

**ARCHER & GREINER P.C.**

Riverview Plaza

10 Highway 35

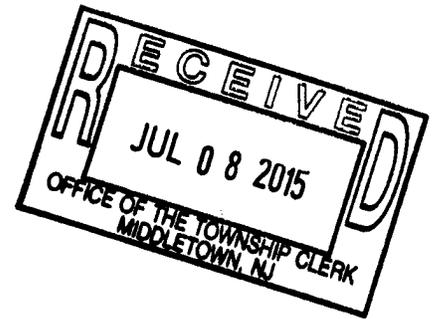
Red Bank, NJ 07701

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Attorneys for Declaratory Plaintiff, Township of Middletown

By: Brian M. Nelson, Esq. (Attorney ID: 1352003)



**IN THE MATTER OF THE  
APPLICATION OF THE  
TOWNSHIP OF MIDDLETOWN,  
MONMOUTH COUNTY, a  
municipal corporation of the State  
of New Jersey.**

**SUPERIOR COURT OF NEW JERSEY  
LAW DIVISION - MONMOUTH COUNTY**

**DOCKET NO.: MON-L-**

Civil Case  
(Mount Laurel)

**EXHIBITS C-I**

ORDINANCE NO. 2009-2969 (AMENDED)

TOWNSHIP OF MIDDLETOWN

ORDINANCE AUTHORIZING THE TOWNSHIP OF MIDDLETOWN TO ACQUIRE PROPERTY IDENTIFIED AS BLOCK 873, LOT 163 (163Q), BLOCK 871, LOT 9 FOR OPEN SPACE AND TO ENTER INTO AN AGREEMENT WITH THE MONMOUTH CONSERVATION FOUNDATION, NY/NJ BAYKEEPER AND IMPACT/OASIS TO PARTITION A PORTION OF THE PROPERTY FOR USE AS A FARM AND RESIDENCE FOR YOUNG AUTISTIC ADULTS

**WHEREAS**, the Township voted in November 1998 to approve a Township Open Space Program for acquiring and preserving open space and recreational lands in the Township, and the Township over the years has preserved a number of parcels for open space so as to enhance the community and its residents; and

**WHEREAS**, the Township in conjunction with the Monmouth Conservation Foundation ("MCF") has been in active negotiations for some time with George Coe, the owner of Block 873, Lot 163 (163Q), which is a parcel of approximately 25.6 acres, with a 5046 s.f. house of some historic value, a four car garage, and fenced paddock area, located on Sleepy Hollow Road and terminating at the Earle Navy road (Block 871 Lot 9 is a small vacant parcel of .127 acres, located on the other side of the Navy Road, also owned by Coe and included in the acquisition); and

**WHEREAS**, IMPACT/OASIS, a non-profit group intending to establish a residence/working farm for autistic young adults, had also been involved in negotiations with the owner seeking to purchase a portion of the property, being the house with approximately 7 to 8 acres surrounding/adjacent to the house; and

**WHEREAS**, to that end, the Township, the MCF, IMPACT/OASIS, the NY/NJ Baykeeper, and the State Green Acres representatives thereupon began working together toward the joint acquisition of the Coe property, with the acquired parcel to be partitioned so that the Township would retain approximately 16 to 17 acres of the property for use as open space/recreation and IMPACT/OASIS would obtain approximately 7 to 8 acres of property including the existing house with the limitation that it would only be used as a residential/farm for handicapped (autistic) adults; and

**WHEREAS**, negotiations have been complicated because a portion of Block 873 Lot 163 is in the midst of a remediation of ground contamination from a leaking fuel tank (removed in 2003) and adequate provision had to be made to require suitable guarantees that the property is or will be remediated at the seller's expense; and

**WHEREAS**, the seller and joint acquiring parties have tentatively worked out two inter-related agreements to accomplish this joint acquisition: (1) being the Agreement between the seller Coe and the Township to acquire the entire property for \$2,900,000, subject to joint financing by the Township (\$1,550,000), IMPACT/OASIS (\$900,000), NY/NJ Baykeeper (\$250,000), and Monmouth Conservation Foundation (\$200,000), along with remediation completion or guarantees; and (2) being the Agreement for Assignment of Interest in Real Property as between the Township, IMPACT/OASIS, the MCF, and NY/NJ Baykeeper providing for the specified contribution by each party to the joint acquisition price and for the partition of the property, with approximately 7 to 8 acres including the house to be deeded to IMPACT/OASIS for use as a residence/farm for autistic adults and 17 to 18 acres to be deeded to the Township for open space/recreational use, subject to a further delineation to be agreed upon by the parties; the agreement further allows for the Township's easement/right to locate a public parking area near the front of the property on the IMPACT/OASIS area; and

**WHEREAS**, it is further anticipated that the Township will apply for and obtain reimbursement in the future from the State Green Acres Program for approximately \$650,000 of its \$1,550,000 share of this joint acquisition cost; and

WHEREAS, the Township's proposed participation in this joint acquisition will result in the preservation of a large tract for public open space/recreation use and will allow for the preservation of a home of historic value with its continued beneficial use as a residence/farm for autistic adults on approximately 7 to 8 acres; and

WHEREAS, the Agreements contemplated herein have been recommended and endorsed by the State Green Acres Program and the Monmouth Conservation Foundation as a beneficial joint acquisition to preserve this property.

NOW THEREFORE BE IT ORDAINED by the Township Committee of the Township of Middletown that:

**Section 1.** The Township is authorized to execute the Agreement as between the Township and the seller Coe for purchase of the property for \$2,900,000 (subject to possible adjustment upon the survey delineating the exact acreage) with the property to be funded jointly by the Township (\$1,550,000), IMPACT/OASIS (\$900,000), MCF (\$200,000), and NY/NJ Baykeeper (\$250,000) in substantially the form attached hereto.

**Section 2.** The Township is further authorized to execute the Agreement for Assignment of Interest in real property as between the Township, IMPACT/OASIS, the MCF, and NY/NJ Baykeeper providing for the partition of the acquired property with approximately 7 to 8 acres including the house to be deeded to IMPACT/OASIS and approximately 17 to 18 acres to be deeded to the Township for open space recreation purposes in substantially the form attached hereto.

**Section 3.** The Agreements set forth in this ordinance are subject to the final approval of the Mayor, Township Administrator and Township Attorney.

**Section 4.** The Mayor, Township Attorney and Township officials are hereby authorized to take all necessary actions required to effectuate the terms of the Agreements to acquire the property and the related partition.

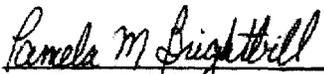
**Section 5.** If a court of competent jurisdiction shall declare any section, paragraph, subsection, clause or provision of this ordinance invalid, such decision shall not affect the validity of this ordinance as a whole or any part hereof.

**Section 6.** This ordinance shall take effect immediately upon final passage. Notice of adoption shall be published as provided by law.

PASSED FIRST READING: April 20, 2009

AMMENDED: May 18, 2009

PASSED AND APPROVED: June 15, 2009

  
PAMELA BRIGHTBILL, MAYOR  
TOWNSHIP OF MIDDLETOWN

ATTEST  
  
HEIDI ABS, TOWNSHIP CLERK

**RESOLUTION APPROVING MINOR SUBDIVISION  
BLOCK 871, LOT 163.01  
BLOCK 871, LOT 163.02**

WHEREAS, the Township of Middletown is the contract purchaser (owner George Coe) of a parcel presently known as Block 871 Lot 163 (163Q), consisting of a house and certain outbuildings on 25.6 acres, and

WHEREAS, the Township is acquiring the property in a joint acquisition with IMPACT/OASIS inc., a non-profit corporation, with the plan and intention for the Township to own one lot/parcel consisting of approximately 18.64 acres to be utilized as part of the Township Open Space Program and IMPACT/OASIS to own one lot/parcel consisting of the house and outbuildings on approximately 7.00 acres for utilization as a residential/farm facility for autistic young adults, and

WHEREAS, in furtherance of this acquisition and with the consent of the owner/contract seller, the Township has applied, as part of a capital review approval by the Planning Board under N.J.S.A. 40:55D-31, for a Minor Subdivision Approval in order to subdivide the exiting Block 871 Lot 163 into two lots/parcels, so as to permit the proper completion of the conveyance to the Township and IMPACT/OASIS, and

WHEREAS, as the application is for Minor Subdivision Approval with no variances required and the proposed lots being conforming, and pursuant to a capital project review, there is no requirement of public notice for this minor subdivision, and

WHEREAS, the matter was presented to the Board with the testimony of Township Planning Director Jason Greenspan, PP, AICP and the proposed Subdivision Plat by Najarian Associates (1 Sheet) dated December 4, 2009, and

WHEREAS, the Planning Board upon the consideration of the exhibits and evidence has made the following findings:

1. The property presently consists of a single lot (Block 871 Lot 163), being an older single family house and certain outbuildings located on 25.6 acres. The applicant Township is the contract purchaser in conjunction with IMPACT/OASIS Inc., a non-profit corporation involved in the education and assistance to autistic young adults.
2. The Township has applied for minor subdivision approval, in conjunction with a capital projects review under N.J.S.A. 40:55D-31, in order to obtain the subdivision of the existing Lot 163 into two lots, to be designated Lot 163.01 (7.001 acres inclusive of the house and outbuildings) and Lot 163.02 (18.64 acres). The proposed Lot 163.02 would be the Township property, to be acquired and dedicated as open space pursuant to the Township Open Space Program. The proposed Lot 163.01 would become the property of IMPACT/OASIS, to be utilized as a residence/farm for the education and assistance of autistic young adults pursuant to the IMPACT/OASIS purposes and Charter. The acquisition of this property by the Township is being partially funded by IMPACT/OASIS, the Monmouth Conservation Foundation, the State Green Acres Program, and the NY/NJ Baykeeper. The acquisition and the proposed partition of the portion of the property to the IMPACT/OASIS has been approved by the Township Ordinance 2009-2969.

3. The minor subdivision requested results in and requires no variances. The proposed lots are conforming to the Township Development Regulations. The proposed subdivision and acquisition will provide Township open space and will also provide a beneficial utilization and preservation of the existing house and structures by IMPACT/OASIS. On that basis the minor subdivision of the subject Lot 163 into the new proposed Lot 163.01 and Lot 163.02 as shown on the Subdivision Plat proposed is properly approved.

4. As to the capital project review by the Planning Board, the Board has reviewed the proposed action by the Township in the acquisition and division of this property. The Board concludes that the proposed acquisition and utilization is in conformance with the Master Plan and will provide substantial benefits to the Township and public by providing substantial open space area along with an appropriate and beneficial use as a community residence/farm in the existing structures by IMPACT/OASIS. The Board recommends that the Township continue with the proposed acquisition and proposal.

5. The minor subdivision furthers the purpose of the Township's Housing Element and Fair Share Plan, which received Substantive Certification by the New Jersey Council on Affordable Housing (COAH) on October 14, 2009, as said Housing Plan relies on the conversion of the existing residence located on proposed Lot 163.01 into a community residence/supportive housing unit by IMPACT/OASIS, thereby providing credits towards Middletown's affordable housing obligation.

NOW THEREFORE BE IT RESOLVED by the Planning Board of the Township of Middletown that the minor subdivision of the existing Block 871 Lot 163 (163Q) into the new Lot 163.01 and Lot 163.02 as detailed and shown in the Subdivision Plat by Najarian Associates dated December 4, 2009, is hereby approved.

BE IT FURTHER RESOLVED that the Planning Board hereby recommends the continued acquisition of Block 871 Lot 163, as now subdivided into Lot 163.01 and Lot 163.02 as proposed and detailed by Ordinance 2009-2969 and the testimony presented at the hearing.

CERTIFICATION

I, Debra Yuro, Secretary of the Township of Middletown Planning Board hereby certify the foregoing to be a true copy of a resolution adopted by the Middletown Township Planning Board at their public meeting held on January 6, 2010.

WITNESS, my hand and the seal of the Township of Middletown this day of January, 2010.

  
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RESOLUTION NO. 12-88

TOWNSHIP OF MIDDLETOWN  
COUNTY OF MONMOUTH

RESOLUTION AUTHORIZING DEDICATION OF AFFORDABLE HOUSING TRUST FUNDS FOR  
COMPLETION OF DEVELOPMENT OF SUPPORTIVE HOUSING UNITS FOR  
DEVELOPMENTALLY DISABLED YOUNG ADULTS

WHEREAS, the Township of Middletown maintains a dedicated Affordable Housing Trust Fund through the receipt of development fees pursuant to the Fair Housing Act and regulations that must be spent by this July or these funds revert to the State of New Jersey; and

WHEREAS, in 2011, the Township and a number of non-profit organizations completed a transaction acquiring open space and a housing structure formerly known as the Coe Estate intended to be used as affordable supportive housing for developmentally disabled young adults sponsored by IMPACT/OASIS upon Block 871, Lot 163.01; and

WHEREAS, significant improvements are required to be made to renovate the housing structure acquired by IMPACT/OASIS through private donations and a loan acquired through the HMFA, including the installation of a sprinkler system requiring a \$40,000+ dedicated water main to the house to provide supportive housing to as many as eight (8) young developmentally disabled adults; and

WHEREAS, the provision of such housing will provide the Township with at least eight (8), but likely more, affordable housing credits and the type of housing being created is consistent with the housing and approved spending plan for the disposition of affordable housing trust funds in the Township; and

WHEREAS, if the Township dedicates \$5,000 per bedroom of affordable housing trust funds (a total of \$40,000) that can be applied towards the completion of these affordable housing units, IMPACT/OASIS

will be able to cover the remaining costs of the installation of the necessary sprinkler system and dedicated water main supporting the same.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey that the Chief Financial Officer, in conjunction with the Director of Planning, is hereby authorized and directed to dedicate and encumber \$40,000 in affordable housing trust funds to IMPACT/OASIS, a duly registered non-profit organization, for the purpose of completing the development of up to eight (8) supportive housing bedrooms for young developmentally disabled adults pursuant to any terms and conditions required by law and the Township's Director of Planning for the disposition of the same to be contingent upon the issuance of certificates of occupancy for the same.

**MIDDLETOWN TOWNSHIP COMMITTEE**

Committee Member	Approved	Opposed	Abstain	Absent
Mayor A. Fiore	X			
G. Scharfenberger	X			
P. Brightbill	X			
K. Settembrino	X			
S. Massell	X			

**CERTIFICATION**

I, Heidi R. Brunt, Township Clerk of the Township of Middletown, hereby certify the foregoing to be a true copy of a resolution adopted by the Middletown Township Committee at their regular meeting held on February 21, 2012.

Witness, my hand and the seal of the Township of Middletown this 21st day of February, 2012.

  
Heidi R. Brunt, Township Clerk

February 16, 2012

**CERTIFICATION OF FUNDS**

I, Nicola Trasente, Chief Financial Officer for the Township of Middletown, do hereby certify that adequate funds are available for the contract with **IMPACT OASIS, 1 MORGAN ROAD, MIDDLETOWN, N.J. 07748** in the amount of **\$40,000.00**. The funds being expended are for a Dedicated Water Main and Significant Improvements to Housing Structure the funds that are available for this contract are found in the following line item appropriations or ordinances:

T-03-56-802-290-000 - \$40,000.00

  
Nicola Trasente  
Chief Financial Officer

**ORDINANCE NO. 2009-2979**

**TOWNSHIP OF MIDDLETOWN**

**ORDINANCE AMENDING CHAPTER 16 OF THE  
CODE OF THE TOWNSHIP OF MIDDLETOWN (1996) FACILITATING  
DEVELOPMENT OF INCLUSIONARY SITES AS PROSCRIBED  
PURSUANT TO THE PROVISIONS OF THE TOWNSHIP'S  
HOUSING ELEMENT AND FAIR SHARE PLAN**

**WHEREAS**, on December 11, 2008, the Middletown Township Planning Board adopted an amended Master Plan Housing Element and Fair Share Plan; and

**WHEREAS**, the Township Committee subsequently endorsed the action of the Planning Board and petitioned the New Jersey Council on Affordable Housing ("COAH") for Substantive Certification of said Fair Share Plan on December 30, 2008; and

**WHEREAS**, on April 13, 2009, COAH determined the Township's petition for substantive certification to be complete; and

**WHEREAS**, in accordance with the Municipal Land Use Law at N.J.S.A. 40:55D-62, the Township Committee is charged with the responsibility of adopting ordinances designed to effectuate the goals, objectives and recommendations of the Master Plan, including the Housing Element and Land Use Element; and

**WHEREAS**, consistent with the intent and purpose of the Housing and Land Use Elements of the Township Master Plan, the Planning Board has recommended making certain zoning changes in accordance therewith; and

**WHEREAS**, it is in the best interests of the taxpayers of the Township of Middletown to plan for inclusionary development in a manner consistent with sound planning and zoning principles; and

**WHEREAS**, it is in the best interests of the taxpayers of the Township of Middletown to take these steps to ensure it is effectively protected from potential future litigation and to advance the settlement of other currently pending litigation.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Middletown, County of Monmouth, State of New Jersey that the following zoning amendments be effectuated under Chapter 16 of the Code of the Township of Middletown (1996), as follows:

**SECTION 1.** Block 281, Lots 14 and 15 shall be rezoned as Residential Multifamily (RMF-1) per the following standards:

**16-9.51 Standards and Regulations Affecting the RMF-1 Zone**

A. Minimum Standards

- |                                  |                   |
|----------------------------------|-------------------|
| 1. Tract area                    | 1 acre            |
| 2. Building setbacks             |                   |
| i. From public right of way      | 15 feet           |
| ii. From side yard line          | 10 feet           |
| 3. Surface parking area setbacks |                   |
| i. From roadway                  | 10 feet           |
| ii. From any lot line            | 10 feet           |
| iii. From buildings              | 5 feet            |
| 4. Driveway side setback         | 20 feet           |
| 5. Distance between buildings    | 20 feet           |
| 6. Open space                    |                   |
| i. Active                        | 5% of tract area  |
| ii. Total                        | 10% of tract area |
| 7. Affordable Housing Set-Aside  | 25%               |

B. Maximum Regulations

- |                    |                            |
|--------------------|----------------------------|
| 1. Building Height | 48 feet                    |
| 2. Building Cover  | 30%                        |
| 3. Lot Cover       | 60%                        |
| 4. Density         | 24 dwelling units per acre |

C. Design Standards – In addition to the specific Architectural and Building Design Standards set forth in Section 16-6.4, the following design standards shall apply:

1. Where practical, the lowest floor shall be elevated at least eighteen inches above the established base flood elevation.
2. Electrical, heating, ventilation, plumbing, and air conditioning equipment and other service facilities (including ductwork) shall be elevated at least eighteen inches above the established base flood elevation.
3. All portions of buildings lower than 18 inches above the established base flood elevation must be constructed using flood-damage-resistant materials.
4. All garages shall meet the minimum flood opening requirements for enclosures.

5. Exterior building facades shall incorporate design features such as offsets, balconies, projections, window reveals, or similar elements to preclude large expanses of uninterrupted building surfaces. Along the vertical face of a building, such features shall occur at a minimum of every 30 feet, and on each floor shall, to the greatest degree practicable, contain a minimum of two of the following features:
  - a. Recesses (e.g., deck, patio, courtyard, entrance, window reveals) that have a minimum depth of 3 feet;
  - b. Extensions (e.g., floor area, deck, patio, entrance) that have a minimum depth of 2 feet and minimum length of 4 feet; and/or
  - c. Offsets or breaks in roof elevation of 2 feet or greater in height.
6. To the greatest degree practical, neither rear building facades nor garages shall be oriented towards Main Street. Garage doors shall include fenestration.
7. Adequate, accessible and secure storage space shall be provided for each dwelling unit. A minimum of 112 cubic feet of enclosed storage shall be required separate from each living unit. This is an area 4' x 4' x 7'. Garages and storage units adjoining a dwelling (e.g., attached to decks and patios) shall qualify as storage space.
8. Trash receptacles shall not be located in any front yard setback, or within 10 feet of an adjacent property line.

