

**SURENIAN, EDWARDS & NOLAN LLC**

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Attorneys for Declaratory Plaintiff, Township of Cranford

By: Jeffrey R. Surenian (Attorney ID: 024231983)

Michael J. Edwards (Attorney ID: 032112012)

**IN THE MATTER OF THE  
APPLICATION OF THE TOWNSHIP OF  
CRANFORD COUNTY OF UNION**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION: UNION COUNTY**

**DOCKET NO.: UNN-L-3976-18**

**CIVIL ACTION – *Mount Laurel***

**CERTIFICATION OF  
MICHAEL J. EDWARDS, ESQ.**

**Michael J. Edwards, Esq.**, of full age, does hereby certify as follows:

1. I am an attorney-at-law of the State of New Jersey and Partner at the law firm Surenian, Edwards & Nolan, LLC, attorneys for the Township of Cranford (hereinafter the “Township”) in the above matter.

2. This certification is being submitted in response to the objections filed by Hartz Mountain Industries, Inc., H-Conduit LP, and H-Cranford Credit LP (hereinafter “Hartz”) on January 13, 2020.

3. Attached hereto as **Exhibit A** is a true copy of the relevant pages of a transcript of a Public Hearing on Senate Bill 2046, dated September 17, 1984.

4. Attached hereto as **Exhibit B** is a true copy of the relevant pages of a treatise entitled Mount Laurel II and the Fair Housing Act.

5. Attached hereto as **Exhibit C** are true copies of relevant grants of COAH Substantive Certifications, pursuant to the Round 2 regulations.

6. Attached hereto as **Exhibit D** a true copy of a Final Order of Judgment of Compliance and Repose in Cranford Development Associates, LLC vs. Township of Cranford, dated May 22, 2013.

7. Attached hereto as **Exhibit E** is a true copy of the relevant portions of a reply Certification of Art Bernard, dated January 2, 2018.

8. Attached hereto as **Exhibit F** is a true copy of the relevant pages of a transcript in re Fair Share Housing Center, Inc. v. Township of Cherry Hill, dated January 16, 2004.

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

*Michael J. Edwards*

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Michael J. Edwards

Dated: January 27 2020

# EXHIBIT A

P U B L I C   H E A R I N G

before

SENATE STATE GOVERNMENT, FEDERAL AND INTERSTATE RELATIONS  
AND VETERANS' AFFAIRS COMMITTEE

on

SENATE BILL 2046

(DESIGNATED THE "FAIR HOUSING ACT")

Held:  
September 17, 1984  
Room 114  
State House Annex  
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Wynona M. Lipman (Chairwoman)  
Senator Gerald R. Stockman  
Senator Richard J. Codey  
Senator Gerald Cardinale  
Senator H. James Saxton

ALSO PRESENT:

Senator S. Thomas Gagliano

Joseph Capalbo, Research Associate  
Office of Legislative Services  
Aide, Senate State Government Federal and Interstate Relations  
And Veterans' Affairs Committee

\* \* \* \* \*

a rather long and tortuous process. As was pointed out to us by a number of municipalities, there may be the possibility that a town which takes the time to construct a housing element, comes before the Housing Council, and attempts to mediate its problem, would then be forced to go through a lengthy review process, offering testimony, paying for experts, permitting long, extended cross-examination and, only after a long process, getting a presumption of validity, which then might be challenged in the courts and brought back into the area of litigation. We wanted to avoid a dragging out of the process. We wanted to avoid a doubling up of hearings on the part of the Council and the courts.

In substitution, what we have designed is a streamlined procedure for the hearing process, where the municipality and any other concerned party can submit their reports, together with the housing element, to the Housing Council. A hearing will then be held which will last, in most cases, no more than one day. We propose to set in legislation a maximum of two days for the hearing process. We do not intend to permit full and extensive cross-examination because we feel this would be a duplication of the court process and it would only extend the time for implementation.

Instead, we would permit the Housing Council to entertain limited questions from concerned parties, as well as their own questioning of the municipality concerning the proposed housing element. In the event that the Housing Council after this, in most cases, one-day review procedure felt that the municipality had made a good-faith effort to reach its own fair share obligation, through a housing element that truly was geared to implement the fair share, the Housing Council would then be empowered to grant that the presumption of validity be strengthened.

The entire Mount Laurel process really is a legal advance on local home rule. Previously, zoning legislation carried with it a strong presumption of validity, whereby a town was almost guaranteed insulation against developer attack. With the recalcitrance of many municipalities -- and I stress, not all municipalities -- the courts felt it necessary to put aside the presumption of validity and, thus, the onslaught of litigation that now comprises the Mount Laurel issue.

MR. POZYCKI: Well, I'm going to answer it right now. What we are struggling to do here today is to develop a legislative solution that can take the courts out of the business of Mount Laurel and return the power of home rule to the municipalities.

I personally don't have the energies to do more than I'm doing right now. I am not pleading for your mercy; I'm simply pointing out that as a volunteer -- and we have several volunteers on the Committee; I might point out that many of them are municipal representatives -- we're trying to fashion a response that will remove the matter of Mount Laurel from the realm of adversity and that will get on with the solution in a way which is most sensitive to municipal needs.

If you feel there is a way to go in terms of further litigation, it certainly is your option, but the members of my Committee and myself are overwhelmed in simply trying to fashion a legislative response.

I might point out that from the time of Governor Cahill's blueprint on housing, the Executive Branch has spent over 20 years trying to deal with the housing issue. From the time of the first fair-share housing cases in the courts, the Judiciary has spent over 10 years trying to deal with the housing issue. My Committee has been working on this for a little over two months, and I really think we have to keep our focus on the solution that we're working on right now in order to be effective. I'm not trying to argue against your solution as another avenue, but it certainly is not an avenue that my Committee has the capacity to respond to.

SENATOR LIPMAN: Are you finished, Senator?

SENATOR GAGLIANO: I promised I wouldn't say another word.

SENATOR LIPMAN: All right. I have been sitting here trying to figure out what is the best way for the mayors who have asked to speak to ask questions of the Ad Hoc Committee Chairman. You have already been up here for two hours. I will approach it like this: Are there mayors present who would like to ask questions of Mr.--

SENATOR GAGLIANO: (interrupting) I think there is another Committee member.

This, basically, is what it is about. So, if we could walk away today with three things, and the removal of the need for a municipality to demonstrate an ability to provide an infrastructure, especially in the sewage area, that is very important, because that goes beyond reason, in my opinion. It is a \$10 million ticket for the municipality, based on the five-to-one ratio. If you eliminate the five-to-one ratio and do something else, then it may not be.

The other factor has to do with the cap, and the others I have already stated, so it becomes redundant. Thank you very much.

SENATOR LIPMAN: Mayor Hornik, we have-- I think Senator Stockman has addressed one of the problems that you brought up at your first appearance before this Committee. I think I have to reiterate what Mr. Pozycki pointed out this morning.

This legislation cannot address all the problems. We wish to help the municipalities return to some sense of home rule, which seems to have been taken away. When you asked that this legislation remove the necessity for providing a plan about infrastructure, for example, the plan could also show that you don't have the capability for \$10 million in infrastructure.

In implementing the philosophy behind the Mount Laurel decision, I don't think the structure that this legislation puts up is an attempt at tyranny, as it has been called many times today, on municipalities. I think we are seeking a reparable solution, and the presumption of validity that municipalities had in the first place, which seems to have been somewhat removed by the Mount Laurel decision, we are seeking to return by establishing this Housing Council.

Once we set up the Housing Council and give it the guidelines we think it can work with, then I think we will have taken a great step in ameliorating what municipalities feel has been a severe injustice.

The Lehrman formula, as you suggest, is the only guideline now because there has been no legislation passed, and it is the only formula which has been used up until now. It is hoped that with the help of the State Planning Council and this new legislation, with its promise of relief in subsidies and remedies -- not five to one -- that adjustments may be made.

# EXHIBIT B



**MOUNT LAUREL II**  
**AND THE**  
**FAIR HOUSING ACT**

**JEFFREY R. SURENIAN, ESQ.**

**NEW JERSEY INSTITUTE FOR  
CONTINUING LEGAL EDUCATION**

Finally, a municipality should clearly receive credit for creating the realistic opportunity for the actual construction of lower income housing after 1980\* regardless of the means for creating that opportunity. See generally Chapter IV.B. (spelling out a variety of different compliance mechanisms).

### (3) Vacant Developable Land

If a municipality simply lacks the vacant developable land to absorb the obligation the court would otherwise impose, the court will not expect the municipality to tear down existing structures to enable the municipality to satisfy its full obligation. Mount Laurel II at 301 n. 51. Rather, the court will reduce the municipality's obligation to a number the municipality can accommodate on existing vacant developable land.\*\* AMG at 455.

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\* Courts have also demonstrated a willingness to reduce a municipality's obligation for lower income housing that was produced before 1980 on two theories. First, on a credit theory, courts have recognized that price restricted pre-1980 lower income housing reduces the need for lower income housing after 1980 because when the lower income family residing in the lower income unit before 1980 sells or rents its unit after 1980, the new occupants will also be lower income. Second, on an adjustment theory, courts have been willing to reward municipalities that made efforts to provide lower income housing before 1980. While the pre-1980 lower income unit may not contribute at all to the satisfaction of the present need as a credit would, the courts have reduced the municipality's obligation nonetheless for this public policy reason.

\*\* In Urban League of Greater New Brunswick v. Carteret, Judge Serpentelli set the stage for a new basis to reduce a municipality's obligation--a reduction based upon general planning concerns. Specifically, after reducing Piscataway Township's fair

(footnote continued on next page)

# EXHIBIT C

**RESOLUTION GRANTING CONDITIONAL SUBSTANTIVE CERTIFICATION**NO: 199-99

WHEREAS, the Borough of Leonia, Bergen County, petitioned the Council on Affordable Housing (COAH) on July 1, 1999 for substantive certification of a housing element and fair share plan which addresses its 1987-1999 cumulative need in accordance with N.J.S.A. 52:27D-313 and N.J.A.C. 5:93-1 et seq.; and

WHEREAS, COAH has established a 1987-1999 precertified need for Leonia of 50 units including 31 new construction units and 19 rehabilitation units; and

WHEREAS, the Borough of Leonia published notice of its petition in the Bergen Record, which is a newspaper of general circulation within the county, on May 24, 1999 pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:91-4.3; and

WHEREAS, the petition for substantive certification initiated a 45-day objector period pursuant to N.J.A.C. 5:91-1 et seq.; and

WHEREAS, COAH received no objections to the plan; and

WHEREAS, COAH staff has reviewed the Borough of Leonia's housing element; and

WHEREAS, on April 11, 2002, COAH staff issued a COAH Compliance Report (attached hereto as Exhibit A and incorporated herein) which was distributed to the Leonia service list for comment; and

WHEREAS, no comments on the COAH Compliance Report were received by COAH; and

WHEREAS, Leonia received a first round substantive certification from COAH on October

3, 1990 that included a vacant land adjustment and 10 prior-cycle credits for the Grandview Meadows development, located at 392 Grand Avenue; and

WHEREAS, the vacant land adjustment included in the October 3, 1990 substantive certification granted by COAH resulted in a zero-unit RDP; and

WHEREAS, pursuant to N.J.A.C. 5:93-4.2(f), a municipality that received an adjustment due to lack of vacant land in addressing its 1987-1993 affordable housing obligation is presumed to have addressed its RDP provided the municipality continues to implement the terms of its previous certification; and

WHEREAS, COAH staff conducted a site visit on March 28, 2002 and observed that Leonia remains fully developed with the exception of park and recreation areas that fall within the allowances prescribed by N.J.A.C. 5:93-4.2(d)4 and 5; and

WHEREAS, Leonia's planning consultant has indicated that there have been no substantial changes in land availability subsequent to the borough's first round COAH certification (see attachment to Exhibit A); and

WHEREAS, Leonia's first round plan consisted of a rehabilitation program under which seven units were completed after April 1, 1990 by the Bergen County Home Improvement Program; and

WHEREAS, Leonia continues to participate in the Bergen County Home Improvement Program through an inter-local services agreement with the county; and

WHEREAS, the Bergen County Home Improvement Program has committed to make funding available to rehabilitate 12 additional units at a minimum rate of three units per year during the first four years of Leonia's fair share plan. (See letter from the Bergen County Office of

Community Development, attachment to Exhibit A); and

WHEREAS, N.J.A.C. 5:93-4.2(h) requires municipalities that are granted a vacant land adjustment to capture affordable housing opportunities beyond their RDP; and

WHEREAS, Leonia has captured affordable housing opportunities by developing a three-unit development at the corner of Station Parkway and Maple Street; and

WHEREAS, Leonia proposes to capture additional affordable housing opportunities by adopting a development fee ordinance pursuant to N.J.A.C. 5:93-8; and

WHEREAS, Leonia did not include a draft copy of its proposed development fee ordinance or spending plan.

NOW THEREFORE BE IT RESOLVED that COAH finds that the housing element submitted by the Borough of Leonia comports with the standards set forth at N.J.S.A. 52:27D-314 and is consistent with the rules and criteria adopted by COAH except for the omission of a development fee ordinance that demonstrates an additional method to capture affordable housing opportunities beyond the borough's RDP and except for a spending plan; and

BE IT FURTHER RESOLVED that, within 60 days of the grant of this conditional substantive certification, Leonia must submit:

1. a development fee ordinance
2. a spending plan; and

BE IT FURTHER RESOLVED that COAH hereby grants conditional substantive certification to the Borough of Leonia; and

BE IT FURTHER RESOLVED that, upon COAH review and approval of the Borough of Leonia's development fee ordinance and spending plan, COAH shall grant final substantive certification; and

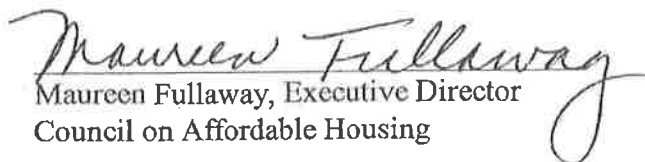
BE IT FURTHER RESOLVED that the Borough of Leonia is eligible to receive 10 prior cycle credits for 392 Grand Avenue; and

BE IT FURTHER RESOLVED that the Borough of Leonia shall continue to participate in the Bergen County Home Improvement Program; and

BE IT FURTHER RESOLVED that the Borough of Leonia is presumed to have addressed its RDP pursuant to N.J.A.C. 5:93-4.2(f) because land use patterns have remained unchanged since Leonia's first round COAH certification and the Borough of Leonia has continued to implement the terms of its previous certification; and

BE IT FURTHER RESOLVED that any changes in the facts upon which this conditional certification is based or any deviation from the terms and conditions of this conditional certification affecting the ability of the Borough of Leonia to provide for its fair share of low and moderate income housing, and which the Borough of Leonia fails to remedy, may render this conditional certification null and void.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on 5/1/02

  
Maureen Fullaway, Executive Director  
Council on Affordable Housing



**RESOLUTION GRANTING FINAL SUBSTANTIVE CERTIFICATION 199-99(a)**

WHEREAS, Leonia Borough, Bergen County, petitioned the Council on Affordable Housing (COAH) on July 1, 1999 for substantive certification of its housing element and fair share plan; and

WHEREAS, the COAH Compliance Report, dated April 11, 2002 (Exhibit A), summarizes COAH's review and certification process; and

WHEREAS, COAH established a 1987-1999 precertified need for Leonia Borough of 50 units including a rehabilitation component of 19 units and a new construction component of 31 units; and

WHEREAS, as noted in the COAH Compliance Report, Leonia Borough is eligible to receive 38 credits, reductions and adjustments which include 10 prior cycle credits, 7 rehabilitation credits and a 21-unit downward adjustment due to the lack of vacant land pursuant to N.J.A.C. 5:93 - 4.2; and

WHEREAS, Leonia Borough's plan addresses its calculated need of 12 units through a 12-unit rehabilitation program; and

WHEREAS, on May 1, 2002, COAH adopted Resolution #199-99 (Exhibit B) granting Leonia Borough conditional substantive certification; and

WHEREAS, COAH's grant of conditional substantive certification included two conditions to be addressed within 60 days; and

WHEREAS, the requirement of COAH's May 1, 2002 conditional certification was that, within 60 days, Leonia must submit:

1. a development fee ordinance
2. a spending plan; and

WHEREAS, Leonia Borough submitted a development fee ordinance that was approved by COAH on June 5, 2002; and

WHEREAS, Leonia Borough submitted a development fee spending plan that was approved by COAH on July 9, 2002

WHEREAS, Leonia Borough has thereby complied with the conditions prescribed in



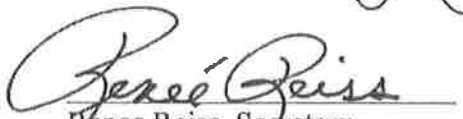
Resolution #199-99 to COAH's satisfaction.

NOW THEREFORE BE IT RESOLVED that COAH finds that the housing element and fair share plan submitted by Leonia Borough, together with the addressed conditions, comply with the standards set forth at N.J.S.A. 52:27D-314 and are consistent with the rules and criteria adopted by COAH; and

BE IT FURTHER RESOLVED that Leonia Borough shall adopt all implementing fair share ordinances within 45 days from the grant of final substantive certification and shall forward a copy of the adopted ordinances to COAH; and

BE IT FURTHER RESOLVED that any change in the facts upon which the conditional and final certifications are based or any deviation from the terms and conditions of the conditional and final certifications, which affect Leonia Borough's ability to provide for the realistic opportunity of its fair share of low and moderate income housing and which Leonia Borough fails to remedy, shall render this certification null and void.

