

CLINTON TOWNSHIP COMMUNITY COALITION
P.O. Box 78
Lebanon, NJ 08833

September 16, 2010

Mr. Sean Thompson
Acting Executive Director
New Jersey Council on Affordable Housing
101 South Broad Street
PO Box 813
Trenton, NJ 08625-0813

RE: Comments on Township of Clinton Fair Share Plan

Dear Mr. Thompson:

Please accept this letter as a formal objection to the Fair Share Plan and Housing Element submitted by Clinton Township, Hunterdon County, NJ in accordance with the Council on Affordable Housing third round rules.

Summary

Specifically, we object to the inclusion of the site known as Windy Acres (Block 7 Lot 31.02) because it does not represent a realistic opportunity to satisfy Clinton Township's prior round and actual growth share obligations.

We find the latest Plan prepared by Clinton Township to be a disingenuous effort to address its affordable housing obligation by (a) removing a site (the "Old Allerton" site) from the Township's 2007 Plan that provides a realistic opportunity to deliver affordable housing, and (b) relying instead almost exclusively on a site ("Windy Acres") that does not have water or sewer, that does not conform with State regulations and policies, and that is unlikely to obtain the necessary regulatory approvals and the necessary funding subsidies within the timeframes established by COAH.

The history of Clinton Township's Fair Share Plan bears a black mark, warning that the failure to provide a site with available water and sewer has been at the root of the Township's repeated failures to meet its COAH obligations.

The Objector & The History

The Clinton Township Community Coalition (CTCC) is a community organization formed in 2000 that represents the interests of concerned residents. An organization of 3,600 members, the CTCC was a party to the litigation that resulted in the abandonment of Windy Acres by Pulte Homes because it did not provide a realistic opportunity to deliver affordable housing.

In fact, the CTCC's arguments about lack of sewer and water were cited by the Honorable Judge Edmund Bernhard as key reasons for remanding the case to the Clinton Township Planning Board. In his February 5, 2004 decision (Attachment 1), Judge Bernhard acknowledged that, without water and sewer, the project might fail to meet COAH's requirements, and he specifically instructed the Planning Board to deny approvals until water and sewer requirements were met.

Judge Bernhard wrote:

A: *"This court recognizes that in the event an appropriate sewerage treatment plan is not feasible, Clinton Township may fail to meet the requirements of its COAH certification. While it is to act in good faith, the Planning Board is instructed to deny any proposed sewerage treatment plan that fails to meet the requirements of N.J.S.A. 40:55D-38 and appropriate municipal ordinances."*

B: *"Before [Planning Board approvals] for preliminary site plan and subdivision can be granted, there are certain conditions and factors which must be met. These are:*

"(1) There must be a provision that there is an adequate and potable source of water..."

C: *"The applicant's approval cannot be granted until adequate provisions for sewerage treatment, either through a plant or other permits, are obtained."*

D: *"I am also remanding this matter to the Planning Board for their determination of whether P&H has provided adequate provision for sewer treatment, pursuant to N.J.S.A. 40:55D-38."*

E: *"...P&H [aka, Pulte Homes, the developer] and Clinton Township must formulate a new provision for adequate sewer treatment if site plan and subdivision approval are to be granted."*

Subsequent to Judge Bernhard's decision and instructions, and at a time when Pulte Homes was proposing an on-site sewer system, COAH and the NJDEP determined that the site was not suitable to meet Clinton Township's affordable housing obligation. (Attachments 2, 3, 4, 5) Today, Clinton Township is also proposing an on-site sewer system, *yet without any engineering work completed* — for an even higher-density project on a smaller parcel of land (the newly subdivided "Windy Acres") that makes it even harder to obtain the necessary approvals.

Even today, Judge Bernhard's instructions ring the same warning. Even today, the newly subdivided "Windy Acres" site has no proven, adequate water supply or sewerage treatment, much less any NJDEP or other State approvals.

THE OBJECTION

The CTCC is concerned that the actions of the Township Council with respect to the preparation and submission of its new COAH Plan will expose the Township to the risk of losing its substantive certification, to significant financial liabilities, and to the uncertain outcome of builder's remedy lawsuits.

The CTCC does not object to using the Windy Acres site for a future affordable housing obligation, if the site can be engineered for it and if it can obtain the necessary approvals.

However, the CTCC objects to using the site for the Township's prior rounds and actual third round obligation because we believe the site does not provide a clear and realistic opportunity to meet COAH's deadlines for obtaining necessary approvals and funding subsidies. Once again, by relying on this highly-controversial and already-rejected site, in Judge Bernhard's words, "*Clinton Township may fail to meet the requirements of its COAH certification.*"

We object to Clinton Township's new Plan for the following reasons:

- **The Windy Acres site, which is designated to yield almost all of the Township's affordable housing, is not suitable nor does it represent a realistic opportunity to provide affordable housing as envisioned in the Township's latest housing Plan because that site is inconsistent with the municipal Sewer Service Area, the Highlands Regional Master Plan, and the NJ State Plan.**
 1. The Windy Acres site is precluded from a Sewer Service Area due to the service area delineation standards adopted by NJDEP in accordance with Water Quality Management Planning Rules.
 2. The site is inconsistent with the Highlands Regional Master Plan (RMP). Specifically, the site is designated a Conservation Zone and Environmentally Constrained Sub-Zone. The RMP precludes or severely restricts the extension of water or sewer infrastructure within both the Conservation Zone and/or the Environmentally Constrained Sub-Zone. Additionally, the Township has relied on the Highlands RMP growth projections and as such has obligated itself to conform to the Highlands RMP. However, the Township has included the site in its Plan without determining whether the site can be developed in accordance with the Highlands RMP.
 3. The site is inconsistent with the NJ State Plan, which, after years intensive analysis and Cross Acceptance work, now proposes the site for a Planning Area 5 (PA5) designation due to the site's environmental sensitivity.
- **Clinton Township is unlikely to meet its first COAH compliance review period deadline, thereby risking its COAH substantive certification.**
 1. The Township has failed to take substantive steps to obtain the necessary development approvals for Windy Acres in order to satisfy its prior round and actual third round obligations by the first compliance review period.

2. The Township has failed to sign a developer's agreement with an affordable housing developer.
 3. The Township has failed to apply for and secure housing subsidies to pay for the project. The available funding programs are highly competitive, application cycles are only twice per year, and applications require fully-developed plans and a named developer. The Township is far behind the curve on all these requirements — perhaps fatally.
 4. Members of the newly-elected majority of the Township Council have publicly stated their political opposition and/or reluctance to actually adopt the Highlands RMP, thereby risking the Township's reduced COAH number, upon which the current Plan relies. In the event the Township fails to adopt the RMP, the Township will have inadequate sites that represent a realistic opportunity to deliver affordable housing units, thereby further jeopardizing the looming COAH schedule — and the Township's substantive certification.
- **The Township had a fully-documented primary site in its 2007 COAH plan, which had allocations of water and sewer, yet it disingenuously and for political reasons substituted a deficient “primary” site that does not have water and sewer allocations or infrastructure.**
 1. The Township arbitrarily removed other, more appropriate sites including a municipally-sponsored affordable housing site known as Old Allerton. The Old Allerton site was included in the Township's 2007 housing Plan. That site had obtained development approvals from the Township, and, most significantly, that site had the allocations of water and sewer capacity necessary to support the development.
 2. When it put out an RFP for Affordable Housing Developers in 2010, the Township did not include the Old Allerton site. Yet the newly-elected majority members of the Council disingenuously proclaimed that the Old Allerton site would be far more costly to develop than the Windy Acres site — without having new, competitive bids on Old Allerton to base these claims on. Perhaps more than anything else, this chicanery reveals the political agenda behind the trashing of the 2007 Plan.

SUPPORTING INFORMATION

NJDEP previously advised COAH that the timeframes for obtaining approvals on Windy Acres would be “extensive” and “very difficult”

The site does not have water or sewer service and there is currently no infrastructure available to provide the site with water or sewer service. The site is designated as part of the Clinton East Sewer Service Area, but that Area has been determined “economically and technologically

infeasible” due to the designation by NJDEP of the Rockaway Creek traversing it as a Category 1 waterway.