D. Other Regulations:

1. Temporary construction trailers shall be permitted where active construction work is proposed. Such trailers shall not be placed on site until building permits have been issued and in no case more than seven days prior to the commencement of work. Trailers shall not remain on site more than seven days after the completion of all work. Temporary construction trailers shall not be placed within the right-of-way of any improved public road.
2. All affordable units shall be constructed and maintained in a manner consistent with the rules and regulations adopted by the New Jersey Council on Affordable Housing. Affordable housing units shall be deed restricted to remain affordable for a period of 30 years, unless the rules adopted by the New Jersey Council on Affordable Housing are changed. Should such a change occur the term of the affordability deed restriction shall be consistent with any new rule(s).

**16-9.1 Zoning Map**

The Official Zoning Map is hereby amended to change the zone designation for Block 281, Lots 14 and 15 to Residential Multifamily (RMF-1).

**16-9.2.B Schedule of Permitted Uses**

The Schedule of Permitted Uses is hereby amended as follows for the RMF-1 Zone: All principal, accessory and conditional uses permitted for the RTH shall be permitted principal, accessory and conditional uses in the RMF-1 Zone.

**16-9.2.C Schedule of Area, Yard and Building Requirements**

The Schedule of Area, Yard and Building Requirements is hereby amended to incorporate the provisions of 16-9.51(A) and 16-9.51(B).

**SECTION 2.** Block 825, Lots 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 01, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81 shall be zoned as a Planned Development (PD) zone per the following standards:

**16-9.39 Standards and Regulations Affecting the PD Zone**

- A. Minimum Standards:

1. Minimum Lot Area: 20 acres.
2. Minimum Building Setbacks:
  - a. From arterial or collector roadway: 50 feet except where any jughandle intrudes into property which buildings shall be no less than 20 feet to the ROW jughandle in that instance.
  - b. From tract boundary or right of way: 35 feet.
  - c. From single family residential zone: 75 feet, except detached single family homes are permitted with frontage on an extension of Carriage Lane so long as the "standards and regulations" of the R-22 Zone are complied with for each lot and structure.
  - d. From internal streets: 12 feet.
3. Parking Setbacks:
  - a. From arterial or collector roadway: 60 feet, except that parking for affordable housing units may be located to within 30 feet from arterial or collector roadways.
  - b. From tract boundary or right of way (other than internal streets): 50 feet, except for parking for affordable housing units which may be no closer than 20 feet.
  - c. From principal buildings: 6 feet, except for driveway parking spaces.
4. Buffer Requirements:
  - a. No structure or paved area associated with a retail use shall be located within 150 feet of a single family residential zone.
  - b. No structure or paved area associated with any office use shall be located within 100 feet of a single family residential zone.
  - c. Structures associated with drainage facilities may be permitted within any required buffer area.
5. Open Space: 30% (open space includes all area of the tract meeting the definitions of "open space" and/or "open space", unoccupied in 16-2.3. It specifically includes all drainage and storm water drainage and recharge basins.

B. Maximum Regulations:

1. Lot Coverage: The overall lot coverage for the gross tract area shall not exceed 50%.
2. Building Height:
  - a. Single family detached residential uses – 2 ½ stories, 35 feet
  - b. Retail, Office, Commercial, Mixed-Use And Multi-Family Residential Buildings – 4 stories, 60 feet
3. Floor Area Ratio: 0.12 excluding residential uses.

C. Other Regulations:

1. All residential uses on the site shall be developed at a density not to exceed 4.5 units per gross tract area.
2. Performance residential development shall be permitted on any portion of the PD Zone consistent with the R-22 standards and shall be exempt from the minimum tract size requirement.
3. Any application for development greater than 100 acres in size may, in addition to the application for site plan approval, also include a request for a General Development Plan approval for the full development of the project. This application shall be submitted consistent with N.J.S.A. 40:55D-45, 45.1, 45.2 and 45.3 and include information outlined in the above referenced Statutory Sections that the Board deems necessary for review and determination of General Development Plan approval. The term of the General Development Plan approval shall be determined by the Planning

Board using the guidelines set forth in N.J.S.A. 40:55D-45.1(c), however, the term shall not be less than 10 years nor more than 20 years from the date upon which the developer receives final approval of the first section of the planned development.

4. The General Development Plan for the full development of the project must contain a minimum of three of the below uses, and each use shall not comprise more than the maximum percentage listed below, unless otherwise specified herein. Nonresidential development shall comprise a minimum 30% of the full development of the PD zone.

<u>Uses</u>	<u>Maximum Percent of Full Development</u>
Office uses	40%
Retail uses	50%
Multi-family residential	50%
Single family residential	40%
Other uses	30%
Farms	100%

5. At the request of the applicant, any of the standards and regulations applicable to the PD Zone may be increased or decreased up to 10% by the approving authority, without need for a variance application.
6. Buildings containing a mix of uses, including residential, shall be permitted in the PD Zone. Any structure containing a mix of uses which includes residential shall be considered a nonresidential structure (except the residential floor area shall not be included in the floor area ratio calculation). Additionally, for the purpose of calculating the mix of uses per Section C4, the square footage of any use within a mixed use structure shall be added separately and shall contribute to the maximums specified in Section C4.
7. After approval (including General Development Plan approval, preliminary site plan approval and/or final site plan approval), it shall be permissible to sell individual portions of the project (and obtain subdivision approval if necessary) so long as all portions of the project shall remain consistent and in conformance with the General Development Plan. Such subdivision and sale shall not add additional requirements to the project that were not present prior to the proposal to subdivide and sell a portion of the project.
8. Parking Lot Landscaping: Section 16-6.22 (D-4 and 5) shall not apply to the PD Zone.

**16-9.1 Zoning Map**

The Official Zoning Map is hereby amended to designate Block 825, Lots 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69.01, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81 as Planned Development.

**16-9.2.B Schedule of Permitted Uses**

The Schedule of Permitted Uses is hereby amended to add "Mixed Use Developments," "Hotels," "Motels" and "Assisted Living" as Permitted Uses in the PD Zone District.

**SECTION 3.** Block 1063, Lot 10 shall be rezoned as Residential Multifamily (RMF-2) per the following standards:

**16-9.52 Standards and Regulations Affecting the RMF-2 Zone**

- A. Minimum Regulations
  1. Gross Lot Area 65 acres
  2. Tract Frontage Minimum 100 feet
  3. Minimum Building Setbacks

- |  |   |          |
|--|---|----------|
|  | i. From Arterial or Collector Roadway             | 250 feet |
|  | ii. From Tract Boundary                           | 30 feet  |
|  | iii. From any existing residence/residential zone | 75 feet  |
4. Parking or Driveway/Roadway Setback
- |  |   |          |
|--|---|----------|
|  | i. From Arterial or Collector Roadway         | 300 feet |
|  | ii. From Tract Boundary or other Right of Way | 60 feet  |
5. Open Space 30%
6. Affordable Housing Set-Aside 20%
- B. Maximum Regulations
- |                              |                             |
|------------------------------|-----------------------------|
| 1. Dwelling Unit Density     | 5.5 dwelling units per acre |
| 2. Building Height           | 40'                         |
| 3. Maximum Building Coverage | 35%                         |
| 4. Lot Coverage              | 40%                         |
- C. Design Standards – In addition to the specific Architectural and Building Design Standards set forth in Section 16-6.4, the following design standards shall apply:
9. Exterior building facades shall incorporate design features such as offsets, balconies, projections, window reveals, or similar elements to preclude large expanses of uninterrupted building surfaces. Along the vertical face of a building, such features shall occur at a minimum of every 30 feet, and on each floor shall, to the greatest degree practicable, contain a minimum of two of the following features:
- Recesses (e.g., deck, patio, courtyard, entrance, window reveals) that have a minimum depth of 3 feet;
  - Extensions (e.g., floor area, deck, patio, entrance) that have a minimum depth of 2 feet and minimum length of 4 feet; and/or
  - Offsets or breaks in roof elevation of 2 feet or greater in height.
10. Adequate, accessible and secure storage space shall be provided for each dwelling unit. A minimum of 112 cubic feet of enclosed storage shall be required separate from each living unit. This is an area 4' x 4' x 7'. Garages and storage units adjoining a dwelling (e.g., attached to decks and patios) shall qualify as storage space.
11. Trash receptacles shall not be located in any front yard setback, or within 75 feet of an adjacent property line.
- D. Other Regulations:
- Temporary construction trailers shall be permitted where active construction work is proposed. Such trailers shall not be placed on site until building permits have been issued and in no case more than seven days prior to the commencement of work. Trailers shall not remain on site more than seven days after the completion of all work. Temporary construction trailers shall not be placed within the right-of-way of any improved public road.
  - All affordable units shall be constructed and maintained in a manner consistent with the rules and regulations adopted by the New Jersey Council on Affordable Housing. Affordable housing units shall be deed restricted to remain affordable for a period of 30 years, unless the rules adopted by the New Jersey Council on Affordable Housing are changed. Should such a change occur the term of the affordability deed restriction shall be consistent with any new rule(s).

The Official Zoning Map is hereby amended to change the zone designation for Block 1063, Lot 10 to Residential Multifamily (RMF-2).

**16-9.2.B Schedule of Permitted Uses**

The Schedule of Permitted Uses is hereby amended as follows for the RMF-2 Zone: All principal, accessory and conditional uses permitted for the RTH Zone shall be permitted principal, accessory and conditional uses in the RMF-2 Zone.

**§ 16-9.2.C Schedule of Area, Yard and Building Requirements**

The Schedule of Area, Yard and Building Requirements is hereby amended to incorporate the provisions of 16-9.52(A) and 16-9.52(B).

**SECTION 4.**

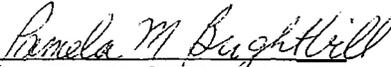
If a court of competent jurisdiction shall declare any section, paragraph, subsection, clause or provision of this ordinance invalid, such decision shall not affect the validity of this ordinance as a whole or any part hereof.

**SECTION 5.**

This ordinance shall take effect immediately upon final passage. Notice of adoption shall be published as provided by law.

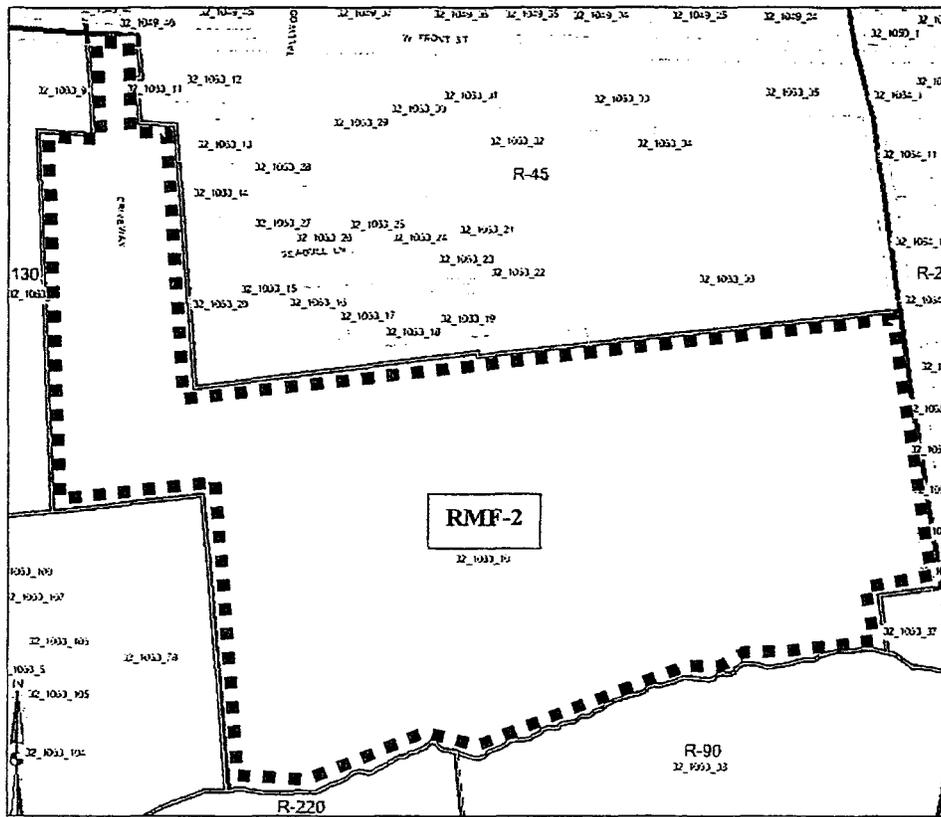
PASSED FIRST READING: July 6, 2009

PASSED AND APPROVED: July 20, 2009

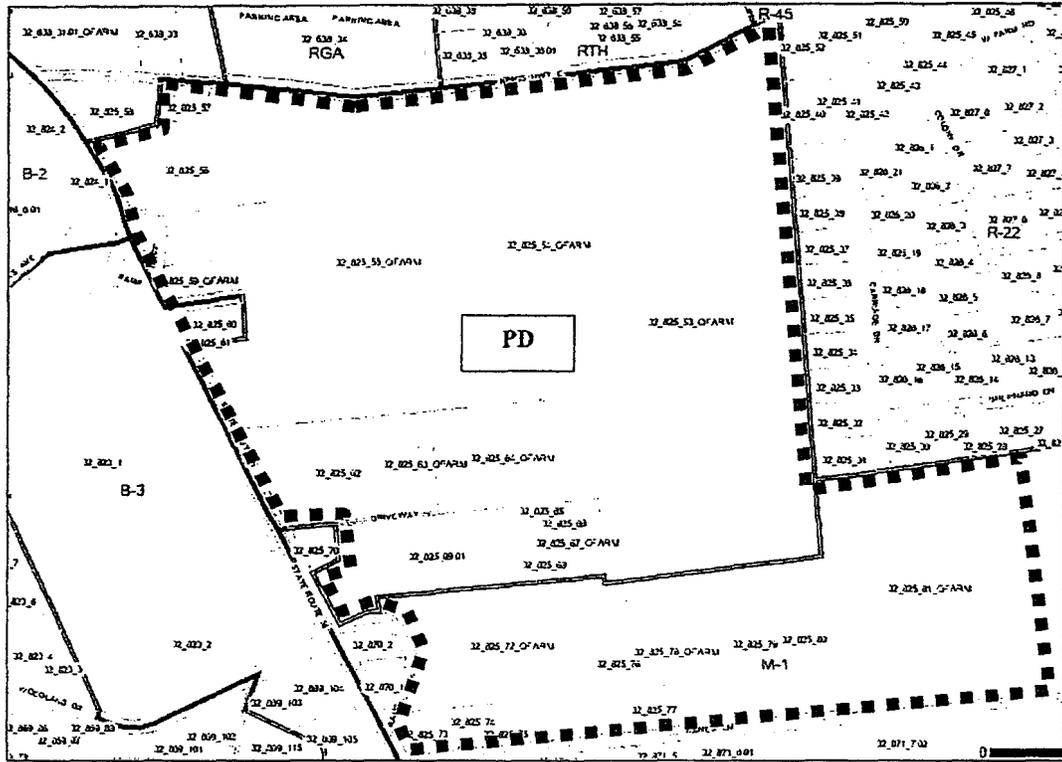
  
PAMELA BRIGHTBILL, MAYOR  
TOWNSHIP OF MIDDLETOWN

ATTEST:

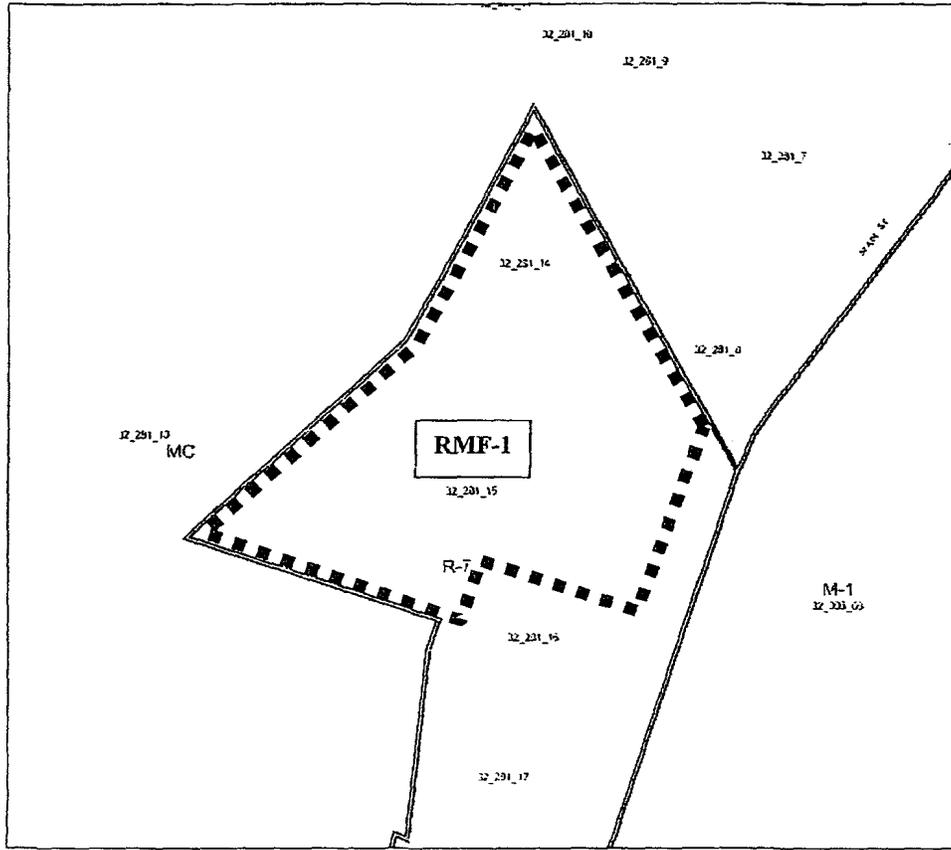
  
HEIDI R. BRUNT, TOWNSHIP CLERK



Block 1063, Lot 10: To be Zoned Residential Multifamily (RMF-2)



■■■■ Block 825, Lots 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69.01, 72,  
 ■■■■ 73, 74, 75, 76, 77, 78, 79, 80, 81: To be Zoned Planned Development (PD)



 Block 281, Lots 14 & 15: To be Zoned Residential Multifamily (RMF-1)

**RESOLUTION NO. 09-219  
TOWNSHIP OF MIDDLETOWN  
COUNTY OF MONMOUTH  
RESOLUTION AUTHORIZING EXECUTION OF COAH  
COMMITMENT AGREEMENT PURSUANT TO COAH  
REGULATIONS WITH MOUNTAIN HILL, LLC**

**WHEREAS**, on December 11, 2008, the Middletown Township Planning Board adopted an amended Master Plan Housing Element and Fair Share Plan pursuant to COAH's revised third round rules; and

**WHEREAS**, the Township Committee subsequently endorsed the action of the Planning Board and petitioned the New Jersey Council on Affordable Housing ("COAH") for Substantive Certification of said Fair Share Plan just before COAH's deadline for compliance on December 30, 2008; and

**WHEREAS**, on April 13, 2009, COAH determined the Township's petition for substantive certification to be complete; and

**WHEREAS**, on July 15, 2009, consistent with the intent and purpose of the Housing and Land Use Elements of the Township Master Plan, the Planning Board has recommended the legal necessity of making certain zoning changes in accordance therewith to comply with COAH's rules; and

**WHEREAS**, on July 20, 2009, the Township Committee adopted Ordinance No. 2009-2979 amending Chapter 16 of the Code of the Township of Middletown (1996) providing zoning for the provision of inclusionary sites as required by the COAH rules pursuant to the Township's Housing Element and Fair Share Plan; and

**WHEREAS**, further agreements with the landowner(s), contract purchaser(s) and/or developer(s) will be necessary at a future date to ensure that all on and off-tract improvements are completed at defined stages of site development relating to matters including but not limited to utility infrastructure, public services and uses, traffic impact mitigation and building demolition; and

**WHEREAS**, Mountain Hill, LLC, is the owner of a +/- 120-acre tract known as Block 825, Lots 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69.01, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81 as identified on the Middletown Township Official Tax Map; and

**WHEREAS**, Mountain Hill, LLC, intends to commit that, as part of any future development at this tract, it will provide inclusionary housing pursuant to the terms of the Township's Housing Element and Fair Share Plan and as required by COAH's rules; and

**WHEREAS**, it is in the best interests of the taxpayers of the Township of Middletown to take these steps at this time to ensure it is effectively protected from builder's remedy and other litigation brought by developers that could result in a virtual loss of the Township's zoning powers as imposed by COAH and the courts.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey, that the Mayor is hereby authorized to execute a COAH Commitment Agreement with Mountain Hill, LLC, as attached hereto as "Exhibit A" with executed copies being transmitted to COAH and maintained on file with the Township Clerk.

