will likely rely on the COAH projections in preparing its third round Housing Element and Fair Share Plan; and

WHEREAS, no replies in opposition to the waiver request were received by COAH; and

WHEREAS, the Task Force discussed the waiver request on November 23, 2009 and recommended that the waiver be granted; and

WHEREAS, the Task Force cautioned that Washington Township must take into account the cumulative affect of granting minor residential subdivisions without requiring set-asides for the creation of affordable housing; and

WHEREAS, the Task Force further notes that Washington Township has an obligation to enforce zoning requirements that ensure that the Township's Fair Share Obligation is addressed in proportion to the creation of market rate housing.

NOW THEREFORE BE IT RESOLVED that the Council finds that this application does not fall within any of the 36 exemptions provided in COAH's clarification correspondence of December 17, 2008, subsequently memorialized and amended by COAH on October 14, 2009, and therefore requires COAH action to lift the Scarce Resource Restraint for this motion; and

BE IT FURTHER RESOLVED that Washington Township does not show a lack of water or sewer capacity as indicated in the preliminary Highlands Council October 9, 2009 Municipal Build-Out Report and is therefore likely able to address its full projected growth share obligation through 2018; and

BE IT FURTHER RESOLVED that although Washington Township may seek to amend the Highlands Council's Municipal Build-Out Report, the Diane Mikell subdivision will not effect sewer and potable water usage in the Township; and

BE IT FURTHER RESOLVED that this approval authorizes the Township to proceed with the minor subdivision application but does not authorize any allocation of sewer or water usage until such time as the COAH Scarce Resource Restraint is lifted as to the entire municipality; and

BE IT FURTHER RESOLVED that COAH grants the motion for exemption from the Scarce Resource Restraint imposed upon Washington Township, Warren County, as it pertains to the Diane Mikell property located at Block 45, Lot 14, Washington Township, Warren County.

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 with a large initial 'R'.

Renee Reiss
Council Secretary