I hereby certify that this resolution  
was duly adopted by the Council on  
Affordable Housing on July 16, 2002.

  
Renee Reiss, Secretary  
Council on Affordable Housing



# State of New Jersey

## COUNCIL ON AFFORDABLE HOUSING

101 SOUTH BROAD STREET

PO Box 813

TRENTON NJ 08625-0813

JAMES E. MCGREEVEY  
Governor

SUSAN BASS LEVIN  
Commissioner  
MAUREEN C. FULLAWAY  
Executive Director

### COAH SUMMARY FACT SHEET - 1987-1999

- |    |   |                                 |                 |
|----|---|---------------------------------|-----------------|
| 1. | Municipality <u>Borough of Leonia</u>   | 2. Dates                        |                 |
|    | County <u>Bergen</u>  | Petition for Certification      | <u>07/01/99</u> |
|    | Region <u>1</u>   | Published                       | <u>05/24/99</u> |
|    | Planning Area <u>1</u>  | COAH Compliance Report          | <u>04/11/02</u> |
|    |   | Conditional COAH Certification  | <u>05/01/02</u> |
|    |   | Final Substantive Certification | <u>07/16/02</u> |
|    |   |                                 |                 |
| 3. | Staff Reviewer <u>Keith Henderson, P.P.</u>   |                                 |                 |
|    |   |                                 |                 |
| 4. | <b>1987-1999 Cumulative Obligation</b>  |                                 |                 |
|    | Precredited Need  |                                 | <u>50</u>       |
|    | New Construction Obligation   | <u>31</u>                       |                 |
|    | Rehabilitation Obligation   | <u>19</u>                       |                 |
|    | Grandview Meadows (Prior Cycle Credits)   |                                 | <u>- 10</u>     |
|    | Vacant Land Adjustment  |                                 | <u>- 21</u>     |
|    | Rehabilitation Credits (N.J.A.C. 5:93-3.4)  |                                 | <u>- 7</u>      |
|    | Total Remaining Obligation (All Rehabilitation)                                     |                                 | <u>12</u>       |
|    |   |                                 |                 |
| 5. | <b>Fair Share Plan: Rehabilitation Program</b>                                      |                                 | <u>12</u>       |
|    |   |                                 |                 |
| 6. | <b>Unmet Need:</b>  | <u>21</u>                       |                 |
|    | Addressed: Development Fee Ordinance required and three affordable sale units built |                                 |                 |

### Recommendation

Grant Final Substantive Certification



**COAH REPORT**  
**FINAL SUBSTANTIVE CERTIFICATION**  
**LEONIA BOROUGH/BERGEN COUNTY**

**REGION #1**

**Prepared By**

**Keith Henderson, P.P.**

**July 9, 2002**

**I. INTRODUCTION**

The Planning Board of Leonia Borough, Bergen County, adopted a housing element and fair share plan on January 27, 1999, which addresses its 12-year cumulative fair share obligation. Leonia Borough's 1987-1999 cumulative precertified need is 50 units, including a rehabilitation obligation of 19 units and a new construction obligation of 31 units. The borough petitioned the Council on Affordable Housing (COAH) for substantive certification on July 1, 1999 and published in the Bergen Record on May 24, 1999. The petition filed by Leonia included a vacant land adjustment, prior cycle credits and rehabilitation credits that reduced the borough's obligation to a 12-unit rehabilitation obligation. Pursuant to N.J.A.C. 5:93-4.1(b), Leonia included a development fee ordinance as one of two means of addressing unmet need.

**II. CONDITIONAL SUBSTANTIVE CERTIFICATION**

On May 5, 2002, COAH adopted Resolution #199-99 granting Leonia Borough conditional substantive certification which required that the borough submit a development fee ordinance and spending plan within 60 days.

Leonia submitted a development fee ordinance and a development fee spending plan to COAH on May 23, 2002. The development fee ordinance was approved by COAH on June 5, 2002 and the spending plan was approved on July 9, 2002.

Leonia Borough – July 9, 2002

### **III. RECOMMENDATION**

Leonia has complied with the conditions noted in COAH Resolution # 199-99. The condition concerning submission of a development fee ordinance and spending plan was met within the 60 days that were required by the COAH resolution. COAH has since approved both documents. COAH staff recommends that COAH grant the Borough of Leonia final substantive certification.

## RESOLUTION GRANTING FINAL SUBSTANTIVE CERTIFICATION

WHEREAS, Leonia Borough, Bergen County, petitioned the Council on Affordable Housing (COAH) on July 1, 1999 for substantive certification of its housing element and fair share plan; and

WHEREAS, the COAH Compliance Report, dated April 11, 2002 (Exhibit A), summarizes COAH's review and certification process; and

WHEREAS, COAH established a 1987-1999 precertified need for Leonia Borough of 50 units including a rehabilitation component of 19 units and a new construction component of 31 units; and

WHEREAS, as noted in the COAH Compliance Report, Leonia Borough is eligible to receive 38 credits, reductions and adjustments which include 10 prior cycle credits, 7 rehabilitation credits and a 21-unit downward adjustment due to the lack of vacant land pursuant to N.J.A.C. 5:93 - 4.2; and

WHEREAS, Leonia Borough's plan addresses its calculated need of 12 units through a 12-unit rehabilitation program; and

WHEREAS, on May 1, 2002, COAH adopted Resolution #199-99 (Exhibit B) granting Leonia Borough conditional substantive certification; and

WHEREAS, COAH's grant of conditional substantive certification included two conditions to be addressed within 60 days; and

WHEREAS, the requirement of COAH's May 1, 2002 conditional certification was that, within 60 days, Leonia must submit:

1. a development fee ordinance
2. a spending plan; and

WHEREAS, Leonia Borough submitted a development fee ordinance that was approved by COAH on June 5, 2002; and

WHEREAS, Leonia Borough submitted a development fee spending plan that was approved by COAH on July 9, 2002

WHEREAS, Leonia Borough has thereby complied with the conditions prescribed in

Resolution #199-99 to COAH's satisfaction.

NOW THEREFORE BE IT RESOLVED that COAH finds that the housing element and fair share plan submitted by Leonia Borough, together with the addressed conditions, comply with the standards set forth at N.J.S.A. 52:27D-314 and are consistent with the rules and criteria adopted by COAH; and

BE IT FURTHER RESOLVED that Leonia Borough shall adopt all implementing fair share ordinances within 45 days from the grant of final substantive certification and shall forward a copy of the adopted ordinances to COAH; and

BE IT FURTHER RESOLVED that any change in the facts upon which the conditional and final certifications are based or any deviation from the terms and conditions of the conditional and final certifications, which affect Leonia Borough's ability to provide for the realistic opportunity of its fair share of low and moderate income housing and which Leonia Borough fails to remedy, shall render this certification null and void.

I hereby certify that this resolution  
was duly adopted by the Council on  
Affordable Housing on \_\_\_\_\_

\_\_\_\_\_  
Renee Reiss, Secretary  
Council on Affordable Housing

## **EXHIBIT A**

**See resolution included May 2002 packet**

## **EXHIBIT B**

See report included in May 2002 packet



**RESOLUTION GRANTING SUBSTANTIVE CERTIFICATION NO.**

110-99

WHEREAS, Chatham Borough, Morris County, petitioned the Council on Affordable Housing (COAH) on August 14, 1995 for substantive certification in accordance with N.J.S.A. 52:27D-313 and N.J.A.C. 5:93 et seq.; and

WHEREAS, Chatham Borough published notice of its petition in the *Daily Record*, which is a newspaper of general circulation within the county, on February 16, 1996 pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:91-3.3; and

WHEREAS, publication of notice initiated a 45-day objector period which resulted in no objections being filed; and

WHEREAS, COAH has established a 1987-1999 precertified need for Chatham Borough of 114 units with a vacant land adjustment (VL): 76 units of new construction and 38 units of rehabilitation; and

WHEREAS, COAH staff has reviewed the borough's housing element and fair share plan; and

WHEREAS, on August 10, 1998 COAH issued a Compliance Report (attached hereto as Exhibit A) which was distributed to the Chatham Borough service list for comment and COAH received one comment; and

WHEREAS, the borough submitted a letter questioning the calculation of rehabilitation obligations and the structural conditions survey; and

WHEREAS, the comment does not alter the COAH Compliance Report; and

WHEREAS, the borough requested a adjustment to its 38-unit rehabilitation obligation; and

WHEREAS, the borough submitted a structural conditions survey that was sent to COAH consultant, Dr. Robert Burchell of the Center for Urban Policy Research at Rutgers University and Dr. Burchell concluded that the borough's actual deteriorated number of units was 23; and

WHEREAS, the borough received a vacant land adjustment in its previously certified plan that reduced its realistic development potential (RDP) to 23 resulting in a calculated need of 46; and

WHEREAS, the borough submitted documentation for a six-unit reduction for zoning in place, 14 constructed units at three inclusionary sites, three rental bonus credits and four units of rehabilitation, totaling 27; and

WHEREAS, Chatham Borough's fair share obligation for 1987-1999 is 19, all rehabilitation; and

WHEREAS, Chatham Borough indicates that its rehabilitation program will be administered by the Morris County Department of Community Development (MCD CD); and

WHEREAS, pursuant to N.J.A.C. 5:93-4.1(b), the borough adopted a COAH approved development fee ordinance to capture affordable housing opportunities beyond the RDP; and

WHEREAS, COAH finds that the housing element and fair share plan submitted by Chatham Borough comport with the standards set forth at N.J.S.A. 52:27D-314(a) and (b).

NOW THEREFORE BE IT RESOLVED that COAH has reviewed Chatham Borough's petition for substantive certification and determines that it is consistent with the rules and criteria adopted by COAH and the achievement of the low and moderate income housing needs of the region; and

BE IT FURTHER RESOLVED that COAH grants 27 units of eligible reductions and credits

based on the submitted documentation; and

BE IT FURTHER RESOLVED that COAH grants the adjustment to the rehabilitation obligation; and

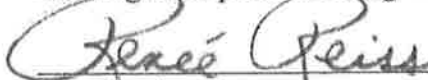
BE IT FURTHER RESOLVED that COAH shall continue the vacant land adjustment from the first round certification that resulted in an RDP of 23; and

BE IT FURTHER RESOLVED that Chatham Borough's fair share obligation is 19, all rehabilitation; and

BE IT FURTHER RESOLVED that COAH grants substantive certification to Chatham Borough for a period of six years from the date of this resolution; and

BE IT FURTHER RESOLVED that any changes in the facts upon which this certification is based or any deviation from the terms and conditions of this certification, which affects Chatham Borough's ability for the realistic opportunity of its fair share of low and moderate income housing and which the borough's fails to remedy, may render this certification null and void.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on 9/2/98



Renee Reiss, Secretary  
Council on Affordable Housing

**RESOLUTION AMENDING SUBSTANTIVE CERTIFICATION: 110-99(a)**

WHEREAS, the Council on Affordable Housing (COAH) granted substantive certification to Chatham Borough, Morris County, on September 2, 1998; and

WHEREAS, Chatham Borough has a 1987-1999 precredited need of 114 units, including a new construction of 76 units and a rehabilitation obligation of 38 units; and

WHEREAS, the borough's new construction obligation was reduced to a 23-unit realistic development potential (RDP) as the result of a vacant land adjustment during the first round; and

WHEREAS, the borough's rehabilitation obligation was recalculated to 23, based on the results of a structural conditions survey; and

WHEREAS, the borough received 27 credits including 14 for units built, three rental bonuses, six credits for zoning in place and four credits for rehabilitation, reducing its 12-year cumulative obligation to 19 units, all rehabilitation; and

WHEREAS, Chatham Borough petitioned COAH with an amendment to its substantive certification on June 16, 2003, to amend its affordable housing zoning ordinance from AFD-2 to AFD-1.1 to permit the option of providing two units on site or allowing payment in lieu of constructing two affordable units to fund a two-unit RCA; and

WHEREAS, the borough is also seeking to amend its substantive certification to enter into an RCA with the City of Linden for two units; and

WHEREAS, COAH approved an RCA between Linden City and Chatham Borough for two units at \$25,000 per unit on September 3, 2003; and

WHEREAS, Chatham Borough will provide a total of \$50,000 (\$25,000 per unit) to Linden City; and

WHEREAS, no objections to Chatham Borough's amendment were received by COAH; and

WHEREAS, COAH staff reviewed Chatham Borough's amendment in a COAH Compliance Report, dated August 20, 2003 (Exhibit 1); and

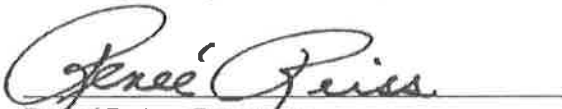
WHEREAS, the borough has complied with the provisions of N.J.A.C. 5:91-13.1 et seq. regarding amendments to substantive certification.

NOW THEREFORE BE IT RESOLVED that COAH approves the amendment to Chatham Borough's fair share plan to amend its ordinance from AFD-2 to AFD-1.1 to permit the option of providing two units on site or allowing a two-unit RCA; and

BE IT FURTHER RESOLVED that COAH also approves the amendment to the borough's certified fair share plan to add an RCA between Linden City and Chatham Borough for two units; and

BE IT FURTHER RESOLVED that all other conditions and approvals of COAH's original grant of substantive certification shall remain in place.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on 9/3/03.

  
Renee Reiss, Secretary  
Council on Affordable Housing

COAH SUMMARY FACT SHEET - 1987-1999

9(c)

1. Municipality Chatham Borough 2. Date of:  
County Morris Petition for Certification 8/13/95  
Region 2 Final Certification 9/2/98

Planning Area: 1

3. Staff Reviewer Sean Thompson

4. Precredited Need: 114VL  
New Construction Component 76VL  
Rehabilitation Component 38

Calculated Need 46  
New Construction Component/  
Realistic Development Potential (RDP) 23  
Rehabilitation Component 23\*  
(Borough received a reduction as a result of a structural conditions survey)\*

Credit(s)/Reduction(s)

Units Built

Willows at Chatham (for-sale) -8

Chestnut Ridge (senior rentals) -4

Vine Street (family rentals) -2

Rental Bonus Credits -3

Zoning in Place

Howardson -2

Averett/Nilson -2

Averett -2

Rehabilitation Credit -4

5. Fair Share Plan  
Rehabilitation 19

Recommendation

GRANT SUBSTANTIVE CERTIFICATION WITH THE PREVIOUSLY APPROVED  
VACANT LAND ADJUSTMENT

**EXECUTIVE SUMMARY  
CHATHAM BOROUGH/MORRIS COUNTY  
REGION #2  
PREPARED BY: SEAN THOMPSON, PRINCIPAL PLANNER**

The Planning Board of Chatham Borough, Morris County, adopted a housing element and fair share plan on September 12, 1995 which addressed a 12-year cumulative obligation. The governing body petitioned the Council on Affordable Housing (COAH) on August 14, 1995 and published on February 16, 1996. No objections were received by COAH.

Chatham Borough's 1987-1999 precredited need is 114: 76 units of new construction and 38 units of rehabilitation. The new construction obligation was reduced to 23 as the result of a vacant land adjustment during the first round. In addition, the borough requested an adjustment to its 38-unit rehabilitation obligation. Chatham Borough's RDP is 23 and the rehabilitation obligation is 23. The borough submitted crediting documentation for 27 units: 14 for units built, three rental bonus credits, reduction of six for zoning in place and four for rehabilitation. Based on the information submitted for credits and pursuant to N.J.A.C. 5:93-4.2(f), vacant land adjustment, the borough's 1987-1999 fair share obligation is 19, all rehabilitation.

A municipality receiving a vacant land adjustment is expected to capture opportunities for affordable housing beyond the RDP. To address its unmet need, Chatham Borough proposes a development fee ordinance.

COAH staff recommends that Chatham Borough be granted substantive certification with the continuation of the previously approved vacant land adjustment.



**COAH COMPLIANCE REPORT  
CHATHAM BOROUGH/MORRIS COUNTY  
REGION #2  
PREPARED BY: SEAN THOMPSON, PRINCIPAL PLANNER  
August 10, 1998**

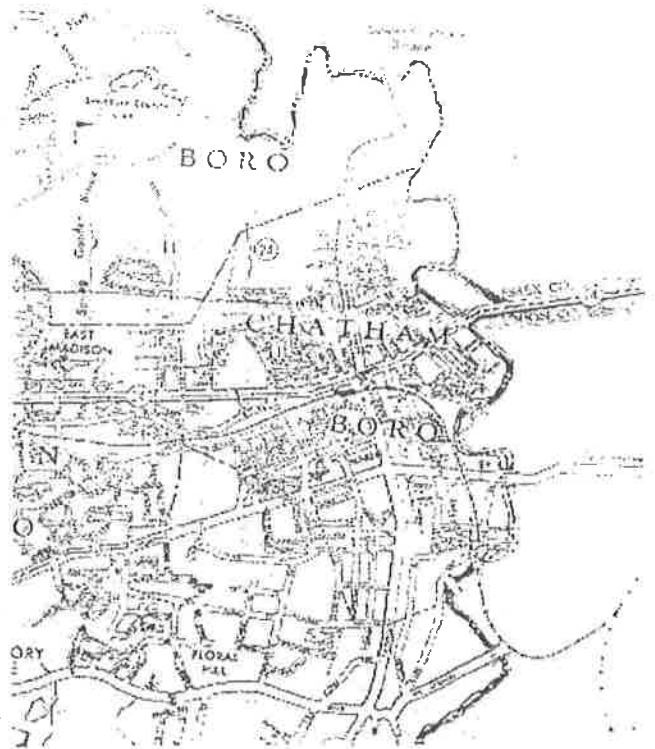
**I. MUNICIPAL DESCRIPTION**

Chatham Borough is located in the southeastern portion of Morris County. The borough is approximately 2.35 square miles and is almost completely developed.