Committee Member	Approved	Opposed	Abstain	Absent
S. Byrnes	X			
A. Fiore	X			
P. Short	X			
G. Scharfenberger	X			
Mayor Brightbill	X			

**CERTIFICATION**

I, Heidi R. Brunt, Township Clerk of the Township of Middletown, hereby certify the foregoing to be a true copy of a resolution adopted by the Middletown Township Committee at their meeting held September 8, 2009.

WITNESS, my hand and the seal of the Township of Middletown this 8th day of September, 2009.

  
HEIDI R. BRUNT  
TOWNSHIP CLERK

**"EXHIBIT A"**  
**FIRM COMMITMENT FOR THE CONSTRUCTION OF  
FAMILY RENTAL UNITS PURSUANT TO THE  
SUBSTANTIVE REGULATIONS OF THE NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING**

**THIS AGREEMENT** entered into this 24<sup>th</sup> day of September 2009 between the Township of Middletown, a municipal corporation in the County of Monmouth, State of New Jersey, having an office at 1 Kings Highway Middletown, New Jersey (hereinafter "Township"), and Mountain Hill, LLC, having an office at 853 Hwy. 35, POB 278, Middletown, NJ, (hereinafter "Developer"); and

**WHEREAS**, Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount laurel IP"), the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., and other applicable laws require the Township to create a realistic opportunity for the provision of its fair share of low and moderate income housing (hereinafter "lower income housing"); and

**WHEREAS**, the Township seeks to satisfy a portion of its fair share obligation through inclusionary development of a +/- 120 acre tract identified as Block 825, Lots 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69.01, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81 on the Township's official tax map (hereinafter "Subject Property") in accordance with an ordinance previously adopted (hereinafter "Affordable Housing Zoning Ordinance"); and

**WHEREAS**, Developer is the owner of the Subject Property and desires the Subject Property to be developed in accordance with the portion of the Affordable Housing Zoning Ordinance concerning rental housing and with the general requirement of COAH and the Uniform Housing Affordability Controls (UHAC) regulations at N.J.A.C. 5:80-26.1 et seq. concerning non-age restricted rental housing; and

**WHEREAS**, Developer understands that the Township is entitled to rental bonuses for the 80 affordable rental units it intends to construct if it makes a firm commitment to construct the affordable rental units; and

**WHEREAS**, further agreements with the landowner(s), contract purchaser(s) and/or developer(s) will be necessary at a future date to ensure that all on and off-tract improvements are completed at defined stages of site development relating to matters including but not limited to utility infrastructure, public services and uses, traffic impact mitigation and building demolition; and

**WHEREAS**, Developer wishes to make the firm commitment sought by the Township.

NOW, THEREFORE, be it agreed as follows:

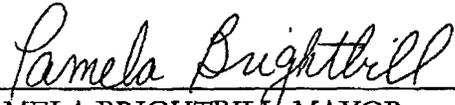
1. Developer intends to develop Phase One of the Subject property in accordance with the Affordable Housing Zoning Ordinance and consistent with the Middletown Township Housing Element and Fair Share Plan. Developer intends to pursue the right to construct 400 units of which 80 will be rented to low and moderate income family households. The parties recognize that Developer may secure the right to construct fewer or greater units in Phase One as a result of the approval processes that lie ahead. In the event that Developer secures the right to construct fewer or greater than 400 units in Phase One, it shall maintain a twenty (20%) percent set aside on the units it does secure the right to construct. Developer shall ensure that at least fifty (50%) percent of the affordable units will be made affordable to low income households.
2. Developer shall adhere to the provisions of COAH's regulations concerning family rental housing which the Township anticipates incorporating into its current affordable housing regulations.
3. Developer shall abide by all applicable regulations of COAH and UHAC:
4. Developer shall complete the development of the Subject property according to the implementation schedule approved by COAH subject to any necessary amendments due to any unforeseen economic or regulatory changes affecting the economic feasibility of the project.
5. Developer reserves the right to make the market units "for sale" units, as opposed to rental units. In such an event, Developer shall maintain a twenty (20%) percent set aside of rental units in the project.

The terms of this agreement shall be binding upon the parties, their successors and/or assigns.

ATTEST:

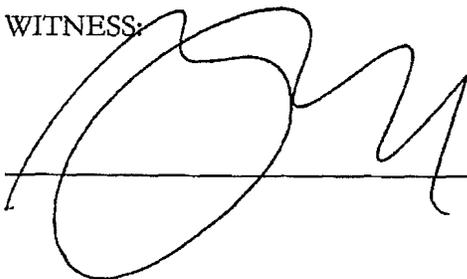
TOWNSHIP OF MIDDLETOWN

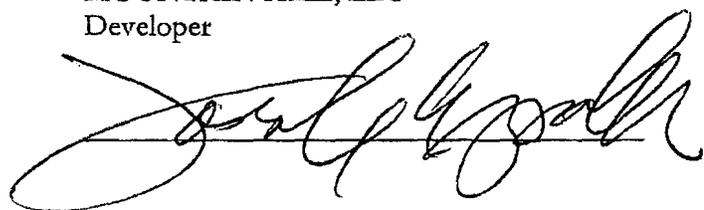
  
\_\_\_\_\_  
BRIAN M. NELSON  
TOWNSHIP ATTORNEY

  
\_\_\_\_\_  
PAMELA BRIGHTBILL, MAYOR

WITNESS:

MOUNTAIN HILL, LLC  
Developer

  
\_\_\_\_\_

  
\_\_\_\_\_



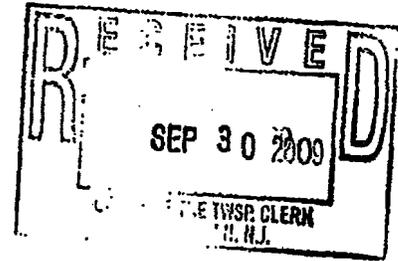
State of New Jersey  
**Council on Affordable Housing**  
 101 SOUTH BROAD STREET  
 PO BOX 813  
 TRENTON NJ 08625-0813  
 (609) 292-3000  
 (609) 633-6056 (FAX)

*Scan and Email  
to Greenspan.*

**JON S. CORZINE**  
 Governor

**CHARLES A. RICHMAN**  
 Acting Commissioner  
**LUCY VANDENBERG**  
 Executive Director

September 24, 2009



The Honorable Pamela Brightbill  
 Middletown Township  
 1 Kings Hwy  
 Middletown, NJ 07748

Dear Mayor Brightbill:

Congratulations! We are pleased to enclose a Council on Affordable Housing (COAH) Compliance Report recommending approval of your municipality's petition for third round substantive certification.

Please be advised that there will be a 14-day comment period on the COAH Compliance Report during which time comments will be accepted at the COAH office. Comments must be received by 9:00 AM on October 8, 2009. COAH expects to approve your petition at its October 14, 2009 meeting. We welcome you to attend the meeting to receive your grant of substantive certification.

If you have any questions or need further information, please call Maria Connolly, COAH planner, at (609) 292-4317. We look forward to working with you to implement your third round growth share plan.

If you would like to be contacted via email regarding the future information/correspondence for Middletown Township, please provide COAH with your email address.

Sincerely,

*Lucy Vandenberg*

Lucy Vandenberg, PP, AICP  
 Executive Director

cc: Attached Service List  
 Sean Thompson, COAH manager of planning  
 Kathy McGlinchy, COAH monitor



**Maria Connolly, COAH planner**  
**Dennis Funaro, COAH supervisor**

10 10  
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1

**1331 - MIDDLETOWN TWP - MONMOUTH**

**Full Service List Labels**

**The Honorable Pamela Brightbill**  
Mayor  
Township of Middletown  
Township Hall  
1 Kings Highway  
Middletown, New Jersey 07748-2085

**Bernard Reilly, Esq.**  
Law Offices of Bernard Reilly  
90 Maple Ave  
Red Bank, New Jersey 07701

**Michael A. Jedziniak, Esq.**  
Jeffrey R. Surenian and Associates, LLC  
Brielle Galleria, Suite 301  
707 Union Avenue  
Brielle, New Jersey 08730

**Joffrey R. Surenian, Esq.**  
Jeffrey R. Surenian & Associates, LLC  
Brielle Galleria, Ste 301  
707 Union Ave  
Brielle, New Jersey 08730

**Helde R. Abs**  
Clerk  
Township of Middletown  
Township Hall  
1 Kings Highway  
Middletown, New Jersey 07748-2085

**Anthony Mercantante**  
Administrator  
Township of Middletown  
Johnson - Gill Annex  
1 Kings Highway  
Middletown, New Jersey 07748

**Jason Greenspan, AICP, PP**  
Director of Planning  
Township of Middletown  
1 Kings Highway  
Johnson-Gill Annex  
Middletown, New Jersey 07748-2594

**John Deus**  
Planning Board Member  
Township of Middletown  
Township Hall  
1 Kings Hwy  
Middletown, New Jersey 07748-2085

**Joseph Maloney**  
Township Engineer  
Township of Middletown  
Township Hall  
1 Kings Hwy  
Middletown, New Jersey 07748-2085

**Janki P. Patel, AICP, PP**  
Assistant Planner  
Township of Middletown  
1 Kings Hwy  
Middletown, New Jersey 07748

**Amy Sarrinikolaou, PP, AICP**  
Assistant Director  
Township of Middletown  
Community Development  
1 Kings Hwy  
Middletown, New Jersey 07748

**Gerald P. Scharfenberger**  
Deputy Mayor  
Township of Middletown  
Township Hall  
1 Kings Hwy  
Middletown, New Jersey 07748-2085

**Jacqui Adam**  
Altea, Inc.  
1262 White Horse-Hamilton Sq Rd  
Bldg A, Ste 101  
Hamilton, New Jersey 08690

**Harry & Rene Swartz And Jos Becker**  
136 Rumson Rd  
Rumson, New Jersey 07760

**1331 - MIDDLETOWN TWP - MONMOUTH**

**Full Service List Labels**

**George Brandt  
Maplewood Homes  
1350 Liberty Ave  
Hillside, New Jersey 07205**

**Anthony & Maria Campo  
P.O. Box 608  
Farmingdale, New Jersey 07727**

**George Coe, III  
89 Sleepy Hollow Rd  
Red Bank, New Jersey 07701**

**David Cohen  
Monmouth County Human Relations Comm.  
1 E Parkway Place  
Holmdel, New Jersey 07733**

**Daniel P. Conceny  
1124 West Front Street  
Linderoft, New Jersey 07738**

**Louis J. De Fonzo  
620 Main St  
Belford, New Jersey 07718**

**Stuart & Allyson DeVesty  
15 Latham Ave  
Atlantic Highlands, New Jersey 07752**

**Emad Elgohail  
4 Harborview Drive  
Atlantic Highlands, New Jersey 07716**

**Aldo Frustacci  
446 Laurel Ave  
Middletown, New Jersey 07748**

**Craig M. Gianetti, Esq.  
Giordano, Halloran & Ciesla  
PO Box 190  
Middletown, New Jersey 07748**

**Adam Gordon, Esq.  
Staff Attorney  
Fair Share Housing Center  
510 Park Boulevard  
Cherry Hill, New Jersey 08002**

**Jos Backer & Harry Schwartz  
138 Cherry Tree Farm Rd  
Middletown, New Jersey 07748**

**Jos Becker & Harry Swartz  
138 Cherry Tree Farm Rd  
Middletown, New Jersey 07748**

**Karl Hartkopf  
Office of Smart Growth, Dept of Community Affairs  
101 S Broad St  
PO Box 204  
Trenton, New Jersey 08625**

**1331 - MIDDLETOWN TWP - MONMOUTH**

**Full Service List Labels**

**Sergina Miller, CPM  
Regional Property Manager  
Conifer Management, LLC  
239 South Sixth Avenue  
Highland Park, New Jersey 08904**

**Phillip R. Nicolaus  
609 Turner Drive  
Belford, New Jersey 07718-1138**

**Evah Podel  
Hamilton Properties Group LLC  
1360 Clifton Ave  
Ste 240  
Clifton, New Jersey 07712**

**Carolyn Schwebel  
Monmouth County Human Relations Comm.  
79 Hamilton Ave  
Leonardo, New Jersey 07737**

**Jon Vogel  
Development Director  
AvalonBay Communities, Inc.  
517 Rte 1 S  
Ste 5500  
Iselin, New Jersey 08830**

**Comprise Technologies, Inc.  
1026 Highway 36  
Navesink, New Jersey 07752**

**Monmouth County Planning Board  
Hall of Records  
1 E. Main St  
Freehold, New Jersey 07728**

**Four Parks LP  
214 Twin Lakes Drive  
Mantua, New Jersey 08051**

**Route 36 Middletown Brown, LLC  
68B Wyckoff St  
Matawan, New Jersey 07747**

**190 Main Street LLC  
187 Main St  
Port Monmouth, New Jersey**

**Meadowview Middletown, LLC  
97 Main St  
Woodbridge, New Jersey 07095**

**199 Laurel Assoc & Steiner Equ. Group  
75 Eisenhower Pkway  
Ste 150  
Roseland, New Jersey 07068**

**446 Laurel Assoc & Steiner Equ. Group  
75 Eisenhower Pkway  
Ste 150  
Roseland, New Jersey 07068**

**Keans, Midd. Bank & Wachovia Corp  
PO Box 36246  
Charlotte, North Carolina**

**1331 - MIDDLETOWN TWP - MONMOUTH**

**Full Service List Labels**

**Atlantic Pier Co., Inc.  
PO Box Drawer 4  
Belford, New Jersey 07714**

**Affordable Housing Alliance of NJ  
59 Broad St  
Eatontown, New Jersey 07724**

**Port Monmouth Partners LLC  
PO Box 130  
Port Monmouth, New Jersey 07758**

**Conifer Realty  
183 E Main St  
Ste 600  
Rochester, New York 14604**

**Harmony @ Middletown, LLC  
68B Wyckoff Road  
1848 's Corner Rd  
Wall, New Jersey 07719**

**Joseph Azzolina, Jr.  
Mountain Hill, LLC  
853 Hwy 35  
PO Box 278  
Middletown,, New Jersey 07748**

**Stephen Elsdorfer, Esq.  
Hill Wallack  
202 Carnegie Center  
CN 5226  
Princeton, New Jersey 08543**

**Gary E. Fox, Esq.  
Fox & Melofchik, LLC  
Copper Gables Professional Building  
1001 Deal Road  
Ocean, New Jersey 07712**

**Deborah and Jeffrey Johnson  
4 Amherst Avenue  
Navasink  
Atlantic Highlands, New Jersey 07716**

**David N. Kinsey, PP, AICP, PhD  
Kinsey and Hand  
14 Aiken Ave  
Princeton, New Jersey 08540**

**Florence Lavelle  
106 Mountainside Avenue  
Atlantic Highlands, New Jersey 07716**

**Walter & Nancy Monahan  
316 Edgemoore Road  
Belford, New Jersey 07718**

**Philip Scaduto  
Mountain Hill, LLC  
835 Hwy 35  
PO Box 278  
Middletown, New Jersey 07748**

**Mountain Hill, LLC  
28 Kanes Lane  
Middletown, New Jersey 07748**

**1331 - MIDDLETOWN TWP - MONMOUTH**

**Full Service List Labels**

**Robert Sander Jr and Agnes Allen**  
634 Laurel Avenue  
Holmdel, New Jersey 07733

**Carl Bachstadt**  
8 Bray Avenue  
Middletown, New Jersey 07748

**Paul & Diana Lobozzo**  
164 Forest Avenue  
Glen Ridge, New Jersey 07028

**John McGowan**  
188 Tenth Street  
Belford, New Jersey 07718

**Nathan Reich**  
Regency Park  
200 Central Avenue  
Mountainside, New Jersey 07092

**The Secretary of Veterans Affairs**  
20 Washington Place  
Newark, New Jersey 07102

**Sterling Properties/Signature Communities**  
609 South Livingston Avenue  
Suite 102  
Livingston, New Jersey 07039

**Borough of Atlantic Highlands**  
100 First Avenue  
Atlantic Highlands, New Jersey 07716

**601 Park Associates, LLC**  
234 River Road  
Red Bank, New Jersey 07701

**Azzolina Land Corporation**  
835 Highway 35  
Middletown, New Jersey 07748

**Century 21 Inc.**  
140 Fulton Street  
5th Floor  
New York, New York 10038

**Middletown Senior Citizens**  
Township Hall  
1 Kings Highway  
Middletown, New Jersey 07748



**Council on Affordable Housing  
Compliance Report  
September 24, 2009**



**Municipality:** Middletown Township  
**County:** Monmouth County

**COAH Region:** 4  
**Planning Area:** 1, 2, 5  
**Special Resource Area:** None

**Housing Element and Fair Share Plan Adopted:** 12/11/2008  
**Petition for 3<sup>rd</sup> Round Substantive Certification:** 12/31/2008  
**Completeness Determination:** 4/13/2009  
**Date of Publication:** 4/17/2009

**Objections Received:** Yes

1. Bamm Hollow LLC
2. Mountain Hill LLC
3. Comment Received by: Fair Share Housing Center

**Mediation Commenced:** August 25, 2009  
**Mediation Concluded:** August 25, 2009

**Petition Includes:**

**VLA:** No

**GPA:** No

**Waiver:** Yes      **Section:** N.J.A.C. 5:80-26.3(b)

**Date of Site Visit:** July 23, 2009

**History of Approvals:**

	<b>COAH</b>	<b>JOC</b>	<b>N/A</b>
<b>First Round:</b>	3/14/1994		
<b>Second Round:</b>	X		
<b>Extended Certification:</b>	X		

**Plan Preparer:** Jason A. Greenspan, P.P., AICP - Director of Planning

**Municipal Housing Liaison:** Jason A. Greenspan, P.P., AICP - Director of Planning

**Recommendation:** Grant Substantive Certification

**SUMMARY OF FAIR SHARE OBLIGATION**

Rehabilitation Share	154
Prior Round Obligation	1,561
Projected Growth Share Obligation (Net)	233

**ACTUAL GROWTH and GROWTH SHARE through September 2008<sup>1</sup>**

Res Units (#)	Actual Res Growth Share	Jobs (#)	Actual Non-Res Growth Share	Actual TOTAL Growth Share
660	132	405	25.3	157 units

<sup>1</sup> This growth share number does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.4; therefore, the actual growth share may vary.

**COMPLIANCE PLAN SUMMARY**

Obligation	Credit/ Mechanism Type	# Units Completed	# Units Proposed	TOTAL
<b>Rehabilitation: 154 units</b>				
Credits	Post-April 1, 2000	28		28
Program(s)	Municipal		126	126
<b>Rehabilitation Subtotal</b>				<b>154</b>
<b>NEW CONSTRUCTION:</b>				
<b>Prior Round: 1,561 units</b>				
Credits	Prior Cycle	133		133
	Post-1986	465		465
	RCA	500		500
Proposed Mechanism(s)	Inclusionary Zoning		155	155
	Supportive/Special Needs Housing		12	12
	Accessory Apartment Program		2	2
Prior Round Bonus(es)	Rental	127	167	294
<b>Prior Round Subtotal</b>				<b>1,561</b>
<b>Growth Share: 233 units</b>				
Credits	Post-1986	2		2
Proposed Mechanism(s)	Inclusionary Zoning		133	133
	Supportive/Special Needs Housing		10	10
	Accessory Apartment Program		21	21
	Market to Affordable Program		10	10
	Residential over Commercial Program		22	22
	Municipally Sponsored 100 percent affordable projects		137	137
Growth Share Bonus(es)	Rental	-	3	3
<b>Growth Share Subtotal</b>				<b>338</b>
<b>Surplus</b>				<b>+105</b>

**I. HOUSING ELEMENT**

Pursuant to N.J.S.A. 40:55D-28(b), the Housing Element is a required section of the Municipal Master Plan. The Housing Element must be designed to achieve the goal of access to affordable housing to meet existing and future housing needs, with special attention given to low- and moderate-income households. The housing needs analysis must include demographic information on existing and projected housing stock and employment characteristics, a quantification of low- and moderate-income housing need, and a consideration of the lands within the municipality that are most appropriate to accommodate such housing. Middletown's Housing Element includes sufficient information regarding housing stock, demographic and employment characteristics and population trends pursuant to N.J.S.A. 52:27D-310.

