

RESOLUTION LIFTING THE HIGHLANDS SCARCE RESOURCE RESTRAINT AS IT PERTAINS TO ASBURY FARMS AND VILLAGE SUPER MARKET LOCATED AT BLOCK 65.01, LOT 1 AND BLOCK 65, LOTS 2 AND 4 TO CREATE A SHOP RITE SUPERMARKET

COAH DOCKET # 09-2181

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, on March 6, 2006 Asbury Farms entered into a ground lease with Village Super Market of N.J., L.P. and Village Super Market, Inc. (hereinafter collectively referred to a Village) to permit the construction of a Shop Rite Supermarket on Block 65.01, Lot 1 and Block 65, Lots 2 and 4 (site); and

WHEREAS, on October 10, 2007, Asbury Farms obtained final site plan approval for the Shop Rite Supermarket from the Washington Township Planning Board; and

WHEREAS, on January 23, 2009, a Stop Work Order was entered at the Superior court in Warren County and all construction on the site ceased; and

WHEREAS, on April 22, 2009, the Honorable John J. Coyle, J.S.C., issued an opinion invalidating the prior site plan approval; and

WHEREAS, on October 28, 2009, the Warren County Planning Board issued a conditional site plan approval for the Shop Rite Supermarket; and

WHEREAS, on November 11, 2009 Asbury Farms received a new preliminary and final site plan approval from the Washington Township Planning Board; and

WHEREAS, a condition of the November 11, 2009 final site plan approval for the site requires Asbury Farms to obtain from COAH an exemption of the Scarce Resource Restraint as it applies to the site; and

WHEREAS, the supermarket structure on the site is 69,622 square feet; and

WHEREAS, the supermarket structure is 75 percent completed; and

WHEREAS, the supermarket is part of a Planned Village District (PVD), pursuant to Washington Township's Municipal code; and

WHEREAS, the PVD is 313 acres, containing mixed uses including Open Spaces (a golf course), Residential Area and Commercial Area; and

WHEREAS, pursuant to a March 2000 General Development Plan, the PVD contains 120 age-restricted homes built as per a 2001 site plan; and

WHEREAS, in 2005 Asbury Farms received approval to build 75 townhouses in the PVD, which townhouses have not yet been built; and

WHEREAS, the approval for the townhouses require inclusion of eight affordable housing units with ten credits; and

WHEREAS, the supermarket is part of the commercial core area of the PVD; and

WHEREAS, the entire PVD receives sewer service through the Asbury Sewer Service System; 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 preliminary 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 preliminary 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 there will not be any effect on sewer and water supply in Washington Township by the proposed Shop Rite Supermarket in the PVD, Asbury Farms Sewer Service Area; and

WHEREAS, the Asbury Farms Sewer Service Area was created to accommodate the sewer needs for the entire PVD; and

WHEREAS, Asbury Farms has purchased water rights to accommodate the needs of the supermarket as anticipated in the Highlands Council's Municipal Build-Out Report as it applies to the PVD; 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, a Task Force discussed the exemption request on November 23, 2009 and recommended that the waiver be granted.

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 Highlands Council October 9, 2009 Municipal Build-Out Report and is therefore likely able to address its full projected growth share obligation through 2008; and

BE IT FURTHER RESOLVED that although Washington Township may seek to amend the Highlands Council's Municipal Build-Out Report, the Shop Rite Supermarket in the PVD, Asbury Farms Sewer Service Area will not effect sewer and potable water usage in the Township; and

BE IT FURTHER RESOLVED that the Shop Rite Supermarket is 75 percent complete; and

BE IT FURTHER RESOLVED that this approval authorizes the Township to proceed with the construction of the Shop Rite Supermarket on Block 65.01, Lot 1 and Block 65, Lots 2 and 4, but does not authorize any allocation of sewer or water usage other than what is presently permitted in the PVD and Asbury Farms Sewer service Area for the Shop Rite Supermarket 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 Shop Rite Supermarket on Block 65.01, Lot 1 and Block 65, Lots 2 and 4, 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, reading "Renee Reiss". The signature is written in a cursive, flowing style with a large initial "R" and "R".

Renee Reiss
Council Secretary