**II INTRODUCTION**

The Planning Board of Chatham Borough, Morris County, adopted a housing element and fair share plan addressing its 12-year cumulative obligation on March 1, 1995. Chatham Borough petitioned on August 14, 1995. The borough published notice on February 16, 1996. No objections were filed.

The borough submitted and received approval for a development fee ordinance for future fee collections. The borough submitted a spending plan for COAH review as part of its petition for substantive certification. The spending plan will be addressed in a separate report.



**II BACKGROUND**

Chatham Borough received its first substantive certification on September 16, 1988 to address a need of 123 units, 105 new construction and 28 rehabilitation. Due to insufficient vacant land, the borough received a vacant land adjustment that reduced its new construction obligation to 23 units. The borough proposed to meet its affordable housing obligation through a combination of inclusionary development and a rehabilitation program. The borough adopted amendments to its Land Development Ordinance establishing three affordable housing districts (AHD-1, AHD-2 and AHD-3) consisting of six sites zoned for affordable housing.



#### IV. INVENTORY ANALYSIS

##### A. Housing Stock

According to the 1990 census, there were 3,154 housing units in the borough. The median value of owner-occupied housing in 1990 was \$279,756.

##### B. Demographic Characteristics

According to the 1990 census, the borough had a population of 8,007. In 1990 there were 3,095 households with an average household size of 2.58 persons. The median income was \$62,129.

In reviewing Chatham Borough's housing element, sufficient information was submitted regarding housing stock, demographic characteristics, employment characteristics and population trends.

#### IV. STRUCTURAL CONDITIONS SURVEY

Chatham Borough requested a recalculation of its rehabilitation obligation of 38 units. Chatham Borough submitted a structural conditions survey that was sent to COAH consultant, Dr. Robert Burchell of the Center for Urban Policy Research at Rutgers University, regarding municipal housing allocations.

The construction code official of Chatham Borough conducted COAH's structural conditions survey on all units within the borough municipal boundary. He certified that five units were deficient. COAH staff performed a site visit on June 14, 1996. All information was forwarded to Dr. Burchell who concluded that the borough's actual deteriorated number of units was 23 pursuant to the attached letter dated August 29, 1997.

#### V. REDUCTION/CREDITS AND ADJUSTMENTS

Chatham Borough received a vacant land adjustment as part of its first-round plan and was assigned a VL status in COAH's 1987-1999 cumulative need allocations. Pursuant to N.J.A.C. 5:93-4.2(f), a municipality that received a vacant land adjustment in the first round is presumed to have addressed its realistic development potential (RDP), provided the municipality continues to implement the terms of its previous substantive certification. The borough is seeking a six-unit

reduction for zoning in place and 14 units of credit for three developed sites.

The borough also requested credit for four age-restricted low and moderate income rental units constructed at Chestnut Ridge, block 103, lots 7.01-7.09 and block 99, lots 15.01-15.05 (Site 25). The documentation submitted on the four-unit development meets COAH's requirements. The borough is eligible to receive one rental bonus credit for the four rental units constructed.

In addition, the borough is seeking credit for eight low and moderate income for-sale units in the Chatham at Willows development currently under construction at block 106, lot 1 (Site 26). The documentation submitted on the eight-unit development meets COAH's requirements.

The borough also requested credit for two low and moderate income rental units under construction on Vine Street, block 127, lot 4 (Site 30). The borough submitted a letter from the owner, Ronald Gunn, indicating that the units would be rentals. The documentation submitted on the two-unit rental development meets COAH's requirements and the borough is eligible for rental bonus credits.

In accordance with N.J.A.C. 5:93-3.4, municipalities may receive credit for the rehabilitation of substandard low and moderate income units completed subsequent to April 1, 1990. Chatham Borough is seeking credit for 13 units of rehabilitation activity. However, after a review of the submitted documentation, only four are eligible to receive COAH credit. The ineligible units did not meet the \$8,000 minimum average threshold for hard costs. The four eligible units were completed by the Morris County Department of Planning and Development, Division of Community Development, and meet COAH criteria.

In summary, Chatham Borough is eligible to receive credits and reductions for 27 units: 14 new construction, three rental bonus credits, a reduction of six units for zoning in place and four rehabilitation credits.

Requested Credits and Reductions		
	RDP + rehabilitation component	46
credits	Chatham at Willows (for-sale)	-8
	Vine Street (family-rentals)	-2
	Chestnut Ridge (age-restricted rentals)	-4
	Rental bonus credits	-3
reductions	Howardson (zoning in place)	-2
	Averett/Nilson site (zoning in place)	-2
	Averett site (zoning in place)	-2
	Rehabilitation credits	-4
	Fair Share Number	19

## V NUMBER

Chatham Borough's precredited 1987-1999 obligation of 114 was reduced to 46 as a result of a structural conditions survey in accordance with N.J.A.C. 5:93-5.2(a) and the vacant land adjustment for the new construction component in the first round. Chatham Borough's RDP is 23 and the rehabilitation obligation is 23.

Based on the information submitted for reductions, credits and adjustments, the borough's 12-year cumulative 1987-1999 obligation is 19, all rehabilitation.

## VI HOUSING ELEMENT

Chatham Borough proposes a rehabilitation program, continuation of zoning on three sites and a development fee ordinance to address its 12-year cumulative obligation.

### A. REHABILITATION

Chatham Borough plans to continue its rehabilitation program to address its 19-unit obligation through Morris County's Department of Community Development Rehabilitation Program. The county program is a grant/loan program which is designed for units occupied by low and moderate income households. Affordability controls are incorporated into the rehabilitation program. If necessary funds are not available through the county program, the

borough will provide funds through development fees.

In addition, the township adopted a resolution of intent to bond for any shortfall of funds for implementing the rehabilitation program.

#### B. INCLUSIONARY DEVELOPMENT

Pursuant to N.J.A.C. 5:93-4.2(f), Chatham Borough is proposing the continuation of zoning on three undeveloped sites. The land area within the borough is located in Planning Area 1.

##### Site 27

The Howardson property, block 118, lot 38, a one-acre infill property, originally received site plan approval for a 23-unit, five-story apartment building in 1988. At this time the owners of the property have an interest in building a low-density townhouse project, leading to a rezoning of the property at 10 units per acre, which is marketable zoning. The site will yield two low and moderate income units.

##### Site 24

The Averett/Nilson site, block 99, lots 13 and 20.1, zoned AHD-2, is approximately seven acres but only one acre is not affected by floodplain or steep slopes. The density is 10 units per acre, with a 20 percent setback that would yield two affordable units.

The Averett/Nilson property is under contract. The contract purchaser has prepared two conceptual sketches of an inclusionary housing layout scheme that have been forwarded to the borough. An informal review was held in mid-June 1998.

##### Site 22

The Averett site, block 98, lot 2, zoned AHD-2, is approximately 2.33 acres and is located on the border of Chatham Township. However, only one acre is developable. The site is zoned at a density of 10 units per acre, with a 20 percent setback that would yield two units. At this time there are no approvals on the Averett property.

Pursuant to N.J.A.C. 5:93-5.6, Chatham Borough has submitted a description of the sites

and surrounding land uses: a description of environmental constraints including the appropriate wetland and flood plain maps; and information regarding the location, size and capacity of sewer lines and facilities within the service area.

#### Unmet Need

Pursuant to N.J.A.C. 5:93-4.1(b), a municipality receiving a vacant land adjustment is expected to capture opportunities for affordable housing beyond the calculated RDP. The borough adopted a COAH approved development fee ordinance to capture affordable housing opportunities beyond the RDP.

COAH staff reviewed the borough's existing land use map and made a site visit to the borough. Based on this analysis, COAH staff has determined that the borough's housing stock does not consist of large older dwellings that are appropriate for accessory apartments. In addition, COAH staff determined that there are no areas in the borough likely to develop or redevelop during the six year period of substantive certification. The borough has a small central business district that is fully developed, not in need of redevelopment and is not appropriate for an overlay zone. Therefore, COAH staff recommends accepting the development fee ordinance as addressing the unmet need.

#### **VI. AGE-RESTRICTED UNITS**

As per N.J.A.C. 5:93-5.13(a) and (b), a municipality may address 25 percent of [RDP, plus rehabilitation component, minus credits pursuant to N.J.A.C. 5:93-3.4] less age-restricted units completed that addressed the 1987-1993 obligation in Chatham Borough. Based on this calculation  $[.25 \times (23+23-4)-4]$ , the borough is eligible to age restrict an additional seven units.

#### **VII RENTAL COMPONENT**

As per N.J.A.C. 5:93-5.14(a), every municipality has a rental obligation of 25 percent of its RDP. Based on this calculation  $[.25 \times 23]$ , Chatham Borough has a rental obligation of six units which has been addressed at the Chestnut Ridge and Vine Street sites.

**VIII CONTROLS ON AFFORDABILITY**

Chatham Borough's fair share plan will be administered by the borough administrator and housing officer. The borough's administrative plan outlines the methods of qualifying applicants, establishing waiting lists, matching applicants to units and processing rentals and sales/resales.

**IX AFFIRMATIVE MARKETING**

Chatham Borough submitted an affirmative marketing plan that reflects N.J.A.C. 5:93-11.

**X AFFORDABLE HOUSING ORDINANCE**

The borough submitted draft ordinances which include regulations for affordable housing, controls on affordability and affirmative marketing that meet COAH criteria.

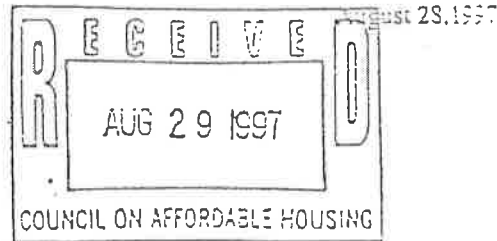
**XII. RECOMMENDATION**

With its vacant land adjustment and credits, Chatham Borough has a second round obligation of 19, all rehabilitation. Chatham Borough will address its fair share obligation through a 19-unit rehabilitation program. In addition, Chatham Borough will address its RDP through a development fee ordinance. The borough adopted a COAH approved development fee ordinance to capture affordable housing opportunities beyond the RDP. COAH staff recommends that COAH grant Chatham Borough substantive certification. Chatham Borough must adopt all implementing ordinances within 45 days of receiving substantive certification.





Shirley M. Bishop  
Executive Director  
Council on Affordable Housing  
101 S. Broad Street  
Trenton, NJ 08625



Dear Shirley,

You have asked that I review the number of actual deteriorated housing units assigned to Chatham Borough/Morris County by the Council on Affordable Housing (COAH). Chatham Borough disputes the assigned number of 44 and has undertaken a survey to reduce this number.

As you were aware, COAH has estimated the number of substandard housing units occupied by low and moderate income households in each municipality by employing census data. This estimate is called the municipal indigenous need. COAH recognizes that its estimates may be high or low. Therefore, COAH has devised a survey for any municipality in COAH's process to present data to COAH that may be used to alter the census-generated indigenous need estimates.

The survey requires an exterior inspection to determine if a housing unit is substandard. It then provides for the use of census data to estimate the number of substandard units occupied by low or moderate income households.

To assist municipalities, COAH has made available a Structural Conditions Survey which can be performed by individuals who are licensed to perform building and/or housing inspections. However, Chatham Borough did not use this survey but instead, the licensed construction official in the borough performed his own exterior survey that indicated only five housing units in the borough were in fair to poor condition. Subsequently, COAH staff conducted a site visit to the borough and viewed the existing housing stock in this 2.35 square mile community. Based on this site visit and another exterior survey, COAH staff concurred that there were only five deficient houses. Chatham Borough has also submitted additional information for verification and validation to me at the Center for Urban Policy Research.

Accordingly, I have reviewed this information and find that there are 18 overcrowded units in Chatham Borough in addition to the five substandard units from the survey. These 18 overcrowded units are not the same as the five deficient and both must be added together.

Based on a careful review of census data and the exterior survey, Chatham Borough's actual deteriorated number of units is adjusted to 23.

If you have any questions, please call me at (732) 932-3133 extension 542.

Sincerely,

Robert W. Burchell, Ph.D.

cc: Sean Thompson, COAH planner

THE STATE UNIVERSITY OF NEW JERSEY  
**RUTGERS**

33 Livingston Avenue, Suite 400, New Brunswick, New Jersey 08901-1982  
Tel: 908-932-3133 • Fax: 908-932-2363

## Municipal Data

Municipality Name	Chatham Borough with Revised Indigenous Need (23)
County	Morris County
Region	2 - Northwest

## Part I - Present Need

## Subpart I-A - Indigenous Need

A1. Sub-Regional Multiple Index Need		
A2. Sub-Regional Single-Index Need		
A3. Municipal Single-Index Need		Adjusted Survey
A. Indigenous Need (Estimated low- and moderate income households in deficient units)	$(A3/A2)*A1$	23
B1. Regional Average Percent Deficiency		0.02500
B2. 1993 Occupied Housing Estimate		3,100.66
B. Indigenous Need(Capped Deficient Housing)	$(B1*B2)$	73.07
Urban Aid City Status		Not Urban Aid
C. Indigenous Need	(The Smaller of A or B)	23.00 Result 1

## Distribution of Need: 1993; 1993-1999

D1. Municipal Non-residential Value		149,015,800
D2. Regional Non-residential Value		23,413,909,40
D. % Regional Equalized Nonresidential Value	$(D1/D2)$	0.63644 †
E1. Municipal Vacant Land - Planning Area 1		220.61
E2. Municipal Vacant Land - Planning Area 2		0.00
E3. Municipal Vacant Land - Planning Area 3		0.00
E4. Municipal Vacant Land - Pinelands Growth Areas		0.00
E5. Municipal Vacant Land in Growth Areas	$(E1+E2+((E3+E4)/2))$	220.61
E6. Regional Total of Vacant Land in Growth Areas		58,693.16
E. % Regional Vacant Area	$(E5/E6)$	0.37537
F1. Municipal Median Household Income in 1989		68,341.90
F2. Regional Income Floor (lowest municipal income)		23,705.00
F3. Municipal Households 1993		3,122.66
F4. Municipal Weighted Income	$((F1-F2)*F3)$	139,335,744
F5. Regional Total Weighted Income (non Urban Aid)		14,347,812,417
F6. Regional Total of Unweighted Income (non Urban Aid)		3,563,718
F7. Weighted Income Measure Share	$(F4/F5)$	0.97148
F8. Unweighted Income Measure Share	$((F1-F2)/F6)$	1.25254
F. Regional Income Difference	$((F7*2)+F8)/3$	1.06516
G. Present Need Allocation Factor	$((D + E + F)/3)$	0.69249

## Subpart I-B - Reallocated Present Need: 1993

H. Regional Pool of Excess Deficient Housing Units	5,305.99
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Total Part I - I. Reallocated Present Need	$(G * H)$	36.74 Result 2
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## Present Need

J. Present Need	$(C + I)$	59.74 Result 3
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\* = Multiply / = Divide

† Bold type indicates information included in calculation flow diagram which follows



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## Part II - Prospective Need: 1993; 1993-1999

K1. Municipal Change in Non-residential Valuation	92,778,250
K2. Regional Total Change in Non-residential Valuation	14,225,393,300
K. % Regional Equalized Nonresidential Value Change (K1/K2)	0.65220
L. Regional 1993-1999 Prospective Need	1,033.00
M. Prospective Need Allocation Factor ((E + F + K)/3)	0.69775
Total Part II - N. Prospective Need (L * M)	7.21 Result: 4

## Part III - Total Need: 1993; 1993-1999

O. Total Need (J + N)	66.95 Result: 5
Subpart III-A - Prior Cycle Prospective Need	
P1. Municipal Prospective Need 1987-93	63.67
P2. Share of Prospective Need to Use	0.52
P3. Filtering 1987-93	27.11
P4. Conversions 1987-93	5.74
P5. Present Need 1987-93	95.29
P6. Demolitions 1987-1993 (see below)	11.14
P7. Share of Filtering and Conversions to Use	0.32960
P. Prior Cycle Prospective Need	41.14 Result: 6

## Subpart III-B - Demolitions

Q1. Demolitions 1988	9.00
Q2. Demolitions 1989	9.00
Q3. Demolitions 1990	1.00
Q4. 1990 Low- Mod Income Subregional % poor units	24.43
Q. Demolitions (((Q1+Q2+Q3)/3)*6*Q4/100*1.2)	11.14 Result: 7

## Subpart III-C - Filtering

R1. Regional Filtering	4,535.20
R2. Multi-Family Units 1990	291.00
R3. Regional Multi-Family Units 1990	156,393.00
R4. Pre 1940 Units -1990	1,253.00
R5. Regional Pre 1940 Units -1990	206,403.00
R6. Possible Filtering (((R2/R3)*2)+(R4/R5))/3)*R1	14.79
R7. Pre-Filtering Need (O+P+Q)	119.23
R. Filtering (IF R6>R7 use R6, otherwise R7)	-14.79 Result: 8