Under N.J.A.C. 5:97-2.1(b), the Housing Element must also set forth the municipality's fair share obligation, which is the sum of the rehabilitation share, the prior round obligation, and the growth share.

**A. Rehabilitation Share**

The rehabilitation share is the number of existing housing units within a municipality as of April 1, 2000, that are both deficient and occupied by households of low or moderate income. As indicated in Appendix B of N.J.A.C. 5:97, Middletown Township has a 154-unit rehabilitation share.

**B. Prior Round Obligation**

The prior round obligation is the cumulative 1987-1999 new construction obligation provided in Appendix C of N.J.A.C. 5:97. Middletown has a prior round obligation of 1,561 units.

**C. Projected Growth Share**

The projected growth share is initially calculated based on household (residential) and employment (non-residential) 2004-2018 projections. Pursuant to Appendix F of N.J.A.C. 5:97, Middletown has a residential projection of 1,149 units and a non-residential projection of 3,731

jobs, which results in an initial projected growth share obligation of 463 affordable units. However, after subtracting the allowable exclusions itemized in Worksheet A (Attachment 1), the Township's residential projection is reduced to 0. Therefore, the Township's total projected growth share for the period 1999-2018 is 233 affordable units consisting of a zero unit projected residential growth share and a projected non-residential growth share of 233.2.<sup>2</sup>

**SUMMARY OF FAIR SHARE OBLIGATION**

Rehabilitation Share	154
Prior Round Obligation	1,561
Projected Growth Share Obligation (Net)	233

**II. FAIR SHARE PLAN**

A Fair Share Plan, as required under N.J.A.C. 5:97-3.1, describes the completed or proposed mechanisms and funding sources, if applicable, that will be utilized to specifically address a municipality's rehabilitation share, prior round obligation, and growth share obligation and includes the draft ordinances necessary to implement that plan. Affordable housing must be provided in direct proportion to the growth share obligation generated by the actual growth.

Middletown Township's Fair Share Plan, and the supporting documentation incorporated by reference therein, address the requirements of N.J.A.C. 5:97-3.1 as follows:

**A. Plan to Address Rehabilitation Share**

**Rehabilitation Share Credits**

Middletown is requesting credit for 28 units rehabilitated subsequent to April 1, 2000. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11. [28 rehabilitated units]

<sup>2</sup> The Township's nonresidential projection of 3,731 jobs is divided by 16 to yield 233.2 units. The Township's total projected growth share is therefore 233 units.

**Rehabilitation Credits**

Rehabilitation Program	# Credits
Middletown Rehab Program	28
<b>TOTAL</b>	<b>28</b>

**Proposed Rehabilitation Program(s)**

*Middletown Rehabilitation Program*

Middletown currently implements a municipally sponsored rehabilitation program for the rehabilitation of deficient units within the Township. Middletown's rehabilitation program will adhere to the regulations in N.J.A.C. 5:97-6.2, including having the program available to both owner-occupied and renter-occupied units. Middletown has provided an operating manual and an affirmative marketing plan for the administration of the program. The rehabilitation program is funded through Community Development Block Grants (CDBG) that the Township receives directly from HUD and Neighborhood Preservation Program (NPP) funds from DCA. The Township has provided an implementation schedule for the rehabilitation program that provides sufficient dollars to fund no less than half of the municipal rehabilitation component by the mid-point of the substantive certification period, and has submitted a resolution of intent to bond that was adopted on December 11, 2008, in the event of a shortfall in funding. [126-unit rehabilitation program]

**Proposed Rehabilitation Program(s)**

Rehabilitation Program	# Units
Middletown Rehab Program	126
<b>TOTAL</b>	<b>126</b>

**B. Plan to Address Prior Round Obligation**

**Prior Round Credits**

Middletown is addressing its prior round obligation with 1,225 prior cycle credits and post-1986 credits, totaling 1098 credits and 127 bonuses. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

**Prior Cycle Credits**

<b>Project/Development Name</b>	<b>Year Built or Approved</b>	<b>Type of Affordable Unit</b>	<b># Units/Bedrooms</b>	<b>Total Units/Bedrooms</b>
Credits without Controls	various	Family For-sale	101	101
Scattered Site Municipal Construction Program	various	Family For-sale	2	2
King's Row Senior Citizen Development	1983	Age-restricted Rentals	26	26
Departmental Disabilities Association Group Home	1985	Supportive/Special Needs Housing	4	4
<b>TOTALS</b>			<b>133</b>	<b>133</b>

Post-1986 Credits

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Highlands Township RCA	1988	RCA	50	-	-	50
Long Branch City RCA	1988	RCA	150	-	-	150
Union Beach Township RCA	1988	RCA	75	-	-	75
Red Bank Township RCA	1988	RCA	45	-	-	45
Asbury Park City RCA	1989	RCA	180	-	-	180
Outlook America Group Home	1998	Supportive/Special Needs Housing	4	Rental	4	8
Brookside Group Home	2001	Supportive/Special Needs Housing	4	Rental	4	8
Collins Group Home	2003	Supportive/Special Needs Housing	4	Rental	4	8
Accessory Apartments	various	Family Rental	29	-	-	29
Beacon Place inclusionary	2000	Family Rental	28	Rental	28	56
Chapel Hill inclusionary	2007	Family Rental	30	Rental	30	60
Park Ferry inclusionary <sup>3</sup>	2006	Family Rental	6	Rental	6	12
Regency Park inclusionary	2004	Family Rental	16	Rental	16	32
Harmony Glen inclusionary <sup>4</sup>	2008	Family Rental	18	Rental	18	36
Residential Over Commercial - Elgohail <sup>5</sup>	2007	Family Rental	12	Rental	12	24

<sup>3</sup> On September 23, 2009, COAH granted the Township a bedroom distribution waiver for this project.

<sup>4</sup> Harmony Glen is under construction.

<sup>5</sup> Elgohail is under construction.

Wallace 100% Affordable Municipally Sponsored Project <sup>6 7</sup>	2007	Family Rental	5	Rental	5	10
Luftman Pavilion 100% Affordable	1998	Age-restricted Rental	60	-	-	60
Conifer Village 100% Affordable	2008	Age-restricted Rental	180	-	-	180
Scattered Site Municipal Construction Program	various	Family For-sale	23	-	-	23
Laurel Greene inclusionary	2002	Family For-sale	24	-	-	24
Cottage Gate inclusionary <sup>8</sup>	2008	Family For-sale	13	-	-	13
Browns Landing inclusionary <sup>9</sup>	2009	Family For-sale	2	-	-	2
Wallace Point 100% Affordable Municipally Sponsored Project	2007	Family For-sale	7	-	-	7
<b>TOTALS</b>			<b>965</b>		<b>127</b>	<b>1,092</b>

***Wallace Point Waiver - 100 % Affordable Municipally Sponsored Project***

The Wallace Point site is located at Highway 36 (Block 532, Lots 42 & 43) and is 3.1 acres. The project received final approvals on October 17, 2007, for twelve affordable units, but is not constructed yet. Seven of the units will be family for-sale units and five will be family rental units. The site is owned by the Affordable Housing Alliance of NJ and will be developed and managed by the Alliance. The Alliance is actively seeking Balanced Housing Funds and will enter into a PILOT agreement with the Township.

<sup>6</sup> Wallace is approved but not yet constructed.

<sup>7</sup> Middleton is requesting a bedroom distribution waiver for this project.

<sup>8</sup> Cottage Gate is under construction.

<sup>9</sup> Browns Landing is under construction.

The site is located in Planning Area 1 and there are significant wetlands and wetlands transition areas on the property. The property received a Letter of Interpretation (LOI) from DEP's Land Use Regulation Division to establish the wetlands boundary. Approximately 0.5 to 0.75 acres of the property is developable. The remaining constrained portions are encumbered by a conservation easement. Residential and commercial uses surround the property. The development will be served by public water and sewer.

Instead of providing a bedroom distribution in accordance with N.J.A.C. 5:80-26.3(b), the project will consist of six one-bedroom units and six two-bedroom units. Pursuant to N.J.A.C. 5:96-15, the Township is requesting a waiver from the bedroom distribution requirements. The Township has provided a chart that demonstrates that its existing 17 scattered site homes have three bedrooms, two homes have four bedrooms and one home has five bedrooms.

The waiver meets the requirements of N.J.A.C. 5:96-15.2(a) in that the strict application of the rule would create an unnecessary environmental hardship. The Township states that the bedroom mix was necessary due to extensive environmentally-constrained areas on the property, including wetlands and wetlands transition areas. Due to the constraints, a buffer averaging plan was necessary from DEP to allow access to the very limited upland portions of the site. Satisfying the bedroom mix requirement would entail the construction of three bedrooms at the site, which in turn would increase the parking requirements per the Residential Site Improvement Standards. As a result, the Township states that the total number of affordable units would have to be reduced on the site, due to the site's very limited building area. Moreover, the Township maintains that expanding the footprint of the building or expanding the parking area would have required further permits from DEP and disturbance of additional wetlands and wetlands transition areas. In addition, the waiver fosters the production of affordable housing because the units are already approved, and to require a new design of the buildings to meet the three-bedroom requirement would create a financial hardship for the Township and the developer. Granting the waiver fosters the intent, if not the letter of the rules, in that the Township has already made up any deficiency of three-bedroom units that would be required under the regulation. The Township states that it has already facilitated the construction of almost 20 scattered site single family residences, which primarily contain three bedrooms. In addition, the

Township's Fair Share Plan provides a mix of housing options, including a mix of one, two and three-bedroom for sale and rental units. COAH staff recommends approval of this waiver.

The affordable units must meet the remaining requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, and low/moderate split. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.7(e).

**Proposed Affordable Housing Mechanisms**

Middletown proposes to address the remaining 336-unit prior round obligation through the following mechanisms:

***Mountain Hill Inclusionary Development***

The Mountain Hill site is included in the Township's plan for 400 total units, which includes 80 affordable family rental units. The site is proposed to be developed at a gross density of three units per acre with a 20 percent set-aside, and a maximum of 850,000 square feet of nonresidential space, which is below the minimum presumptive density for rental units pursuant to N.J.A.C. 5:97-6.4(b)6i. However, the Township has demonstrated the realistic opportunity of the reduced density by submitting an agreement with the developer, which was executed on September 24, 2009. In addition, Middletown is requesting 80 rental bonuses for the development. The agreement provides the commitment for 80 affordable family rental units. Middletown rezoned the site "Planned Development (PD)" on July 20, 2009.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Mountain Hill site is located in the central part of the Township on the Route 35 corridor between Kanen Lane and Kings Highway East, (Block 825, Lots 53-69.01, 72-81 & Block 871, Lot 7.02). The site is owned by Mountain Hill, LLC. The site is approximately 138 acres. The site was previously zoned Active Adult Community (AAC) with Planned Development (PD) zoning. The site is surrounded by business, light industrial and residential uses.

The Mountain Hill site is located in Planning Area 1. The Township indicates that there are wetlands, buffers and floodplain areas on the site, but that up to 60 percent of the site

(approximately 80 acres) is developable. Currently, the site contains some retail buildings and a bank, which is currently serviced by public sewer and water. The retail buildings will likely be removed. The Township indicates that connections to the existing infrastructure will be necessary. The Township has submitted information demonstrating that sufficient water and sewer capacity are available for the proposed development.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, rental pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). [80 family rental units & 80 rental bonuses]

#### *Avaya (Four Ponds) Inclusionary Development*

The Avaya site is included in the Township's plan for 375 total units, which includes 75 affordable family rental units. The site is proposed to be developed at a gross density of 5.5 units per acre with a 20 percent set-aside, which is below the minimum presumptive density for rental units pursuant to N.J.A.C. 5:97-6.4(b)6i. However, the Township has demonstrated the realistic opportunity of the reduced density by submitting an agreement with the developer, which was executed on July 20, 2009. In addition, Middletown is requesting 75 rental bonuses for the development. The agreement provides the commitment for 75 affordable family rental units. Middletown rezoned the site "Residential Multifamily (RMF-2)" on July 20, 2009.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Avaya site is located in the southern part of the Township at 307 Middletown Lincroft Road (Block 1063, Lot 10). Access will be provided from Middletown Lincroft Road and West Front Street. The site is owned by Four Ponds. The site is approximately 68 acres. The site was previously zoned Office Research (OR-1). The site is surrounded by educational, agricultural and residential uses. The site currently contains a 300,000 square foot office building and expansive parking areas. The owners of the property have advised the Township that the current tenant, Avaya, will not be renewing their lease after it expired in 2009. The office building will be demolished.

The Avaya site is located in Planning Area 1. The Township indicates that there are limited wetlands and floodplain areas on the site, but that up to 60 percent of the site (approximately 40 acres) is developable. The Township indicates that the office building is currently serviced by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available for the proposed development.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, rental pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). [75 family rental units & 75 rental bonuses]

*Supportive and Special Needs Housing - Housing and United Services with Monarch Housing Inc.*

Pursuant to N.J.A.C. 5:97-6.10, Middletown is proposing to create a total of eight group home bedrooms on two municipally owned properties (two four-bedroom facilities) with Housing and United Services (HUS) in conjunction with Monarch Housing Inc. Pursuant to N.J.A.C. 5:97-6.10(e)4, Middletown has submitted documentation demonstrating site control of the properties.

A draft agreement between HUS and Middletown has been submitted. Middletown is requesting eight rental bonuses for the group home bedrooms. The Township has also provided a letter of intent from HUS. In addition, Middletown has submitted a draft ordinance, which provides the Township's intent to enter into a contract for the conveyance of the properties to HUS. The executed agreement with HUS and the adopted ordinance must be submitted to COAH within 45 days of substantive certification.

Pursuant to N.J.A.C. 5:97-6.10(e)6, Middletown has submitted a pro forma statement for the project. Middletown anticipates that the primary funding source for construction and ongoing rental assistance will be HUD Section 811 "Supportive Housing for Persons with Disabilities" funds, with the NJ Division of Developmental Disabilities providing some funds for construction

costs and ongoing supportive services. HUS anticipates applying for the HUD Section 811 funds by November 16, 2009. The Township has submitted a resolution of intent to bond that was adopted on December 11, 2008, in the event of a shortfall in funding. In addition, the Township has submitted a detailed construction schedule. The construction schedule indicates that building permits are anticipated to be issued in October 2010.

The sites are located in Planning Area 1. There are no environmental constraints on the properties, except for some moderately steep slopes that will not present a barrier to access or construction. Residential neighborhoods surround the properties. The developments will be served by public water and sewer. The Chestnut Avenue site has approximately 100 feet of frontage along Chestnut Avenue. Access to the Middletown Avenue site will be provided via a recently extended segment of Middletown Avenue.

Middletown is requesting eight rental bonuses for the group home bedrooms pursuant to N.J.A.C. 5:97-3.5. The Township should note that in the event the units are not constructed in accordance with the construction schedule, Middletown may lose the rental bonuses pursuant to N.J.A.C. 5:97-3.5(c). Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.10(f). [8 Special Needs bedrooms, plus 8 rental bonuses]

#### *Supportive and Special Needs Housing - Community Options*

Pursuant to N.J.A.C. 5:97-6.10, Middletown is proposing a group home facility with a total of five bedrooms. This group home is provided as part of the Cottage Gate development. The 105-unit development, which is currently under construction, is obligated through its development approvals to provide a 17.5 percent affordable housing set-aside. The set-aside requires a minimum of 18 affordable units, of which 13 will be family for sale units and five were supposed to be part of the group home. However, a letter from Community Options dated September 16, 2009, indicates that only four bedrooms will be occupied by persons with developmental disabilities. Kara Homes was the original developer, which filed for bankruptcy in 2006, and Maplewood Homes is the current developer that has accepted the legal and financial responsibilities of the development approvals.

Middletown has submitted the contract of sale between Kara Homes and Community Options, which will be the group home developer and provider. In addition, the Township has provided a construction permit for the group home, dated January 16, 2009. As of the site visit on July 23, 2009, the building was under construction and almost complete. The Township anticipates that a certificate of occupancy will be issued within the next few weeks. Community Options has provided confirmation that operational funding for the group home has already been secured, and that eligible tenants have already been selected from DDD's pool.

The site is located in Planning Area 1. There are no environmental constraints on the property. Residential neighborhoods surround the properties. The development will be served by public water and sewer.

Middletown is requesting four rental bonuses for the group home bedrooms pursuant to N.J.A.C. 5:97-3.5. [4 Special Needs bedrooms, plus 4 rental bonuses]

#### *Accessory Apartment Program*

Pursuant to N.J.A.C. 5:97-6.8, Middletown may propose accessory apartments to address its affordable housing obligation provided the municipality's housing stock lends itself to accessory apartments. A municipality may receive credit up-front for up to 10 accessory apartment units, or an amount equal to a combined total of 10 percent of the fair share obligation, whichever is greater.

Middletown's Fair Share Plan proposes a 23-unit Accessory Apartment Program in all its residential zones. The Township is applying two units to its prior round obligation and 21 units to its projected growth share obligation. The Township already has an adopted accessory apartment ordinance. As indicated above, the Township has already created 29 accessory apartments. The accessory apartments will be served by public water and sewer where available, or on-site wells and septic systems. The Township will provide the minimum subsidy of \$20,000 for each moderate-income unit and \$25,000 for each low-income unit. Subsidy may be used to fund actual construction costs and/or to provide compensation for reduced rental rates. Middletown will fund the program with its affordable housing trust fund. The Township has

submitted a spending plan and a resolution of intent to bond that was adopted by the Township on December 11, 2008, in the event of a shortfall in funding.

The units will be administered by the Township's in-house affordable housing administrator. Pursuant to N.J.A.C. 5:97-6.8(e), Middletown has submitted a written operating manual for administering the program and an affirmative marketing plan. The units must be affirmatively marketed, and have the proper affordability controls, low/moderate split and rental pricing. The units will have 10-year affordability controls, pursuant to N.J.A.C. 5:97-6.8(c)1. [2 units in Accessory Apartment Program]

**Proposed Prior Round Affordable Housing Mechanisms**

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Mountain Hill Inclusionary	Family Rental	80	Rental	80	160
Avaya Inclusionary	Family Rental	75	Rental	75	150
Monarch/HUS group homes	Supportive/Special Needs	8	Rental	8	16
Community Options group home	Supportive/Special Needs	4	Rental	4	8
Accessory Apartment Program	Family Rental	2	-	-	2
<b>TOTALS</b>		<b>169</b>		<b>167</b>	<b>336</b>

**Prior Round Obligation Parameters**

Middletown Township has satisfied the applicable Prior Round parameters as follows:

Prior Round Rental Obligation:<sup>10</sup> 357 Units

Development/Project Name	Type of Affordable Unit	# Units
Outlook America Group Home	Supportive/Special Needs	4
Brookside Group Home	Supportive/Special Needs	4
Collins Group Home	Supportive/Special Needs	4
Accessory Apartments	Family Rentals	29
Beacon Place inclusionary	Family Rentals	28
Chapel Hill inclusionary	Family Rentals	30
Park Ferry inclusionary	Family Rentals	6
Regency Park inclusionary	Family Rentals	16
Harmony Glen inclusionary	Family Rentals	18
Residential Over Commercial – Elgohail	Family Rentals	12
Wallace 100% Affordable Municipally Sponsored Project	Family Rentals	5
Luftman Pavillion	Age-restricted Rentals	60
Conifer Village	Age-restricted Rentals	180
Mountain Hill Inclusionary	Family Rental	80
Avaya Inclusionary	Family Rental	75
Monarch/HUS group homes	Supportive/Special Needs	8
Community Options group home	Supportive/Special Needs	4
Accessory Apartment Program	Family Rental	2
<b>TOTAL</b>		<b>565</b>

<sup>10</sup> Rental Obligation= .25 (Prior Round Obligation-Prior Cycle Credits) or .25(1,561-133) = 357 units N.J.A.C. 5.97-3.10(b)1

**Prior Round Age-Restricted Maximum:<sup>11</sup> 263 Units**

Development/Project Name	Type of Affordable Unit	# Units
Luftman Pavilion	Age-restricted Rentals	60
Conifer Village	Age-restricted Rentals	180
<b>TOTAL</b>		<b>240</b>

**Regional Contribution Agreement (RCA) Maximum:<sup>12</sup> 777 Units**

Receiving Municipality(s)	Type of Affordable Unit	# Units
Highlands Township RCA	RCA	50
Long Branch City RCA	RCA	150
Union Beach Township RCA	RCA	75
Red Bank Township RCA	RCA	45
Asbury Park City RCA	RCA	180
<b>TOTAL</b>		<b>500</b>

<sup>11</sup> Age-Restricted Maximum = .25 (Prior Round Obligation + Rehabilitation Share - Prior Cycle Credits - Rehabilitation Credits - Transferred RCA Units Addressing the Prior Round Obligation) or .25(1,561+154-28-133-500) = 263.5 or 263 units. N.J.A.C. 5:97-3.10(c)1.

