

RESOLUTION DENYING WAIVER REQUEST BY THE TOWNSHIP OF HANOVER MORRIS COUNTY OF THE HIGHLANDS MUNICIPALITY DEADLINE TO FILE A REVISED THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN

COAH DOCKET #10-2233

WHEREAS, on December 21, 2005 Hanover Township (Hanover or Township) petitioned the Council on Affordable Housing (COAH) for third round substantive certification; and

WHEREAS, on June 2, 2008, COAH's revised third round rules went into effect; and

WHEREAS, on July 17, 2008, the New Jersey Highlands Council (Highlands Council) adopted its Regional Master Plan (RMP); and

WHEREAS, on September 5, 2008, Governor Corzine signed Executive Order 114 which required the Council on Affordable Housing (COAH) and the Highlands Council to enter into a Memorandum of Understanding (MOU) designed to coordinate the actions of both agencies to maximize affordable housing opportunities while preserving critical environmental resources within the Highlands Region; and

WHEREAS, on October 30, 2008, COAH and the Highlands Council entered into a MOU; and

WHEREAS, on November 12, 2008 COAH adopted a resolution that extended the December 31, 2008 deadline, pursuant to N.J.A.C. 5:96-16.2(a) to December 8, 2009 for all Highlands municipalities under the jurisdiction of COAH to submit a revised Housing Element and Fair Share Plan (HEFSP) pursuant to N.J.A.C. 5:96-16; and

WHEREAS, Hanover submitted to COAH a Notice of Intent to Petition in accordance with the Highlands Council's Plan Conformance Guidelines and provided a duly adopted resolution notifying COAH of the Township's intent to petition COAH for substantive certification of a Housing Element and Fair Share Plan (HEFSP), no later than December 8, 2009; and

WHEREAS, on August 12, 2009 COAH issued a resolution extending the December 8, 2009 date for Highlands municipalities to submit a revised HEFSP until June 8, 2010; and

WHEREAS, the November 12, 2008 resolution also imposed a scarce resource restraint on all municipalities in the Highlands Region under COAH's jurisdiction; and

WHEREAS, the scarce resource restraint did not expire on June 8, 2010; and

WHEREAS, the scarce resource restraint remains in full force and effect until such time as a Highlands municipality receives substantive certification from COAH or demonstrates to COAH that appropriate measures have been taken to preserve scarce land, water and sewer resources and that same have been dedicated on a priority basis for the production of affordable housing; and

WHEREAS, pursuant to the Highlands Council Growth Share build-out report, Hanover has a total growth share obligation of 184 affordable housing units; and

WHEREAS, pursuant to the COAH Growth Share Obligation (GSO), the Township has a total GSO of 310 affordable housing units;

WHEREAS, if Hanover decides to participate in the RMP the Township's GSO will be significantly lower; and

WHEREAS, Hanover is requesting an extension of time to submit a revised third round HEFSP; and

WHEREAS, the extension of time request is pursuant to a resolution from the Township Committee of the Township of Hanover dated May 27, 2010 and signed by Mayor John T. Sheridan ; and

WHEREAS, Hanover is seeking emergent relief so as to allow the Township to continue to collect affordable housing fees and to spend money from the Township's Affordable Housing Trust Fund (AHTF) for administrative expenses related to the preparation of its revised third round HEFSP, and to market and administer existing affordable housing units; and

WHEREAS, the Township Committee resolution states that Hanover has not submitted a conforming master plan to the Highlands Council for approval; and

WHEREAS, Hanover advises that several parties are presently contesting the Township's imposition of growth share obligations upon developments pursuant to a growth share ordinance, and one party has commenced litigation of this matter in Superior Court; and

WHEREAS, COAH has advised Hanover to provide information pertaining to the collection of fractional payments in lieu of construction and the Township's growth share ordinance; and

WHEREAS, Hanover advises that there are two developers who provide correspondence showing recent interest to develop 100% affordable housing projects in the Township; and

WHEREAS, Hanover advises that there are no pending or anticipated builders' remedy lawsuits against the Township; and