## Subpart III-D - Residential Conversion

S1. Regional Residential Conversions	2,229.43
S2. 2 TO 4 Family Units (1990)	317.00
S3. Regional Total of 2 to 4 Family Units 1990	150,817.00
S4. Possible Conversions (S2/S3)*S1	4.69
S5. Pre-Conversion Need (R7+R)	104.45
S. Residential Conversion (IF S4>S5 use S4, otherwise S5)	-4.69 Result: 9

## Subpart III-E - Spontaneous Rehabilitation

T1. Regional Spontaneous Rehabilitation	597.17
T2. Municipal Weighted Income	139,385,744.44
T3. Regional Total Weighted Income (all Municipalities)	16,299,646,858.00
T4. Municipal Income (difference from floor)	44,636.90
T5. Regional Total of Unweighted Income (all Municipalities)	3,698,545.40
T6. possible spontaneous rehabilitation (((T2/T3)*2)+(T4/T5))/3)*T1	5.81
T7. Pre-Spontaneous Rehabilitation Need (S5+S)	99.76
T. Spontaneous Rehabilitation (IF T6> Indigenous need use C, otherwise T6 )	-5.81 Result: 10
(IF T6>T7 use T6, otherwise T7)	

FLOW DIAGRAM FOR THE CALCULATION OF  
LOW- AND MODERATE-INCOME HOUSING NEED


for Chatham Borough with Revised Indigenous Need (23) Morris County

(Subpart I-A)		(Subpart I-B)		(Part I)
INDIGENOUS NEED	+	REALLOCATED	=	PRESENT NEED
(Result 1)		PRESENT NEED		(Result 3)
23		(Result 2)		60
		37		
(Part I)		(Part II)		(Part III)
PRESENT NEED	+	PROSPECTIVE NEED	=	TOTAL NEED
(Result 3)		(Result 4)		(Result 5)
60		7		67
(Part III)		(Subpart III-A)		(Subpart III-B)
TOTAL NEED	+	PRIOR-CYCLE	+	DEMOLITIONS
(Result 5)		PROSPECTIVE NEED		(Result 7)
67		(Result 6)		11
		41		
(Subpart III-C)		(Subpart III-D)		(Subpart III-E)
(-) FILTERING	(-)	RESIDENTIAL	(-)	SPONTANEOUS
(Result 8)		CONVERSION		REHABILITATION
15		(Result 9)		(Result 10)
		5		6
(Subpart IV-A)		(Subpart IV-B)		(Subpart IV-C)
(-) REDUCTION	(-)	PRE-1987	(-)	20%
(Result 12)		CREDITS		CAP
23		(Result 13)		(Result 14)
		0		0
				(Part V)
				= CALCULATED
				NEED
				(Result 15)
				71

\* Prior-cycle vacant land adjustment communities are indicated by "VL" even though their number is calculated. This indicates that although there is not much vacant land left in these communities, the affordable housing number may be met in other ways and is retained as part of the overall Calculated Need.

Community  
Chatham Borough with Revised Indigenous Need (23)


County/Region  
Morris County /Region 2 - Northwest

  
William R. Dolphin

Prepared

Aug 28, 97

Date

  
Robert W. Burchell

Checked

28 Aug 1997

Date

**RESOLUTION GRANTING SUBSTANTIVE CERTIFICATION NO: 30 - 99**

WHEREAS, the Borough of Teterboro petitioned the Council on Affordable Housing (COAH) on May 9, 1995 for substantive certification of a housing element and fair share plan which addresses its 1987-1999 cumulative need in accordance with N.J.S.A. 52:27D-313 and N.J.A.C. 5:93-1 et. seq.; and

WHEREAS, COAH has established a 1987-1999 precertified need for Teterboro of 106 units, all inclusionary; and

WHEREAS, the Borough of Teterboro published notice of its petition in the Bergen Record, which is a newspaper of general circulation within the county, on May 19, 1995 pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:91-4.3; and

WHEREAS, the petition for substantive certification initiated a 45-day objector period as per N.J.A.C. 5:91-1 et. seq.; and

WHEREAS, COAH received no objections to the plan; and

WHEREAS, COAH staff has reviewed the Borough of Teterboro's housing element; and

WHEREAS, on March 8, 1996, COAH staff issued a Compliance Report (attached hereto as Exhibit A and incorporated herein) which was distributed to the Teterboro service list for comment; and

WHEREAS, no comments on the Compliance Report were received by COAH; and

WHEREAS, the entire existing housing stock of the borough is nine units; and

WHEREAS, the Borough of Teterboro qualifies for an adjustment under the 20 percent cap rule, N.J.A.C. 5:93-2.16, which reduces the borough's calculated need to two units of new construction; and

WHEREAS, the Borough of Teterboro received a vacant land adjustment which reduced its first-round obligation to zero and, as such, was assigned a VL status in COAH's 1987-1999 cumulative need allocations; and

WHEREAS, pursuant to N.J.A.C. 5:93-4.2(e), the Borough of Teterboro is presumed to have addressed its realistic development potential (RDP) of zero; and

WHEREAS, pursuant to N.J.A.C. 5:93-4.1(b) and N.J.A.C. 5:93-4.2(g), a municipality receiving a vacant land adjustment must capture opportunities for affordable housing beyond the calculated RDP of zero; and

WHEREAS, there are facts unique to the Borough of Teterboro that provide justification for a waiver from these requirements pursuant to N.J.A.C. 5:93-15.1(b)(3) including the nature of the existing land uses in the borough which are primarily industrial and commercial; the very limited areas currently zoned residential and the fact that over half of the borough is within the Hackensack Meadowlands Development District; and

WHEREAS, given these facts, a strict application of COAH's rule requiring the capture of opportunities for affordable housing beyond Teterboro's calculated RDP of zero would create an unnecessary hardship and thereby justifies a waiver from the requirements of N.J.A.C. 5:93-4.1(b) and N.J.A.C. 5:93-4.2(g) pursuant to N.J.A.C. 5:93-15.1(b)(3).

NOW THEREFORE BE IT RESOLVED that COAH determines that the Borough of Teterboro's 1987-1999 cumulative fair share obligation is zero after adjustments; and

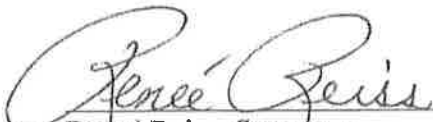
BE IT FURTHER RESOLVED that COAH finds that the housing element submitted by the Borough of Teterboro comports with the standards set forth at N.J.S.A. 52:27D-314 and is consistent with the rules and criteria adopted by COAH; and

BE IT FURTHER RESOLVED that COAH grants substantive certification to the Borough of Teterboro for a period of six years from the date of this resolution; and

BE IT FURTHER RESOLVED that COAH grants the Borough of Teterboro a waiver from the requirements of N.J.A.C. 5:93-4.1(b) and N.J.A.C. 5:93-4.2(g) concerning the capture of opportunities for affordable housing beyond the borough's calculated RDP of zero; and

BE IT FURTHER RESOLVED that any changes in the facts upon which this certification is based or any deviation from the terms and conditions of this certification, which affects the Borough of Teterboro's ability to provide for the realistic opportunity of its fair share of low and moderate income housing and which Teterboro fails to remedy, shall render this certification null and void.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on April 3, 1996

  
Renee Reiss, Secretary  
Council on Affordable Housing

TETRBORO.RES

7(c)



CHRISTINE TODD WHITMAN  
Governor

State of New Jersey  
COUNCIL ON AFFORDABLE HOUSING  
CN-813  
TRENTON NJ 08625-0813  
609-292-3000  
FAX: 609-633-6056  
TDD#: (609) 278-0175

HARRIET DERMAN  
Chairperson  
SHIRLEY M. BISHOP, P.P.  
Executive Director

### COAH SUMMARY FACT SHEET - 1987-1999

- |    |  |                                |    |                            |                |
|----|--|--------------------------------|----|----------------------------|----------------|
| 1. | Municipality                               | <u>Borough of Teterboro</u>    | 2. | Dates of                   |                |
|    | County                                     | <u>Bergen</u>                  |    | Petition for Certification | <u>5/9/95</u>  |
|    | Region                                     | <u>1</u>                       |    | Published                  | <u>5/15/95</u> |
|    |  |                                |    | Compliance Report          | <u>3/8/96</u>  |
|    |  |                                |    | COAH Certification         | <u>4/3/96</u>  |
| 3. | Staff Reviewer                             | <u>Stanley Slachetka, P.P.</u> |    |                            |                |
| 4. | 1987-1999 Cumulative Obligation            |                                |    |                            |                |
|    | Precredited Need                           |                                |    |                            | <u>106</u>     |
|    | New Construction Obligation                | <u>106</u>                     |    |                            |                |
|    | Rehabilitation Obligation                  | <u>0</u>                       |    |                            |                |
|    | 20 Percent Cap (N.J.A.C. 5:93-2.16)        |                                |    |                            | <u>- 104</u>   |
|    | Vacant Land Adjustment (N.J.A.C. 5:93-4.2) |                                |    |                            | <u>- 2</u>     |
|    | Fair Share Obligation                      |                                |    |                            | <u>0</u>       |

### Recommendation

### GRANT SUBSTANTIVE CERTIFICATION

TETRBORO.FCT



**EXECUTIVE SUMMARY  
TETERBORO BOROUGH, BERGEN COUNTY**

**Region #1**

**Prepared by**

**Stanley C. Slachetka, Jr., P.P.**

**April 3, 1996**

The Planning Board of the Borough of Teterboro, Bergen County, adopted a housing element and fair share plan on November 15, 1994 which addresses its 12-year cumulative obligation. Teterboro's 1987-1999 cumulative precredited need is 106 units, all inclusionary, and a calculated need of two units with a VL designation. There were no objections to the plan.

The borough's entire housing stock consists of nine units. Therefore, Teterboro qualifies for an adjustment under the 20 percent cap rule, N.J.A.C. 5:93-2.16, which reduces the borough's fair share obligation to two units of new construction.

Teterboro received a vacant land adjustment which reduced its first-round obligation to zero and, as such, was assigned a VL status in COAH's 1987-1999 cumulative need allocations. Thus, the borough's realistic development potential (RDP) is zero.

Pursuant to N.J.A.C. 5:93-4.1(b) and N.J.A.C. 5:93-4.2(g), a municipality receiving a vacant land adjustment must capture opportunities for affordable housing beyond the calculated RDP. However, there are mitigating factors unique to the Borough of Teterboro that provide justification for a waiver from these requirements. Only a limited area of the borough is zoned for residential development. This zone is fully developed. The rest of the borough consists of Teterboro Airport and existing industrial and warehouse facilities. More than half of the borough, including Teterboro Airport, is under the jurisdiction of the Hackensack Meadowlands Development Commission (HMDC). Given these facts, strict application of COAH's rule requiring the capture of opportunities for affordable housing beyond Teterboro's calculated RDP of zero would create an unnecessary hardship for the borough. in accordance with N.J.A.C. 5:93-15.1(b)(3).

With the 20 percent cap and the vacant land adjustment, Teterboro's 1987-1999 cumulative fair share obligation is zero. COAH staff recommends that the Borough of Teterboro be granted substantive certification and a waiver from the requirements of N.J.A.C. 5:93-4.1(b) and N.J.A.C. 5:93-4.2(g) concerning the capture of opportunities for affordable housing beyond the borough's calculated RDP of zero.

*TETERBORO.EX*

EXHIBIT A



**COAH COMPLIANCE REPORT**  
**TETERBORO BOROUGH, BERGEN COUNTY**  
**Region #1**  
**Prepared by**  
**Stanley C. Slachetka, Jr., P.P.**  
**March 8, 1996**

**I. INTRODUCTION**

The Planning Board of the Borough of Teterboro, Bergen County, adopted a housing element and fair share plan on November 15, 1994 which addresses its 12-year cumulative obligation. Teterboro's 1987-1999 cumulative precertified need is 106 units, all inclusionary. The borough petitioned the Council on Affordable Housing (COAH) for substantive certification and published on May 15, 1995. The 45-day objector period ended on June 28, 1995. There were no objections to the plan.

**II. BACKGROUND**

Teterboro Borough was first certified by COAH on June 5, 1989. The borough's 1987-1993 fair share obligation was reduced to zero pursuant to a combination of COAH's 20-percent cap rule and a vacant land adjustment.

**III. HOUSING AND DEMOGRAPHIC ANALYSIS**

A review of Teterboro Borough's housing element indicates that sufficient information was submitted regarding housing stock, demographic characteristics, employment characteristics and population trends to satisfy the requirements of N.J.A.C. 5:93-5.1(b)(1) through (4).

#### IV. CREDITS AND REDUCTIONS

Teterboro is not seeking any credits or reductions.

#### V. ADJUSTMENTS

The borough's entire housing stock consists of nine units. Therefore, Teterboro qualifies for an adjustment under the 20 percent cap rule, N.J.A.C. 5:93-2.16, which reduces the borough's fair share obligation to two units of new construction.

Teterboro received a vacant land adjustment which reduced its first-round obligation to zero and, as such, has been assigned a VL status in COAH's 1987-1999 cumulative need allocations. Pursuant to N.J.A.C. 5:93-4.2(e), a municipality that received a vacant land adjustment in the first round is presumed to have addressed its realistic development potential (RDP). Thus, Teterboro's 1987-1999 cumulative fair share obligation is zero.

Pursuant to N.J.A.C. 5:93-4.1(b) and N.J.A.C. 5:93-4.2(g), a municipality receiving a vacant land adjustment must capture opportunities for affordable housing beyond the calculated RDP. However, there are mitigating factors unique to the Borough of Teterboro that provide justification for a waiver from these requirements. Only four acres in the borough, or less than one percent of its total area, are zoned for residential development. This zone is fully developed with five single-family dwellings and two two-family dwellings. The rest of the borough consists of Teterboro Airport and existing industrial and warehouse facilities. More than half of the borough, including Teterboro Airport, is under the jurisdiction of the Hackensack Meadowlands Development Commission (HMDC). Pursuant to N.J.A.C. 5:93-4.2(d)(2)(ii), COAH is required to adhere to the zoning regulations of the HMDC in this area of the borough. Given these facts, strict application of COAH's rule requiring the capture of opportunities for affordable housing beyond Teterboro's calculated RDP would create an unnecessary hardship for the borough. Therefore, COAH staff recommends that COAH waive this requirement in accordance with N.J.A.C. 5:93-15.1(b)(3).

## VI. RECOMMENDATION

With the 20 percent cap and the vacant land adjustment, Teterboro's 1987-1999 cumulative fair share obligation is zero. COAH staff recommends that the Borough of Teterboro be granted substantive certification and a waiver from the requirements of N.J.A.C. 5:93-4.1(b) and N.J.A.C. 5:93-4.2(g) concerning the capture of opportunities for affordable housing beyond the borough's calculated RDP.

*TETRBORO.RPT*

**RESOLUTION GRANTING SUBSTANTIVE CERTIFICATION NO.**107-99

WHEREAS, New Providence Borough, Union County, petitioned the Council on Affordable Housing (COAH) on July 7, 1997 for substantive certification in accordance with N.J.S.A. 52:27D-313 and N.J.A.C. 5:93 et. seq.; and

WHEREAS, New Providence Borough published notice of its petition in the Star Ledger, which is a newspaper of general circulation within the county, on July 12, 1997 pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:91-3.3; and

WHEREAS, publication of notice initiated a 45-day objector period which resulted in no objections being filed; and

WHEREAS, COAH has established a 1987-1999 precertified need for New Providence Borough of 151 units, 134 units of new construction and 17 units of rehabilitation with a vacant land adjustment (VL); and

WHEREAS, COAH staff has reviewed the borough's housing element and fair share plan; and

WHEREAS, on July 20, 1998 COAH issued a COAH Compliance Report (attached hereto as Exhibit A) which was distributed to the New Providence Borough service list for comment and COAH received no comments; and

WHEREAS, the borough submitted crediting documentation for two alternative living facilities containing eight bedrooms, 16 rental units in a senior citizen complex, 25 constructed units at three inclusionary sites, 14 rental bonus credits and nine units of rehabilitation, totaling 72; and

WHEREAS, the borough received a vacant land adjustment in its previously certified plan that reduced its realistic development potential (RDP) to 54 resulting in a calculated need of 71; and

WHEREAS, pursuant to N.J.A.C. 5:93-4.1(b), New Providence Borough shall capture opportunities for affordable housing beyond the RDP through the continuation of zoning on six sites; and

WHEREAS, COAH finds that the housing element and fair share plan submitted by New Providence Borough comport with the standards set forth at N.J.S.A. 52:27D-314(a) and (b).