In 2006, The NJDEP wrote to COAH expressing its opinion that development of Windy Acres “presents significant regulatory challenges that would be very difficult for the Department to approve” and further that the “permit application review timeframes would be very extensive”. (Attachment 2)

COAH previously Issued an Opinion regarding Windy Acres citing a lack of Sewer Capacity

The Windy Acres site was once included in the Township’s affordable housing Plan as an inclusionary site to satisfy the Township’s prior round obligation. However, in October 2006 COAH issued an Order to Show Cause why it should not rescind the Township’s substantive certification largely due to the inability of the previous developer, P&H Partnership, aka Pulte Homes, to secure the necessary development approvals to effectuate the development, which inability was due largely to the absence of available water and sewer capacity to support the needed housing to satisfy the Township’s COAH obligation. (Attachment 3)

COAH’s October 2006 opinion stated that the Windy Acres site did not create a “realistic opportunity for affordable housing in light of the many environmental issues and questions regarding sewer capacity.” (Attachment 3) This issue was only exacerbated by the advent of the Highlands RMP adopted in 2008 and the new NJDEP water quality management rules adopted in 2008 at NJAC 7:15.

The Highlands Council RMP released in 2008 designates the site as being entirely within the Conservation Zone, and the entire site is designated as an Environmentally Constrained Sub-Zone which precludes certain types of development activity.

Court Decision upheld denial of development approvals due to a lack of Water and Sewer for the Windy Acres Site, yet the current Township Council ignored the Court’s reasons and instructions.

The CTCC was very active in the review of prior proposals to include Windy Acres in the Township’s prior Plan. The CTCC was also instrumental in demonstrating that the site did not represent a realistic opportunity to provide the needed affordable housing. The position of the CTCC was subsequently affirmed by Judge Bernhard in his 2004 decision to withhold site plan approvals for the project based on the lack of available water and sewer.

The CTCC maintains that the current, subdivided site, still known as Windy Acres, still does not represent a realistic opportunity to produce the affordable units envisioned by Clinton Township.

We also maintain that the decision to include Windy Acres and remove the Old Allerton site was a dangerous, arbitrary and politically-motivated action of the newly-elected majority of the Township Council.

The Township Council was perfectly aware of the Court's 2004 instructions to ensure the availability of water and sewer to the site, yet it took no action to conclusively demonstrate that these utilities were available. In fact, one of the new members of the Council served as Planning Board Chairman when Judge Bernhard issued his instructions. This raises the question whether politics trumps good sense and responsibility, and whether the new Plan is intended as retaliation against the Judge's rebuke of virtually all of the Planning Board's reasons for denying the Pulte Homes application, or perhaps a misguided revenge against the NJDEP's 2005 rebuke of the Planning Board's practices. (Attachment 4)

The Council was also perfectly aware that the Old Allerton site, which had already obtained its approvals with the cooperation of the landowners, and which had both water and sewer allocations, as well as municipal approvals, was the only site that could realistically fulfill the Township's affordable housing obligation.

In a brazen political move, immediately upon taking office the new majority of the Council, led by the former Planning Board Chairman, took the unusual action of politically engineering the disbanding the Township's COAH Committee, thus eliminating credible opposition and the valuable input of a full cross-section of Township boards, commissions and officials. This action also dispensed with the participation of the citizenry. The Township Council thus rejected reasonable consideration of alternatives and arbitrarily excluded the more suitable sites that were previously included in the Township's housing plan.

The Windy Acres site is not suitable to satisfy Clinton Township's Prior Round and Third Round obligation as envisioned in the Township's Housing Plan

Despite several years of careful planning and collaboration at the local, County and State levels to produce its 2007 COAH Plan, Clinton Township has now arbitrarily re-designated Windy Acres as the primary site in its housing Plan, contrary to the State Plan, the Highlands RMP and the NJDEP rules, prior Court decisions, COAH's prior opinion, and prior guidance from the NJDEP.

Perhaps most astonishingly, rather than leave the approved Old Allerton site in the Plan, the Township completely removed Old Allerton in spite of the massive investment already made in that site. Some of the new members of the Township Council know only too well the Township's historical failure to keep realistic sites in its Plan, and the ire that was aroused in COAH when, in the past, the Township exposed itself to considerable risk because it continued to rely on unsuitable sites.

But perhaps most troubling is that when, in early 2010, the Board of Adjustment approvals for the Old Allerton site came up for virtually automatic renewal, the new majority of the Council that was responsible for upsetting the Township's 2007 COAH Plan refused to renew those

approvals — even when publicly advised to do so by the Township attorney, who pointed out that there was no cost or risk associated with renewing those approvals to further ensure the delivery of affordable housing. The failure to protect those approvals, and thus the continued viability of the Old Allerton site, reveals a stunning political agenda behind the actions of the newly-elected majority of the Council.

After the Township acquired the 292-acre Windy Acres parcel from Pulte Homes on December 31, 2008, the then-sitting COAH Committee worked with the Township professionals and the Council to subdivide 35 acres of the property. The purpose of the subdivision was to create a future affordable housing site, recognizing that prior round and actual third round obligations would be addressed on the Old Allerton site. It was never the intent of the Township to rely on those 35 acres to fulfill its immediate obligation because the site did not present a realistic opportunity to fulfill the Township's prior round and actual third round obligations within the timeframes established by COAH.

Subsequent to that subdivision, the Township decided to put virtually all of its affordable housing obligation on that site, without seeking or permitting comments and input from the very COAH Committee that worked on the subdivision and on the rationale for creating it. Instead, the newest members of the Township Council ignored the intentions of the COAH Committee and politically engineered the elimination of the COAH Committee prior to revising the 2007 Plan.

Virtually everyone in Clinton Township, at NJDEP and at COAH is familiar with the repeated failure of Windy Acres to fulfill the affordable housing obligation.

Windy Acres site is inconsistent with the Final Draft State Plan.

In 2004 Clinton Township submitted a Cross Acceptance report detailing the changes necessary to the State Plan map. Subsequently, the recommendations of Clinton Township were adopted in a report prepared and submitted by the Hunterdon County Planning Board in March 2005 to identify necessary map changes.

In 2009, the Office of Smart Growth issued the Final Draft State Plan maps that identify the inclusion of the Windy Acres site as a PA5. This change was a result of extensive and careful science- and fact-based planning at the local, regional, County and State levels intended to align the Township's zoning with applicable State requirements and with the plans of neighboring towns and the entire region. The recommendations of the Clinton Township-area towns for the State Plan were supported by the NJDEP and subsequently by the Highlands Council, through designation of the Windy Acres site as Environmentally Constrained. Upon adoption of the State Plan, the site will be designated as PA5 which will severely limit its realistic development potential. (Copies of pertinent State Plan maps will be provided to COAH upon request. The large file sizes are the only reason we do not included them in our Attachments.)

Windy Acres is inconsistent with NJDEP rules governing Sewer Service Area designation

In 2008 the NJDEP issued amended Water Quality Management Planning rules and subsequently released guidance to Highlands communities regarding interim sewer service area designations. The County is obligated to submit an amended Wastewater Management Plan (WMP) by April of 2011.

In accordance with the current NJDEP rules and the Highlands RMP, the newly subdivided Windy Acres site will be precluded from inclusion in the sewer service area due to factors that may include, without being limited to, the following:

1. Windy Acres is still not currently served by water or sewer and lacks access to existing infrastructure that is available to provide water or sewer.
2. Windy Acres is still designated for inclusion as PA5 in the State Plan.
3. Windy Acres is still identified by the NJDEP as habitat for State-listed threatened and endangered species.
4. Windy Acres is still within a Category 1 Stream and associated Special Water Resource Protection Area.
5. Windy Acres is still designated as a Conservation Zone by the Highlands Council.
6. Windy Acres is still designated as an Environmentally Constrained Sub Zone by the Highlands Council.
7. Windy Acres is still designated as a Critical Wildlife Habitat by the Highlands Council.
8. Windy Acres is still designated within a Tier 1 Well Head Protection Area by the Highlands Council.

