

**RESOLUTION GRANTING ESTAUGH COMMONS' REQUEST FOR A WAIVER
FROM THE SCARCE RESOURCE RESTRAINT IMPOSED UPON
THE BOROUGH OF HADDONFIELD AND DENYING THE REQUEST FOR
INCLUSION IN THE HOUSING ELEMENT AND FAIR SHARE PLAN
COAH DOCKET 09-2182**

WHEREAS, The Borough of Haddonfield (Haddonfield), Camden County, petitioned COAH for second round substantive certification on March 11, 1997, with a housing element and fair share plan addressing its 12-year cumulative obligation of 255 units, consisting of 63 rehabilitation units and 192 new construction units; and

WHEREAS, Haddonfield received a vacant land adjustment that reduced its new construction obligation to zero; and

WHEREAS, Haddonfield received substantive certification on July 7, 1999, validating its zero-unit RDP; and

WHEREAS, COAH required the Borough to conduct follow-up studies to determine the viability of mechanisms to address unmet need pursuant to N.J.A.C. 5:93-4.1(b); and

WHEREAS, Haddonfield failed to propose such mechanisms; and

WHEREAS, on May 31, 2004 and October 25, 2004, respectively, the Fair Share Housing Center (FSHC) filed motions asking COAH to impose scarce resource restraints and temporary restraints on Haddonfield from granting any development approvals; and

WHEREAS, FSHC further asked COAH to direct Haddonfield to amend its substantive certification and/or to void the current substantive certification; and

WHEREAS, on November 22, 2004, a scarce resource restraint was issued by COAH, restraining Haddonfield from issuing any further development approvals; and

WHEREAS, the restraint exempts improvements made to single and two-family homes;
and

WHEREAS, COAH required Haddonfield to submit an amended plan within 60 days identifying how the Borough intended to address new development and how to address the Borough's unmet need of 192 units; and

WHEREAS, the restraint is in effect until Haddonfield receives substantive certification of its Third Round Plan; and

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

WHEREAS, one objection was received during the 45-day objection period from FSHC and mediation was conducted on June 28, 2009 and October 13, 2009 and is ongoing; and

WHEREAS, on November 9, 2009, the Health Resource of NJ LLC and Estaugh Commons, LLC ("Estaugh Commons") submitted a motion to COAH requesting a waiver of the scarce resource restraint and for inclusion of its property in Haddonfield's Housing Element and Fair Share Plan (HE&FSP); and

WHEREAS, Estaugh Commons is the contract purchaser of Block 11, Lot 3, approximately 1.7 acres, in Haddonfield ("the property"); and

WHEREAS, the Estaugh's concept plan for the property consists of thirty-five units of family housing with a twenty percent (20%) set-aside for low and moderate income households;
and

WHEREAS, Estaugh's motion withdraws an October 21, 2009 request for a waiver submitted by Health Resource of New Jersey LLC, which proposed an assisted living facility at the same site; and

WHEREAS, Estaugh claims that its project should be included in the Borough's compliance plan as a means of addressing Haddonfield's unmet need; and

WHEREAS, under the Borough's current zoning regulations, Estaugh must seek a use variance from the Zoning Board; and

WHEREAS, Estaugh is requesting to be included in the Borough's HE&FSP as a means of assisting Haddonfield with addressing its unmet need; and

WHEREAS, Estaugh did not formally object to the Borough's HE&FSP for inclusion into the plan due to a missed opportunity during the public comment period; and

WHEREAS, Estaugh asserts that the basis of the following Appellate Division Decisions, In re Petition for Substantive Certification, Township of Southampton, 338 N.J. Super. 103 (App. Div 2001) and In the Matter of Fair Lawn Borough, Bergen County, Motion of Landmark at Radburn, 406 N.J. Super. 433, 444 (App. Div. 2009) support its rationale to be included in Haddonfield's HE&FSP; and

WHEREAS, on December 14, 2009, Haddonfield submitted correspondence indicating that it does not oppose Estaugh's request for a scarce resource restraint waiver but does oppose Estaugh's request that the property be included in its HE&FSP; and

WHEREAS, Haddonfield argues that its HE&FSP has been reviewed at length by the Borough Commissioners and was submitted a year ago for COAH's review; and