NOW THEREFORE BE IT RESOLVED that COAH has reviewed New Providence Borough's petition for substantive certification and determines that it is consistent with the rules and criteria adopted by COAH and the achievement of the low and moderate income housing needs of the region; and

BE IT FURTHER RESOLVED that COAH grants the 72 units of credit based on the submitted documentation; and

BE IT FURTHER RESOLVED that COAH shall continue the vacant land adjustment from the first round certification that resulted in an RDP of 54; and

BE IT FURTHER RESOLVED that New Providence Borough's 1987-1999 cumulative obligation has been met and its fair share is zero; and

BE IT FURTHER RESOLVED that COAH grants substantive certification to New Providence Borough for a period of six years from the date of this resolution; and

BE IT FURTHER RESOLVED that any changes in the facts upon which this certification is based or any deviation from the terms and conditions of this certification, which affects New Providence Borough's ability for the realistic opportunity of its fair share of low and moderate income housing and which the borough's fails to remedy, may render this certification null and void.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on 8/5/98.

A handwritten signature in cursive script, appearing to read "Renee Reiss", is written over a horizontal line.

Renee Reiss, Secretary

Council on Affordable Housing

7(c)

COAH SUMMARY FACT SHEET - 1987-1999

1. Municipality New Providence Borough 2. Date of:  
County Union Petition for Certification 7/7/97  
Region 2 Final Certification 8/5/98

Planning Area: 1

3. Staff Reviewer Sean Thompson

4. Precredited Need: 151VL  
New Construction Component 134VL  
Rehabilitation Component 17

Calculated Need 71  
New Construction Component/  
Realistic Development Potential (RDP) 54  
Rehabilitation Component 17

Credit(s)

Units Built

Our House Inc. (group home) -4  
Community Action for  
Independent Living (group home) -4  
Villages at New Providence (rentals) -10  
New Providence Senior Housing (rentals) -16  
Southgate at Murray Hills (rentals) -2  
Murray Hill Farms (for-sale) -13  
Rental Bonus Credits -14

Rehabilitation Credit -9

5. Fair Share Obligation

6. Unmet Need  
Zoning in Place

Recommendation

GRANT SUBSTANTIVE CERTIFICATION WITH THE PRI  
VACANT LAND ADJUSTMENT

54  
+ 17  
71  
17  
Address obl.  
-4  
6  
12  
54  
18

**EXECUTIVE SUMMARY  
NEW PROVIDENCE BOROUGH/UNION COUNTY  
REGION #2  
PREPARED BY: SEAN THOMPSON, PRINCIPAL PLANNER**

**I. INTRODUCTION**

The Planning Board of New Providence Borough, Union County, adopted a housing element and fair share plan on September 12, 1995 which addressed a 12-year cumulative obligation. New Providence Borough's 1987-1999 cumulative precertified need is 151 units: 17 rehabilitation and 134 new construction. The new construction obligation was reduced to 54 as the result of a vacant land adjustment during the first round. The governing body petitioned the Council on Affordable Housing (COAH) on July 7, 1997 and published on July 12, 1997. No objections were received by COAH.

According to N.J.A.C. 5:93-4.2(f), a municipality that received a vacant land adjustment in the first round is presumed to have addressed its RDP provided the municipality continues to implement the terms of its previous substantive certification. Therefore, New Providence Borough has a calculated need of 71, 54 new construction and 17 rehabilitation. The borough submitted crediting documentation for 72 units: 49 for units built, 14 rental bonus credits and nine for rehabilitation. Based on the information submitted for credits and pursuant to N.J.A.C. 5:93-4.2(f), vacant land adjustment, the borough has met its 1987-1999 cumulative obligation.

A municipality receiving a vacant land adjustment is expected to capture opportunities for affordable housing beyond the calculated RDP. To address its unmet need, New Providence Borough proposes the continuation of zoning on six sites.

COAH staff recommends that New Providence Borough be granted substantive certification with the continuation of the previously approved vacant land adjustment.



## EXHIBIT A

**COAH COMPLIANCE REPORT  
NEW PROVIDENCE BOROUGH/UNION COUNTY  
REGION #2  
PREPARED BY: SEAN THOMPSON, PRINCIPAL PLANNER  
July 20, 1998**

**I. INTRODUCTION**

The Planning Board of New Providence Borough, Union County, adopted a housing element and fair share plan on September 12, 1995 which addressed a 12-year cumulative obligation. New Providence Borough's 1987-1999 cumulative precertified need is 151 units: 17 rehabilitation and 134 new construction. The new construction obligation was reduced to 54 as the result of a vacant land adjustment during the first round. The governing body petitioned the Council on Affordable Housing (COAH) on July 7, 1997 and published on July 12, 1997. No objections were received by COAH.

**II BACKGROUND**

On April 29, 1988 the Superior Court transferred the matter regarding New Providence Borough to COAH. As a result of the court transfer, mediation ensued and ended with nine sites zoned for affordable housing. The borough entered into developer agreements with owners of five of the nine sites.

New Providence Borough received its first substantive certification on September 18, 1989 to address a need of 318 units, 22 rehabilitation and 296 new construction. Due to insufficient vacant land, the borough first received an adjustment that reduced its new construction obligation to 65. Subsequently, Nip Hill, L.P., and Tuck, L.P., owners of a site included in the borough's plan, filed a motion to reduce the density on their site. The site is located in two municipalities, New Providence Borough and Berkeley Heights Township. The owner requested the lower density in New Providence to be consistent with the density permitted in Berkeley Heights. On July 1, 1992, COAH reduced the new construction obligation/realistic development potential (RDP) to 54 units.

### III INVENTORY ANALYSIS

#### A. Housing Stock

According to the 1990 census, there were 4,325 total housing units in New Providence Borough. The median value of owner-occupied housing in 1990 was \$246,100.

#### B. Demographic Characteristics

According to the 1990 census, the borough had a population of 11,439. In 1990 there were 4,225 households with an average household size of 2.68 persons. The median income was \$62,420.

In reviewing New Providence Borough's housing element, sufficient information was submitted regarding housing stock, demographic characteristics, employment characteristics and population trends.

### IV REDUCTION(S)/CREDIT(S)

New Providence Borough received a vacant land adjustment for its first round substantive certification that reduced its RDP to 54. Pursuant to N.J.A.C. 5:93-4.2(f), the borough requested that COAH continue the vacant land adjustment for its 1987-1999 cumulative obligation. A municipality that received a vacant land adjustment in the first round is presumed to have addressed its RDP provided the municipality continues to implement the terms of its previous substantive certification.

In accordance with N.J.A.C. 5:93-3.5(a), municipalities may receive credit for the rehabilitation of substandard low and moderate income units completed subsequent to April 1, 1990. The township is seeking 14 credits for rehabilitation activity. However, after a review of the submitted documentation, only nine are eligible to receive COAH credit. The ineligible units did not meet the \$8,000 minimum average threshold for hard costs.

The borough is seeking credit for two alternative living facilities containing eight bedrooms. Our House, Inc., owns and administers a four-bedroom facility located at 32 Pine Way. The home opened in July 12, 1982. The second home also has four bedrooms and is owned and administered by Community Action for Independent Living located at 1141 Springfield Avenue. The home opened

on March 5, 1990 and the borough is eligible to receive four rental bonus credits. Both facilities are licensed as group homes and funded by the Division of Developmental Disabilities of the New Jersey Department of Human Services. All residents are low income and placed by the Division of Developmental Disabilities. The homes meet COAH guidelines.

The borough is seeking credit for 22 units for a development at 101 Academy Street that was not included in its originally certified housing element and fair share plan. On June 26, 1995 the New Jersey Housing Mortgage and Finance Agency (HMFA) approved an application for federal low income tax credits. The 22-unit senior citizen complex was completed in 1996. However, pursuant to N.J.A.C. 5:93-5-13(a) and (b), only 16 units are eligible for credit towards addressing the 1987-1999 cumulative housing obligation. The extra units may address unmet need.

In addition, the borough is seeking credit for 25 constructed units at three inclusionary sites. The first site is a rental development called Villages at New Providence on Spring Street and Floral Avenue, identified as block 340, lot 7 on the tax maps. There are 10 affordable rental units constructed and occupied. The borough is eligible for 10 rental bonus credits.

The second site is a rental development called Southgate at Murray Hill on Southgate Road, identified as block 341, lot 2. There are two affordable rental units constructed and occupied.

The third site is a for-sale development called Murray Hill Farms on Timothy Field Road, identified as block 376, lot 1. There are 13 affordable for-sale units.

In summary, the borough is eligible to receive credit for 72 units: 49 for new construction, 14 rental bonus credits and nine for rehabilitation. All necessary documentation has been filed with COAH.

	Requested Credits and Reductions	
C r e d i t s	group home (Our House Inc.)	4
	group home (Community Action for Independent Living)	4
	Villages at New Providence (rentals)	10
	New Providence Senior Housing (rentals)	16
	Southgate at Murray Hills (rentals)	2
	Murray Hill Farms (for-sale)	13
	Rental Bonus Credits	14
	Rehabilitation Credits	9
	<b>Total</b>	<b>72</b>

#### V. NUMBER

Based on the information submitted for credits and pursuant to N.J.A.C. 5:93-4.2(f), vacant land adjustment, the borough's 1987-1999 cumulative obligation is zero.

#### VI. UNMET NEED

Pursuant to N.J.A.C. 5:93-4.1(b), a municipality receiving a vacant land adjustment is expected to capture opportunities for affordable housing beyond the calculated RDP. COAH may require that the municipality utilize a combination of overlay zoning, an accessory apartment program or development fee ordinance to address its obligation beyond the RDP.

To capture opportunities of affordable housing beyond the calculated RDP, New Providence Borough proposes the continuation of zoning on six sites. The land area within the borough is located in Planning Area 1.

Pursuant to N.J.A.C. 5:93-5.6, New Providence Borough has submitted a description of the sites and surrounding land uses; a description of environmental constraints including the appropriate wetland and flood plain maps; and information regarding the location, size and capacity of sewer lines and facilities within the service area.

Summary of Undeveloped Previously Certified Sites				
Block/lot	Total Acreage	Density	Total Units	Number of Low/Moderate Income Units
234/15,17,19,20 and 27 <i>JAN</i>	2.14	10	22	4
121/26 and 27 <i>Pelham</i>	3.06	10	30	6
192/27 <i>Overline</i>	1.02	10	10	2
103/24 <i>Springman</i>	2.5	14	35	7
310/1 and 2 <i>Yonkers</i>	2.5	10	25	5
311/1,2 and 3 <i>Yonkers</i>	2.5	10	25	5
			<b>TOTAL</b>	<b>29</b>

In addition, the borough proposes to continue its rehabilitation program. The borough also participates in the Multi-Jurisdictional Housing Rehabilitation Program of Union County which is administered by Planners Diversified.

#### **VII. AGE-RESTRICTED UNITS**

As per N.J.A.C. 5:93-5.13(a) and (b), a municipality may address 25 percent of its RDP, plus rehabilitation component, minus credits pursuant to N.J.A.C. 5:93-3.4 less age-restricted units from its first round certification with age-restricted units. Based on this calculation  $[(.25 \times (54+17-9))]$ , the borough is eligible to receive credit for 16 age-restricted units.

#### **VIII. RENTAL COMPONENT**

As per N.J.A.C. 5:93-5.14(a), every municipality has a rental obligation of 25 percent of its RDP. Based on this calculation  $[(.25 \times 54)]$ , New Providence Borough has a rental obligation of 14 units which has been addressed with a group home on Springfield Avenue and the Villages at New Providence.

#### **IX. CONTROLS ON AFFORDABILITY**

The borough established a housing committee to administer its housing program. The



administrative plan outlines the method of qualifying applicants, establishing waiting lists, matching applicants to units and processing for sale and rental units.

**X. AFFIRMATIVE MARKETING**

The borough must revise its fair share ordinance to reflect that resales and rentals/re-rentals will be marketed to the new COAH housing region consisting of Essex, Morris, Union and Warren counties. The revised ordinance must be adopted within 45 days after receiving substantive certification.

**XI. AFFORDABLE HOUSING ORDINANCE**

The borough incorporated provisions addressing the requirements outlined in N.J.A.C. 5:93-9 for affordable housing programs in the plan. The provisions must be adopted within 45 days of receiving substantive certification.

**XII. RECOMMENDATION**

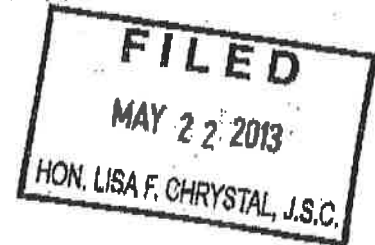
With its vacant land adjustment and credits, New Providence Borough has a second round obligation of zero. In addition, New Providence will address its unmet need obligation through zoning. COAH staff recommends that COAH grant New Providence Borough substantive certification. New Providence Borough must adopt all implementing ordinances within 45 days of receiving substantive certification.

# EXHIBIT D



SUPERIOR COURT OF NEW JERSEY  
UNION COUNTY - LAW DIVISION  
DOCKET NOS. UNN-L-003759-08

Civil Action



**FINAL JUDGMENT OF COMPLIANCE**

CRANFORD DEVELOPMENT ASSOCIATES, LLC, a limited liability company organized under the laws of the State of New Jersey, SAMUEL HEKEMIAN, PETER HEKEMIAN, JEFFREY HEKEMIAN, and ANN KRIKORIAN as trustee for RICHARD HEKEMIAN and MARK HEKEMIAN, Plaintiffs,

vs.

TOWNSHIP OF CRANFORD, MAYOR AND COUNCIL OF THE TOWNSHIP OF CRANFORD and the PLANNING BOARD OF THE TOWNSHIP OF CRANFORD, Defendants.

This matter having come before the Court on the 22nd day of April 2013, in presence of Stephen Eisdorfer, Esq., counsel for Plaintiffs Cranford Development Associates LLC et al ("CDA"), Carl Rizzo, Esq. counsel for Plaintiff Lehigh Acquisition Corp. ("Lehigh"), Peter Wolfson, Esq., counsel for WP Cranford LLC, Philip Morin, Esq., counsel for Defendants Township of Cranford et al ("Defendants"), and Laura Smith-Denker, Esq., counsel for Objector Fair Share Housing Center, Inc. on the joint motion of CDA and the Defendants for entry of a Final Judgment of Compliance; and

The Court having determined that adequate notice of the hearing and the opportunity to submit written objections was given by publication and by mail

to entities and organizations in the Essex, Morris, Union, and Sussex housing region representing the interests of low and moderate income households; and

The Court having determined the claims by Lehigh Acquisition Corp. for a site specific builders remedy on the its property at 555 South Avenue in Cranford Township, formerly consolidated with the present action, were resolved by negotiated settlement approved by the Court by order entered on January 28, 2011, and that those claims were severed from the present action by Order entered on March 22, 2013; and

The Court having decided certain issues by orders granting partial summary judgment entered on March 20, 2009, and June 23, 2011; and

The Court having determined for reasons set forth in its oral opinion of July 29, 2011, to grant a site-specific builder's remedy to plaintiffs Cranford Development Associates et al on specified terms and to award other relief and having entered an order granting a site specific builder's remedy to plaintiffs on December 9, 2011; and

The Court having set conditions for the entry of a final judgment of compliance in its order of December 9, 2011; and

The Court having denied Defendants' motions for reconsideration of its Order of December 9, 2011, by oral opinion dated January 26, 2012; and for disqualification of the special master and new trial by order entered on December 17, 2012; and

The Court having previously ordered that Lehigh must appear at the hearing on April 22, 2013, and that it would be bound by the terms of any

judgment of compliance in this matter, even though its claims have been severed; and

The Court having reviewed the Housing Element and Fair Share Plan with supporting appendices adopted by the Planning Board of the Township of Cranford and approved the Township Committee of the Township of Cranford, dated April 3, 2013, and the Final Report submitted by Special Master Elizabeth McKenzie dated March 29, 2013; and

The Court having considered written objections submitted by John Hrebin, Elizabeth A. Sweeney, Kevin Campbell, Maria Anderson, Rita LaBrutto, Mark Smith, and the Fair Share Housing Center, Inc.; the oral testimony of Objectors Elizabeth A. Sweeney, Kevin Campbell, Maria Anderson, and Rita LaBrutto, and the arguments of counsel for Objector Fair Share Housing Center, Inc.; and

The Court having considered the oral comments of the Special Master McKenzie, the written responses of the various parties to the objections, and the arguments of the counsel; and

It further appearing to the Court that, for the reasons set forth in its oral opinion of April 22, 2013, a final judgment of compliance should be entered in favor of defendants,

It is on this \_\_\_\_ day of \_\_\_\_, 2013, hereby ORDERED and ADJUDGED as follows:

1. The Court DECLARES that Cranford Township's fair share housing obligation, which is its fair share of the unmet need for safe, decent housing

affordable to low and moderate income households for the Essex-Morris-Sussex-Union Housing Region, is comprised of an indigenous need of 55 units, and a prior round (i.e., pre-1999) need of 138 units, plus that portion of the third round (post-1999) need that can be satisfied on the available vacant developable land and imminently redevelopable land within the municipality (the so-called realistic development potential) of 5 units.

2. The Court DECLARES that the Housing Element and Fair Share Plan dated April 3, 2013, creates sufficient realistic opportunities for the provision of safe, decent housing affordable to low and moderate income households to satisfy Cranford Township's fair share housing obligation quantified in paragraph 1.

3. The Court DECLARES that, in addition to the housing obligation quantified in paragraph 1, Cranford Township may have an additional unmet third round housing obligation that has not yet been quantified. The Court further DECLARES that the Housing Element and Fair Share Plan dated April 3, 2013, creates realistic opportunities for the provision of safe, decent housing affordable to low and moderate income households that satisfies a portion of such additional obligation, if any.