The Township is thus likely to be precluded from securing the necessary approvals in a timely manner from the NJDEP and Highlands Council to accommodate the water and sewer capacities needed to support any development on this site.

The Township once again ignores factors relating to both the original Windy Acres site and the newly subdivided site that have long been acknowledged by NJDEP and COAH as impediments to obtaining necessary approvals. Nonetheless, the Township has once again submitted a Plan to COAH that relies upon an unrealistic site that still faces the same regulatory obstacles.

The passage of time and “institutional lack of memory” may not be cited to excuse such poor planning. As already cited, one of the current members of the Township Council was the Chairman of the Planning Board at the time of the original denial of the Windy Acres application, which led to the Court’s order to demonstrate availability of water and sewer prior to approvals being granted, which led to stern warnings from the NJDEP, which in turn ultimately led to COAH issuing its order to show cause and to COAH’s finding that Windy Acres did not represent a realistic opportunity to deliver affordable housing.

Windy Acres is inconsistent with the Highlands RMP

The Township has elected to utilize the Highlands buildout projections for determining its third round COAH obligation. This in turn obligates the Township to conform to the Highlands RMP.

The Windy Acres site as proposed has been designated to satisfy both the Township's outstanding prior round and third round obligations based on the Highlands buildout projections. However, no outside agency approvals have been obtained by the Township for the Windy Acres development at this time.

In 2009 the Township submitted its resolution of intent to Conform to the Highlands RMP. The Highlands RMP precludes extension of water and sewer service areas within certain areas. Even if the Township is successful at changing the map designation from Conservation Zone to some other designation, the development proposed for Windy Acres will be precluded because:

- Windy Acres is included within the Environmentally Constrained Sub Zone.
- Windy Acres is designated as Critical Wildlife Habitat.
- Windy Acres is within a Tier 1 Well Head Protection Area.
- Windy Acres is within a Water Protection Area.
- Windy Acres is within a Steep Slope Protection Area.

The Township Arbitrarily Excluded the Old Allerton Site from its Housing Plan

In 2006, COAH ordered the Township to submit, within 120 days, a revised Plan that did not rely on Windy Acres, citing the lack of a realistic opportunity to develop that site for affordable housing, and further citing NJDEP's warnings that the site was not likely to obtain NJDEP approvals.

Within the ordered 120 days, the Township amended its Plan, which amendment is dated January 2007, and included other sites that represented a realistic opportunity for affordable housing. That Plan included two realistic sites, most notably a site known as the Old Allerton site (Block 58 Lots 4, 5, 6 and 7). This site was chosen in significant part because it had access to available water and sewer utilities.

The Old Allerton site was the primary site proposed to satisfy the obligation in the Township's prior Plan, and it was engineered to accommodate a total of 85 affordable housing units. The site is designated in the Final Draft State Plan as PA3 and is designated as Existing Community Zone by the Highlands RMP. Both the State Plan and Highlands RMP support the affordable housing development proposed on the Old Allerton Site. The site has water and sewer allocated to the project.

Using monies from its Housing Trust Fund, on December 8, 2008 the Township secured preliminary site plan approvals from the Clinton Township Board of Adjustment, without public opposition and with public support.

As already noted, on December 31, 2008 the Township acquired the original 292-acre Windy Acres parcel predominantly as Open Space, reserving approximately 35 acres for future affordable housing. At the time of acquisition, no determination was made regarding the realistic development potential of the site set aside for affordable housing, nor were any engineering studies completed to demonstrate the availability of water and sewer to service a future development. Since the Township acquired the property, no engineering studies have been completed nor have any agency approvals been obtained to demonstrate that the site can realistically support the 150-unit residential development and requisite utilities now envisioned by the Township.

When the current Council reformulated its Plan in 2010, the Old Allerton site was the only significant COAH site:

- For which the Township had secured development approvals and obtained water and sewer allocations.
- That was consistent with the State Plan and with the Highlands RMP, in accordance with its obligation to provide a realistic opportunity for affordable housing.

Instead, the Township decided to exclude the ready-to-go site and replace it with an alternate site that:

- Had previously been rejected by COAH.
- Which was never intended or vetted by the COAH Committee for the prior round and third round obligation.
- Which even today has no development approvals.
- Which even today has no water or sewer.
- Which is inconsistent with the State Plan and Highlands RMP.
- And which is unlikely to secure the necessary approvals to create a realistic opportunity to deliver affordable housing.

The COAH Plan appears to be politically-motivated effort to eliminate the realistic site, Old Allerton site by falsely portraying it as “more costly.”

On May 31, 2009, as part of a political campaign, three current members of the Township Council issued an alarmist statement (Attachment 6) titled “ALERT: COAH HOUSING IN BEAVER BROOK SECTION OF ANNANDALE” stating that:

“We support amending our COAH plan to put all of our affordable housing on the front portion of the Windy Acres property — land we already own... and not on land we would have to buy for several million dollars more.”

“We can no longer ignore the adverse tax impacts of the Township’s current [2007] affordable housing plan. We must meet our COAH obligations, but in a fiscally responsible way. That means building all of these units on part of the land we purchased last December at Windy Acres for \$7 million.”

First, the Old Allerton site is not in the well-known Beaver Brook development, but across the 4-lane, divided Route 31 highway. The candidates were simply attempting to inappropriately arouse voters in the largest development in the Township.

Second, having gotten elected, these three new Council members falsely and without evidence portrayed Old Allerton as more costly before rejecting it. However, they never solicited or received competitive proposals for Old Allerton as they did for Windy Acres. Instead, they offered a fabricated “cost estimate” for Old Allerton as justification for dispensing with it entirely.

The political flyer goes on to inaccurately state that the Old Allerton affordable housing project would:

“directly impact the Quality of Life you enjoy in Clinton Township for years to come.”

In spite of the fact that in 2006, over three years earlier, the NJDEP and COAH rejected Windy Acres as a realistic component of the Township’s Plan, the candidates disingenuously stated that:

“For at least fifteen years prior to the Township’s recent amendment, the Township’s Master Plan included Windy Acres as our preferred site for affordable housing.”

Emphasizing the fear-mongering of the joint campaign letter, one of the candidates issued a separate letter dated April 29, 2009 (Attachment 7), implying the Old Allerton affordable housing would somehow be inappropriate:

“directly across the street from Immaculate Conception [church] on Old Allerton Road.”

More to the point, prior to getting elected, and prior to reviewing all the available information that was developed by the COAH Committee to help produce the 2007 Plan, this candidate made it clear just how political and premeditated his later action on the Council would be:

“I’m running to insure the balance of our COAH obligations for the foreseeable future is developed at Windy Acres.”

As of January 1, 2010, the three candidates comprised a majority of the Township Council, and two of them have been in charge of the development of the Township’s recent COAH Plan.

The COAH Plan is the result of political engineering that eliminated potential opposition of municipal officials

The further political manipulation of the Township’s COAH plan occurred after the Mayor renewed the COAH Committee, which had been working on the Plan for years, at the 2010 Council Reorganization meeting.

During the preparation of the Township’s 2007 Plan, the Mayor had established a COAH Committee to advise the Council on the development of a Plan that would ensure a realistic opportunity to develop affordable housing. That Committee included members of:

- the Council,
- the Chair and Vice Chair of the Planning Board,
- the Chair of the Board of Adjustment,
- the Chair of the Historic Commission,
- the Chair of the Environmental Commission,
- and other citizen volunteers.

The Committee's purpose was to ensure the participation of members of the public, and key officials of the Township whose respective departments would be responsible for supporting the Plan. The Committee ensured broad scrutiny and validation of choices for the Township's COAH Plan. These representatives of key Township boards and commissions met regularly to ensure the preparation of a Plan that was consistent with the Township's Wastewater Management Plan, with its Zoning, with the NJ State Plan, with the Highlands RMP, and with NJDEP regulations.

Upon arriving on the Council, the three new members quickly rejected the COAH Committee, caused it to be disbanded, and two of them managed the preparation of the new Plan based on their campaign promises without the key boards, commissions and citizens of the Township. The elimination of the Committee effectively eliminated organized opposition from within the municipal government.

