

RESOLUTION GRANTING EXEMPTION FROM THE HIGHLANDS SCARCE RESOURCE RESTRAINT UNDER EXEMPTION #35 AND REQUIRING A 20 PERCENT SET-ASIDE FOR AFFORDABLE HOUSING ON THE PROPOSED SUBDIVISION OF THE ESTATE OF HANSCH PROPERTY LOCATED AT BLOCK 5601, LOTS 16 AND 17, HANOVER TOWNSHIP, MORRIS COUNTY

COAH DOCKET #09-2190

WHEREAS, Hanover Township, Morris County did not file for first round substantive certification; and

WHEREAS, on August 4, 1999, Hanover Township received second round substantive certification and on September 14, 2005 extended second round substantive certification; and

WHEREAS, on December 21, 2005, Hanover Township submitted a third round petition which the Council on Affordable Housing (COAH) did not certify due to the Appellate Court's January 2007 decision and rule amendments; and

WHEREAS, 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, Hanover Township is a municipality in the Highlands Region; and

WHEREAS, COAH issued correspondence on December 17, 2008 setting forth a list of 36 exemptions from the restraint, which were memorialized by way of resolution dated October 14, 2009; and

WHEREAS, exemption #35 states "Subdivisions necessary to settle the estate of a decedent"; and

WHEREAS, the Fair Housing Act at N.J.S.A. 52:27D-329.9 states, pertaining to the Highlands Region and as to other protected areas in New Jersey, "there shall be required to be reserved for occupancy by low and moderate income households at least 20 percent of the residential units constructed, to the extent this is economically feasible"; and

WHEREAS, on August 12, 2009, COAH adopted a Resolution granting Highlands municipalities an extension of time, until June 8, 2010, to file third round petitions, which was subsequently memorialized and amended by COAH on October 14, 2009; and

WHEREAS, COAH also 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

WHEREAS, Hanover Township has a third round rehabilitation share of 17 units; and

WHEREAS, Hanover Township has a prior round 1987-1999 obligation of 356 units; and

WHEREAS, the third round 2004-2018 residential growth projection for Hanover Township is 265 units; and

WHEREAS, the employment projection for Hanover Township is 4,108 jobs; and

WHEREAS, the total projected growth share for the third round for Hanover Township is 310 affordable housing units; and

WHEREAS, on October 30, 2008 COAH and the Highlands Council entered into a Memorandum of Understanding (MOU); 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 in November, 2009, for Hanover Township; and

WHEREAS, 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 lower than the COAH projection; and

WHEREAS, the residential unit figures in the Municipal Build-Out Report for Hanover Township are significantly lower than COAH's projections; and

WHEREAS, the Highlands build-out results demonstrate that there is a shortage of land, water and sewer capacity; and

WHEREAS, under the Regional Master Plan, Hanover Township will have a reduced projected growth share obligation, from 310 to 184 affordable housing units; and

WHEREAS, Leonard Leider and Edward Carr are contract purchasers of an approximately three acre property located at Block 5601, Lot 16 and 17 (the Property), Hanover Township, Morris County; and

WHEREAS, Robert D. Borteck Esq. is the court appointed fiduciary/administrator of the Estates of Henry and Helen Hansch (the Estates) in In re the Estate of Henry Hansch, Deceased, #MRS P-0621-2004 and In re the Estate of Helen Hansch, Deceased, #MRS P-0450-2006, in the Morris County Surrogate's Court; and

WHEREAS, the Property is the last remaining substantial asset of the Estates; and

WHEREAS, on November 2, 2009 a contract for the purchase of the Property was finalized between the contract purchasers and the Estates; and

WHEREAS, a condition of the contract of sale is that the contract purchasers be able to obtain Hanover Township Planning Board approval to subdivide the Property into at least four residential developable lots; and

WHEREAS, the fiduciary/administrator of the Estates certifies that if the Property contract for sale is completed, he will be able to settle the Estates upon final judgment of the Surrogate's Court; and

WHEREAS, the contract purchasers maintain that the Property should receive exemption from the Highlands Scarce Resource Restraint under Highlands Council exemption #35, so that application can be made before the Hanover Township Planning Board for subdivision; and

WHEREAS, the Council finds that Hanover Township should continue to be subject to the Highlands Scarce Resource Restraint based upon the comparison of the Highlands Council's Build-Out Report Table 4 and COAH's Module 3- Housing Element and Fair Share Plan; and

WHEREAS, the Council finds that developments in the jurisdiction of the Highlands Council are required to provide a 20 percent set-aside for affordable housing pursuant to N.J.S.A. 52:27D-329.9; and

WHEREAS, the Council finds that there shall be an affordable housing obligation of at least one building lot in the proposed subdivision in the event that at least five lots are created; and

WHEREAS, the Council has determined that the conveyance of the Property pursuant to the contract of sale and the subsequently proposed subdivision does settle an estate and can be determined to fall under exemption #35 subject to the condition of the creation of affordable housing in the proposed subdivision; and

WHEREAS, no replies in opposition to the exemption request have been received by COAH; and

WHEREAS, A Task Force reviewed this exemption request on January 28, 2010, and recommends that the exemption be granted subject to the condition that at least one lot of the proposed subdivision be used to create affordable housing in the event that at least five lots are created.

NOW THEREFORE BE IT RESOLVED that the Council grants an exemption from the Highlands Scarce Resource Restraint for Block 5601, Lot 16 and 17, Hanover Township, Morris County, pursuant to exemption #35 as noted in COAH's letter of clarification dated December 17, 2008, subject to the condition that the subdivision of this site shall provide at least one affordable housing unit in the event that at least five lots are created; and

BE IT FURTHER RESOLVED that this approval authorizes Hanover Township to proceed with the subdivision application subject to the condition that at least one lot of the proposed subdivision be used to create affordable housing in the event that at least five lots are created following the affordable housing set-aside under N.J.S.A. 52:27D-329.9, but does not authorize any allocation of sewer or water usage as to any location other than Block 5601, Lot 16 and 17 until such time as the COAH Scarce Resource Restraint is lifted as to the entire municipality.

I hereby certify that this Resolution was
Duly adopted by the Council on Affordable
Housing at its meeting on March 10, 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