WHEREAS, Haddonfield states that mediation sessions have taken place; and

WHEREAS, Haddonfield states that the project is pending before Haddonfield's Zoning Board of Adjustment and should be addressed by the Borough on its own merits and further states that if the Zoning Board approves the application, there would be an affordable housing

set-aside in accordance with the Borough's overlay zone; and

WHEREAS, on December 15, 2009, Mr. John Nicholson, an adjacent property owner (Block 11, Lot 2.01) submitted opposition to Estaugh's motion; and

WHEREAS, Mr. Nicholson states that the physical limitations of the property in question must be considered and asserts that the proposed development is too intense for the property in question and that it would be inappropriate to "hold Haddonfield's HE&FSP hostage to it"; and

WHEREAS, Nicholson argues that the plans submitted by Health Resources and by Estaugh Commons are identical in terms of the proposed structure and that the Council must consider the character of the surrounding area in determining whether or not the project should be exempt from the restraint and whether it is a suitable site for affordable housing; and

WHEREAS, Nicholson states that the Haddonfield Zoning Board has raised issues with Estaugh's proposed project, including the fact that the property contains two historic structures, one of which is being used for residential purposes and the other to be used for professional offices; and

WHEREAS, Nicholson argues that the pending proposal would result in a third use and structure for the property, which is contrary to Estaugh's claim that the proposed project is consistent with surrounding uses; and

WHEREAS, Nicholson argues several deficiencies with local zoning standards as well as controlling water flow and storm sewer piping as the existing system is antiquated and below modern standards; and

WHEREAS, Nicholson notes past COAH decisions regarding waivers from the Scarce Resource Restraint, stating that, for the most part, those which were favorably considered did not propose excessive overdevelopment and in fact met local zoning standards; and

WHEREAS, on December 15, 2009, FSHC submitted a brief in support of the Estaugh Commons motion; and

WHEREAS, FSHC states that it assumes the Estaugh development is for families and will be developed at the density proposed in Estaugh's moving papers; and

WHEREAS, FSHC notes that Haddonfield has a substantial unmet need and that the Estaugh site will very likely be developed; and

WHEREAS, FSHC states that several sites in Haddonfield's HE&FSP make the provision of affordable housing optional, meaning the sites could be redeveloped from a commercial to an office use without providing any affordable units; and

WHEREAS, FSHC argues that this is contrary to COAH's practice and regulations; and

WHEREAS, FSHC also states that the Borough should include the Estaugh site in its RDP inventory; and

WHEREAS, on December 28, 2009, Estaugh Commons submitted comments in a reply brief; and

WHEREAS, Estaugh notes that there is no substantial disagreement on the conclusion that a proposed inclusionary project should be exempt from the Scarce Resource restraint and

therefore Estaugh's request for an exemption should be granted; and

WHEREAS, Estaugh notes that the Council should direct the inclusion of the project within the Borough Compliance Plan; and

WHEREAS, Estaugh reiterates that the project is both suitable and consistent with the other sites contained with the Borough's Compliance Plan; and

WHEREAS, COAH staff requested additional information from the Borough on January 5, 2010 and determined that the Estaugh Commons application had been submitted to the Haddonfield Zoning Board of Adjustment on January 4, 2010 and the application has not yet been reviewed; and

WHEREAS, a COAH Task Force met on January 5, 2010 and recommended that the Estaugh Commons application be exempted from the scarce resource restraint as it is providing a 20% on-site affordable housing set-aside; and

WHEREAS, the COAH Task Force further recommended that the request to include Estaugh Commons in Haddonfield's Housing Element and Fair Share Plan be denied without prejudice, noting that the application had just been received by the Borough on January 4, 2010 and has not yet gone through the local approval process; and

WHEREAS, the COAH Task Force recommended that Estaugh may refile its motion at a later date after the application has progressed through the local approval process, if necessary and that Haddonfield may amend its plan to include the project at a future time, if appropriate; and

WHEREAS, the COAH Task Force recommended that the COAH review of Haddonfield's Housing Element and Fair Share Plan continue.

NOW, THEREFORE, BE IT RESOLVED that for the reasons set forth above the Council hereby grants Estaugh's request for a waiver of the Scarce Resource Restraint in effect in Haddonfield Borough; and

BE IT FURTHER RESOLVED that COAH hereby waives the scarce resource restraint for the purpose of allowing the Borough's Planning Board to consider the Estaugh application provided the project includes a 20% on-site affordable housing set-aside; and

BE IT FURTHER RESOLVED that COAH denies without prejudice Estaugh's request to be included in Haddonfield's HE&FSP for the reasons set forth above.

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 a horizontal line.

Renee Reiss, Council Secretary