

RESOLUTION DENYING WAIVER REQUEST BY THE BOROUGH OF HOPATCONG SUSSEX COUNTY FOR A SIXTY DAY EXTENSION OF THE HIGHLANDS MUNICIPALITY DEADLINE TO FILE A REVISED THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN

COAH DOCKET #-10-2232

WHEREAS, on December 19, 2005 the Borough of Hopatcong (Hopatcong or Borough) petitioned the Council on Affordable Housing (COAH) for third round substantive certification and was subsequently provided a Highlands extension to refile by June 8, 2010; 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, 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, Hopatcong has a total growth share obligation of 29 affordable housing units; and

WHEREAS, pursuant to the COAH Growth Share Obligation (GSO), the Borough has a total GSO of 103 affordable housing units;

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

WHEREAS, Hopatcong is requesting a 60-day extension for the submission of a revised third round HEFSP; and

WHEREAS, the Borough is in the process of complying with the Highlands Council's Regional Compliance Plan; and

WHEREAS, Hopatcong advises that the Borough was caused to sever its working relationship with its consulting planner and on May 5, 2010 engaged the services of a new consulting planner to advise and guide the Borough through the Highlands Compliance Plan process and file the revised HEFSP with COAH; and

WHEREAS, based on this personnel problem the Borough seeks an extension of time to file the revised HEFSP with COAH; and

WHEREAS, Hopatcong states that there are no pending or anticipated builders' remedy lawsuits against the Borough; 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, forty municipalities in the Highlands region filed revised third round petitions by the June 8, 2010 filing deadline; 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 Hopatcong, the Borough 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. Hopatcong may file a revised HEFSP with COAH at any time; and

WHEREAS, the task force further recommends that Hopatcong be permitted to retain funds presently in the Borough's Affordable Housing Trust Fund (AHTF) until September 13, 2010; and

WHEREAS, the task force further recommends that if COAH does not receive Hopatcong's revised third round petition for substantive certification and HEFSP by September 13, 2010, COAH may require the Borough to forfeit the funds in the Borough's AHTF into the New Jersey AHTF; and

WHEREAS, the task force further recommends that any non-residential development fees collected by Hopatcong 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 Borough into the New Jersey AHTF.

NOW THEREFORE BE IT RESOLVED that the Council has determined that the Borough of Hopatcong'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 Borough fails to demonstrate that strict application of the rule creates an unnecessary financial, environmental or other hardship, nor does the Borough show how a waiver of the Highlands municipality deadline filing date fosters the production of affordable housing, or fosters the intent of the Council's rules, or creates a mix of housing options; and

BE IT FURTHER RESOLVED that Hopatcong is hereby permitted to retain funds presently in the Borough's Affordable Housing Trust Fund (AHTF) until September 13, 2010; and

BE IT FURTHER RESOLVED if COAH does not receive Hopatcong's revised third round petition for substantive certification and HEFSP by September 13, 2010 , COAH may require the Borough to forfeit the funds in the Borough's AHTF into the New Jersey AHTF; and

BE IT FURTHER RESOLVED that any non-residential development fees collected by Hopatcong 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 Borough 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