Clinton Township's history with COAH demands a Plan with extraordinary integrity

The new Plan skims dangerously close to the line of COAH's rules and requirements, rather unquestionably demonstrating compliance with both the letter of the law and its intent.

Without completing the requisite studies, in January 2010 the Township issued a Request for Proposal (RFP) for Affordable Housing Developers. The RFP identified two sites the Township intended to include in its affordable housing Plan — Windy Acres and the Old Municipal Building site, intentionally excluding the Old Allerton Site. The Township did not make the details of the RFP available for public review until the CTCC filed an OPRA request.

The process managed by the new 2-member "COAH Committee" precluded meaningful public input and revealed purely political motivations. The RFP specifically excluded the Old Allerton site from consideration, in spite of its existing Board of Adjustment approvals and in spite of its role as the key site in the Township's prior submission to COAH, and in spite of being the only available COAH site in the Township with water and sewer.

In the meantime, the existing developer's agreement for both the Old Allerton site and the Old Municipal Building site expired, yet has not been replaced with any new agreement. In preparing its new Plan, the Township concocted grossly overestimated costs of land acquisition and project construction in a transparent effort to discredit the only significant, conforming, sewer and watered site it had available — Old Allerton.

The stern warnings of COAH and the NJDEP in 2005 and 2006 led the Township to produce its 2007 Plan — within an extraordinarily tight timeframe of 120 days, per COAH's order — only after taking extraordinary measures to demonstrate its good faith and intent to deliver its affordable housing obligation.

With its current Plan the Township has rejected the extraordinary measures of the 2007 Plan. Even with much more time to produce a new Plan, the Township reverted to a Plan with the same lack of integrity that resulted in COAH's 2006 order to show cause.

CONCLUSION

We believe that what makes our objection all the more compelling is the fact that in 2010 Clinton Township suddenly abandoned a realistic Plan (submitted to COAH in January 2007) that:

- was engineered;
- had obtained municipal approvals;
- had water;
- had sewer;
- met Judge Bernhard's requirements;
- upon which the Township had spent years and significant funds, including from the Township's Affordable Housing Trust Fund;
- that was developed in conjunction with the municipal COAH Committee, comprising the Chair and Vice Chair of the Planning Board, the Chair of the Board of Adjustment, the chair of the Environmental Commission, the Chair of the Historic Commission, the Mayor, and other citizen volunteers;
- which conformed with the Final Draft State Plan, with the Highlands Regional Master Plan, with the municipal Wastewater Management Plan, with the NJDEP Water Quality Management Planning Rules;
- and was ready to submit for necessary funding subsidies on a realistic schedule.

The Township suddenly reverted to a site that:

- is substantially as problematic as it was when it was larger;
- which today would require higher-density development on a smaller parcel;
- was previously rejected by COAH;
- was previously rejected by the NJDEP;
- which even today has no municipal development approvals;
- which has no regulatory agency approvals;
- which has not been engineered;
- which has no water supply;
- which has no sewerage capacity;
- which has no water or sewer infrastructure on it or connected to it;

- which is inconsistent with the Final Draft State Plan, the Highlands RMP, the municipal Waste Water Management Plan, with the NJDEP Water Quality Management Planning Rules;
- which was developed without the input of the key Township officials comprising the COAH Committee;
- for which there is no developer's agreement;
- for which no application process has been initiated to obtain necessary funding;
- and which is unlikely to meet COAH's deadlines for approvals and funding.

Perhaps most stunningly, the new Plan once again defers responsibility and relies on the unconfirmed representations of a third-party developer's proposal, without any contractual agreement or commitment by either the developer or the Township. Just like the Plan that originally included Windy Acres.

Clinton Township has a sad and costly history of relying on Windy Acres for its affordable housing obligation. With its 2007 Plan, the Township turned a corner and moved quickly toward compliance with a carefully-designed Plan utilizing engineered, approved, realistic sites to fulfill its COAH obligation in a prudent, timely matter.

In 2010, having discarded the valuable input of key officials and the public, and working behind a veil, the new majority of the Clinton Township Council changed course and made again for the jagged rocks of Windy Acres, putting the Township at risk for more litigation, unknown financial costs, and the loss of its substantive certification.

Unfortunately, it seems the new Clinton Township Plan before COAH is at best a disingenuous, risky proposition, and a product of political demagoguery, not a realistic opportunity to deliver affordable housing.

This Plan harkens back to CT's discredited approach of making promises without making commitments or demonstrating a realistic opportunity to fulfill its obligation. **We respectfully request that COAH instruct the Township to put the Old Allerton site back in its Plan, since that site is the only one that meets COAH's requirements and the intent of the law.**

The CTCC appreciates your consideration. Please do not hesitate to contact us if you have any questions or require additional information at (908) 236-8440.



Nick Corcodilos, Co-Chair
For The Clinton Township Community Coalition

Attachments (7)

ATTACHMENTS

List of Attachments

1. Judge Bernhard Decision, February 5, 2004. (Cover page and Conclusion. Copy of complete decision available upon request.)
2. NJDEP Letter to COAH, September 12, 2006.
3. COAH Opinion, October 11, 2006.
4. NJDEP Letter from Commissioner Campbell to Clinton Township, October 5, 2005
5. NJDEP Letter from Commissioner Campbell to Clinton Township, October 25, 2005
6. Campaign Letter to Beaver Brook, May 31, 2009
7. Campaign Letter to Editor, Hunterdon Democrat, April 30, 2009

ATTACHMENT 1

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

P & H CLINTON PARTNERSHIP	:	SUPERIOR COURT OF NEW JERSEY
	:	HUNTERDON COUNTY-LAW DIVISION
	:	DOCKET NO. HNT-L-342-01
Plaintiff,	:	
vs.	:	Civil Action
PLANNING BOARD OF CLINTON TOWNSHIP	:	OPINION
	:	JUDGE EDMUND R. BERNHARD
Defendant.	:	FEBRUARY 5, 2004

This case is a challenge to the denial by the defendant Clinton Township Planning Board of the application of P&H Clinton Partnership for preliminary site plan and subdivision approval. Plaintiff also argues it is a suit to enforce the constitutional mandate that municipalities create realistic opportunities for the provision of low and moderate income housing enunciated by the New Jersey Supreme Court in Southern Burlington County NAACP v. Mount Laurel Township, 67 N.J. 151 (1974) (Mount Laurel I), and 92 N.J. 158 (1983) (Mount Laurel II). Plaintiff argues that the denial of the site plan application has the effect of thwarting low and moderate housing in Clinton Township and subverting the housing plan for which the Township twice received substantive certification. This court then must then review not only the Planning Board's handling of this application in accordance with general standards under the Municipal Land Use Law, N.J.S.A. 40:55D-1 et. seq. (MLUL) but also special standards covering decisions on inclusionary developments established by the New Jersey Supreme Court in

CONCLUSION

This court finds that the Planning Board's conclusions in Subparagraph G, Subparagraph I, Subparagraph T, Subparagraph L, Subparagraph M, Subparagraph K and Subparagraph J are arbitrary, unreasonable and provide more than an adequate basis to reverse these findings of the Planning Board. However, before such approvals for preliminary site plan and subdivision can be granted, there are certain conditions and factors which must be met. These are:

- (1) There must be a provision that there is an adequate and potable source of water. The applicant's have appealed the issue of the water tower to the DEP and that appeal must be resolved and a water source provided.
- (2) Under Subparagraph P the applicant and the Board must agree to set aside some area for the two species of birds discussed in that paragraph.
- (3) Subparagraph T. The applicant and the Planning Board must examine the question to see if anything further can be done to decrease the storm water runoff and pollution on the remand for further proofs to be provided by each side.
- (4) Under Subparagraph Q it is necessary that a condition of approval be that there be appropriate maintenance and repair easements for each property.
- (5) An additional condition is that the DEP issue a new LOI without change and if there is any change that the applicant comply with any changes or recommendations in the LOI.

The applicant's approval cannot be granted until adequate provisions for sewerage treatment, either through a plant or other permits, are obtained.

