

RESOLUTION DENYING GALLOWAY TOWNSHIP, ATLANTIC COUNTY, WAIVER FROM N.J.A.C. 5:97-8.1(d) ALLOWING FOR EXPENDITURE FROM THE AFFORDABLE HOUSING TRUST FUND

COAH DOCKET # 09-2166

WHEREAS, Galloway Township, Atlantic County (“Galloway” or “Township”), received second round substantive certification on December 20, 2004; and

WHEREAS, Galloway received COAH approval for a development fee ordinance on December 7, 2006; and

WHEREAS, the Township received approval of its spending plan on April 8, 2005; and

WHEREAS, COAH received Galloway’s latest Affordable Housing Trust Fund monitoring report on February 2, 2009; and

WHEREAS, as of December 31, 2008, the Township’s housing trust fund account balance was \$1,689,725.72; and

WHEREAS, Galloway petitioned COAH for third round substantive certification on December 31, 2008; and

WHEREAS, the Township published notice of its petition in the Press of Atlantic City on March 8, 2009; and

WHEREAS, two objections were received during the 45-day objection period: one from Adam Gordon, Esq., on behalf of Fair Share Housing Center (FSHC), and one from Richard J. Hoff, Jr., Esq., on behalf of Ole Hansen and Sons, Inc.; and

WHEREAS, the latter objection was withdrawn and the objections were not in regards to Galloway’s spending plan nor the Seashore Gardens project; and

WHEREAS, the Township’s Housing Element and Fair Share Plan and revised spending plan includes the 100% affordable Seashore Gardens project which consists of 58 units: 46 senior units (three of which are also special needs units) and 12 special needs housing units; and

WHEREAS, on September 23, 2009 Galloway Township submitted to COAH a request for a waiver from the requirements of N.J.A.C. 5:97-8.1(d) in order to expend affordable housing trust funds to purchase five (5) Pinelands Development Credits (PDCs) to allow for the construction of a 58-unit 100% affordable housing development known as Seashore Gardens; and

WHEREAS, the estimated cost to purchase the PDCs is \$360,000; and

WHEREAS, Galloway states that Seashore Gardens received approval from the Township of Galloway Zoning Board of Adjustment in 2000 to construct a 151-bed extended care facility, a 35-bed assisted living facility, an adult day care facility and a 50-unit independent living facility; and

WHEREAS, as part of this approval the Pinelands Commission established a PDC requirement of 8.75 for the project; and

WHEREAS, the basis for the obligation was that a portion of the lot (the independent living facility) was located in the Professional Office district, which does not permit residential uses and under Pinelands regulations development of residential uses in the Professional Office district requires the purchase of PDCs; and

WHEREAS, as originally approved, the 50-unit independent living facility was to consist of 28 market rate and 22 affordable units; and

WHEREAS, in 2007 Seashore Gardens decided to eliminate the market rate units and build a 100% affordable housing development for seniors and later revised its plans to include special needs housing; and

WHEREAS, the current approval is for a 58-unit, 100% affordable, independent living facility, consisting of 46 senior units (three of which are also special needs units) and 12 special needs housing units; and

WHEREAS, on October 20, 2009, COAH staff contacted the Pinelands Commission staff to inquire about the 8.75 PDC requirement for this 100% affordable project; and

WHEREAS, the Pinelands Commission staff confirmed that it was aware that the project was now 100% affordable and reiterated the fact that the Pinelands does not have a policy in place that would waive the PDC requirement for affordable housing projects; and

WHEREAS, the Pinelands Commission staff further stated that it has represented to Seashore Gardens that it was not willing to go back ten years and re-evaluate the amount of PDCs that it had previously determined to be required for the Seashore Gardens project; and

WHEREAS, in 2006 Seashore Gardens asked the Township for assistance with the PDC requirement for this project; and

WHEREAS, the Township recognized the benefit of gaining the affordable units and through a growth share ordinance began accepting PDCs (or the cash equivalent)

from market-rate housing developments in-lieu of the developers constructing affordable units on-site; and

WHEREAS, there are 3 projects that are responsible for 2.5 PDCs and these projects, approved on May 25, 2006, July 27, 2006 and February 8, 2007, are not required to transfer the PDCs until a request for a building permit is made; and

WHEREAS, none of the projects are ready for building permits in light of economic conditions; however, at some point the Township asserts that PDCs should be provided to the Township (or the cash equivalent); and

WHEREAS, the Township has proposed purchasing the 2.5 PDCs for Seashore Gardens upfront so that the project can move forward as planned; and

WHEREAS, Galloway also proposes to purchase the remaining 2.5 PDCs for Seashore Gardens in order to enable the creation of affordable housing units; and

WHEREAS, the PDC Bank agreed to transfer to Seashore Gardens 3.75 PDCs at no cost and the bank approved this on September 1, 2009; and

WHEREAS, Seashore Gardens recently received a funding commitment through HMFA's Spring 2009 cycle of tax credits for this project with the provision that they break ground by September 28, 2009 and as part of the funding agreement the project must commence construction within 120 days of the tax credit award date; and

WHEREAS, the Township of Galloway has indicated that the Township Planner has signed off on footing and foundation permits to allow the developer to commence construction by September 28, 2009, meeting the HMFA deadline; and

WHEREAS, the Pinelands Commission will not allow the construction to proceed beyond footings and foundations until the Township receives approval from COAH to expend trust fund monies on the PDCs; and

WHEREAS, before Seashore Gardens can proceed with construction, it needs to secure the 8.75 PDCs so that the Pinelands Commission can issue a no call-up letter; and

WHEREAS, John Stokes, Executive Director of the Pinelands Commission, agreed that a no-call up letter would be issued allowing construction to commence if the Township could structure an agreement with the Commission and Seashore Gardens that would guarantee the transfer of the 5 PDCs (estimated value \$360,000) from the Township; and

WHEREAS, this agreement has been signed by all parties and in a letter dated October 16, 2009, the Township has requested that the Pinelands Commission issue the no call-up letter; and

WHEREAS, in a letter dated September 29, 2009, COAH acknowledged receipt of Galloway's motion and stated that any opposing briefs should be filed with COAH not later than October 13, 2009; and

WHEREAS, COAH set October 23, 2009 as the final date for responses to any opposing briefs; and

WHEREAS, No replies in opposition were received by COAH; and

WHEREAS, this waiver request was discussed at the Task Force meeting of Monday October 26, 2009; and

WHEREAS, the Task Force recommended denial of the request for the following reasons:

- The use of Housing Trust Fund money for the purchase of development rights has heretofore not been approved by the Council. The approval of such expenditures is inconsistent with the Fair Housing Act in that affordable housing trust funds would be used to purchase PDCs, which is not an affordable housing purpose.
- Given the difficulties in providing and funding affordable housing, the requirement for payments for development rights runs counter to the efforts to provide affordable housing by adding cost generative requirements to the construction of affordable housing.
- In light of the requirements in P.L. 2008, c. 46 (also known as Bill A500), requiring future development in areas under the jurisdiction of regional planning agencies to provide an affordable housing set-aside of 20%, (to the extent financially feasible), the addition of costs due to the purchase of development rights for affordable housing units will have a negative impact on the development of affordable housing.

NOW THEREFORE BE IT RESOLVED that the Council hereby denies the waiver request for the reasons provided by the task force, as set forth above.

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 cursive script that reads "Renee Reiss". The signature is written in black ink and is positioned above the printed name of the Council Secretary.

Renee Reiss, Council Secretary