<sup>12</sup> RCA Maximum: .50(Prior Round Obligation + Rehabilitation Share - Prior Cycle Credits - Rehabilitation Credits) or .50(1,561+154-133-28) = 777 units N.J.A.C. 5:97-3.10(d)1

**Prior Round Rental Bonus Maximum:<sup>13</sup> 357 Units**

<b>Development/Project Name</b>	<b>Type of Bonus</b>	<b># Bonuses</b>
Outlook America Group Home	Rental	4
Brookside Group Home	Rental	4
Collins Group Home	Rental	4
Beacon Place inclusionary	Rental	28
Chapel Hill inclusionary	Rental	30
Park Ferry inclusionary	Rental	6
Regency Park inclusionary	Rental	16
Harmony Glen inclusionary	Rental	18
Residential Over Commercial – Elgohail	Rental	12
Wallace 100% Affordable Municipally Sponsored Project	Rental	5
Mountain Hill Inclusionary	Rental	80
Avaya Inclusionary	Rental	75
Monarch/HUS group homes	Rental	8
Community Options group home	Rental	4
<b>TOTAL</b>		<b>294</b>

<sup>13</sup> No rental bonuses shall be granted for rental units in excess of the prior round rental obligation, therefore, PR Rental Bonus Maximum = PR Rental Obligation or 357 N.J.A.C. 5:97-3.5

**C. Plan to Address Projected Growth Share**

**Growth Share Credits**

Middletown is addressing two units of the projected 233-unit growth share obligation with two units of credit for approved units. In accordance with N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11.

**Post-1986 Credits**

Project/Development Name	Year Built or Approved	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Stavola Inclusionary Development <sup>14</sup>	2008	Family For-sale	2	-	-	2
<b>TOTALS</b>			<b>2</b>		<b>-</b>	<b>2</b>

**Approved But Not Constructed**

***Stavola Inclusionary Development***

Pursuant to N.J.A.C. 5:97-4.3(a)3, Middletown is eligible to receive credit for two affordable family for-sale units in an inclusionary development, known as Stavola. The development is located at the intersection of Chapel Hill Road and Kings Highway East (Block 832, Lot 93) and is 64 acres. The site was granted preliminary subdivision approval on July 2, 2008, but is not constructed yet. The project will contain 17 market rate units and two affordable units.

The site is located in Planning Area 1. The site contains steep slopes and wetlands. However, the Township indicates that the portion of the site that will be developed is suitable. The site will be served by public water and sewer.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units,

<sup>14</sup> Stavola is approved but not yet constructed.

Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). [2 post-1986 for sale credits]

**Proposed Affordable Housing Mechanisms**

The Township proposes to address its remaining 231-unit projected growth share obligation through the following mechanisms:

***Schwartz/Taylor Lane Inclusionary Development***

The Taylor Lane site is included in the Township's plan for 360 total units, which includes 72 affordable family rental units (the site was originally to produce 96 affordable rental units; however, the Township was unable to reach an agreement with the developer). The Township has removed its request for rental bonuses for the project. The site is proposed to be developed at a gross density of 12 units per acre with a 20 percent set-aside, which is consistent with the presumptive density for rental units pursuant to N.J.A.C. 5:97-6.4(b)6i. Middletown has submitted a more detailed draft zoning ordinance for the site. The ordinance must be adopted within 45 days of substantive certification.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Taylor Lane site is located in the northwestern part of the Township at 1200 Highway 35 (Block 600, Lots 34, 35.01 & 35.02). The site is owned by Jos Becker and Harry Swartz. The site is approximately 30 acres. The site is presently zoned Active Adult Community (AAC). The site is surrounded by business and residential uses.

The Taylor Lane site is located in Planning Area 1. The Township indicates that there are wetlands, and floodplains on the site, but that up to 70 percent of the site is developable. The site has a Wetlands Letter of Interpretation/Line Verifications from the NJ Department of Environmental Protection (DEP). The Township indicates that the site will be served by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available to the site.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. The Township has confirmed that the

affordable units will have the proper bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). [72 family rental units]

*Steiner & Frustacci Inclusionary Development*

The Steiner & Frustacci site is included in the Township's plan for 139 total units, which includes 35 affordable family for sale units. The site is proposed to be developed at a gross density of eight units per acre with a 25 percent set-aside, which is above the minimum presumptive density in N.J.A.C. 5:97-6.4(b)1. In addition, the Township is proposing to deed restrict four of the units as very-low income units. Middletown has submitted a more detailed draft zoning ordinance for the site. The ordinance must be adopted within 45 days of substantive certification.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Steiner & Frustacci site is located in the northwestern part of the Township at 446 Laurel Avenue (Block 795, Lots 23 & 24). The site is owned by Aldo Frustacci. The site is approximately 17 acres. The site is presently zoned Office Research (OR-2). The site is surrounded by office and residential uses. The site currently contains barn buildings. If the Township determines that the existing buildings have historic significance, they may negotiate with the developer to preserve the buildings.

The Steiner & Frustacci site is located in Planning Area 2. The Township indicates that there are wetlands, steep slopes and floodplains on the site, but that up to 75 percent of the site is developable. The Township indicates that the site will be served by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available to the site.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). [35 family for sale units]

*Meadowview Inclusionary Development*

The Meadowview site is included in the Township's plan for 35 total units, which includes nine affordable family for sale units. The site is proposed to be developed at a gross density of 24 units per acre with a 25 percent set-aside, which is above the minimum density requirement in N.J.A.C. 5:97-6.4(b)1. In addition, the Township is proposing to deed restrict one of the units as very-low income units. Middletown rezoned the site "Residential Multifamily (RMF-1)" on July 20, 2009.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Meadowview site is located in the northern part of the Township at 630 Main Street (Block 281, Lots 14 & 15). The site is owned by Louis J. De Fonzo. The site is approximately two acres. The site was previously zoned for single family residential. The site is surrounded by marine commercial and light industrial uses. The site currently contains two dwelling units and a fire damaged building, which will all be removed.

The Meadowview site is located in Planning Area 1. The Township indicates that there are wetlands and floodplains on the site, but that up to 85 percent of the site is developable. The site has a Wetlands Letter of Interpretation/Line Verifications from the NJ Department of Environmental Protection (DEP). The entire site is in a 100-year flood zone. However, Middletown states that the buildings will be elevated to ensure the first floor is at or above the base flood elevation. The Township indicates that the site will be served by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available to the site.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). [9 family for sale units]

*199 Laurel Associates (Steiner) Inclusionary Development*

The Steiner site is included in the Township's plan for 37 total units, which includes nine affordable family for sale units. The site is proposed to be developed at a gross density of eight units per acre with a 25 percent set-aside, which is above the minimum presumptive density in N.J.A.C. 5:97-6.4(b)1. In addition, the Township is proposing to deed restrict one of the units as very-low income units. Middletown has submitted a more detailed draft zoning ordinance for the site. The ordinance must be adopted within 45 days of substantive certification.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Steiner site is located in the western part of the Township at Holland Road and Laurel Avenue (Block 795, Lot 19). The site is owned by 446 Laurel Associates and Steiner Equ. Group. The site is approximately five acres. The site is presently zoned for single family residential development. The site is surrounded by residential and office research uses. The site currently contains existing barns that will be removed.

The Steiner site is located in Planning Area 2. The Township indicates that there are some limited areas of steep slopes and wetlands transition areas on the site, but most of the site is unconstrained. The Township indicates that the site will be served by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available to the site.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). [9 family for sale units]

*Atlantic Pier Inclusionary Development*

The Atlantic Pier site is included in the Township's plan for 45 total units, which includes eight affordable family for sale units. The site is proposed to be developed at a gross density of eight units per acre with a 25 percent set-aside, which is consistent with the minimum presumptive density in N.J.A.C. 5:97-6.4(b)1. In addition, the Township is proposing to deed restrict one of the units as very-low income units. Middletown has submitted a more detailed

draft zoning ordinance for the site. The ordinance must be adopted within 45 days of substantive certification.

Pursuant to N.J.A.C. 5:97-3.13, the Township indicates that the portion of the site that will be developed is suitable. The Atlantic Pier site is located in the northeastern part of the Township at Highway 36 (Block 732, Lots 10-13 & 21). The site is owned by Atlantic Pier Co., Inc. The site is approximately six acres. The site is presently zoned Residential Town Home Development (RTH-9). The site is surrounded by residential and business uses.

The Atlantic Pier site is located in Planning Area 1. The Township indicates that there are no substantial environmental constraints except for some steep slopes. The Township indicates that the site will be served by public water and sewer. The Township has submitted information demonstrating that sufficient water and sewer capacity are available to the site.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.4(k). [8 family for sale units]

#### *Accessory Apartment Program*

As described above under Section II, Part B, of this report, two units of the 23-unit Accessory Apartment Program will be used to address a portion of Middletown's prior round obligation. The remaining 21 affordable family rental units in the program will be used to address a portion of its growth share obligation. [21-unit Accessory Apartment Program]

#### *Market to Affordable Program*

Middletown's Fair Share Plan proposes a 10-unit Market to Affordable Program pursuant to N.J.A.C. 5:97-6.9. The Township will target existing homes that are for sale and sell the units to income-eligible households. Middletown has demonstrated that there are sufficient market-rate units within the Township, as documented by a multiple listing service. The multiple service list shows 15 units priced under \$200,000. The Township states that it will provide the minimum subsidy of \$25,000 for each moderate-income unit and \$30,000 for each low-income

unit. However, based on the asking price of the market rate units, the Township is allocating \$900,000 in its spending plan in order to provide additional subsidies above the minimum for the prices to achieve an affordable level. Middletown will fund the program with its affordable housing trust fund. The Township has submitted a spending plan and a resolution of intent to bond that was adopted on December 11, 2008, in the event of a shortfall in funding.

The units will be administered by the Township's in-house affordable housing administrator. The units must be certified to be in sound condition as a result of an inspection performed by a licensed building inspector, be affirmatively marketed, and have the proper affordability controls, low/moderate split and pricing. Pursuant to N.J.A.C. 5:97-6.9(e), the Township has submitted an operating manual that includes a description of the program procedures and administration in accordance with UHAC and an affirmative marketing plan.  
**[10-Unit Market to Affordable Program]**

#### *Supportive and Special Needs Housing-Coe*

Pursuant to N.J.A.C. 5:97-6.10, Middletown is proposing to create 10 special needs bedrooms in an existing home. The property is currently owned by George Coe and is located on Sleepy Hollow Road (Block 873, Lot 163). The site is 25.6 acres and formally was a farm. There is an existing home on the property. The Township, in conjunction with the Monmouth Conservation Foundation, NY/NJ Baykeeper, and Impact/OASIS (Improving Middletown's Program for Autistic Children and "OASIS" stands for Ongoing Autistic Success in Society) has a contract to purchase the property and subdivide it into two lots. One lot will be designated as municipal open space and the other lot (approximately seven acres) will be purchased by Impact/OASIS, which will convert the existing home into a supportive housing/special needs facility for adults with autism. The property will also serve as a farm center where the residents will be able to work on the small farm to produce their own food. On June 15, 2009, the Township adopted an ordinance authorizing the Township to purchase the Coe site. The ordinance also authorizes the Township to enter into an agreement with Impact/OASIS.

The site is located in Planning Area 1 and contains wetlands. However, the Township indicates that the portion of the site that will be developed is suitable. The site will be served by the existing infrastructure that serves the existing house.

Pursuant to N.J.A.C. 5:97-3.2(a)4, the Township has provided an implementation schedule that sets forth a detailed timetable that demonstrates a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.10. The Township's mechanism checklist form includes a timetable for each step of the development process in accordance with N.J.A.C. 5:97-6.10(e), with certificates of occupancy being issued in 2014, requiring that supporting documentation be submitted to COAH in 2011, two years before construction begins.

Middletown is requesting three rental bonuses for the group home bedrooms ( $10 * .25 = 2.5$  rounded up to 3). Middletown has provided the contract of sale and a letter of intent, which provide the commitment for the development of the facility from Impact/OASIS. The Township should note that in the event the units are not constructed in accordance with its implementation schedule, Middletown may lose the rental bonuses pursuant to N.J.A.C. 5:97-3.6(a)3ii. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.10(f). [10 Supportive/Special Needs bedrooms, plus 3 rental bonuses]

***Innovative Approaches: Residential Over Commercial Development Program***

Middletown's 2003 second round and third round Housing Element and Fair Share Plan first included an innovative program referred to as the "Residential over Commercial" program. The program provides financial incentives to establish affordable housing units above commercial units at appropriate locations. The Township has identified certain properties comprised of existing single-story commercial and rezoned them to allow the development of second story residential uses. The Township states that it provides a per unit subsidy for this program of \$23,000 for each low-income unit produced and \$17,000 for each moderate-income unit produced. Middletown will fund the program with its affordable housing trust fund. The Township's spending plan allocates \$820,000 for the following four identified residential over commercial projects (Elgohail, Whirl, Rosen and Mogas). The Township has submitted a

spending plan and a resolution of intent to bond that was adopted by the Township on December 11, 2008, in the event of a shortfall in funding.

One project has already received approvals under the residential over commercial overlay ordinance and is under construction. The Elgohail project will contain 12 affordable family rental housing units. The Township is anticipating that three more residential over commercial projects will be proposed in the near future.

The first site, known as the Whirl site, is located at 190 Main Street (Block 260, Lot 2). The property is 0.6 acres. The Township is anticipating that this site will contain commercial on the first floor and two affordable family rental units on the second floor. The site currently contains a residential structure, which will most likely be demolished and open lawn areas. The site is located in Planning Area 1 and has 180 feet of frontage on Main Street. There are no environmental constraints on the property. Residential and commercial uses surround the properties. The development will be served by public water and sewer.

The second site, known as the Rosen Investment site, is located at 18 Leanardville Road (Block 646, Lot 29). The property is one acre. The site currently contains a vacant, single story 4,000 square foot office building, which will be retrofitted to accommodate new commercial development on the first floor and eight affordable family rental units on the second floor. The site is located in Planning Area 1 and has 80 feet of frontage on Leanardville Road. The Township indicates that the site likely contains wetlands and transition areas associated with a nearby stream and some steep slopes may be present on the southeast back section of the site, where development is not proposed. However, the Township anticipates that 50 percent of the site is developable. Residential, places of worship and office uses surround the properties. The development will be served by public water and sewer.

The third site, known as Mogas, is located at 880-882 Highway 36 (Block 443, Lots 1 & 2). The property is two acres. The Township is anticipating that this site will contain 12 affordable family rental units. The site currently contains an auto repair facility, which will be demolished. The site is located in Planning Area 1 and has 450 feet of frontage along Highway 36 and Concord Avenue. There are no environmental constraints on the property. Residential and commercial uses surround the properties. The development will be served by public water and

sewer. Permits to remove fuel tanks associated with a former gas station were issued in August 2008 and certificate of approval for their removal was issued in October 2008.

The overlay zoning ordinance was submitted by the Township. The ordinance requires a minimum set-aside of 20 percent for affordable housing. The ordinance also allows a 20 percent increase in the floor area ratio to accommodate the residential units. The Whirl and Rosen properties' blocks and lots are not listed in the overlay. The ordinance must be revised to include these properties and adopted within 45 days of COAH's grant of substantive certification and submitted to COAH upon adoption.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, rental pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.7(e). [22 family rental units in Residential over Commercial Program]

#### *Municipally Sponsored 100 percent Affordable Developments*

Pursuant to N.J.A.C. 5:97-6.7, Middletown is proposing to construct 130 affordable for sale units (consisting of 15 scattered site homes and 115 units in municipally sponsored projects) and seven additional residential over commercial family rental units in future municipally sponsored affordable projects. Middletown has provided separate checklists and implementation schedules for each of the projects; however the Township anticipates that it will be implementing these projects on an ongoing basis.

The Township is anticipating that 115 units will be multiple for-sale projects that will include both 100 percent affordable and mixed-income housing. Middletown anticipates that 57 will be family for-sale units and 58 will be age-restricted sale units. The Township is also proposing to deed restrict 15 of the units for very-low income households.

Pursuant to N.J.A.C. 5:97-3.2(a)4, the Township has provided an implementation schedule that sets forth a detailed timetable that demonstrates a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.7. The Township's mechanism checklist form includes a timetable

for each step of the development process in accordance with N.J.A.C. 5:97-6.7(d), with certificates of occupancy being issued in 2016, requiring that supporting documentation be submitted to COAH in 2014, two years before construction begins.

Middletown anticipates that 15 units will be scattered site construction on municipally owned lots. The Township indicates that it will inventory municipal lots and identify sites and developers throughout the third round period. The Township is also proposing to deed restrict one of the units for very-low income households. Pursuant to N.J.A.C. 5:97-3.2(a)4, the Township has provided an implementation schedule that sets forth a detailed timetable that demonstrates a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.7. The Township's mechanism checklist form includes a timetable for each step of the development process in accordance with N.J.A.C. 5:97-6.7(d), with certificates of occupancy being issued in 2016, requiring that supporting documentation be submitted to COAH in 2013, two years before construction begins.

Middletown anticipates that seven units will be additional residential over commercial affordable rental units. The Township is also proposing to deed restrict one of the units for very-low income households. Middletown states that it is currently working on two potential projects. One potential project is Campbell's Junction, which is an existing 2 ½ story mixed-use building, in which the Township indicates that five affordable units could be provided. The top level is already framed to accommodate residential units and the Township has initiated a dialogue with the landowner. Another potential project could be located on a 0.75-acre tract in the North Middletown neighborhood, a potential redevelopment area. Middletown indicates that it is currently working with the State and the private sector to redevelop this site with a new sustainable, mixed-use building with at least five affordable residential uses above first-floor commercial space.

Pursuant to N.J.A.C. 5:97-3.2(a)4, the Township has provided an implementation schedule that sets forth a detailed timetable that demonstrates a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.7. The Township's mechanism checklist form includes a timetable for each step of the development process in accordance with N.J.A.C. 5:97-6.7(d), with

certificates of occupancy being issued in 2017, requiring that supporting documentation be submitted to COAH in 2014, two years before construction begins.

Middletown will fund the projects with its affordable housing trust fund. The Township has submitted a spending plan and a resolution of intent to bond that was adopted on December 11, 2008, in the event of a shortfall in funding. The Township's spending plan allocates \$1,334,801 for new construction (future 115-unit project), \$330,000 for the seven future residential over commercial units, and \$652,365 for the 15 future scattered site units.

The affordable units must meet the requirements of the Uniform Housing Affordability Controls (N.J.A.C. 5:80-1 et seq.) with regard to controls on affordability, affirmative marketing, pricing, low/moderate split and bedroom distribution. Prior to marketing the affordable units, Middletown must submit the required items pursuant to N.J.A.C. 5:97-6.7(e).