This court will remand the matter back to the Planning Board to resolve the five conditions set forth above. I am also remanding this matter to the Planning Board for their determination of whether P&H has provided adequate

provisions for sewer treatment, pursuant to N.J.S.A. 40:55D-38. As I indicated, in the prior motion to dismiss it appears that the originally planned sewerage treatment for the Windy Acres site is not practical (Weber Cert. ¶20). Therefore, P&H and Clinton Township must formulate a new provision for adequate sewer treatment if site plan and subdivision approval are to be granted.

This court recognizes that in the event an appropriate sewerage treatment plan is not feasible, Clinton Township may fail to meet the requirements of its COAH certification. While it is to act in good faith, the Planning Board is instructed to deny any proposed sewerage treatment plan that fails to meet the requirements of N.J.S.A. 40:55D-38 and appropriate municipal ordinances.

A remand to the Special Master for resolution of the sewerage treatment question is inappropriate at this time. This court is without adequate information to assess what the alternatives might be. As it stands, there is no dispute between Clinton Township and P&H as to the formulation and implementation of an alternate sewerage treatment plan. No such plan currently exists. If in the future, a viable plan is formulated and the Planning Board refuses to grant preliminary site plan approval, a subsequent action in lieu of prerogative writ remand may be appropriate.

I am also ordering that the applicant provide the Planning Board with its Phase I study. In the event that the Phase I study reveals factors which will impact upon site plan and subdivision approval, those issues must be dealt with on remand.

This application is, therefore, remanded to consider the matters set forth above. I direct the plaintiff to provide an appropriate order.



ATTACHMENT 2

State of New Jersey

DEPARTMENT OF ENVIRONMENTAL PROTECTION

Land Use Management

P.O. Box 402

Trenton, NJ 08625-0402

Phone: (609) 292-2178

Fax: (609) 633-0750

LISA P. JACKSON
Commissioner

S. CORZINE
Governor

September 12, 2006

Lucy Voorhoeve, Executive Director
State of New Jersey
Council on Affordable Housing
101 South Broad Street
P. O. Box 813
Trenton, New Jersey 08625-0813

Dear Ms. Voorhoeve,

I am writing to formalize the discussion points related to the June 22, 2006 meeting regarding the Windy Acres site in Clinton, New Jersey. During that meeting the Department provided comments on the proposed development concepts shown on a plan titled "ENVIRONMENTAL CONSTRAINTS, Traditions at Hunt's Mill, Clinton Township, Hunterdon County, NJ," dated August 24, 2005, prepared by TRC. This plan depicts a proposed project consisting of 455 active adult and affordable units. In addition, we also reviewed another plan titled "Traditions at Hunt's Mills (Windy Acres), Alternative Plan for 58 Single Family Lots, dated May 2006, prepared by TRC. The proposed development shown on the referenced plans will require approval of the NJDEP pursuant to, at a minimum, the Freshwater Wetlands Protection Act (FWPA) and the Flood Hazard Area Control Act (FHACA).

Based on the information provided, significant environmental constraints exist that will constrain potential development of this property, particularly in the areas of the site that require access south of the on-site stream. These site constraints include wetlands and associated transition areas, a Category One waterway and associated 300 foot Special Water Resource Protection Area (SWRPA), flood hazard areas and extensive State and Federally listed Endangered and/or Threatened Species habitat, and steep slopes.

Because of these significant environmental constraints, it is likely that any proposed project on this site will necessitate a lengthy permit application review and timeframe. Although conclusive findings cannot be made without completion of a formal permit application review pursuant to all applicable statutes, the significant and complex environmental constraints on this site make a positive regulatory outcome improbable for current 455 or 58 market rate unit alternatives. Specifically, it appears that the proposed project may not qualify for the required permits to construct the access road through the wetlands and across the Category One water with the associated 300 foot SWRPA.

Potential impacts to threatened and/or endangered species habitat would further complicate and discourage the proposed development.

The proposed project appears to require a FWPA Individual permit rather than a FWPA General permit due to the length of the crossing on the plans that were provided. The standards for issuance of this type of permit include an exhaustive alternatives analysis demonstrating that there is no alternative to the proposed wetlands disturbance. It appears that alternatives to this disturbance are available and as such, would preclude issuance of the required permit for the roadway as currently proposed. In addition, in order to approve such a permit, the Department must find that the proposed project is in the public interest, which may be problematic in this case. Further, the proposed project must also be consistent with the applicable approved Water Quality Management Plan (WQMP) adopted under the New Jersey Water Quality Planning Act. At this time, Clinton Township requires a comprehensive Wastewater Management Plan (WMP) update, and it is likely that the Department cannot make a finding that the proposed project is consistent with the WQMP.

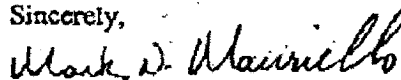
The Land Use Regulation permits will include a review for compliance with the Stormwater Management rule that prohibits development in the 300 foot buffer (SWRPA) adjacent to a Category One waterway. The referenced plans showed significant encroachment into these areas that would not be permissible. Furthermore, this permit review process would also address potential impacts to Threatened and Endangered species habitats, and may also involve U.S. Fish and Wildlife Service review of potential impacts to any Federally listed species on-site.

The discharge of sanitary wastewater from the proposed development will require a NJPDES- Discharge to Groundwater (DGW) permit. The WMP and associated WQMP Amendment are a requirement of an administratively complete NJPDES-DGW permit application.

In conclusion, the proposed development presents significant regulatory challenges that would be very difficult for the Department to approve. In addition, the permit application review timeframes would be very extensive, due the scope of the proposed project and the environmental and regulatory constraints described herein.

Please feel free to contact me at the above address or by phone at 609-292-2178 should you have any questions about the proposed project or Department regulatory process.

Sincerely,



Mark N. Mauriello
Assistant Commissioner
Land Use Management

ATTACHMENT 3

IN RE CLINTON TOWNSHIP,
HUNTERDON COUNTY

)
)
)
)

NEW JERSEY COUNCIL
ON AFFORDABLE HOUSING

OPINION
COAH 06-1806.

This matter arises as a result of an Order to Show Cause issued by the New Jersey Council on Affordable Housing on November 9, 2005. That order was issued in conjunction with the Council's decision on an emergent motion filed by P&H Clinton Partnership ("P&H"). P&H's emergent motion sought to compel Clinton Township, Hunterdon County, to support P&H's efforts to obtain sewer service for the Windy Acres site which was included in the Township's certified fair share plan. Specifically, P&H asked this Council to compel Clinton Township to join in and support P&H's position on appeal before the Superior Court, Appellate Division, in a matter in which P&H ultimately sought sewer service from the Readington-Lebanon Sewer Authority ("RLSA"). The relief sought by P&H was granted in part and denied in part by COAH. (See copy of the December 14, 2005 opinion memorializing COAH's decision on that motion, attached and incorporated by reference herein). In addition, on November 9, 2005, COAH issued an Order to Show Cause as to Why COAH should not Revoke Clinton Township's Second Round Substantive Certification and Dismiss the Pending Petition to Amend that Certified Plan (See copy of November 9, 2005 Order to Show Cause attached and incorporated as if set forth at length herein).

BACKGROUND

The procedural and factual history concerning Clinton Township's re-petition has been long and arduous. Moreover, it has been reiterated at length in COAH's prior decisions in this matter. As such, COAH will rely on the procedural history and background as set forth in its November 22, 2004 Opinion on the Motions to Revoke Clinton Township's Second Round Substantive Certification and to Dismiss the Township's Petition to Amend that Certification; the November 22, 2004 Resolution Granting a Waiver; the January 12, 2005 Resolution on the Motions for Clarification and Reconsideration; the March 9, 2005 Opinion on Motion for Emergent Relief; the November 9, 2005 Order to Show Cause; and the December 14, 2005 Opinion on the

Motion for Emergent Relief. (Copies of these COAH decisions and resolutions are attached and incorporated by reference herein). In addition, the Council notes the following pertinent facts.