4. The Court ORDERS Defendants to take the steps necessary to effectuate the Housing Element and Fair Share Plan set forth at pages 23 to 26 of the Final Report of the Special Master, which are attached as Exhibit A, and incorporated herein by reference. Except as otherwise specified in the Final Report of the Special Master, all actions required of the defendants, or any of

them, shall be taken within 45 days after the entry of this Judgment of Compliance.

- a) In implementation of its Housing Element and Fair Share Plan, Defendant Township of Cranford may elect to establish a locally administered and controlled Affordable Housing Trust Fund. If it is required to enter into an escrow agreement with the Council on Affordable Housing (COAH), it is ORDERED that, under any circumstances, the funds in the Affordable Housing Trust Fund shall be spent in Cranford for the benefit of its housing programs and shall not be available for appropriation by the State of New Jersey for any other purpose.
- b) Cranford Township may elect to reallocate credit for certain of the low and moderate income housing units provided for by its Housing Element and Fair Share Plan between its Prior Round and Third Round housing obligations: credit for 2 units in the Lehigh Acquisition project allocated in the Housing Element and Fair Share Plan to satisfaction of the Third Round housing obligation may be reallocated to satisfaction of the Second Round housing obligation; credit for 2 units in the CDA project allocated to the Second Round obligation may be reallocated to satisfaction of the Third Round housing obligation. This reallocation of credits shall not have any effect upon the site-specific builder's remedy granted to CDA.


- c) No later than 90 days after the entry of this Judgment of Compliance and every 90 days thereafter, the Special Master shall submit a report in writing to the Court and the parties as to the extent to which Defendants have taken the steps necessary to effectuate the Housing Element and Fair Share Plan set forth at pages 23 to 26 of the Final Report of the Special Master. She shall continue to submit such periodic reports until Defendants have taken all the steps necessary to effectuate the Housing Element and Fair Share Plan set forth at pages 23 to 26 of the Final Report of the Special Master.
  - d) If Defendants fail to take the steps necessary to effectuate the Housing Element and Fair Share Plan set forth at pages 23 to 26 of the Final Report of the Special Master, any interested party may, upon written notice to all the parties to this litigation, apply to the Court for further relief or, alternatively, the Court may upon notice to all the parties, entertain such an application sua sponte.
5. The Court ORDERS Lehigh and CDA, and their successors and assigns, to take the steps required of them at pages 23 to 26 of the Final Report of the Special Master to facilitate construction of the low and moderate income housing units in their projects.
6. Except insofar they are expressly modified or vacated by this order, all prior orders entered by the Court in this matter shall remain in force.

7. Elizabeth McKenzie shall continue to serve as Special Master until further order of the Court. She shall consult with the parties as required to facilitate the implementation of this order.
8. The reasonable fees and expenses of the Special Master shall continue to be solely the responsibility of the defendants and shall be paid on timely basis.
9. The Court ORDERS that, upon the entry of this Judgment, the Township of Cranford is entitled to a period of repose from further exclusionary zoning litigation, in accordance with the terms set forth in *Southern Burlington County NAACP v. Mt. Laurel Township*, 92 N.J. 158 (1983). The period during which defendants are deemed to be in compliance with their obligations under the New Jersey Constitution and the Fair Housing Act of 1985 and entitled to repose from further exclusionary zoning litigation shall both continue until December 31, 2018, subject to their continuing compliance with all the terms of this Final Judgment of Compliance.
10. When Cranford Township's Third Round (post-1999) fair share housing obligation is formally quantified by the COAH or a lawfully designated successor entity, Defendants shall amend Cranford Township's Housing Element and Fair Share Plan to address any unmet need resulting from the assignment of a Third Round housing obligation in excess of the five unit realistic development potential (RDP) provided for in its Housing Element and Fair Share Plan. No later than one calendar year after the COAH or a lawfully designated successor entity has taken formal action quantifying Cranford Township's Third Round (post-1999) fair share housing obligation, Defendants

shall apply to the COAH (or its successor entity) or the Court, as may be authorized by law, for approval of such amended Housing Element and Fair Share Plan and shall diligently prosecute that application.

11. The Court retains jurisdiction of this matter for the limited purpose of enforcing this Final Judgment of Compliance and other orders entered in this matter.

12. Except as otherwise provided by the orders of this Court, each party shall bear its own costs and expenses. In accordance with the Court's order of June 23, 2011, CDA is not entitled to award of attorney fees or litigation expenses.



Hon. Lisa F. Chrystal, JSC



## EXHIBIT A

ELIZABETH C. MCKENZIE, P.P., P.A.  
COMMUNITY PLANNING AND DEVELOPMENT  
9 MAIN STREET  
FLEMINGTON, NEW JERSEY 08822  
TELEPHONE (908) 782-5564  
TELEFAX (908) 782-4056  
ecmcke@embarqmail.com

### REPORT OF THE SPECIAL MASTER FINAL COMPLIANCE REPORT

in

Lehigh Acquisition Corp. v. Township of Cranford, et al., Docket No.:  
UNN-L-0140-08, and Cranford Development Associates, LLC, et al. v.  
Township of Cranford, et al., Docket No.: UNN-L-3759-08

Township of Cranford, Union County, New Jersey

Submitted to  
The Honorable Lisa Chrystal, JSC

March 29, 2013

my recommendation that the Township be entitled to Repose as to both its prior round and third round fair share obligations through December 31, 2018.

1. All inclusionary developments in the Compliance Plan will have to be appropriately deed restricted and administered by the Township's Administrative Agent to ensure that they comply with UHAC Rules regarding administration, affirmative marketing and affordability controls and all other requirements of N.J.A.C. 5:97-6.4, pertaining to inclusionary developments. As well, the CDA development will have to comply with all provisions of the December 9, 2011, Order Granting Relief in Exclusionary Zoning Litigation and all conditions of site plan approval, and the Lehigh development will have to comply with all provisions of the January 28, 2011, Consent Judgment for Builder's Remedy, all conditions of the amended Redevelopment Plan for that site and all conditions of site plan approval.
2. The Township shall adopt its new Affordable Housing Ordinance within 45 days of the entry of a Final Judgment of Compliance and Repose.
3. The Township shall adopt its Affirmative Marketing Plan Resolution within 45 days of the entry of a Final Judgment of Compliance and Repose.
4. The Township shall perfect and adopt its draft Development Fee Ordinance within 45 days of the entry of a Final Judgment of Compliance and Repose. Should the Township elect the option of establishing an Affordable Housing Trust Fund, it shall enter into a three-way escrow agreement with COAH and the Bank. The Development Fee Ordinance (and the executed escrow agreement) shall be forwarded to COAH within seven (7) days of the adoption of the Development Fee Ordinance and/or the establishment of the Trust Fund, whichever occurs later, and no fees shall be collected until COAH has approved these documents.

5. The proposed Spending Plan shall be corrected and adopted by Resolution of the governing body within 45 days of the entry of a Final Judgment of Compliance and Repose. Similarly, the Township shall adopt the proposed Resolution of Intent to Fund any Shortfall in the moneys available for its affordable housing (rehabilitation) program, also within 45 days of the entry of a Final Judgment of Compliance and Repose. Approval of these documents by the Court is for the purpose of directing Cranford to submit them to COAH for review and approval, as COAH has exclusive authority to review and approve Spending Plans for the disposition of funds from an Affordable Housing Trust Fund. Submission of these documents to COAH shall occur simultaneously with the submission of the adopted Development Fee Ordinance and executed escrow agreement addressed in condition 4, herein.

6. The Ordinance to create the position of Municipal Housing Liaison and the Resolution appointing someone to fill the position of Municipal Housing Liaison, as well as the execution of a contract with a duly qualified Administrative Agent shall all occur within 45 days of the entry of a Final Judgment of Compliance and Repose. The costs of the Administrative Agent shall be paid by the owners of inclusionary developments or affordable units for all services rendered in connection with their particular developments or units.

7. The Township shall retain the services of a Rehabilitation Administrator and adopt a customized rehabilitation manual before the end of 2013 and shall continuously fulfill the funding commitments reflected in the approved Spending Plan and the Resolution of Intent to Fund any Shortfall. Additionally, Cranford shall regularly advertise the availability of its housing rehabilitation program. As a minimum, fliers advertising the availability of the program shall be included with the annual municipal tax bills. Nothing herein shall prevent the Township from entering into a shared

services agreement for the administration of the rehabilitation program, as long as the program complies fully with COAH's Rules.

8. Cranford shall have an adjusted third round fair share obligation (RDP) of five (5) units. In addition, Cranford shall be required to return to the Court or to COAH (or COAH's successor agency) within a year of the issuance of third round fair share numbers and present its proposals for addressing any Unmet Need obligation it may have based on the third round obligation assigned to it. The plan to address the Unmet Need, once the third round obligation has been quantified, may be reviewed and approved as an amendment or supplement to the Court-approved Housing Element and Fair Share Plan on which the Township's Final Judgment of Compliance and Repose is based.

9. In order for the remaining three units (not used to satisfy the prior round obligation) in the Riverfront Redevelopers, LLC, project to qualify for crediting against the third round RDP, the filed deed restriction shall reflect the following bedroom mix for all 19 affordable units: a maximum of three (3) one-bedroom units, a minimum of four (4) three-bedroom units and twelve (12) two-bedroom units. This will require two of the two-bedroom market units to be redesignated as affordable units and two of the one-bedroom affordable units to be redesignated as market units.

10. In order to claim credit for the affordable unit in the Needlepoint Homes development against the third round RDP, the Township must ensure that when the affordable unit is vacated by its current (non-qualified) occupant, it will be affirmatively marketed (for a period of 120 days), will be rented only to a qualified low income household at an affordable rent, and will be deed restricted as a low income unit for a period of at least 30 years from the time the unit is leased to a qualified low income household.

11. If the Township is able to obtain all of the necessary documentation for the two Community Access Unlimited special needs homes, it should be able to apply any credits available for these facilities against any portion of the third round obligation.

12. Within 60 days of the entry of the Final Judgment of Compliance and Repose, the Township shall provide COAH with copies of all materials and records of the Court proceedings needed for COAH to undertake annual monitoring of the implementation of the Housing Element and Fair Share Plan.

# EXHIBIT E

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adelvecchio@beattielaw.com

Attorneys for Defendant-Intervenor  
800 Sylvan Avenue, LLC

IN THE MATTER OF THE APPLICATION  
OF THE BOROUGH OF ENGLEWOOD  
CLIFFS, a Municipal Corporation of the State  
of New Jersey

SUPERIOR COURT OF NEW JERSEY  
BERGEN COUNTY - LAW DIVISION

Mt. Laurel  
CIVIL ACTION

DOCKET NO. BER-L-6119-15

**REPLY CERTIFICATION OF ART  
BERNARD, PP, IN SUPPORT OF  
MOTION TO INTERVENE AND IN  
OPPOSITION TO CROSS-MOTION TO  
EXTEND IMMUNITY**

I, Art Bernard, of full age, hereby certify as follows:

1. I am a professional planner licensed by the State of New Jersey and the Managing Member of Art Bernard and Associates, L.L.C., a professional planning firm with offices at 77

## ***Art Bernard and Associates, L.L.C.***

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Housing and Land Use Planning

### **ART BERNARD, P.P CURRICULUM VITAE**

#### **EDUCATION**

Master of City and Regional Planning, Rutgers University, 1974  
BA, History, Lafayette College, 1971

#### **LICENSES AND AFFILIATIONS**

New Jersey Professional Planners License #02507  
American Planning Association  
New Jersey Federation of Planning Officials  
New Jersey Builder's Association Land Use Committee  
New Jersey State Planning Commission Housing Advisory Committee  
Highlands Technical Advisory Committee

#### **PROFESSIONAL EXPERIENCE**

##### **Private Consultant**

**1994 to present**

Managing Member of Art Bernard and Associates, L.L.C. Provide consulting services related to general land use and affordable housing. Activities include preparation of municipal plans, development ordinances and development reviews. Represent developers before municipal boards and in litigation. Specialize in representing municipalities and developers in exclusionary zoning matters before the Superior Court and the Council on Affordable Housing. Serve the Superior Court as Special Master.

##### **New Jersey Council on Affordable Housing (COAH) Executive Director**

**1993 to 1994**

Developed recommendations to the Governor and Legislature. Negotiated contracts for consulting services as necessary for the proper operation of the Council. Represented the Council before relevant interest groups, governmental bodies and the general public. Acted as a hearing officer in accordance with the provisions of the Fair Housing Act and the rules established by the Council

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77 North Union Street, Lambertville, New Jersey 08530 Phone (609) 397-8070 Fax (609) 397-8084  
E-mail: yukygolfer@aol.com



# EXHIBIT F

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION - CIVIL PART  
CAMDEN COUNTY  
DOCKET NO. L-04889-01  
A.D. NO. \_\_\_\_\_

FAIR SHARE HOUSING CENTER, INC.,	)	
	)	
Plaintiff,	)	
	)	TRANSCRIPT OF
v.	)	HEARING
	)	
TOWNSHIP OF CHERRY HILL,	)	
	)	
Defendant,	)	

Place: Camden County Hall of Justice  
101 S. Fifth St.  
Camden, NJ 08103-4001

Date: January 16, 2004

BEFORE:

HONORABLE M. ALLAN VOGELSON, J.S.C.

TRANSCRIPT ORDERED BY:

RONALD C. MORGAN, ESQ. (Parker McCay & Criscuolo,  
P.A.)

APPEARANCES:

KEVIN WALSH, ESQ., (Fair Share Housing Center)  
PETER O'CONNOR, ESQ., (Fair Share Housing Center)  
Attorneys for the Plaintiffs

ALLEN ZELLER, ESQ., (Zeller & Bryant, L.L.P.)  
Attorney for the Defendant

RONALD C. MORGAN, ESQ., (Parker McCay & Criscuolo,  
P.A.)  
Attorney for Turnberry Cherry Hill, L.L.C.

PHILIP CATON, Special Master

Transcriber Susan Johnson-Switzer  
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I N D E XPage

Hearing

3

## Hearing

3

(Tape begins)

THE COURT: All right. Counsel, you may be seated.

All right. From my right and your left, may I have appearances, please?

MR. BURNAN: Terence Burnan, (phonetic) Your Honor.

MR. WALSH: Kevin Walsh, Your Honor. Fair Share Housing Center, for the Plaintiffs.

MR. O'CONNOR: Peter O'Connor for the Plaintiffs.

MR. ZELLER: Allen Zeller of Zeller and Bryant representing the Township of Cherry Hill, Cherry Hill Township Planning Board and Cherry Hill Township Zoning Board of Adjustment.

MR. MORGAN: Good afternoon, Your Honor. Ronald Morgan representing the Intervener, Turnberry Cherry Hill, L.L.C.

MR. CATON: Your Honor, Philip Caton, Special Master.

MR. WALSH: Your Honor, just to clarify, Terry's an attorney who's been admitted but not -- who's passed the Bar but not just yet been admitted so --

THE COURT: You may have a lot of fun ahead

## Hearing

4

1 of you, Mr. Burnan.

2 (Laughter in the courtroom)

3 THE COURT: All right. Gentleman, I'm  
4 cautiously optimistic that your efforts of the last  
5 several weeks have resulted in a settlement with  
6 respect to the Garden State Park Development. I have  
7 in front of me a five-page document that now have --  
8 having grown to six pages, that contains the provisions  
9 of that agreement and I asked Mr. Caton when he called  
10 me with reference to continuing the motions and told me  
11 that you were progressing well in terms of your  
12 settlement efforts that I wanted something in writing  
13 which, of course, I have now and I wanted you here so  
14 that we could ask questions and give answers because  
15 quite candidly, as a famous philosopher once said, it  
16 ain't over til it's over and I want this over.

17 So that's what we're here about and I will  
18 tell you at the conclusion of our -- our  
19 representations and statements on the record. I'm  
20 going to ask each of you with respect to the Plaintiff,  
21 Mr. O'Connor, Mr. Zeller on behalf of the Township and  
22 its Boards and Mr. Morgan several questions. I'll be  
23 just like a Pro Se settlement on the record. Do you  
24 agree with the terms as they have been stated? Have  
25 you discussed the matter with your clients? Have they

## Hearing

5

1 authorized you to reach that accord? And depending, of  
2 course, upon your answer, when we leave here today  
3 there will be no open issues, save those that I'm  
4 advised there's one in particular where there has to be  
5 some details worked out. But we're done, hopefully.  
6 And nobody's going to have any second thoughts and if  
7 they do, as they say in Blackstone, too bad. We're  
8 done.

9 So I want that clear before we proceed.

10 Who's going to -- and I -- I want to go  
11 through each of the pages. There have been a number of  
12 handwritten additions. I want those read.

13 Mr. Caton, it appears that the document is  
14 your design and I'm -- I feel certain that your  
15 comments are -- are reflected or the agreements are  
16 reflected in your handwriting so may I impose upon you  
17 to do it?

