

RESOLUTION GRANTING IN PART FAIR SHARE HOUSING CENTER'S MOTION SEEKING CLARIFICATION OF THE COUNCIL ON AFFORDABLE HOUSING'S GRANT OF SUBSTANTIVE CERTIFICATION TO THE TOWNSHIP OF EAST BRUNSWICK AND GRANTING IN PART THE TOWNSHIP'S CROSS-MOTION FOR CLARIFICATION AMENDING THE COUNCIL'S RESOLUTION NO. 30-09, DATED AUGUST 12, 2009

COAH DOCKET #09-2153

WHEREAS, Fair Share Housing Center (FSHC) filed a motion seeking clarification pertaining to the language requiring the Township of East Brunswick (Township) to complete at least 20 market to affordable units, in keeping with actual growth as stated in the Resolution granting Third Round Substantive Certification No. 30-09, dated August 12, 2009; and

WHEREAS, the Township filed a cross-motion also seeking clarification as to the same clause in the Resolution of August 12, 2009, claiming it to be ambiguous as to whether East Brunswick is mandated to provide a minimum of 20 market to affordable units each year regardless of actual growth or whether East Brunswick must provide affordable units commensurate with its actual growth share and can meet its actual growth share using the market to affordable program technique at a rate of no more than 20 market to affordable units per year; and

WHEREAS, on July 12, 1984, the Township received a first round judgment of compliance; and

WHEREAS, on June 4, 1997, the Township received a Second Round Substantive Certification, with extended substantive certification on March 9, 2005; and

WHEREAS, on August 12, 2009, the Council on Affordable Housing (Council) granted the Township Third Round Substantive Certification and the Resolution stated in part "BE IT FURTHER RESOLVED that East Brunswick is to complete at least 20 Market to Affordable units each year, in keeping with actual growth"; and

WHEREAS, the Township proposes to address a portion of the 497 units of the third round growth share obligation with a 183-unit market to affordable program; and

WHEREAS, the Township sought and obtained a waiver for the affordable housing program from the 10 percent limitation requirements under N.J.A.C. 5:97-6.9(b)(4) by demonstrating that the Township has a successful history of a market to affordable program; and

WHEREAS, the Township's market to affordable plan has a mix of housing types in its plan with for-sale family units, family rental units, age-restricted sale units and age-restricted rental units; and

WHEREAS, during the 45-day public comment period FSHC objected to the Township's Housing Element and Fair Share Plan; and

WHEREAS, on June 2, 2009 FSHC participated in mediation; and

WHEREAS, at mediation FSHC raised concerns about funding for the market to affordable plan; and

WHEREAS, the Township maintained at mediation that funding was not an issue, and submitted documentation and information regarding the financial operations and other aspects of its market to affordable program; and

WHEREAS, COAH maintains that under the third round rules, in the event that the Township's actual growth share differs from COAH's projection, the Township will be required to produce affordable housing units proportionate to the actual growth experienced by the Township; and

WHEREAS, the Council's task force met on June 2, 2009 and discussed the Township's waiver request and Petition for Substantive Certification; and

WHEREAS, the task force discussed financing and implementation for the market to affordable plan; and

WHEREAS, on August 12, 2009, the Council granted the Township's waiver request, finding pursuant to the waiver requirements under N.J.A.C. 5:96-15.2(a), the waiver request fosters the production of affordable housing as much needed family rental units will be made available to income eligible households in a timely fashion, the waiver request fosters the intent of, if not the letter of, the Council's rules because all the units will have 30-year deed restrictions, will be affirmatively marketed and will be occupied by income eligible households and that the Township's Fair Share Plan contains a mix of housing options; and

WHEREAS, a task force discussed FSHC's August 12, 2009 motion for clarification and the Township's cross-motion for clarification on November 23, 2009 and concluded that clarification pertaining to the limitation on the waiver being granted for the market to affordable program was necessary; and

WHEREAS, the task force recommended language requiring East Brunswick to create 20 units of market to affordable units for the next two years, until the first biennial plan evaluation pursuant to N.J.A.C. 5:96-10.1 which will provide an opportunity at that time to evaluate the program in relationship to actual growth.

NOW THEREFORE BE IT RESOLVED that the language in the Council's Resolution granting a waiver and Third Round Substantive Certification to the Township of East Brunswick dated August 12, 2009, stating that "East Brunswick is to complete at least 20 Market to Affordable units each year, in keeping with actual growth" is hereby amended to state; "**BE IT FURTHER RESOLVED** that East Brunswick is to create 20 market to affordable units per year for the next two years; thereafter the market to affordable program will be subject to biennial evaluation commensurate with N.J.A.C. 5:96-10.1."; and

BE IT FURTHER RESOLVED that at the first biennial review, if the actual growth is lower than, or higher than, projected growth, the Township may adjust its annual production rate in keeping with actual growth; and

BE IT FURTHER RESOLVED that FSHC's motion for clarification of the Third Round Substantive Certification Resolution is granted in part and the Township's cross-motion for clarification of the Third round Substantive Certification Resolution is granted in part, consistent with this Resolution.

I hereby certify that this Resolution was duly
Adopted by the Council on Affordable Housing
at its meeting on January 13, 2010

A handwritten signature in cursive script that reads "Renee Reiss". The signature is written in black ink and is positioned above the printed name and title.

Renee Reiss
Council Secretary