Despite on-going negotiations, and direction from COAH to include the Windy Acres site in its Fair Share Plan, on October 27, 2005, Clinton Township Council rejected a proposed settlement with P&H regarding the development of Windy Acres as an affordable housing site. Accordingly, on November 9, 2005, COAH issued an Order to Show Cause as to why Clinton Township's Substantive Certification should not be Revoked ("OSC"). In response to COAH's Order, Clinton Township requested that the parties be allowed the opportunity to enter COAH mediation in an effort to resolve the outstanding issues surrounding the Windy Acres development. COAH granted the Township's request and afforded the parties the opportunity to enter mediation. As such, the resolution of the OSC was put off pending mediation. As a result of this mediation, Clinton Township and P&H executed a settlement agreement; however, this agreement is not binding on those parties without COAH's approval. Both P&H and the Township have asked COAH to approve the agreement.

In addition, and in response to the OSC, SJM Communities, an objector to the Township's petition to amend, filed a "Cross-Motion" seeking to compel the Township to include SJM's property in its second and third round affordable housing plans.

COAH heard argument on both the Order to Show Cause and SJM's "cross-motion" at its June 14, 2006 meeting. This opinion will address both the OSC and the motion.

ARGUMENTS

CLINTON TOWNSHIP'S RESPONSE TO THE OSC:

The Township argues that the Order to Show Cause should be dismissed because the Township and P&H have reached an agreement regarding the development of the Windy Acres site for affordable housing. The Township notes that the initial "trigger" for the issuance of the Order was the Township's initial rejection of an agreement with P&H, and since there is now an agreement between the Township and P&H, the Township submits that the OSC should be dismissed.

In addition, the Township asks that COAH approve the mediated agreement as well as several "modifications" to its pending petition to amend its certified plan. Specifically, the Township asks that it be allowed to remove two municipal construction projects within its plan, and instead receive credit for the Windy Acres site.¹

P&H/WINDY ACRES RESPONSE TO THE OSC:

P&H asserts that prior to COAH's November 9, 2005 OSC, the Township had demonstrated "bad faith" with regard to the development of the Windy Acres development. Since the issuance of the OSC, however, P&H explains that the Township has been cooperative in reaching an agreement with P&H regarding the development of the Windy Acres site. As such, P&H also requests that COAH approve the mediated agreement and allow the Township to modify its pending petition as noted above.

SJM'S CROSS-MOTION:

SJM argues that Clinton Township has exercised and continues to exercise bad faith in implementing its affordable housing plan. SJM's motion notes that COAH previously ordered the Township to proceed with the construction of the municipal construction sites relied upon in its repetition regardless of the outcome of the Windy Acres litigation. However, SJM notes that the Township now seeks to delete these municipal sites from its plan. In addition, SJM argues that the Windy Acres site is no longer suitable for inclusionary development. SJM submits that New Jersey Department of Environmental Protection ("NJDEP") regulations concerning Category One Waters make the provision of sewer service to the Windy Acres site problematic at best. SJM also notes that P&H was not successful in its appeal seeking sewer capacity from the Readington-Lebanon Sewer Authority ("RLSA"). (App. Div. Docket No. A-2997-03T1). As such, SJM argues that the Windy Acres site should no longer be included in the Township's plan. Instead, SJM asserts that it has a site which is available and suitable for development as an inclusionary development. SJM submits that its site has ample sewer

¹ COAH's November 22, 2004 Opinion explained that the Township must include the Windy Acres site pursuant to N.J.A.C. 5:93-5.13(b), but could not receive any affordable housing credit for the site at that time given the question of site suitability and potential lack of sewer for the site. As such, COAH directed Clinton Township to provide alternative affordable housing mechanisms in order to address any shortfall of affordable units in Clinton's fair share plan.

availability, and minimal environmental constraints. Therefore, SJM submits that COAH should either revoke Clinton's second round substantive certification or order that SJM's site be included in the Township's affordable housing plan.

CLINTON TOWNSHIP'S RESPONSE TO SJM'S MOTION:

Clinton Township opposes SJM's motion explaining that the SJM property is located in the ROM-1 zone (research, office and manufacturing district) and would therefore require a "wholesale rezoning from commercial to residential." In addition, the Township states that the sewer purportedly available to the SJM site would only permit the creation of one-bedroom units under DEP rules. The Township further argues that the SJM site is physically and environmentally constrained. Clinton Township also questions whether the site could support the type of development proposed by SJM in light of DEP regulations. Moreover, Clinton asserts that Windy Acres continues to pose a realistic opportunity for the creation of affordable housing as the current settlement agreement provides three alternatives to create 150 affordable units. Finally, the Township is unsure whether sufficient water capacity and pressure are available to service the proposed development.

P&H'S RESPONSE:

P&H asserts that SJM's motion for site specific relief should be denied because SJM has not established that Windy Acres fails to present a realistic opportunity for the creation of affordable housing. P&H notes various possibilities for how its site may obtain sewer. In addition, P&H argues that site-specific builder's remedies are to be awarded by COAH only in exceptional cases. Finally, P&H asserts that it has diligently sought to develop its site and should be afforded the opportunity to comply with the agreement entered by the Township and P&H.

RESPONSE FROM CLINTON TOWNSHIP COMMUNITY COALITION ("CTCC"):

The CTCC is also an objector to the Township's petition to amend and responded to both the OSC and SJM's motion for site specific relief. CTCC asserts that

COAH should not approve the agreement at issue here as the CTCC argues that there are too many environmental constraints on the Windy Acres site and that there are too many obstacles for obtaining sewer for the site. However, the CTCC does not advocate dismissal of Clinton Township from COAH's jurisdiction.

In addition, the CTCC supports SJM's cross-motion to the extent that that motion asserts that Windy Acres does not present a realistic opportunity for the creation of affordable housing. However, the CTCC does not support SJM's request for site specific relief noting that the Township has raised valid issues regarding the suitability of SJM's site for affordable housing. CTCC asserts that COAH should look at these issues in more detail before providing the extraordinary relief sought by SJM.

DISCUSSION

COAH initially entered the OSC at issue here after learning that Clinton Township's Council voted to reject a proposed settlement allowing for the creation of ninety affordable units on the Windy Acres site. As COAH had previously ordered that the Windy Acres site be included in the Township's petition to amend its certified fair share plan, such action by the Township Council was deemed contrary to COAH's previous directives. In response to COAH's Order, however, the Township requested and ultimately participated in COAH's mediation process in the hopes of coming to an agreement with P&H regarding the development of the Windy Acres site for affordable housing. In an attempt to foster the production of affordable housing, COAH permitted the parties to enter mediation and as a result, P&H and Clinton Township have reached an agreement. Since the issuance of the OSC, P&H and the Township executed an agreement to address the Township's second round affordable housing obligation. Therefore, COAH does not find it appropriate to revoke the Township's second round substantive certification at this time. However, it should be noted that COAH is deeply concerned about the amount of time which has passed since COAH granted second round substantive certification to Clinton Township and the lack of affordable housing created in Clinton Township since that time.² As such, it is COAH's intent by this decision to

² While COAH is aware that Clinton has a petition to amend its certified plan currently pending before the Council, that amendment has not yet been acted upon due in large part to the request of the Township and the on-going mediation.

fashion a remedy which will ultimately produce affordable housing in Clinton Township with the least amount of delay.

In regard to SJM's request for site specific relief, however, COAH does not believe it is appropriate to order the relief sought by SJM at this time. It is undisputed that site specific relief is an extraordinary remedy granted only when exceptional circumstances are present. As explained above, COAH would like to see affordable housing in Clinton Township in the immediate future; however, COAH is not convinced that SJM is entitled to a builder's remedy at this time. As noted previously, COAH has found that Clinton Township worked collaboratively with P&H in order to implement the terms of its second round substantive certification. Accordingly, SJM's request for site specific relief is denied at this time.

