

APPENDIX "A"

COAH RESOLUTION OF

MAY 11, 2005

GRANTING EXTENDED SUBSTANTIVE CERTIFICATION



State of New Jersey
COUNCIL ON AFFORDABLE HOUSING
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RICHARD J. CODEY
Acting Governor

SUSAN BASS LEVIN
Commissioner
LUCY VOORHOEVE
Executive Director

May 12, 2005

The Honorable Richard Kraft
Mayor, Mendham Borough
2 West Main Street
Mendham, NJ 07945-1213

Dear Mayor Kraft:

Enclosed is a copy of the Council on Affordable Housing's (COAH's) resolution granting Mendham Borough an extension of substantive certification at its May 11 9, 2005 meeting. The grant of extended substantive certification of Mendham Borough's housing element and fair share plan is extended for a period of time not to exceed December 20, 2005, or until Mendham Borough files or petitions for third round substantive certification, whichever is earlier.

Please take note that in the resolution extending substantive certification, COAH is directing Mendham Borough to do the following:

1. Mendham Borough Mahwah shall submit a report on the expenditures of the balance remaining in its affordable housing trust fund at the time the Borough submits a third round petition for substantive certification.
2. Mendham Borough shall submit a revised spending plan with its petition for third round substantive certification which details anticipated expenditures and a timetable to expend development fee revenues.
3. Mendham Borough shall immediately begin expending 60 percent of the annually collected development fees or \$87,881.62 on Affordability Assistance Programs to render units in Mendham's Housing Element and Fair Share Plan more affordable, pursuant to its approved spending plan.

If you have any questions, please call Barbara Walsh at (609) 292-3171.

Sincerely,

Lucy Voorhoeve
Executive Director

c: attached service list
Barbara Walsh, COAH



Mendham Borough

Morris

The Honorable Richard G. Kraft
Borough of Mendham
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Mendham, NJ 07945-1213

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**Extended Substantive Certification Fact Sheet
Mendham Borough, Morris County
April 28, 2005
Prepared By:
Barbara A. Walsh, PP/AICP**

Summary

The second round affordable housing obligation for Mendham Borough is 31 units consisting of six rehabilitation units and 25 new construction units. Mendham Borough received second round substantive certification on June 5, 1996. The plan certified by COAH included a total of 39 credits that included 36 units that had been built and three units that were previously rehabilitated pursuant to COAH rules satisfying the Borough's entire obligation.

Recommendation: Grant Extended Substantive Certification

RESOLUTION GRANTING EXTENDED SUBSTANTIVE CERTIFICATION # ES 107

Mendham Borough, Morris County

WHEREAS, Mendham Borough, Morris County, received substantive certification from the New Jersey Council on Affordable Housing (COAH) on June 5, 1996 for a period of six years; and

WHEREAS, N.J.A.C. 5:95-15.2 permits COAH-certified municipalities to request an extension of substantive certification of their 1987-1999 Housing Element and Fair Share Plan until December 20, 2005; and

WHEREAS, Mendham Borough moved for extended substantive certification by motion on November 12, 2004, as per N.J.A.C. 5:95-12; and

WHEREAS, Mendham Borough's governing body adopted a resolution on November 1, 2004 requesting the extension, committing to continue to implement the certified second round plan and committing to file or petition for third round substantive certification in accordance with N.J.A.C. 5:94 and N.J.A.C. 5:95 by December 20, 2005; and

WHEREAS, notice of the motion was published in the *Morris County Daily Record* on November 4, 2004; and

WHEREAS, Mendham Borough served the motion upon the service list maintained by COAH as per N.J.A.C. 5:95-15.2(c)2; and

WHEREAS, Mendham Borough submitted documentation demonstrating that all applicable ordinances implementing the 1987-1999 substantive certification are in effect; and

WHEREAS, Mendham Borough's motion and accompanying documentation comply with the requirements set forth in N.J.A.C. 5:95-15.2; and

WHEREAS, during the 20-day public comment period, COAH received no comments to Mendham Borough's motion for extended substantive certification; and