Middletown is requesting seven rental bonuses for the seven proposed family rental units. At this time, rental bonuses cannot be provided until the Township demonstrates a firm commitment. [130 sale units, 7 family rental units in municipally sponsored 100 percent affordable projects]

**Proposed Affordable Housing Mechanisms**

Type/Name of Affordable Housing Mechanism	Type of Affordable Unit	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Schwartz/Taylor Lane Inclusionary Development	Family Rental	72	-	-	72
Steiner & Frustacci Inclusionary Development	Family For-sale	35	-	-	35
Meadowview Inclusionary Development	Family For-sale	9	-	-	9
199 Laurel Ave (Steiner) Inclusionary Development	Family For-sale	9	-	-	9
Atlantic Pier Inclusionary Development	Family For-sale	8	-	-	8
Accessory Apartment Program	Family Rental	21	-	-	21
Market to Affordable Program	Family For-sale	10	-	-	10
Special Needs Housing-Coe	Supportive/Special Needs	10	Special Needs Rental	3	13
Residential Over Commercial Program: Mogas (12), Whirl (2), Rosen (8)	Family Rental	22	-	-	22
Future Scattered Sites -- Municipally Sponsored 100% Affordable Projects	Family For-sale	15	-	-	15
Future sites - Municipally Sponsored 100% Affordable Project	Family For-sale	57	-	-	57
Future sites - Municipally Sponsored 100% Affordable Project	Age-restricted For-sale	58	-	-	58
Future sites -- Residential Over Commercial- Municipally Sponsored 100% Affordable Projects	Family Rental	7	-	-	7
<b>TOTALS</b>		<b>333</b>		<b>3</b>	<b>336</b>

**Growth Share Parameters**

Middletown Township has satisfied the applicable Growth Share parameters as follows:

**Growth Share Rental Obligation:<sup>15</sup> 58 Units**

Development/Project Name	Type of Affordable Unit	# Units
Schwartz/Taylor Lane Inclusionary Development	Family Rental	72
Accessory Apartment Program	Family Rental	21
Residential Over Commercial Program	Family Rental	22
Future sites – Residential Over Commercial- Municipally Sponsored 100% Affordable Projects	Family Rental	7
<b>TOTAL</b>		<b>122</b>

**Growth Share Family Rental Requirement:<sup>16</sup> 29 Units**

Development/Project Name	Type of Affordable Unit	# Units
Schwartz/Taylor Lane Inclusionary Development	Family Rental	72
Accessory Apartment Program	Family Rental	21
Residential Over Commercial Program	Family Rental	22
Future sites – Residential Over Commercial- Municipally Sponsored 100% Affordable Projects	Family Rental	7
<b>TOTAL</b>		<b>122</b>

<sup>15</sup> Projected Growth Share Rental Obligation: .25(Projected Growth Share) or .25(233)= 58.25 or 58 units - N.J.A.C. 5:97-3.10(b)3

<sup>16</sup> Projected Growth Share Family Rental Requirement: .5(Projected Growth Share Rental Requirement) or .5(58)= 29 units N.J.A.C. 5:97-3.4(b)

**Growth Share Minimum Family Requirement:<sup>17</sup> 115 Units**

<b>Development/Project Name</b>	<b>Type of Affordable Unit</b>	<b># Units</b>
Stavola Inclusionary Development	Family For-sale	2
Schwartz/Taylor Lane Inclusionary Development	Family Rental	72
Steiner & Frustacci Inclusionary Development	Family For-sale	35
Meadowview Inclusionary Development	Family For-sale	9
199 Laurel Ave (Steiner) Inclusionary Development	Family For-sale	9
Atlantic Pier Inclusionary Development	Family For-sale	8
Accessory Apartment Program	Family Rental	21
Market to Affordable Program	Family For-sale	10
Residential Over Commercial Program	Family Rental	22
Future sites - Municipally Sponsored 100% Affordable Projects	Family For-sale	57
Future sites - Residential Over Commercial- Municipally Sponsored 100% Affordable Projects	Family Rental	7
<b>TOTAL</b>		<b>252</b>

<sup>17</sup> Projected Growth Share Family Requirement: .5 (Units Addressing the Growth Share Obligation) or .5(230)= 115 units N.J.A.C. 5:97-3.9

**Very Low Income Minimum Requirement:<sup>18</sup> 30 Units**

Development/Project Name	Type of Affordable Unit	# Units
Schwartz/Taylor Lane Inclusionary Development	Family Rental	12
Steiner & Frustacci Inclusionary Development	Family For-sale	4
Meadowview Inclusionary Development	Family For-sale	1
199 Laurel Ave (Steiner) Inclusionary Development	Family Rental	1
Atlantic Pier Inclusionary Development	Family For-sale	1
Future sites - Municipally Sponsored 100% Affordable Projects	Family & Age-restricted For-sale	15
Future Scattered Sites - Municipally Sponsored 100% Affordable Projects	Family For-sale	1
Future sites - Residential Over Commercial- Municipally Sponsored 100% Affordable Projects	Family Rental	1
<b>TOTAL</b>		<b>36</b>

**Age-Restricted Maximum:<sup>19</sup> 58 Units**

Development/Project Name	Type of Affordable Unit	# Units
Future sites - Municipally Sponsored 100% Affordable Project	Age-restricted For-sale	58
<b>TOTAL</b>		<b>58</b>

<sup>18</sup> Growth Share Very Low Income Requirement: .13(Units Addressing the Growth Share Obligation) or .13(230)= 29.9 or 30 units N.J.S.A. 52:27D-329.1

<sup>19</sup> Projected Growth Share Age Restricted Maximum: .25(Projected Growth Share) or .25(233)= 58.5 or 58 units N.J.A.C. 5:97-3 10(c)2

**Bonus Maximum:<sup>20</sup> 58 Bonuses**

Development/Project Name	Type of Bonus	# Bonuses
Special Needs Housing-Coe	Rental	3
<b>TOTAL</b>		<b>3</b>

**Actual Growth Share Obligation**

The actual growth share obligation will be based on permanent certificates of occupancy issued within the municipality for market-rate residential units and newly constructed or expanded non-residential developments in accordance with Appendix D of N.J.A.C. 5:97. At plan evaluation review pursuant to N.J.A.C. 5:96-10, COAH will compare the actual growth share obligation with the actual number of affordable units constructed.

The New Jersey Department of Community Affairs (NJ DCA) *Construction Reporter* indicates that between January 1, 2004 and September 2008, Middletown has issued certificates of occupancy for 660 housing units and also for the nonresidential square footage equivalent of 405 jobs, yielding an actual growth share obligation through September 30, 2008, of 157 affordable units.<sup>21</sup>

**D. Summary of Plan to Address Fair Share Obligation**

**REHABILITATION SHARE SUMMARY**

**Rehabilitation Share: 154 Units**

Program Name	# Units
Rehab Credits	28
Rehab Program	126
<b>TOTAL</b>	<b>154</b>

<sup>20</sup> Projected Bonus Maximum:  $.25(\text{Projected Growth Share}) \text{ or } .25(233) = 58.25$  or 58 units N.J.A.C. 5:97-3 20

<sup>21</sup> The number of residential COs (660) is divided by 5 to yield 132 units and the number of jobs (405) is divided by 16 to yield 25.3 units. Middletown's total estimated actual growth share is therefore 157 units (132+25.3). Note: this estimate does not take into account allowable exclusions permitted under N.J.A.C. 5:97-2.5; therefore, the actual growth share may vary.

**PRIOR ROUND SUMMARY**  
 Prior Round Obligation: 1,561 Units

	Name of Mechanism	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
<b>Prior Cycle Credits</b>	Credits without Controls	101			101
	Scattered Site Municipal Construction Program	2			2
	King's Row Senior Citizen Development	26			26
	Departmental Disabilities Association Group Home	4			4
<b>Post-1986 Credits</b>	Highlands Township RCA	50	-	-	50
	Long Branch City RCA	150	-	-	150
	Union Beach Township RCA	75	-	-	75
	Red Bank Township RCA	45	-	-	45
	Asbury Park City RCA	180	-	-	180
	Outlook America Group Home	4	Rental	4	8
	Brookside Group Home	4	Rental	4	8
	Collins Group Home	4	Rental	4	8
	Accessory Apartments	29	-	-	29
	Beacon Place inclusionary	28	Rental	28	56
	Chapel Hill inclusionary	30	Rental	30	60
	Park Ferry inclusionary	6	Rental	6	12
	Regency Park inclusionary	16	Rental	16	32

	Harmony Glen inclusionary	18	Rental	18	36
	Residential Over Commercial -- Elgohail	12	Rental	12	24
	Wallace 100% Affordable Municipally Sponsored Project	5	Rental	5	10
	Luftman Pavilion	60	-	-	60
	Conifer Village	180	-	-	180
	Scattered Site Municipal Construction Program	23	-	-	23
	Laurel Greene inclusionary	24	-	-	24
	Cottage Gate	13	-	-	13
	Browns Landing	2	-	-	2
	Wallace Point 100% Affordable Municipally Sponsored Project	7	-	-	7
	<b>Subtotal</b>	<b>1098</b>		<b>127</b>	<b>1,225</b>
<b>Proposed Mechanisms</b>	Mountain Hill Inclusionary	80	Rental	80	160
	Avaya Inclusionary	75	Rental	75	150
	Monarch/HUS group homes	8	Rental	8	16
	Community Options group home	4	Rental	4	8
	Accessory Apartment Program	2	-	-	2
	<b>Subtotal</b>	<b>169</b>		<b>167</b>	<b>336</b>
				<b>TOTAL</b>	<b>1,561</b>

**GROWTH SHARE SUMMARY**

**Projected Growth Share Obligation: 233 Units**

	Name of Mechanism	# Units/Bedrooms	Bonus Type	# Bonuses	Total Units/Bedrooms + Bonuses
Post-1986 Credits	Stavola Inclusionary Development	2	-	-	2
	<b>Subtotal</b>	<b>2</b>		<b>-</b>	<b>2</b>
Proposed Mechanisms	Schwartz/Taylor Lane Inclusionary Development	72	-	-	72
	Steiner & Frustacci Inclusionary Development	35	-	-	35
	Meadowview Inclusionary Development	9	-	-	9
	199 Laurel Ave (Steiner) Inclusionary Development	9	-	-	9
	Atlantic Pier Inclusionary Development	8	-	-	8
	Accessory Apartment Program	21	-	-	21
	Market to Affordable Program	10	-	-	10
	Special Needs Housing-Coe	10	Special Needs Rental	3	13
	Residential Over Commercial Program: Mogas (12), Whirl (2), Rosen (8)	22	-	-	22
	Future Scattered Sites - Municipally Sponsored 100% Affordable Projects	15	-	-	15
	Future sites - Municipally	57	-	-	57

	Sponsored 100% Affordable Project -Family units				
	Future sites - Municipally Sponsored 100% Affordable Project-Age-restricted Units	58	-	-	58
	Future sites - Municipally Sponsored 100% Affordable Projects	7	-	-	7
	<b>Subtotal</b>	<b>333</b>		<b>3</b>	<b>336</b>
				<b>TOTAL</b>	<b>338</b>
				<b>Surplus</b>	<b>+105</b>

**III. FAIR SHARE DOCUMENT REVIEW**

**A. Development Fee Ordinance**

Middletown's certified plan included a development fee ordinance that was adopted by the Township on November 22, 1993 and approved by COAH on January 11, 1995. Middletown submitted a draft amended development fee ordinance for COAH's review and approval with its third round petition. The amended development fee ordinance will be reviewed in a separate report.

**B. Third Round Spending Plan**

Middletown's prior round spending plan was approved by COAH on June 6, 1997. A revised third round spending plan was submitted by Middletown with the Township's third round petition for COAH's review and approval. The spending plan will be reviewed by COAH in a separate report.

The spending plan approval will be conditioned upon the Township providing the additional detail for the 2006 and 2007 legal expenses. Middletown has indicated that some of the expenses appear to be unrelated to the development or implementation of the Township's affordable housing plan. However, the Township indicates that some of the charges are valid. As such, until the additional detail is provided to COAH to determine whether the withdraws are

eligible expenses pursuant to N.J.A.C. 5:97- 8.7, Middletown has agreed to temporarily refrain from withdrawing additional funds from its affordable housing trust funds other than (1) charges that are contractually mandated for the production of affordable housing; or (2) any charges that are directly related to the Township's affordability assistance program.

Middletown's spending plan also acknowledges that administrative expenses withdrawn from the housing trust fund to date have exceeded the 20 percent limitation. To remedy the issue, Middletown will not withdraw administrative funds from the affordable housing trust fund until sufficient revenue is collected to satisfy the 20 percent administrative expense maximum limitation. Middletown's spending plan estimates that the Township will collect sufficient revenue by 2012 in order to satisfy the 20 percent administrative limitation. This request will be reviewed by COAH in a separate report.

**C. Affordable Housing Ordinance/Affordable Housing Administration**

Middletown Township has an adopted affordable housing ordinance for its prior round obligation. Middletown has submitted a revised draft affordable housing ordinance that comports with the requirements of the UHAC, which was amended on December 20, 2004, including compliance with the barrier free subcode of the State Uniform Construction Code Act (N.J.S.A. 52:27D-119 et seq.) and the accessibility requirements of N.J.S.A. 52:27D-123.15. The draft ordinance must be adopted within 45 days of COAH's grant of substantive certification and submitted to COAH immediately upon adoption.

An ordinance establishing the position of a municipal housing liaison was adopted by the Township on March 16, 2009, and a resolution appointing a municipal housing liaison was adopted by the Township on April 20, 2009.

Middletown is responsible for the continued re-sale and re-rental of existing affordable units and the initial sale and rental of newly constructed affordable units within the Township and must designate an experienced administrative entity for that purpose. The group homes are administered by the special needs providers. The Affordable Housing Alliance administers the units at Beacon Place and Park Ferry. The Alliance will also be the administrator of the 12 units at Wallace. Conifer Realty is the administrator of Conifer Senior Housing. D&M Property Management is the administrator of Village at Chapel Hill. Luftman Pavillion is the

administrator of Lincroft Senior Citizen Housing Corporation. Middletown has an in-house administrative agent who administers the remaining affordable units.

Middletown has submitted operating manuals for its Accessory Apartment and Market to Affordable Programs.

**D. Affirmative Marketing Plan**

Middletown has submitted an affirmative marketing plan. The affirmative marketing plan will be reviewed for conformance with the requirements of the Uniform Housing Affordability Controls, N.J.A.C. 5:80-26.1 et seq., to ensure the units in the Township's 1987-2018 Fair Share Plan and all future affordable housing units will be affirmatively marketed to the region upon initial sale/rental and re-sale/re-rental. Once approved by COAH, the affirmative marketing plan must be adopted by resolution by the Township within 45 days of COAH's grant of substantive certification and submitted to COAH.

**IV. SUMMARY OF MEDIATION**

**A. Objections**

COAH received two objections to Middletown's third round plan. Stephen Eisdorfer Esq., of Hill Wallack, and David N. Kinsey, PP/AICP, of Kinsey & Hand, filed an objection on behalf of Bamm Hollow, LLC. Gary E. Fox, Esq. of the law firm Fox & Melofchik, LLC, filed an objection on behalf of Mountain Hill, LLC. The objections are summarized in COAH's July 28, 2009 Pre-Mediation Report Requesting Additional Information. The municipal response from Middletown is summarized in COAH's August 24, 2009 Pre-Mediation Report Addendum.

**B. Mediation**

Mediation between the Township and Bamm Hollow took place in COAH's offices in Trenton on August 25, 2009. The mediation session did not result in an agreement between the parties.

Mediation did not take place between the Township and Mountain Hill. On September 24, 2009, Middletown and Mountain Hill entered into a developer's agreement. Thereafter, on September 24, 2009, Mountain Hill withdrew its objection.

Mediation concluded on August 25, 2009. The Mediation Report, dated September 24, 2009, is attached hereto as Attachment 2. The developers' agreements between the Township and Avaya and Mountain Hill are attachments to the Mediation Report.

#### **V. COMMENTS**

Adam M. Gordon, on behalf of Fair Share Housing Center (FSHC), submitted a letter dated June 1, 2009, commenting on Middletown's Fair Share Plan during the 45-day objection period. FSHC states that the letter is not intended as an objection to the Township's plan pursuant to N.J.A.C. 5:96-4.1; however FSHC does express concerns regarding the proposed inclusionary developments in Middletown's plan and rental bonuses that the Township is seeking.

FSHC submits that several inclusionary developments do not meet COAH's presumptive densities for inclusionary development. FSHC states that further explanation is required for the Schwartz Property, Ayaya property and the Mountain Hill property. FSHC maintains that developers' agreements for these sites should also be provided. Also, FSHC states that Middletown is requesting rental bonuses for several developments that do not qualify for bonuses because there are no firm commitments for rental units. Lastly, FSHC notes that the Township has correctly not taken credit for a never completed RCA with Keansburg.

FSHC's comments have been addressed by the Township. There are executed developers' agreements with Avaya and Mountain Hill. The Township has removed its request for rental bonuses for the Schwartz/Taylor development. The Schwartz/Taylor site is now proposed to be developed at a gross density of 12 units per acre with a 20 percent set-aside, which is consistent with the presumptive density for rental units pursuant to N.J.A.C. 5:97-6.4(b)6i. Firm commitments have been provided for the projects that are receiving rental bonuses.

#### **VI. MONITORING**

Middletown must comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting the municipality's actual growth pursuant to N.J.A.C. 5:97-2.5. As indicated above, credits for built units will be validated and verified by COAH staff during

monitoring prior to the first biennial plan evaluation. It should be noted that credits for affordable housing programs and/or affordable units must be in compliance with N.J.A.C. 5:97-4. If the units are determined not to be eligible for credit, COAH will notify Middletown in writing and the Township may be directed to amend its certified plan to address the shortfall.

Pursuant to N.J.A.C. 5:96-10.1, COAH will conduct biennial plan evaluations upon substantive certification of Middletown's Housing Element and Fair Share Plan. The purpose of the plan evaluation is to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing. If upon any biennial review the difference between the number of affordable units constructed or provided in Middletown and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, Middletown is not adhering to its implementation schedules pursuant to N.J.A.C. 5:97-3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, the Council may direct the Township to amend its plan to address the shortfall.

## VII. RECOMMENDATION

COAH staff recommends that Middletown be granted third round substantive certification. COAH staff also recommends approval of the waiver from N.J.A.C. 5:80-26.3(b) for the bedroom distribution for the affordable units that will be constructed at Wallace Point. Middletown must adopt all necessary implementing ordinances, which includes the HUS ordinance, all zoning ordinances and the affordable housing ordinance, within 45 days of the grant of substantive certification and submit certified copies of the adopted ordinances to COAH within seven days of the adoption. In addition, the agreement between HUS and Middletown must be executed within 45 days after the grant of substantive certification and submitted to COAH.

*Attachment 1*

**Workbook A: Growth Share Determination Using Published Data**  
 (Using Appendix F(2), Allocating Growth To Municipalities)

**COAH Growth Projections**  
 Must be used in all submissions

Municipality Name: Middletown Township

Enter the COAH generated growth projections from Appendix F(2) found at the back of N.J.A.C. 5:97-1 et seq. on Line 1 of this worksheet. Use the Tab at the bottom of this page to toggle to the exclusions portion of this worksheet. After entering all relevant exclusions, toggle back to this page to view the growth share obligation that has been calculated. Use these figures in the Application for Substantive Certification.

	Residential	Non-Residential
1 Enter Growth Projections From Appendix F(2) *	<span style="border: 1px solid black; padding: 2px;">1,149</span>	<span style="border: 1px solid black; padding: 2px;">3,731</span>
2 Subtract the following Residential Exclusions pursuant to 5:97-2.4(a) from "Exclusions" tab	<a href="#">Click Here to enter Prior Round Exclusions</a>	
COs for prior round affordable units built or projected to be built post 1/1/04	444	
Inclusionary Development	3	
Supportive/Special Needs Housing	10	
Accessory Apartments	3	
Municipally Sponsored or 100% Affordable	0	
Assisted Living	0	
Other	0	
Market Units in Prior Round Inclusionary development built post 1/1/04	<span style="background-color: #cccccc; padding: 2px;">987</span>	
3 Subtract the following Non-Residential Exclusions (5:97-2.4(b))		
Affordable units	<span style="background-color: #cccccc; padding: 2px;">0</span>	
Associated Jobs		0
4 Net Growth Projection	-298	3,731
5 Projected Growth Share (Conversion to Affordable Units Dividing Households by 5 and Jobs by 16)	0.00 Affordable Units	233.19 Affordable Units
6 Total Projected Growth Share Obligation		233 Affordable Units

\* For residential growth, see Appendix F(2), Figure A.1, Housing Units by Municipality. For non-residential growth, see Appendix F(2), Figure A.2, Employment by Municipality.