18 MR. CATON: I'd be happy to, Your Honor.  
19 Would you like me to do it from here?

20 THE COURT: Ah --

21 THE CLERK: Um, no.

22 THE COURT: We need you at a microphone or  
23 you can come here. Make your self comfortable.

24 Mr. Morgan?

25 MR. MORGAN: Yes, Your Honor. I -- I think

## Hearing

6

1 it's our intention that if you -- Your Honor probably  
2 is aware of aspects of an affordable housing case have  
3 to be settled at -- after a --

4 THE COURT: Yes.

5 MR. MORGAN: -- Fairness Hearing is --

6 THE COURT: I have to make --

7 MR. MORGAN: -- conducted --

8 THE COURT: -- an initial finding and then  
9 there's a Fairness Hearing.

10 MR. MORGAN: Right. And the typical way  
11 they're handled is a 30-day publication posting and  
12 mailing requirement for the notice of the hearing  
13 itself. I, in fact, have a Notice of Hearing that --  
14 which I'd like Your Honor to take a look at.

15 THE COURT: Have you circulated it to  
16 Counsel?

17 MR. MORGAN: Yes.

18 THE COURT: All right.

19 MR. MORGAN: At the conclusion of these  
20 proceedings but I think the intention of the parties is  
21 that I will order the transcript of this afternoon's  
22 proceedings such that the terms of the settlement can  
23 be placed on file with the Court and the Municipal  
24 Clerk of Cherry Hill Township, available for public  
25 inspection so with that in mind, what I would request

## Hearing

7

1 is that Mr. Caton actually read his -- the terms of the  
2 settlement --

3 THE COURT: That's precisely what I have --

4 MR. MORGAN: Thank you, Your Honor.

5 THE COURT: -- requested.

6 MR. MORGAN: Thank you.

7 THE COURT: All right.

8 Anyone else before we begin?

9 Mr. Caton?

10 MR. CATON: Your Honor, do you want me to  
11 read the -- the entire document or just the hand --

12 THE COURT: I want you to read --

13 MR. CATON: -- written --

14 THE COURT: -- the entire document and its  
15 text and any of the handwritten notations that are  
16 there. I don't -- I want the record to be as inclusive  
17 as it can be so that there's no misunderstanding or --  
18 I'll stop with that.

19 Let's begin, Roman Numeral I.

20 MR. CATON: Roman Numeral I. "The total  
21 number of housing units to be permitted at the Garden  
22 State Park (GSP) will remain at 1,659 units as set  
23 forth in Judge Davis' June 17, 203 Order. Of this  
24 total, 975 units will be nonage-restricted whereas 684  
25 units will be age-restricted."



## Hearing

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1 Roman Numeral II. "The affordable housing  
2 obligation of the GSP remains at 285 units and Cherry  
3 Hill Township shall receive a minimum of 285 credits  
4 from its development; however, the satisfaction of that  
5 obligation will be changed to the following:"

6 Paragraph A. "214 affordable units will be  
7 constructed on site, generally in the locations  
8 depicted in the Housing Dispersal Plan dated December  
9 1, 2003 except for a reduction from 76 to 5 in the  
10 affordable units to be constructed over first floor  
11 commercial space in Buildings 'D' and 'G' in the Town  
12 Center. The total number of housing units located over  
13 commercial space in the Town Center will be reduced  
14 from 76 to 35 units, of which 5 units (15%) will be  
15 affordable units and 30 units (85%) will be market  
16 rate."

17 Paragraph 1. "Turnberry or its designees or  
18 assignees shall be permitted to alter the locations of  
19 the affordable housing units in the 'interior portion'  
20 of the GSP from that depicted on the December 1, 2003  
21 'Revised Affordable Housing Dispersal Plan' subject to:  
22 (a) approval of the Cherry Hill Planning Board to the  
23 extent such approval is required by the Cherry Hill  
24 Township Zoning Ordinance and the Municipal Land Use  
25 Law; (b) the condition that no more than 20% of the

## Hearing

9

1 housing units in any building shall be affordable  
2 except for the building designated as 'C1' which will  
3 be comprised of 76 100% affordable age-restricted  
4 units.

5 "2. All affordable housing units at GSP  
6 shall conform to COAH's current rules regarding  
7 ~~affordability and bedroom distribution~~ except for the  
8 76 affordable age-restricted units as described more  
9 fully below. Furthermore, the affordable units shall  
10 have unrestricted access to the common open space and  
11 to the clubhouses in the respective developments in  
12 accordance with applicable rules and regulations."

13 Number 3. "Turnberry and Plaintiffs or their  
14 designees shall enter into a joint venture agreement to  
15 build and manage the 76 affordable age-restricted units  
16 in the interior portion of the site. This joint  
17 venture arrangement shall be separate and apart from  
18 this Agreement with the exception that the Township of  
19 Cherry Hill shall have a voting representative on the  
20 Board of Trustees of the nonprofit housing sponsor  
21 which operates the senior housing complex. The  
22 existence of the joint vent -- of the joint venture in  
23 no way diminishes Turnberry's financial obligation to  
24 produce 76 affordable, age-restricted rental units in  
25 accordance with COAH rules in conjunction with market

## Hearing

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1 rate housing at the GSP. Plaintiffs and Turnberry, or  
 2 their designees, agree to prepare the joint venture  
 3 agreement within three weeks and agree to submit any  
 4 disagreements to the Special Master for conclusive  
 5 determination."

6 Paragraph B. "40 units related to the  
 7 contribution by Turnberry of \$1,000,000 [40 x  
 8 \$25,000/unit = \$1,000,000] to the Township's Affordable  
 9 Housing Trust Fund. These funds shall be utilized by  
 10 the Township to create affordable housing opportunities  
 11 within Cherry Hill through a 'write-down, buy-down'  
 12 program. The parties acknowledge that the average cost  
 13 of the 'write-down, buy-down' program may exceed a  
 14 \$25,000 per unit" -- should read, "may exceed \$25,000  
 15 per unit; however, the Township commits to provide no  
 16 fewer than 25 affordable units through the use of these  
 17 funds. The COAH rules cap for the number of 'write-  
 18 down, buy-down' units which may be incorporated in a  
 19 second cycle Fair Share Plan are specifically waived to  
 20 accommodate these units. In addition, the parties  
 21 agree that they will not object to the Township's  
 22 inclusion of an additional 10 'write-down, buy-down'  
 23 units in the Township's second cycle Fair Share Plan.  
 24 However, FSHC reserves the right to object to a 'write-  
 25 down, buy-down' program larger than 50 units (40 units

## Hearing

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1 + 10 units = 50 units) should a program at that scale  
 2 be included in the Township's second cycle Fair Share  
 3 Plan. Cherry Hill reserves the right to request a  
 4 waiver in excess of the 50 unit limitation."

5 Paragraph C. "31 credits related to the  
 6 contribution by Turnberry of \$775,000 [31 x  
 7 \$25,000/unit = \$775,000] paid to the Township's  
 8 Affordable Housing Trust Fund. These funds shall be  
 9 made available within 10 days of a request by the joint  
 10 venture of Turnberry/FSHC to reduce rents in the 76  
 11 units, age-restricted affordable housing development to  
 12 be built in the interior portion of the parcel to  
 13 levels below that required by COAH's rules. The  
 14 payment of those funds -- the payment of these funds is  
 15 exempt from COAH Trust Fund rules."

16 Paragraph 1. "In recognition of the \$775,000  
 17 development fee to be contributed by Turnberry in lieu  
 18 of on-site construction the parties agree that the  
 19 Township shall receive 31 rental bonus credits for 31  
 20 of the 85 affordable family rental units to be provided  
 21 on-site by Turnberry. The Township reserves the right  
 22 to apply for additional rental bonus credits which are  
 23 attributable to the remaining affordable rental housing  
 24 and/or senior housing on the GSP site and FSHC reserves  
 25 the right to contest any such application."



## Hearing

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Paragraph D. "Phase IB shall include a total of 29 affordable units and no fewer than one nor more than two affordable units in each 23 or 26-unit building. This phasing is consistent with the intent of COAH's second cycle phasing rules. The interior portion of the GSP project will conform to COAH's phasing rules, provided that Turnberry shall receive a credit for one affordable housing unit for every \$25,000 in developer fees deposited in the -- deposited in the Township's Affordable Housing Trust Fund (see paragraph IIF below)."

Paragraph E. "Turnberry shall supply the \$775,000 to the Cherry Hill Affordable Housing Trust Fund when needed pursuant to the joint venture agreement for the joint venture's affordable, age-restricted development and shall supply a satisfactory commitment to provide such funds in conjunction with applications for financial subsidies by the joint venture."

Paragraph F. "Turnberry shall supply the \$1,000,000 to the Cherry Hill Affordable Housing Trust Fund contribution pro-rated across the 866 market-rate housing units planned for the interior portion of the GSP. The \$1,154.73 fee per unit [ $\$1,000,000/866$  units = \$1,154.73] will be paid upon the issuance of a

## Hearing

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certificate of occupancy (or a temporary certificate of occupancy) for each market rate unit."

Paragraph Roman Numeral III. "The Township of Cherry Hill shall pay \$80,000 from the Township's Affordable Housing Trust Fund as a grant towards the professional bills/invoices presented by Fair Share Housing, Inc. for the Short Hills affordable housing project. The \$80,000 shall not pay for taxes on the Short Hills property nor on any other property. The Township's Affordable Housing Trust Fund shall be reimbursed this amount from the development fees the Township collects from M -- MBJ, Inc. or its successors/assigns -- successors/designees on the Route 70 car dealership project. If the MBJ project creates more development fees, then the Township shall pay further bills generated for affordable housing on the Short Hills Project. The Township's payment under this paragraph shall be limited to the amount of housing impact fees it receives from MBJ, but not less than \$80,000."

Roman Numeral IV. "None of the parties to this agreement will challenge any collection or expenditure by the Township of any monies received by the Township for the Township's Affordable Housing Trust Fund prior to January 1, 2004. The Township



## Hearing

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1 commits to seeking prompt payment in full from any  
2 developer who has not paid the appropriate fee in the  
3 past. The Township will prepare an interim Spending  
4 Plan for the first six months of 2004 and will submit  
5 it to the parties for review and to the Court for  
6 approval."

7 Roman Numeral V. "Plaintiff's shall withdraw  
8 its -- their motion and any objections related to  
9 vacate Judge Davis' June 17, 2003 Order with prejudice  
10 and shall not file a future motion to vacate the June  
11 17, 2003 Order with the exception that Fair Share  
12 Housing reserves its right to file a motion disputing  
13 only that portion of the June 17, 2003 Order pertaining  
14 to the payment of the Master's fees as set forth in  
15 Paragraph 11 of the said Order."

16 Roman Numeral VI. "Turnberry agrees to pay  
17 to the Cherry Hill Affordable Housing Trust Fund an  
18 affordable housing developer fee of 1% on development  
19 within Phase 1A (retail). No developer fee will be  
20 charged to development on Phase 1B nor to development  
21 (residential and commercial) within the interior  
22 portion of the parcel. Plaintiffs reserve their right  
23 to argue that the non-residential development (office,  
24 hotel and commercial) between the boulevard and the  
25 rail lines (west of the interior portion) should be

## Hearing

15

1 subject to payment of a developer fee. Turnberry  
2 reserves its right to argue that the hotel, office and  
3 retail development planned for that area should be  
4 exempt from any developer fee for affordable housing."

5 Paragraph Roman Numeral VII. "Plaintiffs  
6 agree to dismiss with prejudice the Township, the  
7 Cherry Hill Planning Board and the Cherry Hill Zoning  
8 Board of Adjustment from Counts One and -- Roman  
9 Numeral I and Roman Numeral II of the litigation  
10 entitled under Docket Number L-4889-01 in consideration  
11 of the Township's participation as reflected in the  
12 terms of this settlement."

13 Roman Numeral VIII. "The settlement resolves  
14 with prejudice the following outstanding motions,  
15 issues and litigation: A. Plaintiff's motion to  
16 vacate Judge Davis' Order of June 17th, 2003; B.  
17 Turnberry's motion for approval of the Affordable  
18 Housing Dispersal Plan for the GSP; C. Any issues  
19 related to Cherry Hill Township's collection and use of  
20 developer fees related to the Affordable Housing Trust  
21 Fund (also known as the Housing Impact Fee) prior to  
22 January 1, 2004; D. The litigation reference in  
23 Paragraph Roman Numeral VII above."

24 Roman Numeral IX. "The terms of this  
25 settlement supercede the terms of the June 17th, 2003

## Hearing

16

1 Order and the December 1, 2003 Revised Affordable  
2 Housing Dispersal Plan to the extent of any  
3 inconsistencies."

4 Roman Numeral X. "The terms of this  
5 settlement shall apply to Turnberry and its successors  
6 and assigns, the Township, the Planning Board of Cherry  
7 Hill and Zoning Board of Adjustment and to Plaintiffs  
8 or their designees."

9 THE COURT: Mr. O'Connor?

10 MR. O'CONNOR: Yes, sir?

11 THE COURT: The document that has just been  
12 read into the record arose as a result of extensive  
13 negotiations between the parties between our last  
14 meeting date and today, is that correct?

15 MR. O'CONNOR: Yes, sir.

16 THE COURT: And have you been a participant  
17 in those proceedings and those negotiations?

18 MR. O'CONNOR: In all of them, yes, sir.

19 THE COURT: You have been here -- excuse me  
20 -- and you have heard the terms read into the record,  
21 is that correct?

22 MR. O'CONNOR: Yes, sir.

23 THE COURT: And do you agree with each and  
24 every one of them?

25 MR. O'CONNOR: Yes. I'd just like to --

## Hearing

17

1 there's a typographical error on Page 4, Paragraph III,  
2 third line where it says, "Fair Share Housing, Inc". I  
3 think that should read, "Plaintiffs or its designees".

4 THE COURT: Township -- Four.

5 MR. O'CONNOR: Ah, the --

6 THE COURT: This is on -- on Page 4?

7 MR. O'CONNOR: Roman Numeral III.

8 THE CLERK: Page 4, Paragraph III.

9 THE COURT: Okay.

10 MR. O'CONNOR: The third line, "presented --  
11 the bills presented by" --

12 THE COURT: Fair Share Housing, Inc. You say  
13 it should read what?

14 MR. O'CONNOR: It -- it has not such an  
15 entity. It should be Plaintiffs or its designee which  
16 is consistent with all the other. I think Mr. Caton  
17 will agree that that was the intent.

18 THE COURT: Mr. Caton, do we agree that  
19 that's what the intent was?

20 MR. CATON: I -- I do, Your Honor.

21 THE COURT: Very well.

22 With that typo correction, once again my  
23 question is, do you agree with each and every one of  
24 the terms that have been set forth and read by Mr.  
25 Caton?

## Hearing

18

1 MR. O'CONNOR: Yes, Your Honor.  
 2 THE COURT: Have you discussed these terms  
 3 with your clients?  
 4 MR. O'CONNOR: Yes, I have.  
 5 THE COURT: And --  
 6 MR. O'CONNOR: In several meetings.  
 7 THE COURT: I'm sorry?  
 8 MR. O'CONNOR: In con -- continuous meetings  
 9 paralleling the negotiations.  
 10 THE COURT: Very well.  
 11 And are you authorized by them to enter into  
 12 this agreement and the terms as you've just responded?  
 13 MR. O'CONNOR: Yes, I am.  
 14 THE COURT: Very well. All right. Thank  
 15 you.  
 16 Mr. Zeller? You're here for the Township and  
 17 Miss Jacobucci indicated that she felt that she'd have  
 18 -- be out of here earlier and there was another  
 19 commitment so she has indicated to the Court that you  
 20 are authorized to speak for her.  
 21 MR. ZELLER: Yes.  
 22 THE COURT: Same questions. These  
 23 negotiations took place between our last meeting and  
 24 today. Have you been a participant in each and every  
 25 one of those negotiations?

## Hearing

19

1 MR. ZELLER: I have, Your Honor.  
 2 THE COURT: And are you in agreement with  
 3 each and every one of the terms as read into the record  
 4 by Mr. Caton?  
 5 MR. ZELLER: Yes.  
 6 THE COURT: Are you authorized by your  
 7 clients, plural, to enter into this agreement and the  
 8 terms as so specified?  
 9 MR. ZELLER: Yes.  
 10 THE COURT: All right.  
 11 MR. ZELLER: Can -- can I just, with Your  
 12 Honor's permission, ask that Your Honor ask one more  
 13 question of the parties that --  
 14 THE COURT: Certainly.  
 15 MR. ZELLER: -- that they understand this to  
 16 be a final order.  
 17 THE COURT: Oh, I haven't forgotten that one  
 18 --  
 19 MR. ZELLER: Okay.  
 20 THE COURT: -- Mr. Zeller.  
 21 MR. ZELLER: All right. Thank you, Judge.  
 22 THE COURT: Mr. Morgan?  
 23 MR. MORGAN: Yes, Your Honor?  
 24 THE COURT: Once again, between our last  
 25 meeting and today there have been extensive

## Hearing

20

1 negotiations and meetings. Have you participated in  
 2 each and every one of those?  
 3 MR. MORGAN: Yes, I have, Your Honor.  
 4 THE COURT: And you've heard Mr. Caton read  
 5 those -- the results of those negotiations into the  
 6 record today?  
 7 MR. MORGAN: That is correct.  
 8 THE COURT: And you in accord and in  
 9 agreement with each and every one of them?  
 10 MR. MORGAN: Yes, I am.  
 11 THE COURT: Have you discussed them as they  
 12 -- as the negotiations continued with your client?  
 13 MR. MORGAN: Yes. And in that regard, I  
 14 would note that Mr. Marino from M & M Partners is one  
 15 of the partners in the Turnberry entity is here as is  
 16 Mr. Dwyer representative from the Turnberry entity.  
 17 THE COURT: All right.  
 18 MR. MORGAN: That have participated in the  
 19 settlement negotiations and are fully aware of them.  
 20 THE COURT: Fine.  
 21 Have they authorized you to enter into the  
 22 settlement as have -- have -- forgive me. I'm a little  
 23 tongue-tied. As has been read into the record?  
 24 MR. MORGAN: Yes.  
 25 THE COURT: All right.