WHEREAS, COAH staff conducted a principled review of Mendham Borough's motion and prepared a COAH Report Reviewing Motion for Extended Substantive Certification on April 28, 2005, attached hereto as Exhibit A and incorporated by reference herein; and

WHEREAS, Mendham Borough's cumulative fair share obligation is 31 affordable housing units, consisting of a six-unit rehabilitation obligation and a 28-unit new construction obligation; and

WHEREAS, the plan certified by COAH on June 5, 1996 included 39 credits, yielding eight surplus credits; and

WHEREAS, pursuant to N.J.A.C. 5:93-5.15, Mendham Borough did not have a rental obligation; and

WHEREAS, a development fee ordinance was adopted by the Borough on July 3, 1995 and approved by COAH on July 12, 1995; and

WHEREAS, COAH approved Mendham Borough's spending plan on April 5, 2000; and

WHEREAS, Mendham Borough has a balance of \$146,469.37 in its affordable housing trust fund; and

WHEREAS, in accordance with Mendham Borough's approved spending plan, at least 60 percent of the revenues collected from development fees shall be devoted to render units more affordable; and

WHEREAS, Mendham Borough has expended \$53,887 of development fee funds on the rehabilitation of additional units but has not expended any development fee funds on affordability assistance.

NOW THEREFORE BE IT RESOLVED that Mendham Borough is complying with the terms of its 1987-1999 substantive certification; and

BE IT FURTHER RESOLVED that Mendham Borough shall continue to comply with all terms and conditions of its substantive certification; and

BE IT FURTHER RESOLVED that Mendham Borough's certified plan continues to provide for its fair share of affordable housing; and

BE IT FURTHER RESOLVED that COAH hereby grants Mendham Borough, Morris County extended substantive certification; and

BE IT FURTHER RESOLVED that Mendham Borough shall submit a report on the expenditures of the balance remaining in its affordable housing trust fund at the time the Borough submits a third round petition for substantive certification; and

BE IT FURTHER RESOLVED that Mendham Borough shall submit a revised spending plan with its petition for third round substantive certification which details anticipated expenditures and a timetable to expend development fee revenues; and

BE IT FURTHER RESOLVED that this grant of extended substantive certification of Mendham Borough's Housing Element and Fair Share Plan is extended for a period of time not beyond December 20, 2005 or until Mendham Borough files or petitions for third round substantive certification, whichever is earlier; and

BE IT FURTHER RESOLVED that Mendham Borough shall file or petition for third round substantive certification by December 20, 2005; and

BE IT FURTHER RESOLVED that all ordinances implementing the original substantive certification shall remain in effect for the duration of the extended substantive certification; and

BE IT FURTHER RESOLVED that in accordance with Mendham Borough's adopted spending plan, the Borough shall immediately begin expending 60 percent of the annually collected development fees or \$87,881.62 on Affordability Assistance Programs to render units in Mendham's Housing Element and Fair Share Plan more affordable; and

BE IT FURTHER RESOLVED that Mendham Borough's extended substantive certification is conditioned on Mendham Borough's continued implementation of its certified Housing Element and Fair Share Plan.

I hereby certify that this Resolution was duly adopted by the Council on Affordable Housing at its meeting on May 11, 2005.


Renée Reiss
Council Secretary

REPORT REVIEWING MOTION FOR EXTENDED SUBSTANTIVE CERTIFICATION

Mendham Borough, Morris County

PREPARED BY

Barbara A. Walsh, PP/AICP

April 28, 2005

I. INTRODUCTION

The Council on Affordable Housing (COAH) adopted N.J.A.C. 5:91-14 as an interim procedural rule, effective November 1, 1999, which was designed to address the anticipated gap between the expiration of second round low- and moderate-income housing requirements and the promulgation of a third round methodology and corresponding rules. Specifically, the rule adopted by COAH in 1999 established a mechanism whereby municipalities that had received second round certification from COAH could request an extension for a period of time up to one year after the effective date of COAH's third round rules, provided the municipality requested the extension by resolution of the governing body and committed to petition COAH with a third round plan prior to the expiration of the extension.