## Affordable and Market-Rate Units Excluded from Growth

Municipality Name: **Middletown Township**

Prior Round Affordable Units NOT Included in Inclusionary Developments Built post 1/1/04

Development Type	Number of COs Issued and/or Projected
Supportive/Special Needs Housing	3
Accessory Apartments	10
Municipally Sponsored and 100% Affordable	3
Assisted Living	0
Other	0
<b>Total</b>	<b>16</b>

### Market and Affordable Units in Prior Round Inclusionary Development Built post 1/1/04

N.J.A.C. 5:97-2.4(a)

(Enter Y for yes in Rental column if rental units resulted from N.J.A.C. 5:93-5.15(c)5 incentives)

Development Name	Rentals? (Y/N)	Total Units	Market Units	Affordable Units	Market Units Excluded
Chapel Hill	Y	150	120	30	120
Gate Cottage	N	104	91	13	52
Regency Park	Y	110	94	16	91
Harmony	Y	90	72	18	72
Park Ferry & MHA	Y	30	24	6	24
Conifer	Y	180	0	180	0
Browns Fence	N	21	19	2	8
Wallace (for sale)	N	7	0	7	0
Wallace (for rent)	Y	5	0	5	0
Elgohall	Y	12	0	12	0
Avaya	Y	375	300	75	300
Mountain Hill	Y	400	320	80	320
<b>Total</b>		<b>1,484</b>	<b>1,040</b>	<b>444</b>	<b>987</b>

### Jobs and Affordable Units Built as a result of post 1/1/04 Non-Residential Development

N.J.A.C. 5:97-2.4(b)

Development Name	Affordable Units Provided	Permitted Jobs Exclusion
	0	0
	0	0
	0	0
	0	0
<b>Total</b>	<b>0</b>	<b>0</b>

Return To Workbook A Summary

*Attachment 2*

## **MIDDLETOWN MEDIATION REPORT**

*Middletown Township/Monmouth County*

By,

*Melissa J. Orsan*

*COAH Mediator*

*September 24, 2009*

On August 25, 2009, mediation was held between representatives for Middletown Township ("Middletown" or the "Township") and Bamm Hollow, LLC, an objector to Middletown's Third Round Housing Element and Fair Share Plan ("HEFSP"), pursuant to an objection filed with the New Jersey Council on Affordable Housing ("COAH" or the "Council"). Appearing on behalf of the Township were the Mayor, Pamela Brightbill; Anthony Mercantante, P.P., A.I.C.P., Township Administrator; Jason Greenspan, P.P., A.I.C.P., Director of Planning; Cliff Raisch, Planning Board member; and Michael Jedziniak, Esq., Special COAH Counsel. Appearing for Bamm Hollow, LLC, was Steve Eisdorfer, Esq., Hill Wallack; David Kinsey, P.P., A.I.C.P., Kinsey and Hand; William Charpek; and Robert Keating. One mediation session was held.

Gary E. Fox, Esq., Fox & Melofchik, LLC, on behalf of Mountain Hill, also submitted an objection to Middletown's Plan. Mountain Hill is included in Middletown's Plan to construct 400 total units, including 80 family rental units. Mountain Hill noted in its objection that there were outstanding issues that needed to be addressed before it could proceed; however, Mountain Hill declined an invitation to attend mediation. On September 24, 2009, Middletown and Mountain Hill entered into a developer's agreement. Also on September 24, 2009, Mountain Hill withdrew its objection.

### **OBJECTIONS AND RESPONSES**

Middletown Township is continuing to address its prior round obligation of 1,561 units. Middletown has proposed to meet its entire 1999-2018 growth share projection of 233 affordable housing units through inclusionary zoning, supportive/special needs housing, accessory apartments, a market to affordable program, a "residential over commercial" program, municipally sponsored 100 percent affordable projects and associated bonuses.

Bamm Hollow has objected to the merits of the Township's HEFSP and instead proposes its site, approximately 277 acres, to be developed as inclusionary multi-family housing, in addressing Middletown's fair share obligation. The Township submitted its response to the objections, as summarized above in the Compliance Report; however, at mediation Bamm Hollow focused on its objections to Avaya/Four Ponds and Mountain Hill, as at that time, Middletown had yet to submit certain documentation from Middletown to support its other mechanisms.

Specifically, Bamm Hollow objected to Middletown excluding prior round sites from its affordable housing obligation, thereby reducing the overall affordable housing obligation. Bamm Hollow noted that the effect will be for Middletown to receive a reduction of its projected obligation from 463 to 233 affordable units for the market and affordable units that will be built on prior round projects, including, but not limited to Avaya/Four Ponds and Mountain Hill sites.

Further, in its objection, Bamm Hollow expressed doubt that the Avaya/Four Ponds and Mountain Hill sites created a realistic opportunity for affordable housing. At the time mediation took place, although there was an executed developer agreement with Avaya, the objector had not reviewed same. Also, an agreement with Mountain Lakes was not executed and submitted until September 24, 2009. Bamm Hollow argued that the densities on both sites are lower than COAH's presumptive densities at N.J.A.C. 5:97-6.4 and should not be permitted. Middletown noted in mediation that COAH's regulations allow the Township to exclude the prior round sites from its projection and that developer's agreements on both sites would be submitted within the 60 days provided in the Pre-mediation Report Requesting Additional Information, thereby complying with COAH's regulations. Middletown advised Bamm Hollow that the terms of the developer's agreements meet COAH's regulations and notwithstanding the lower density, Middletown's plan addresses its cumulative obligation. As noted, Middletown entered into agreements with both Avaya/Four Ponds and Mountain Hill (both agreements are attached to this report).

Bamm Hollow also objected to Middletown receiving rental bonuses for the Avaya/Four Ponds and Mountain Hill sites, as there was no evidence of a firm commitment at the time of

petition. Bamm Hollow had similar complaints over the Schwartz/Taylor Lane site<sup>1</sup>, the supportive housing site and the 7-unit municipally sponsored program. At mediation, Middletown stated that the necessary information required under COAH's regulations would be submitted. As noted above in COAH's Compliance Report, Middletown submitted all of the information COAH requested in the Pre-mediation Report, including developer's agreements for Avaya/Four Ponds and Mountain Hill. The agreements satisfy COAH's requirement for a firm commitment pursuant to N.J.A.C. 5:97-6.4. Further, Middletown submitted evidence of a firm commitment on the other projects noted by Bamm Hollow; see Compliance Report.

Finally, Bamm Hollow objected to Middletown claiming 144 third round credits for a combination of scattered sites, a "residential over commercial" program and municipally sponsored 100 percent affordable housing projects that it believed were too vague and failed to create a realistic opportunity for affordable housing. The Township submitted to COAH supporting documentation for each of the noted mechanisms. See Compliance Report pages 27-28.

At mediation, the parties generally discussed the objections but noted that the information that was missing from the Plan and due to be submitted by Middletown would indicate whether Middletown had, in fact, submitted a Plan that could be certified without amendments. Bamm Hollow noted that it did not believe that the Township had met its obligation to provide realistic opportunities for low and moderate income housing, and questioned, in particular, whether the prior round sites continued to create a realistic opportunity for affordable housing. At mediation, Middletown maintained its position as it had in its response documents that it has provided COAH with a fully compliant affordable housing plan addressing its entire prior and third round obligation and, therefore, need not be required to include the Bamm Hollow site as a part of that plan. Nonetheless, Middletown indicated it would be amenable to discussing changes to the Bamm Hollow site, separate from the COAH process. Middletown was clear, however, that it

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<sup>1</sup> As noted above, the Taylor Lane site is included in the Township's plan for 360 total units, which includes 72 affordable family rental units (the site was originally to produce 96 affordable rental units; however, the Township was unable to reach an agreement with the developer). The Township has removed its request for rental bonuses for the project. The site is proposed to be developed at a gross density of 12 units per acre with a 20 percent set-aside, which is consistent with the presumptive density for rental units pursuant to N.J.A.C. 5:97-6.4(b)6i.

wanted to proceed with the Plan before COAH and would not consider re-zoning the Bamm Hollow site at the densities being sought.

The parties agreed to continue to discuss the matter outside of the COAH process. A meeting between representatives of Middletown and Bamm Hollow is in the process of being scheduled.

#### **MEDIATION OUTCOME**

The mediation in this matter did not result in a settlement and the mediator does not believe that further mediation before COAH would result in a settlement being reached. At this point, Middletown has submitted a plan that addresses its cumulative affordable housing obligation and its projected growth share.

As such, mediation has concluded and the mediator finds that there are not any outstanding issues of material fact which necessitate referral to the Office of Administrative Law.

**"EXHIBIT A"**  
**FIRM COMMITMENT FOR THE CONSTRUCTION OF  
FAMILY RENTAL UNITS PURSUANT TO THE  
SUBSTANTIVE REGULATIONS OF THE NEW JERSEY  
COUNCIL ON AFFORDABLE HOUSING**

**THIS AGREEMENT** entered into this 24<sup>th</sup> day of September 2009 between the Township of Middletown, a municipal corporation in the County of Monmouth, State of New Jersey, having an office at 1 Kings Highway Middletown, New Jersey (hereinafter "Township"), and Mountain Hill, LLC, having an office at 853 Hwy. 35, POB 278, Middletown, NJ, (hereinafter "Developer"); and

**WHEREAS**, Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II"), the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., and other applicable laws require the Township to create a realistic opportunity for the provision of its fair share of low and moderate income housing (hereinafter "lower income housing"); and

**WHEREAS**, the Township seeks to satisfy a portion of its fair share obligation through inclusionary development of a +/- 120 acre tract identified as Block 825, Lots 53, 54, 55, 56, 57, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69.01, 72, 73, 74, 75, 76, 77, 78, 79, 80 and 81 on the Township's official tax map (hereinafter "Subject Property") in accordance with an ordinance previously adopted (hereinafter "Affordable Housing Zoning Ordinance"); and

**WHEREAS**, Developer is the owner of the Subject Property and desires the Subject Property to be developed in accordance with the portion of the Affordable Housing Zoning Ordinance concerning rental housing and with the general requirement of COAH and the Uniform Housing Affordability Controls (UHAC) regulations at N.J.A.C. 5:80-26.1 et seq. concerning non-age restricted rental housing; and

**WHEREAS**, Developer understands that the Township is entitled to rental bonuses for the 80 affordable rental units it intends to construct if it makes a firm commitment to construct the affordable rental units; and

**WHEREAS**, further agreements with the landowner(s), contract purchaser(s) and/or developer(s) will be necessary at a future date to ensure that all on and off-tract improvements are completed at defined stages of site development relating to matters including but not limited to utility infrastructure, public services and uses, traffic impact mitigation and building demolition; and

**WHEREAS**, Developer wishes to make the firm commitment sought by the Township.

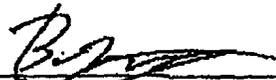
NOW, THEREFORE, be it agreed as follows:

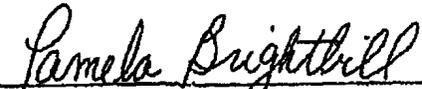
1. Developer intends to develop Phase One of the Subject property in accordance with the Affordable Housing Zoning Ordinance and consistent with the Middletown Township Housing Element and Fair Share Plan. Developer intends to pursue the right to construct 400 units of which 80 will be rented to low and moderate income family households. The parties recognize that Developer may secure the right to construct fewer or greater units in Phase One as a result of the approval processes that lie ahead. In the event that Developer secures the right to construct fewer or greater than 400 units in Phase One, it shall maintain a twenty (20%) percent set aside on the units it does secure the right to construct. Developer shall ensure that at least fifty (50%) percent of the affordable units will be made affordable to low income households.
2. Developer shall adhere to the provisions of COAH's regulations concerning family rental housing which the Township anticipates incorporating into its current affordable housing regulations.
3. Developer shall abide by all applicable regulations of COAH and UHAC.
4. Developer shall complete the development of the Subject property according to the implementation schedule approved by COAH subject to any necessary amendments due to any unforeseen economic or regulatory changes affecting the economic feasibility of the project.
5. Developer reserves the right to make the market units "for sale" units, as opposed to rental units. In such an event, Developer shall maintain a twenty (20%) percent set aside of rental units in the project.

The terms of this agreement shall be binding upon the parties, their successors and/or assigns.

ATTEST:

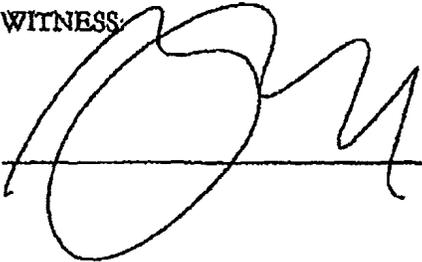
TOWNSHIP OF MIDDLETOWN

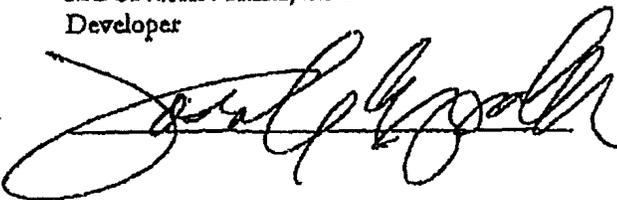
  
 \_\_\_\_\_  
 BRIAN M. NELSON  
 TOWNSHIP ATTORNEY

  
 \_\_\_\_\_  
 PAMELA BRIGHTBILL, MAYOR

WITNESS:

MOUNTAIN HILL, LLC  
Developer

  
 \_\_\_\_\_

  
 \_\_\_\_\_

**FIRM COMMITMENT FOR THE CONSTRUCTION OF RENTAL UNITS  
PURSUANT TO THE SUBSTANTIVE REGULATIONS OF THE NEW  
JERSEY COUNCIL ON AFFORDABLE HOUSING**

THIS AGREEMENT entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2009  
between the Township of Middletown, a municipal corporation in the County of Monmouth,  
State of New Jersey, having an office at 1 Kings Highway, Middletown, New Jersey (hereinafter  
"Township"), and Four Ponds Center Associates, a New Jersey Limited Partnership, having an  
office at 328 Newnan Springs Road, Red Bank, New Jersey (hereinafter "Developer").

WHEREAS, Southern Burlington County NAACP v. Mount Laurel, 92 N.J. 158 (1983)  
("Mount Laurel II"), the New Jersey Fair Housing Act, N.J.S.A. 52:27D-301, et seq., and other  
applicable laws require the Township to create a realistic opportunity for the provision of its fair  
share of low and moderate income housing (hereinafter "lower income housing"); and

WHEREAS, the Township seeks to satisfy a portion of its fair share obligation through  
inclusionary development of a parcel identified as Lot 10, Block 1063, on the Township's  
official tax map (hereinafter "Subject Property") in accordance with an ordinance previously  
adopted (hereinafter "Affordable Housing Zoning Ordinance"); and

WHEREAS, Developer is the owner of the Subject Property and desires the Subject  
Property to be developed in accordance with the portion of the Affordable Housing Zoning  
Ordinance concerning rental housing and with the general requirements of COAH and the  
Uniform Housing Affordability Controls (UHAC) regulations at N.J.A.C. 5:80-26.1 et seq.  
concerning non-age restricted rental housing; and

WHEREAS, Developer understands that the Township is entitled to rental bonuses for the 75 affordable rental units it intends to construct if it makes a firm commitment to construct the affordable rental units; and

WHEREAS, Developer wishes to make the firm commitment sought by the Township.

NOW, THEREFORE, be it agreed as follows:

1. Developer intends to develop the Subject Property in accordance with the Affordable Housing Zoning Ordinance. Developer intends to pursue the right to construct 375 units of which 75 will be rented to low and moderate income households. The parties recognize that Developer may secure the right to construct fewer units as a result of the approval processes that lie ahead. In the event that Developer secures the right to construct fewer than 375 units, it shall maintain a twenty (20%) percent set aside on the units it does secure the right to construct. Developer shall ensure that at least fifty (50%) percent of the affordable units will be made affordable to low income households.

2. Developer shall adhere to the provisions of COAH's regulations concerning family rental housing which the Township anticipates incorporating into its current affordable housing regulations.

3. Developer shall abide by all applicable regulations of COAH and UHAC;

4. Developer shall complete the development of the Subject Property according to the implementation schedule approved by COAH, subject to any necessary amendments due to any unforeseen economic or regulatory changes affecting the economic feasibility of the project.

5. Developer reserves the right to make the market units "for sale" units, as opposed

to rental units. In such an event, Developer shall maintain a twenty (20%) percent set aside of rental units in the project.

The terms of this agreement shall be binding upon the parties, their successors and/or assigns.

ATTEST:

TOWNSHIP OF MIDDLETOWN

  
HEIDI ABS, CLERK

By   
PAMELA BRIGHTBILL, MAYOR

WITNESS:

FOUR PONDS CENTER ASSOCIATES,  
a New Jersey Limited Partnership,  
Developer



By   
WILLIAM D. SCHAFFEL

**RESOLUTION GRANTING THIRD ROUND SUBSTANTIVE CERTIFICATION #42-09**

**Middletown Township, Monmouth County**

WHEREAS, Middletown Township, Monmouth County, petitioned the Council on Affordable Housing (COAH) for third round substantive certification of a Housing Element and Fair Share Plan addressing its total 1987-2018 affordable housing obligation on December 31, 2008; and

WHEREAS, Middletown's petition was deemed complete on April 13, 2009; and

WHEREAS, Middletown Township published notice of its petition in the *Asbury Park Press* on April 17, 2009, which is a newspaper of general circulation within the county, pursuant to N.J.S.A. 52:27D-313 and N.J.A.C. 5:96-3.5; and

WHEREAS, during the 45-day objection period, which ended May 4, 2009, COAH received an objection from Stephen Eisdorfer Esq., of Hill Wallack, and David N. Kinsey, PP/AICP, of Kinsey & Hand, on behalf of Bamm Hollow, LLC; and Gary E. Fox, Esq., of Fox & Melofchik, on behalf of Mountain Hill, LLC; and

WHEREAS, a settlement was reached between Middletown and Mountain Hill and a developer's agreement was executed between the parties on September 24, 2009; and

WHEREAS, thereafter, on September 24, 2009, Mountain Hill withdrew its objection; and

WHEREAS, a COAH Pre-mediation Report Requesting Additional Information was issued on July 28, 2009;

WHEREAS, mediation commenced on August 25, 2009; and

WHEREAS, mediation was concluded on August 25, 2009; and

WHEREAS, a Mediation Report was issued on September 24, 2009, as part of the Township's Compliance Report; and

WHEREAS, the mediation between Bamm Hollow and Middletown did not result in a settlement and the mediator does not believe that further mediation before COAH would result in a settlement being reached; and

WHEREAS, the mediator finds that there are not any outstanding issues of material fact which necessitate referral to the Office of Administrative Law; and

WHEREAS, Middletown Township's fair share plan addresses its 154-unit rehabilitation obligation, 1,561-unit prior round obligation and 233-unit net projected growth share obligation pursuant to Appendix F of N.J.A.C. 5:97; and

WHEREAS, Middletown Township's plan proposes to address its 154-unit rehabilitation obligation with 28 credits for rehabilitated units and a 126-unit municipal rehabilitation program; and

WHEREAS, Middletown Township's plan proposes to address 1,225 units of its 1,561-unit prior round obligation with 133 prior cycle credits for built units, which consist of 101 credits without controls units, two affordable scattered site family sale units, 26 age-restricted rental units in King's Row Senior Citizen Development, and a four-bedroom group home; 964 post-1986 credits and 127 rental bonuses for built, transferred or approved projects, which include 50 RCA credits through a completed RCA with Highlands, 150 RCA credits through a completed RCA with Long Branch, 75 RCA credits through a completed RCA with Union Beach, 45 RCA credits through a completed RCA with Red Bank, 180 RCA credits through a completed RCA with Asbury Park, 12 bedrooms and 12 rental bonuses for three completed group homes, 29 completed accessory apartments, 28 family rental units and 28 rental bonuses in the Beacon Place inclusionary development, 30 family rental units and 30 rental bonuses in the

Chapel Hill inclusionary development, six family rental units and six rental bonuses in the Park Place inclusionary development, 16 family rental units and 16 rental bonuses in the Regency Park inclusionary development, 18 family rental units and 18 rental bonuses in the Harmony Glen inclusionary development, 12 family rental units and 12 rental bonuses in the Elghoil residential over commercial project, five family rentals and five rental bonuses and seven sale units in the Wallace Point 100 percent affordable project, 60 age-restricted rentals in the Luftman Pavilion 100 percent affordable project, 180 age-restricted rentals in the Conifer 100 percent affordable project, 23 affordable scattered site family sale units, 24 family sale units in Laurel Greene inclusionary development, 13 family sale units in Cottage Gate inclusionary development, and two family sale units in Browns Landing inclusionary development; and