## Hearing

21

1 Mr. Marino and I'm sorry, I didn't get the  
 2 other gentleman's name?  
 3 MR. DWYER: Ah, Robert Dwyer.  
 4 THE COURT: Mr. Dwyer and Mr. Marino, you're  
 5 here. Has Mr. Morgan accurately responded to my  
 6 questions?  
 7 MR. MARINO: Yes, he has, Your Honor.  
 8 THE COURT: Very well.  
 9 MR. DWYER: Yes, sir, Your Honor.  
 10 THE COURT: Thank you, gentlemen.  
 11 All right.  
 12 Now, is it understood and agreed, Counsel,  
 13 that this agreement in its exquisite terms constitutes  
 14 the full agreement of the parties?  
 15 Mr. O'Connor?  
 16 MR. O'CONNOR: Yes, Your Honor, with the one  
 17 caveat of the --  
 18 THE COURT: I'll -- I'll come back to the  
 19 caveats.  
 20 MR. O'CONNOR: Okay.  
 21 THE COURT: Mr. Zeller?  
 22 MR. ZELLER: Yes, Your Honor.  
 23 THE COURT: And Mr. Morgan?  
 24 MR. MORGAN: Yes, Your Honor.  
 25 THE COURT: With the exception of the



## Hearing

22

1 reservations that are set forth in the agreement  
 2 itself, my question to each of you is, are there any  
 3 other outstanding issues, questions, disagreements or  
 4 disputes that are -- that remain unresolved other than  
 5 what is in this document?

6 Mr. O'Connor?

7 MR. O'CONNOR: No, Your Honor.

8 THE COURT: Thank you.

9 Mr. Zeller?

10 MR. ZELLER: No, Your Honor.

11 THE COURT: Mr. Morgan?

12 MR. MORGAN: No, Your Honor.

13 THE COURT: All right.

14 Counsel, I want it understood, and I've asked  
 15 the questions I have, that other than the  
 16 implementation of the terms that are here or, God  
 17 forbid, anybody doesn't live up to the terms of the  
 18 agreement you have now entered into, absent coming back  
 19 here because there's a claim breach, we're done. I  
 20 will not accept any application that seeks to raise  
 21 anything else, makes reference to an issue that's  
 22 covered by this agreement or any of the reservations.

23 Obviously, if there's a reservation, it's  
 24 there for the purpose of addressing it at a later time  
 25 but you have created a mechanism by way that those

## Hearing

23

1 disputes can be resolved by referring them to a  
 2 conclusive determination to be made by Mr. Caton.

3 Mr. O'Connor?

4 MR. O'CONNOR: The answer is yes, Your Honor.  
 5 I just want to make sure the record is clear that we  
 6 have a litigation against Cherry Hill regarding  
 7 compliance and other matters. The -- only the matters  
 8 in here, I would call this kind of a partial settlement  
 9 related to everything that is in here. I just want to  
 10 make sure that that was --

11 THE COURT: Well, I -- I am very clear on  
 12 that, Mr. O'Connor. What is here is here and what is  
 13 not here is not here.

14 MR. O'CONNOR: Correct.

15 THE COURT: So you are not foreclosed in any  
 16 other aspect other than what's here.

17 MR. O'CONNOR: Correct, Your Honor.

18 THE COURT: Agreed, Mr. Zeller?

19 MR. ZELLER: Ah, I agree. None of the  
 20 parties are foreclosed, is that what --

21 THE COURT: No -- precisely.

22 MR. ZELLER: Okay.

23 THE COURT: We don't do it --

24 MR. ZELLER: I agree.

25 THE COURT: -- unilaterally. As much as Mr.

## Hearing

24

1 O'Connor would like that, we don't --

2 MR. ZELLER: I agree.

3 THE COURT: -- do it that way.

4 MR. ZELLER: Okay.

5 THE COURT: Mr. Morgan?

6 MR. MORGAN: Understood, Your Honor.

7 THE COURT: Very well.

8 Gentlemen, I do extend to you -- excuse me --  
9 my very sincere and heartfelt appreciation for your  
10 efforts in reaching this settlement. It is a very  
11 complex issue. The litigation has been ongoing for an  
12 extensive period of time and in this manner, hopefully  
13 things will move forward for your respective interests  
14 as well as for the citizens of Cherry Hill. So once  
15 again, I thank you for taking your time and effort to  
16 reach this and Mr. Caton, I'd be remiss if I didn't  
17 extend the Court's specific thanks to you for your very  
18 obvious talents.

19 MR. CATON: I appreciate that, Your Honor.

20 THE COURT: Unless there's anything else,  
21 gentlemen, we're through.

22 Mr. O'Connor?

23 MR. O'CONNOR: I think I'd let Mr. Morgan go  
24 first --

25 THE COURT: Sure.

## Hearing

25

1 MR. O'CONNOR: -- but I had one matter.

2 THE COURT: Okay.

3 MR. MORGAN: Yes, Your Honor.

4 Your Honor, I would like to con -- Your Honor  
5 to consider scheduling a Fairness Hearing upon adequate  
6 --

7 THE COURT: Yes.

8 MR. MORGAN: notice to the public.

9 THE COURT: Thank you. Thank you.

10 And --

11 MR. MORGAN: In that regard, it's my --

12 THE COURT: -- in my -- in my excitement, I  
13 overlooked making that comment.

14 MR. MORGAN: In that regard, I've taken the  
15 liberty of preparing a proposed form of notice which is  
16 based upon the Appendix that Judge Skillman prepared at  
17 the conclusion of Morris County Fair Housing Council  
18 versus Township of Booton, (phonetic) 197 N.J. Super.  
19 387, which is the form of the notice that's used  
20 regularly by most Mt. Laurel jurist in scheduling  
21 Fairness Hearing Notices.

22 The procedure --

23 THE COURT: The page -- the page of the  
24 citation, again, Mr. Morgan?

25 MR. MORGAN: I believe it's 197 N.J. Super.

## Hearing

26

1 I -- I believe, 387 is the --

2 THE COURT: All right.

3 MR. MORGAN: -- page.

4 That's the form of notice that's most often  
5 used. The most recent case dealing with the necessity  
6 for a Fairness Hearing is the Appellate's Division's  
7 decision in East West Ventures versus Borough of Fort  
8 Lee. I don't recall the citation right off the top of  
9 my head but I can get it for you.

10 UNIDENTIFIED SPEAKER: 286 N.J. Super. 311.

11 MR. MORGAN: Thank you.

12 The purpose of the Fairness Hearing, of  
13 course, is for Your Honor to determine if the -- if the  
14 proposed settlement of the Mt. Laurel litigation  
15 adequately protects the interest of the beneficiary  
16 class, those of low and moderate income housing in the  
17 housing region in which the municipality is located.

18 Typically the Courts require publication of  
19 the notice and at least one of the municipality's  
20 official newspapers 30 days prior to the hearing.  
21 Generally the notice is -- is required to be posted on  
22 the official municipal bulletin board and available to  
23 the public inspection and in some instances,  
24 particularly where the property is being rezoned by  
25 virtue of the settlement for affordable housing,

## Hearing

27

1 property owner notification within 200 feet is  
2 required.

3 I would request that Your Honor give the  
4 parties -- well, first of all, establish a Fairness  
5 Hearing date so that -- and give us directions as to  
6 the type of notice that we can -- that you would  
7 require and if Your Honor could determine if the notice  
8 that I've provided to you is -- is adequate. That  
9 doesn't have to be done this afternoon. It could be done  
10 at Your Honor's leisure.

11 I -- I'm not sure if this -- this case would  
12 warrant property owner notification within 200 feet.  
13 We are not changing the zoning. In fact, this is  
14 really not a builder's remedy site and the Planning  
15 Board has already rendered an approval in connection  
16 with the original general development plan, the amended  
17 general development plan, the applications that are  
18 pending before the Board now for 1,659 units. We are  
19 not increasing the number of units in the project.  
20 We're just earmarking 214 of them for low and moderate  
21 income households.

22 But I have current service lists. If Your  
23 Honor feels that the 200 foot service is -- is  
24 necessary, I will certainly do that.

25 THE COURT: All right.

## Hearing

28

1 Mr. --  
 2 MR. O'CONNOR: Excuse me, Your Honor? Could  
 3 Mr. Walsh be excused. We have another --  
 4 THE COURT: Certainly.  
 5 MR. O'CONNOR: matter, I'll stay.  
 6 MR. WALSH: Thank you, Your Honor.  
 7 THE COURT: You're welcome, sir.  
 8 MR. MORGAN: Your Honor, I've also taken the  
 9 liberty of preparing a -- this -- early this morning, a  
 10 proposed form of judgment for your consideration at the  
 11 conclusion of the Fairness Hearing.  
 12 THE COURT: Okay.  
 13 MR. MORGAN: I'd be happy to modify that, if  
 14 there are any changes requested by any of the parties.  
 15 I've submitted that to each -- each of the parties this  
 16 afternoon.  
 17 THE COURT: Okay.  
 18 Counsel, Mr. Morgan, thank you for providing  
 19 me with the documents.  
 20 Excuse me.  
 21 I will review them over the weekend.  
 22 Mr. O'Connor, Mr. Zeller and Mr. Morgan, Mr.  
 23 Caton, will you gentlemen be in your offices at any  
 24 given time on Tuesday?  
 25 MR. CATON: Your Honor, I -- I'll be in

## Hearing

29

1 Vermont next week. I --  
 2 THE COURT: Good for you.  
 3 MR. CATON: I hope.  
 4 THE COURT: Okay.  
 5 Mr. O'Connor?  
 6 MR. O'CONNOR: Yes. Our intent was -- we  
 7 agree with the procedure --  
 8 THE COURT: Uh-huh.  
 9 MR. O'CONNOR: -- and I believe Mr. Morgan  
 10 has set it forth correctly. We also don't see the  
 11 necessity of the 200 foot notice.  
 12 THE COURT: No. If there's no -- my  
 13 immediate reaction is, if there's no zoning change then  
 14 I see no purpose for doing that.  
 15 MR. O'CONNOR: Yeah. What we'd like to do is  
 16 just review it over the weekend and --  
 17 THE COURT: Yes.  
 18 MR. O'CONNOR: -- and give you a letter on  
 19 Monday if there's any comments on --  
 20 THE COURT: That'll be fine.  
 21 Mr. -- then, why don't we do it from that  
 22 standpoint?  
 23 Mr. Zeller --  
 24 MR. ZELLER: Okay.  
 25 THE COURT: -- if you'll do the same thing?



## Hearing

30

1 MR. ZELLER: Yes. I -- I will be available  
2 in my office on Tuesday but I -- I have had a chance  
3 and I don't have any objection to --

4 THE COURT: Have any problem with it? Okay.

5 Mr. Morgan?

6 MR. MORGAN: I'm available Tuesday.

7 THE COURT: Okay.

8 Then Peter, why don't you just send me a -- a  
9 note and -- let's see.

10 Ron, if you have no -- well, it's your  
11 document so obviously I'm going to assume that you're  
12 in accord with them, other than perhaps to respond to  
13 any comment Peter may have. And Sandy, same -- same  
14 comment. If you'll send me a note, get out fax number  
15 from Virginia and you can fax me those short statements  
16 on Tuesday. Or Monday. It'll be there. And that way,  
17 if there are noth -- if there's nothing from any of you  
18 that has any problem and I see none, then I'll simply  
19 have it prepared and executed and we'll send it out to  
20 you.

21 MR. O'CONNOR: The only thing that the Court  
22 may consider with Mr. Morgan is I think his intent is  
23 to order the transcript and that may be a document  
24 that's posted with the town and the Court per the  
25 notice so that may just be a logistical timing issue.

## Hearing

31

1 MR. MORGAN: Yeah. We checked with the  
2 Transcribing Service and they feel that they can have  
3 it transcribed within a week.

4 THE CLERK: -- check.

5 THE COURT: Okay.

6 Well, I'm -- I'm missing something. How is  
7 that --

8 MR. O'CONNOR: The notice is going to say  
9 that this is going to happen on such and such a date  
10 and in the meantime --

11 THE COURT: The hearing date, you mean?

12 MR. O'CONNOR: Right. And in the meantime,  
13 if you'd like to look at the transcript of what's been  
14 agreed upon, --

15 THE COURT: Okay.

16 MR. O'CONNOR: -- it's on posting with the  
17 Clerk at the township --

18 THE COURT: Okay.

19 MR. O'CONNOR: -- so the notice may have to  
20 be consistent with the availability --

21 THE COURT: Oh, okay.

22 MR. O'CONNOR: -- of it.

23 MR. MORGAN: Yeah.

24 THE COURT: Okay.

25 MR. O'CONNOR: I think someplace in there it

## Hearing

32

1 says that --  
 2 THE COURT: Yeah, there's a provision --  
 3 MR. O'CONNOR: -- a handwritten --  
 4 THE COURT: -- at the end before the list.  
 5 Says written objections -- well, that's when it -- have  
 6 to be filed with the Court. I don't see anything --  
 7 MR. O'CONNOR: I think he handwrote it in on  
 8 one of them or something.  
 9 THE COURT: Let's see. In detail -- okay.  
 10 Second page. It is memorialized. Transcript of  
 11 proceedings before the Court on January 16. Well,  
 12 that's -- that'll be consistent with what's already  
 13 here.  
 14 MR. MORGAN: Yeah, okay.  
 15 THE COURT: When it's posted there, of  
 16 course, we'll abide the transcriber's --  
 17 MR. MORGAN: Right.  
 18 MR. O'CONNOR: Right.  
 19 THE COURT: -- thing. Okay.  
 20 MR. MORGAN: I had one item, Your Honor.  
 21 Just a timing item and I -- I haven't discussed this  
 22 with Counsel cause we were focusing on the other but  
 23 eight-something days ago the Court entered the  
 24 restraining order on the -- the vacant land disposition  
 25 and sale --

## Hearing

33

1 THE COURT: Right.  
 2 MR. MORGAN: -- et cetera. My understanding  
 3 is you're going to be away but I think the 90 days may  
 4 expire like January 22nd which is sometime the end of  
 5 next week. What we have done in the past is establish  
 6 some motion date convenient to the Court and if that  
 7 date was let's say 100 days or 105 or whatever it might  
 8 be, if it went past the 22nd, we ask the town if  
 9 there's anything that's going to fit that description  
 10 in that time period, thus removing the necessity of  
 11 setting an earlier date and then what's convenient for  
 12 you, we just set that date.  
 13 THE COURT: All right.  
 14 Mr. Zeller?  
 15 MR. ZELLER: That piece of it I honestly do  
 16 not have information about.  
 17 THE COURT: Well, let me make it easy for  
 18 you. The -- Virginia will give you the motion date,  
 19 the continued motion date. The restraints will remain  
 20 in place until further order of the Court consistent  
 21 with that date. Then we don't have to worry about --  
 22 MR. MORGAN: I don't think there's anything  
 23 any way but --  
 24 THE COURT: Fine.  
 25 All right. Well, now I think we're done.

## Hearing

30

1 MR. ZELLER: Yes. I -- I will be available  
2 in my office on Tuesday but I -- I have had a chance  
3 and I don't have any objection to --

4 THE COURT: Have any problem with it? Okay.

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7 THE COURT: Okay.

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18 that has any problem and I see none, then I'll simply  
19 have it prepared and executed and we'll send it out to  
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20 be consistent with the availability --

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 18 MR. O'CONNOR: Right.  
 19 THE COURT: -- thing. Okay.  
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 22 MR. MORGAN: I don't think there's anything  
 23 any way but --  
 24 THE COURT: Fine.  
 25 All right. Well, now I think we're done.

## Hearing

34

1 If I have any question, you'll be available  
2 and I don't think we'll bother Mr. Caton.

3 Okay?

4 MR. MORGAN: Yeah, I -- I think we just --  
5 we're going to work out that -- the joint venture as  
6 noted in the agreement and we've submitted any  
7 disagreements to -- to Mr. --

8 THE COURT: That's what in the --

9 MR. MORGAN: -- so we --

10 THE COURT: -- in there and he'll --

11 MR. MORGAN: -- don't have to come back to the  
12 Court.

13 THE COURT: He'll resolve them.

14 Very good.

15 Thank you all.

16 MR. O'CONNOR: Thanks for your patience with  
17 us, Your Honor.

18 THE COURT: Thank you.

19 (Conclusion of pertinent proceedings)

20 (Tape stops)

21 \* \* \* \* \*

35

CERTIFICATION

1 I, Susan E. Johnson-Switzer, the assigned transcriber,  
2 do hereby certify the foregoing transcript of  
3 proceedings on tape number 1, index number from 0005 to  
4 2110, is prepared in full compliance with the current  
5 Transcript Format for Judicial Proceedings and is a  
6 true and accurate compressed transcript of the  
7 proceedings as recorded.  
8

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10  
11  
12  
13 Susan E. Johnson-Switzer  
14 Susan E. Johnson-Switzer

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AOC Number

15  
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17 ESSIE Transcription Service  
18 Agency Name

19  
20  
21 1-19-04  
22 Date