In regard to the request by P&H and Clinton to approve the settlement agreement at issue, COAH concluded, based on its own analysis and from objections received in response to Clinton's Housing Element and Fair Share Plan, that input from the New Jersey Department of Environmental Protection ("DEP") was necessary to any determination of the feasibility of the Windy Acres project as proposed in the agreement. As such COAH reached out to the DEP on several occasions to receive its input. On September 12, 2006, COAH received a letter from DEP outlining a timeline, as well as the steps necessary for the Windy Acres site to obtain the necessary DEP permits and approvals. In addition, the DEP letter set forth the potential obstacles to obtaining these DEP permits and approvals. Ultimately, the DEP letter concluded, based on the information provided, that the development proposals on the Windy Acres property presented "significant regulatory challenges that would be very difficult for the [DEP] to approve." See Attached. Although the Council disagrees with DEP's assessment that it would be difficult to find that the development of Windy Acres as an affordable housing site is in the public interest, COAH recognizes that the timeframes necessary for DEP review and approval are "extensive." COAH is not able to find that inclusion of the Windy Acres site for 365 market-rate units and 90 affordable units creates a realistic opportunity for affordable housing in light of the many environmental issues and questions regarding sewer capacity regarding the development of the Windy Acres property. In addition, it should be noted that on September 13, 2006, COAH received a

letter from Stephen Eisdorfer, Esq., counsel for P&H, which advised that after additional testing it appears that the hydrological capacity on the Windy Acres site is less than originally anticipated, thereby providing "significantly less" capacity than would be needed to service the 455 unit development. Therefore, COAH cannot approve this agreement as drafted, as requested by P&H and the Township. Rather, COAH will accept the mediation agreement if the parties want to go forward with the condemnation option. The Council emphasizes, however, that it does not seek to impose a requirement on Clinton and P&H, and it is entirely in their discretion to go forward.

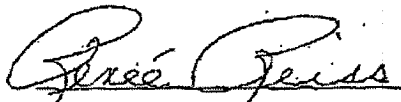
Notwithstanding the foregoing, COAH notes that Clinton Township has an ongoing responsibility to address its affordable housing obligation. Clinton Township's second round substantive certification will expire on March 7, 2007. Moreover, it appears that the Township has decided not to move forward with its pending amendment to this certified plan. As such, COAH is again presented with the question of how to assure that affordable housing is provided in Clinton Township in the most efficient manner possible. In light of the lengthy delays already encountered in this endeavor, COAH finds that this goal can best be accomplished in Clinton Township through a petition to for third round substantive certification on an expedited basis. Such a petition, must, by definition, address any remaining second round obligation together with the Township's third round rehabilitation and growth share obligations. N.J.A.C. 5:94-1.4. In light of the substantial delay in realizing its affordable housing goals thus far, however, COAH finds it necessary to expedite Clinton's third round submission.

As such, Clinton Township is hereby ordered to file a third round petition for substantive certification of its affordable housing plan that addresses the Township's total 1987-2014 affordable housing obligation with COAH within one hundred and twenty (120) days of this order. If no such plan is filed, COAH will revoke the Township's second round certification pursuant to the order to show cause at issue here. The Council will not entertain any request to extend this deadline for submitting a third round plan. If Clinton proposes to provide the 90 affordable units through a municipal construction project (as identified in the settlement agreement), the Township must adhere to the three year construction schedule for such project and must meet the criteria, as set forth in N.J.A.C. 5:94-4.6, including demonstration that there is adequate sewer

and water availability to serve the 90 affordable units. This documentation must be submitted with the Township's third round petition.

In addition, and in order to assure that Clinton Township provides for its affordable housing obligation as expeditiously as possible, Clinton is required to provide COAH staff with quarterly updates on its progress.

In conclusion, Clinton Township is ordered to submit a third round petition within one hundred and twenty (120) days of this opinion. Upon receipt of that petition, COAH will dismiss the Order to Show Cause if the petition meets COAH rules pursuant to N.J.A.C. 5:95-3.2. Further, COAH denies SJM's Cross-Motion in response to the Order to Show Cause seeking to compel the Township to include its property in its second or third round affordable housing plan.


Renee Reiss, Council Secretary

DATED: October 11, 2006

ATTACHMENT 4



State of New Jersey

Department of Environmental Protection
PO Box 402
Trenton, NJ 08625-0402

October 5, 2005

Richard J. Codey
Acting Governor

Bradley M. Campbell
Commissioner
Tel # (609) 292-2885
Fax # (609) 292-7695

The Honorable Thomas Borkowski
Mayor - Clinton Township
1370 Route 31 N
Annandale, New Jersey 08801-0036

Dear Mayor Borkowski and Members of the Clinton Township Council:

I am writing to express my strong objection to the proposed settlement agreement that has been negotiated with respect to the Windy Acres development (Blocks 7, 18, 18.01, and 31, Clinton Township).

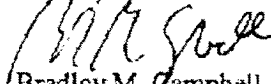
As you are aware, this is a project that has significant implications for water resource protection in the region, particularly in light of the Department of Environmental Protection's designation of the South Branch of the Rockaway Creek as a Category One stream. It is in this light that I have preliminarily reviewed a report by Princeton Hydro (April 13, 2005) concerning the application of water resource protection standards, and particularly stormwater management requirements, to the project.

Under the Municipal Land Use Law and the Residential Site Improvement Standards, governing bodies and planning boards have an independent obligation to review and ensure compliance with stormwater management rules for residential development. The schedule for consideration of the proposed settlement, the extensive doubt cast by the Princeton Hydro report as to whether the project can meet legal requirements, and provisions of the settlement that limit the Planning Board's ability to disapprove the project or to refrain from applying for permits where legal requirements are not met, all make clear that the Planning Board cannot meet the requirements of the law under the current schedule.

The Department depends on local governing bodies and local planning boards to act as our partners in enforcing stormwater management requirements, and the law requires them to do so. This settlement agreement, and the attendant schedule for review of its particulars, is inconsistent with that legal obligation and sets a most disturbing precedent.

For these reasons, I urge you to reject the proposed settlement in its current form, or alternatively, consistent with Senator Leonard Lance's request, to allow interested regulators and the public additional time to ensure that the requirements of the law have been met.

Chiefs,


Bradley M. Campbell
Commissioner

c: The Honorable Leonard Lance



ATTACHMENT 5

State of New Jersey

Richard J. Codey
Acting Governor

Department of Environmental Protection
PO Box 402
Trenton, NJ 08625-0402

Bradley M. Campbell
Commissioner
Tel. # (609) 292-2885
Fax # (609) 292-7695

October 25, 2005

The Honorable Thomas Borkowski
Mayor, Clinton Township
1370 Route 31 North
Annandale, New Jersey 08801-0036

Dear Mayor Borkowski and Members of the Clinton Township Council:

In response to Resolution No. 221-05, I am pleased to provide you with Department of Environmental Protection's (the "Department") comments on the proposed settlement between the Township of Clinton ("Clinton" or the "Township") and P&H Clinton Partnership ("P&H") regarding the Windy Acres Development (Blocks 7, Lots 18, 18.01 and 31, Clinton Township, Hunterdon County). Thank you for the opportunity to comment.

I have reviewed the proposed settlement agreement, which purports to settle litigation concerning P&H's proposed development of the Windy Acres site. P&H proposes to construct, on approximately 292 acres, a total of 515 residential units, 365 of which will be market price age-restricted housing units and 150 of which will be affordable housing units. As I understand the planned development, this represents the maximum build out that would be authorized by the draft Ordinance attached to the settlement agreement as Exhibit C. Based on my review of the settlement agreement, I continue to have serious reservations, and must once again voice my strong objection.

The Windy Acres site is an environmentally sensitive property through which the South Branch of the Rockaway Creek, a Category One ("C1") stream, flows. Development of this site, with its proposed impacts to the South Branch of the Rockaway Creek, has the potential to affect adversely the water resources in the region. To minimize these impacts, it is imperative that proper stormwater management protection and safeguards be implemented in compliance with applicable environmental laws and regulations. However, the settlement agreement contains absolutely no safeguards to ensure that the Planning Board will have an adequate opportunity to perform a thorough review of stormwater management measures proposed at this site.