COAH's interim procedural rule was the subject of several appeals. On August 31, 2004, the Appellate Division of the Superior Court of New Jersey issued a consolidated opinion on these related appeals and determined that while COAH does have the authority to grant extended substantive certifications, it must provide for adequate public notice. The court further opined that COAH must "engage in a principled review of each municipality's compliance and conduct before it can qualify for an extended certification" and directed COAH to adopt rules governing the process municipalities must follow to secure extensions. In re Six Month Extension of N.J.A.C. 5:91-1 et seq. et al., 372 N.J. Super. 61 (App. Div. 2004).

In compliance with the directive of the Appellate Division, COAH adopted N.J.A.C. 5:91-14.3 as an emergency rule, which became effective on October 13, 2004, and N.J.A.C. 5:95-15.2 which replaced the October 13th rule on December 20, 2004. These revised procedures require municipalities seeking extended substantive certification to do so by filing a formal

motion with COAH, providing adequate public notice and providing documentation from which COAH's review can be based.

This report reviews the request for extended substantive certification that was submitted in a motion filed by Mendham Borough, Morris County, on November 12, 2004. Mendham filed its motion prior to the December 13, 2004 deadline established by N.J.A.C. 5:91-14.3 and N.J.A.C. 5:95-15.2. Mendham was originally granted extended substantive certification by COAH on March 6, 2002 under N.J.A.C. 5:91-14.

The motion schedule established by COAH provided for opposing briefs to be filed by December 27, 2004. No opposing briefs were received by COAH.

II. COMPLIANCE REVIEW

Mendham submitted documentation in support of its motion that included a proposed schedule for the submission of a petition for third round substantive certification, a statement describing the progress of the Borough's compliance with the terms of its 1987-1999 substantive certification and current monitoring reports. Mendham has committed to submitting a newly adopted Housing Element and Fair Share Plan to address its third round obligation prior to December 20, 2005.

The second round affordable housing obligation for Mendham is 31 units, consisting of 25 new construction units and six rehabilitation units.

Mendham received second round substantive certification on June 5, 1996. The plan certified by COAH included a total of 39 credits that included 28 units of prior cycle credits for Mendham Area Senior Housing (MASH) units completed in 1980, eight units of credit for MASH units completed in 1989 and three units that had been previously rehabilitated pursuant to COAH rules, leaving a surplus of eight units that may be eligible to be used for any future affordable housing obligation.

On February 24, 1995, Mendham Borough received a Village Center designation from the State Planning Commission. On December 18, 1995 Mendham Borough adopted an ordinance designating tracts as "village center cluster" and provided an incentive to capture affordable housing as development occurs, providing a ten percent increase in density for inclusion of an affordable housing component.

DEVELOPMENT FEE ORDINANCE

Mendham adopted a development fee ordinance on July 3, 1995, which COAH approved on July 12, 1995. COAH approved Mendham's spending plan on April 5, 2000. Pursuant to N.J.A.C. 5:94-6.14, Mendham amended the Borough's development fee ordinance on March 21, 2005, increasing the Borough's development fees pursuant to N.J.A.C. 5:94-6.6(a) and 6.7(a).

The Borough reported that it has collected \$200,356.37 in development fees and interest and expended \$53,887 on rehabilitation activities. The Borough's spending plan provides that 60 percent of the revenues from fees are to be allocated to providing affordability assistance. The Borough has not allocated any development fees towards Affordability Assistance Programs, as required in its spending plan. In accordance with its adopted spending plan, the Borough must immediately begin expending 60 percent of the annually collected development fees or \$87,881.62 on Affordability Assistance Programs to render units in Mendham's Housing Element and Fair Share Plan more affordable.

IMPLEMENTING ORDINANCES

Mendham was required to adopt an affirmative marketing ordinance within 45 days of the grant of substantive certification. Mendham adopted and submitted an Affirmative Marketing Ordinance pursuant to the Borough's grant of substantive certification.