WHEREAS, Hanover maintains that the Township is entitled to a waiver based upon unnecessary financial hardship associated with litigation and professional costs in determining growth share obligations prior to preparing a revised HEFSP and that providing the waive will foster the production of affordable housing, follows the intent if not the letter of the Council's rules and provides a mix of affordable housing, particularly with the anticipated inclusion of two proposed 100% affordable housing projects; and

WHEREAS, pursuant to N.J.A.C. 5:96-2.1, "A municipality may file its Housing Element and Fair Share Plan with the Council at any time pursuant to the Act."; and

WHEREAS, pursuant to N.J.A.C. 5:96-3.8(a), " When a municipality falls within the jurisdiction of the Council pursuant to N.J.A.C. 5:96-2.1(a)1,2 and 3, the municipality shall not be subject to a builder's remedy, unless the municipality's petition is dismissed or substantive certification is revoked by the Council."; and

WHEREAS, Highlands municipalities have been afforded COAH jurisdiction during the pendency of the filing extension which provided the Highlands municipalities protection from builders' remedy lawsuits; and

WHEREAS, municipalities in the Highlands region filed revised third round petitions by the June 8, 2010 filing deadline; and

WHEREAS, the Council has determined that the financial burden to Hanover in dealing with challenges to the Township's growth share obligation and maintaining its AHTF are not directly related to the Township's responsibility to file a revised HEFSP; and

WHEREAS, the Council has determined that submission of a revised HEFSP fosters the production of affordable housing, follows the intent, if not the letter of the Council's

rules and provides a mix of housing options, whether or not the two proposed 100% affordable housing projects are included; and

WHEREAS, pursuant to N.J.S.A. 52:27D-329.2, N.J.A.C. 5:97-8.14 and the Development Fee Ordinance adopted by Hanover, the Township may no longer impose, collect and/or expend residential development fees; and

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

WHEREAS, a task force reviewed this waiver request on June 30, 2010, and recommends that the waiver be denied. Hanover may file a revised HEFSP with COAH at any time; and

WHEREAS, the task force further recommends that Hanover be permitted to retain funds presently in the Township's Affordable Housing Trust Fund (AHTF) until November 12, 2010; and

WHEREAS, the task force further recommends that if COAH does not receive Hanover's revised third round petition for substantive certification and HEFSP by November 12, 2010, COAH may require the Township to forfeit the funds in the Township's AHTF into the New Jersey AHTF; and

WHEREAS, the task force further recommends that any non-residential development fees collected by Hanover pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 et seq.) shall be directly forwarded and deposited by the Township into the New Jersey AHTF.

NOW THEREFORE BE IT RESOLVED that the Council has determined that the Township of Hanover's waiver request from the filing deadline requirements, under N.J.A.C. 5:96-16.2(a) of December 31, 2008, and further extended by two subsequent COAH resolutions to June 8, 2010, is hereby denied; and

BE IT FURTHER RESOLVED that the Council in making this determination finds that the Township fails to demonstrate that strict application of the rule creates an unnecessary financial, environmental or other hardship, nor does the Township show how a waiver of the Highlands municipality deadline filing date fosters the production of affordable housing, or fosters the intent, if not the letter of the Council's rules, or creates a mix of housing options; and

BE IT FURTHER RESOLVED that Hanover is hereby permitted to retain funds presently in the Township's Affordable Housing Trust Fund (AHTF) until November 12, 2010; and

BE IT FURTHER RESOLVED if COAH does not receive Hanover's revised third round petition for substantive certification and HEFSP by November 12, 2010, COAH may require the Township to forfeit the funds in the Township's AHTF into the New Jersey AHTF; and

BE IT FURTHER RESOLVED that any non-residential development fees collected by Hanover pursuant to sections 32 through 38 of P.L.2008, c.46 (C.40:55D-8.1 et seq.) shall be directly forwarded and deposited by the Township into the New Jersey AHTF.

I hereby certify that this Resolution was duly adopted by the Council on Affordable Housing at its meeting on July 15, 2010.



Renee Reiss
Council Secretary