The Planning Board must review P&H's application for residential subdivision and site plan approval in accordance with the Municipal Land Use Law at N.J.S.A. 40:55D and the Residential Site Improvement Standards at N.J.A.C. 5:21. With respect to stormwater, the Planning Board is specifically required to ensure that appropriate stormwater management measures, which are based on the Department's stringent stormwater management rules at N.J.A.C. 7:8, are designed and implemented. See N.J.A.C. 5:21-7.1 et seq. I am concerned that the settlement agreement provides the Township's or Planning Board's consultants with an extremely abbreviated time period (thirty days) within which to analyze and comment on this complex piece of the application. See Paragraph 2(f). On top of that, P&H has the right to sue the Township or the Planning Board for not "diligently proceeding" with the application. See Paragraph 1(m). From my perspective, setting up such a limited window for "fast-track" review is tantamount to not allowing a proper stormwater management review.

In addition, I am concerned with Paragraph 1(d), which provides that environmental constraints on the property may affect the layout of the project, but "will not serve as the basis to reduce the total number of units on the [p]roperty ..." This notion is carried through in the development standards in the proposed Ordinance at Section 165-144.4(A), Density. Since P&H has not yet submitted any environmental permit applications to the Department, and since there are many environmentally sensitive features on the property, it appears to be premature to conclude that the number of units that will be allowed is fixed as the maximum build out for the site.

I also have concerns about Paragraph 11, which addresses the Township's desire to retain the Windy Acres site's Planning Area 2 designation under the State Development and Redevelopment Plan (the "State Plan"). As a member of the State Planning Commission (the "Commission"), I directed my staff to develop recommendations for changes to the State Plan Policy Map to recognize critical natural resources through the Commission's cross acceptance process. The recommendations that the Department made regarding State Plan map changes are based on data that has been shared with each county since Spring 2005. Our review of the environmental features of the Windy Acres site prompted the Department and the Hunderdon County freeholders to recommend changing the site from its current State Plan designation of Planning Area 2 to the Environmentally Sensitive Planning Area 5.

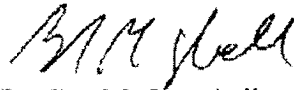
In particular, the site's proximity to the Round Valley Reservoir and tributary headwaters of category one waterbodies and the presence of Threatened and Endangered Species Habitat and wetlands present a compelling justification for the site to be redesignated as environmentally sensitive. More than ninety percent of the Windy Acres site is ranked as suitable habitat for state and federal threatened and endangered species. The area provides a nesting buffer for Bald Eagle as well as suitable habitat for other species, including Bobolink, Wood Turtle, Grasshopper Sparrow, Baltimore Oriole, Eastern Box Turtle, Eastern Ribbon Snake, Gray Catbird, Red-Eyed Vireo, Wood Thrush. In addition, the South Branch of the Rockaway Creek, a C1 waterbody, flows throughout the proposed site. The main stream is on the north side of the property. Two

tributary headwater origins are located within the middle of east and west side of the property. A third tributary flows down to the property from the Round Valley Reservoir state property. Additionally, wetlands are on site connected with the C1 waters. Finally, the Windy Acres site is approximately 150 feet from local open space properties that are contiguous to the Round Valley Reservoir state property.

Resolution No. 221-05 invited the Department to express its views concerning the proposed settlement. These views do not imply my view as to whether the project contemplated by the settlement agreement could satisfy applicable permit or other approval requirements that may apply to applications that later may be submitted to the Department. Any permit application related to this project that is submitted to the Department by P&H will be reviewed on the merits, in accordance with all applicable environmental laws and regulations at the time that a decision is rendered on the application.

Again, thank you for the opportunity to comment on the proposed settlement agreement.

Sincerely,

A handwritten signature in black ink, appearing to read "B. M. Campbell", written in a cursive style.

Bradley M. Campbell
Commissioner

Imbriaco Marra Peck ATTACHMENT 6

ALERT: COAH HOUSING IN BEAVER BROOK SECTION OF ANNANDALE

May 31, 2009

Dear Friend and Neighbor,

In two days, on **Tuesday, June 2**, there will be an important Republican Primary election for three Clinton Township Council seats. The outcome of this primary election will directly impact the **Quality of Life** you enjoy in Clinton Township for years to come.

Clinton Township's current COAH plan places a significant part of our Round two COAH housing obligation - **85 low income units** - on Old Allerton Road **directly across from the Beaver Brook entrance on Route 31**. Another part of our Round two COAH obligation - **15 low income units** - will be built at the Old Municipal building site in Annandale.

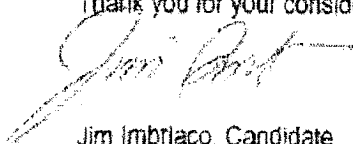
There is a better way forward. **We can no longer ignore** the adverse tax impacts of the Township's current affordable housing plan. We must meet our COAH obligations, but in a **fiscally responsible way**. That means building all of these units on part of the land we purchased last December at Windy Acres for \$7 million, and not on land we would have to buy for several million dollars more. **We support amending our COAH plan to put all of our affordable housing on the front portion of the Windy Acres property - land we already own.**

The Beaver Brook site on Old Allerton Road site was chosen **without input from the affected residents and before we purchased Windy Acres**. Most importantly, Clinton Township does not even own the property and is faced with the prospect of **expensive condemnation litigation**. For at least fifteen years prior to the Township's recent amendment the Township's Master Plan included Windy Acres as our preferred site for affordable housing.

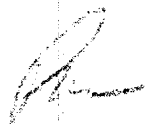
Your vote can make the difference in this election. No Democrats have filed to run. Therefore, the winners of the primary election in two days will also likely win in the November general election. You can vote in the Republican primary if you are a registered Republican or an unaffiliated voter. Unaffiliated voters are registered voters whom have never voted in a previous primary. Only registered Democrats or registered Independents may not vote in the Republican primary.

We hope you agree with us that it would be more fiscally responsible to put our affordable housing obligation on property we already own and not on property we would have to buy. **We respectfully ask for your vote on Tuesday, June 2**, and the votes of your family members, your friends and neighbors. Contact us if you have any further questions at our website address. HYPERLINK "<http://www.yourcouncilteam.com>" www.yourcouncilteam.com, or call us at our phone numbers listed below.


Thank you for your consideration.



Jim Imbriaco, Candidate
Three year term,
Clinton Township Council
908-236-2207



Peter Marra, Candidate
Three year term,
Clinton Township Council
201-213-9401 cell



Spencer Peck, Candidate
One year term,
Clinton Township Council
908-236-6434

ATTACHMENT 7

Municipal Planning

Hunterdon County Democrat (Flemington, NJ) - Thursday, April 30, 2009

To The Editor:

Having spent more than 15 years on the Clinton Township Planning Board, 12 as its chair, I can speak with authority and experience about land use matters and planning in our community.

Consequently, I was surprised and disappointed at the tepid reception by certain members of the township council last Wednesday to the preliminary proposal to build our COAH housing on the north parcel of the Windy Acres site. I would have expected an enthusiastic endorsement. Certain members still defend the current COAH plan to build 85 housing units on land we do not yet own and will need to condemn, directly across the street from Immaculate Conception on Old Allerton Road.

This would be in addition to the current COAH plan to build 15 rental units at Annandale Old Town Hall where I'd prefer from a planning perspective, and have long advocated, a park be developed for residents.

Now that we own Windy Acres (at a cost of \$7 million), it would be fiscally irresponsible to support the current COAH plan and not work immediately to amend it so the township can build its remaining second and third round units at Windy Acres.

Moreover, we've already burdened Annandale with substantial high density housing at The Mews in the name of COAH. To force additional housing in Annandale when we have a more attractive alternative is bad planning; it will increase traffic and congestion, increase the risk of auto accidents, endanger the public health and welfare and degrade the environment and quality of life for residents of Annandale and congregants of the Immaculate Conception Church and its school.

This is municipal spending and planning at its worst. I'm running for council to insure the balance of our COAH obligations for the foreseeable future is developed at Windy Acres.

On June 2, support the team of Imbriaco, Marra and Peck. Visit us at www.YourCouncilTeam.com.

JAMES IMBRIACO

Candidate

Clinton Township Council