WHEREAS, Middletown Township's plan proposes to address its remaining 336-unit prior round obligation with 80 proposed family rental units and 80 rental bonuses in the Mountain Hill inclusionary development, 75 proposed family rental units and 75 rental bonuses in the Avaya inclusionary development, eight proposed group home bedrooms in two buildings with Housing United Services (HUS) and Monarch Housing and eight rental bonuses, a four bedroom group home with Community Options and four rental bonuses, and two units from the Township's Accessory Apartment Program; and

WHEREAS, Middletown Township's plan proposes to address its 233-unit projected growth share obligation with two credits for two approved family sale units in the Stavola inclusionary development, 72 proposed family rental units in the Taylor inclusionary development, 35 proposed family sale units in the Steiner & Frustacci inclusionary development, nine proposed family sale units in the Meadowview inclusionary development, nine proposed family sale units in the 199 Laurel Ave (Steiner) inclusionary development, eight proposed family sale units in the Atlantic Pier inclusionary development, a proposed 21-unit Accessory Apartment Program, a proposed ten-unit Market to Affordable Program, 10 special needs bedrooms and three rental bonuses in a proposed supportive housing facility, 22 proposed units in three identified residential over commercial projects, 15 sale units in a proposed municipally sponsored scattered site project, 57 family rental and 58 age-restricted sale units in a future 115-

unit municipally sponsored project, and seven future municipally sponsored residential over commercial units; and

WHEREAS, pursuant to N.J.A.C. 5:97-3.2(a)4, Middletown has provided implementation schedules that set forth detailed timetables that demonstrate a realistic opportunity as defined under N.J.A.C. 5:97-1.4 and a timetable for the submittal of all information and documentation required by N.J.A.C. 5:97-6.7 and N.J.A.C. 5:97-6.10 for the proposed Coe Supportive/Special Needs project, the seven-unit future municipally sponsored residential over commercial program, the 15-unit future scattered site municipally sponsored units, and the 115-unit municipally sponsored 100 percent affordable project; and

WHEREAS, pursuant to N.J.A.C. 5:97-3.6(a)3ii., in the event the Supportive/Special Needs project is not constructed in accordance with the construction schedule, Middletown may lose the rental bonuses; and

WHEREAS, Middletown Township shall submit documentation of ownership and demonstration of site suitability to COAH once the sites for the municipally sponsored projects are acquired; and

WHEREAS, Middletown Township's plan results in a 105-unit surplus from the proposed future municipally sponsored projects; and

WHEREAS, Middletown Township submitted a waiver request with its petition from N.J.A.C. 5:80-26.3(b) for the bedroom distribution for the affordable units that will be constructed at the 100 percent affordable Wallace Point development; and

WHEREAS, the Wallace Point project received final approvals on October 17, 2007, for twelve affordable units, but is not yet constructed; and

WHEREAS, instead of providing a bedroom distribution in accordance with N.J.A.C. 5:80-26.3(b), the project will consist of six one-bedroom units and six two-bedroom units; and

WHEREAS, the waiver meets the requirements of N.J.A.C. 5:96-15.2(a) in that the strict application of the rule would create an unnecessary environmental hardship as the bedroom mix was necessary due to extensive environmentally-constrained areas on the property; and

WHEREAS, if three bedroom units were to be constructed on the site, the total number of affordable units would have to be reduced on the site, due to the site's very limited building area; and

WHEREAS, the waiver fosters the production of affordable housing because the units are already approved, and to require a new design of the buildings to meet the three-bedroom requirement would create a financial hardship for the Township and the developer; and

WHEREAS, the waiver fosters the intent, if not the letter of the rules, in that the Township has already made up any deficiency of three-bedroom units that would be required under the regulation through its 20 existing scattered site units, which mainly consist of three bedroom units; and

WHEREAS, Middletown Township's Fair Share Plan provides a mix of housing options, including a mix of one, two and three-bedroom for sale and rental units; and

WHEREAS, a COAH task force met on September 30, 2009, and recommends approval of the bedroom distribution waiver for the Wallace Point project; and

WHEREAS, pursuant to N.J.A.C. 5:96-6.2(a)2, on September 24, 2009, COAH issued a Mediation Report and a Compliance Report (Exhibit A) recommending approval of Middletown Township's petition for third round substantive certification; and

WHEREAS, there was a 14-day period to submit comments to the COAH Compliance Report and Mediation Report pursuant to N.J.A.C. 5:96-6.2(b) and COAH received comments from Stephen Eisdorfer Esq., of Hill Wallack, on behalf of Bamm Hollow that have been responded to in a separate report dated October 8, 2009 (Exhibit B); and

WHEREAS, the comments received from Bamm Hollow do not alter the COAH Compliance Report.

NOW THEREFORE BE IT RESOLVED that, for the reasons set forth above, Middletown Township's waiver request from N.J.A.C. 5:80-26.3(b) for the bedroom distribution for the affordable units that will be constructed at Wallace Point is granted; and

BE IT FURTHER RESOLVED the Housing Element and Fair Share Plan submitted by Middletown Township comports to the standards set forth at N.J.S.A. 52:27D-314 and meets the criteria for third round substantive certification pursuant to N.J.A.C. 5:96-6.3; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(a) and after having reviewed and considered all of the above, COAH hereby grants third round substantive certification to Middletown Township; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(e), Middletown Township shall adopt all implementing Fair Share Ordinances within 45 days of the grant of substantive certification; and

BE IT FURTHER RESOLVED that if Middletown Township fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect; and

BE IT FURTHER RESOLVED that Middletown shall submit all Fair Share Ordinances to COAH upon adoption; and

BE IT FURTHER RESOLVED that the agreement between HUS and Middletown must be executed within 45 days after the grant of substantive certification and submitted to COAH; and

BE IT FURTHER RESOLVED that Middletown shall comply with COAH monitoring requirements as set forth in N.J.A.C. 5:96-11, including reporting Middletown's actual growth pursuant to N.J.A.C. 5:97-2.5; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-4.1(d), all credits will be verified and validated during monitoring subsequent to substantive certification pursuant to N.J.A.C. 5:96-11; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-10.1, COAH shall conduct biennial plan evaluations upon substantive certification of Middletown's Housing Element and Fair Share Plan to verify that the construction or provision of affordable housing has been in proportion to the actual residential growth and employment growth in the municipality and to determine that the mechanisms addressing the projected growth share obligation continue to present a realistic opportunity for the creation of affordable housing; and

BE IT FURTHER RESOLVED that if upon any biennial review the difference between the number of affordable units constructed or provided in Middletown and the number of units required pursuant to N.J.A.C. 5:97-2.5 results in a pro-rated production shortage of 10 percent or greater, the Township is not adhering to its implementation schedules pursuant to N.J.A.C. 5:97-3.2(a)4, or the mechanisms addressing the projected growth share obligation no longer present a realistic opportunity for the creation of affordable housing, COAH may direct Middletown Township to amend its plan to address the shortfall; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:97-2.5(e), if the actual growth share obligation determined is less than the projected growth share obligation, Middletown shall continue to provide a realistic opportunity for affordable housing to address the projected growth share; and

BE IT FURTHER RESOLVED that pursuant to N.J.A.C. 5:96-6.3(b), Middletown's substantive certification shall remain in effect until December 31, 2018; and

BE IT FURTHER RESOLVED that any changes to the facts upon which this substantive certification is based or any deviations from the terms and conditions of this substantive certification which affect the ability of Middletown Township to provide for the realistic opportunity of its fair share of low and moderate income housing and which the Township fails to remedy, may render this certification null and void.

I hereby certify that this resolution was  
duly adopted by the Council on Affordable  
Housing at its public meeting on October 14, 2009

A handwritten signature in cursive script that reads "Renee Reiss". The signature is written in black ink and is positioned above the printed name and title.

Renee Reiss, Secretary  
Council on Affordable Housing

**ORDINANCE NO. 2009-2991**

**TOWNSHIP OF MIDDLETOWN  
COUNTY OF MONMOUTH**

**ORDINANCE AUTHORIZING DEVELOPER'S AGREEMENT AND  
CONVEYANCE OF TOWNSHIP PARCELS FOR AFFORDABLE HOUSING  
BLOCK 701, LOT 3  
BLOCK 724, LOT 1**

**WHEREAS**, the Township of Middletown adopted a Housing Element and Fair Share Plan in accord with the requirements of the Council On Affordable Housing ("COAH"), and a significant element of the Township's Fair Share Plan is the "Scattered Sites" program by which affordable homes as defined and governed by COAH rules are built and provided on lots provided by the Township; and

**WHEREAS**, said Housing Element and Fair Share Plan was granted Substantive Certification by COAH on October 14, 2009; and

**WHEREAS**, the Township retains title ownership to two lots (Block 701, Lot 3 and Block 724, Lot 1) that are suitable for this "Scattered Sites" program; and

**WHEREAS**, the Township wishes to enter into a Developer's Agreement with Housing and United Services, Inc., ("HUS") a not-for-profit and/or a responsible owner entity to be formed at future date, to facilitate the construction on said lots of two, four-bedroom, licensed qualified supportive housing units, as defined in N.J.A.C. 5:97-6.10, with supportive housing facilities and services for blind or disabled adults, who qualify as very low income households; and

**WHEREAS**, the Township anticipates that construction of said supportive housing units will receive sixteen (16) credits towards its prior round affordable housing obligation through the construction of said supportive homes, i.e., eight (8) bedroom credits as well as eight (8) rental bonus credits; and

**WHEREAS**, this Ordinance intends to authorize the conveyance of Block 701, Lot 3 and Block 724, Lot 1, which are not needed for any other public purposes, to HUS and/or a responsible not-for-profit owner entity to be formed at future date, for the purpose of constructing two, four-bedroom, licensed qualified supportive housing units as part of the Township's Fair Share Housing Plan.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey that the Mayor and Township Attorney are hereby authorized to execute Developer's Agreements and contracts to convey Block 701, Lot 3 and Block 724, Lot 1 to HUS and/or a responsible not-for-profit owner entity to be formed at future date, for the purpose of constructing two, four-bedroom, licensed and qualified supportive housing units, as defined in N.J.A.C. 5:97-6.10, with supportive housing facilities and services for blind or disabled adults, who qualify as very low income households.

**BE IT FURTHER ORDAINED** that all Agreements set forth herein are subject to the final approval of the Mayor, Township Administrator and Township Attorney.

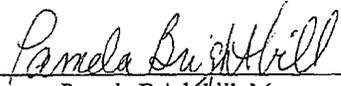
**BE IT FURTHER ORDAINED** that the Mayor, Township Attorney, Township Administrator and all other necessary Township officials are authorized to execute the necessary Deed, Affidavit of Title, Limited Power of Attorney, Developer's Agreement, and other forms or documents, in a form approved by the Township Attorney, to perfect and finalize the conveyance of Block 701, Lot 3 and Block 724, Lot 1 to Housing and United Services, Inc., a not-for-profit entity and/or their responsible partner to be approved by the Township, for \$1 per lot as part of the Township's Fair Share Plan and Scattered Sites program.

**BE IT FURTHER ORDAINED** that if a court of competent jurisdiction shall declare any section, subsection, clause or provision of the ordinance invalid, such decision shall not affect the validity of this ordinance as a whole or any part hereof.

**BE IT FURTHER ORDAINED** that this ordinance shall take effect immediately upon final passage and upon notice of adoption being published as provided by law.

PASSED FIRST READING:           October 19, 2009

PASSED AND APPROVED:       November 16, 2009

  
\_\_\_\_\_  
Pamela Brightbill, Mayor  
Township of Middletown

ATTEST:

  
\_\_\_\_\_  
Heidi R. Brunt, Township Clerk

**TOWNSHIP OF MIDDLETOWN**  
Department of Planning and Community Development  
Johnson-Gill Annex, One King's Highway  
Middletown, NJ 07748-2594  
Tel: (732) 615-2098 or (732) 615-2102  
Fax: (732) 615-2103

Organized December 14, 1667  
"Pride in Middletown"



**JASON A. GREENSPAN, P.P., A.I.C.P.**  
Director of Planning and Community Development

November 25, 2009

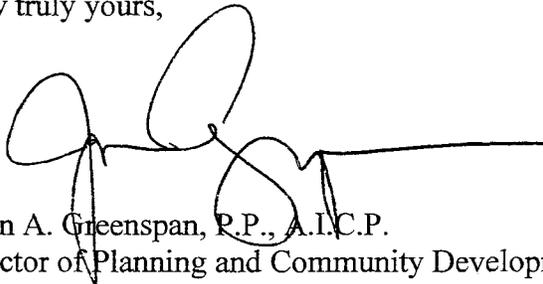
Lucy Vandenberg, Executive Director  
Council on Affordable Housing  
101 South Broad Street  
CN 813  
Trenton, NJ 08625

**Re: Substantive Certification  
Township of Middletown, Monmouth County**

Dear Ms. Vandenberg:

Enclosed please find a copy of a fully executed Developer's Agreement between the Township of Middletown and Housing and United Services. This Agreement has been executed pursuant to COAH's substantive certification of Middletown Township's Housing Element and Fair Share Plan.

Very truly yours,



Jason A. Greenspan, P.P., A.I.C.P.  
Director of Planning and Community Development

Enclosures

c: Michael A. Jedziniak, Esq.  
Brian Nelson, Esq.  
Tony Mercantante  
Maria Connolly, COAH

**AGREEMENT BETWEEN THE TOWNSHIP OF MIDDLETOWN  
AND HOUSING AND UNITED SERVICES, INC.**

This Agreement is made on November 16, 2009, by and between the TOWNSHIP OF MIDDLETOWN, a municipal corporation and body politic, with offices at the Municipal Building, 1 King's Highway, Middletown, N.J. (hereinafter referred to as "Township") and HOUSING AND UNITED SERVICES, INC. a non-profit corporation of the State of New Jersey, having its address at 47 Center Avenue, Leonardo, New Jersey hereinafter referred to as "HUS."

**WITNESSETH:**

**WHEREAS**, HUS is a non-profit corporation which intends to provide affordable housing in a group home facility in the Township of Middletown to assist persons with who are blind or disabled, in addition to other such services; and

**WHEREAS**, such group homes can qualify for affordable housing credit, if restricted as low income units, pursuant to N.J. Council on Affordable Housing ("COAH") rules at N.J.A.C. 5:97-6.10 et seq.; and

**WHEREAS**, the Township of Middletown included the HUS sites as part of its Scattered Sites Program in its third round Affordable Housing and Fair Share Plan (hereinafter "Affordable Housing Plan") which was submitted to the New Jersey Council on Affordable Housing ("COAH") for substantive certification on or around December 30, 2008; and

**WHEREAS**, said Housing Element and Fair Share Plan was granted Substantive Certification by COAH on October 14, 2009; and

**WHEREAS**, the Township's Affordable Housing Plan calls for HUS to facilitate construction of two, four-bedroom group homes with supportive housing facilities and services for blind or disabled adults; and

**WHEREAS**, the Affordable Housing Plan provides that the Township will facilitate construction of said group homes on property to be conveyed from the Township of Middletown to HUS and/or a responsible partner approved by the Township; and

**WHEREAS**, the Affordable Housing Plan anticipates that the Township will receive sixteen credits towards its prior round fair share housing obligation through the construction of said group homes, i.e. eight bedroom credits as well as eight rental bonus credits; and

**WHEREAS**, the terms and conditions of the aforesaid proposal, as outlined more specifically in the Affordable Housing Plan, are subject to the acceptance and approval of COAH; and

**WHEREAS**, the Township is not required to enter into a formal agreement with HUS under the Affordable Housing Plan, until the Township has received written notification from COAH that the proposed credits and proposed third round Affordable Housing Plan have been accepted; and

**NOW, THEREFORE**, in consideration of the mutual covenants and conditions herein contained, the parties agree as follows:

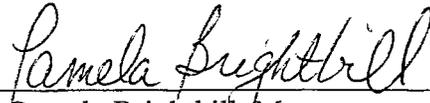
1. The Township of Middletown agrees to convey land suitable for the construction of two, four-bedroom, licensed qualified group homes, as defined in N.J.A.C. 5:97-6.10, with supportive housing facilities and services for blind or disabled adults, who qualify as very low income households, to HUS and/or a responsible owner entity to be formed at future date, subject to the Township's successful adoption of an ordinance for this purpose.
2. In return for the aforesaid contribution, HUS and/or a responsible owner entity to be formed at future date agrees to designate each bedroom of the units to be constructed as an affordable rental unit for very low income households, in accordance with COAH's rules and regulations. The Township shall have the right to monitor the income levels of the tenants on an annual basis to ensure compliance with COAH income requirements. HUS and/or a responsible owner entity to be formed at future date further agrees to place thirty-year deed restrictions on each of the properties purchased in the form(s) approved by the Township and by COAH. HUS and/or a responsible owner entity to be formed at future date also agrees to prepare and submit any required COAH monitoring forms as may be requested by either COAH or Middletown Township,
3. HUS and/or a responsible owner entity to be formed at future date understands that this conveyance is contingent on the Township's ability to obtain a minimum of 16 affordable housing credits from COAH as part of its Affordable Housing Plan which was granted Substantive Certification on October 14, 2009. In order to receive such credits, the Township must seek approval from COAH to allow the inclusion of the units to be constructed by HUS and/or a responsible owner entity to be formed at future date in its Affordable Housing Plan. The Township agrees to seek approval for inclusion of the 16 credits in its Affordable Housing Plan. The parties agree to cooperate in the submission of the within Agreement and the execution of all documents needed to obtain the said affordable housing credits for the Township.
4. HUS and/or a responsible owner entity to be formed at future date agrees to complete the construction contemplated under this Agreement by the end of the third round period which shall occur at the end of 2018 or by such implementation schedule required per N.J.A.C. 5:97-3.2(a)4, and approved by COAH.
5. The parties have read and understand this Agreement fully. It is signed and sealed in accordance with New Jersey law by the duly authorized officers of the Township and HUS.

6. The terms of this agreement shall be binding upon the parties, their successors and/or assigns.

ATTEST

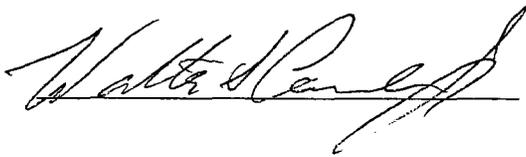
TOWNSHIP OF MIDDLETOWN

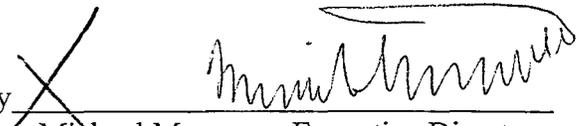
  
Heidi Brunt, Township Clerk

By   
Pamela Brightbill, Mayor

WITNESS:

HOUSING AND UNITED SERVICES



By   
Michael Marrazzo, Executive Director

**ORDINANCE NO. 2009-2992**

**TOWNSHIP OF MIDDLETOWN  
COUNTY OF MONMOUTH**

**ORDINANCE AMENDING CHAPTER 16 OF THE  
REVISED GENERAL ORDINANCES FACILITATING  
DEVELOPMENT OF INCLUSIONARY SITES AS PROSCRIBED  
PURSUANT TO THE PROVISIONS OF THE TOWNSHIP'S  
HOUSING ELEMENT AND FAIR SHARE PLAN**

**WHEREAS**, on December 11, 2008, the Middletown Township Planning Board adopted an amended Master Plan Housing Element and Fair Share Plan; and

**WHEREAS**, on December 30, 2008, the Township Committee subsequently endorsed the action of the Planning Board and petitioned the New Jersey Council on Affordable Housing ("COAH") for Substantive Certification of said Fair Share Plan; and

**WHEREAS**, on October 14, 2009, COAH granted the Township Substantive Certification by COAH Resolution No. 42-09; and

**WHEREAS**, pursuant to N.J.A.C. 5:96-6.3(e), COAH's grant of Substantive Certification is explicitly conditioned upon the Township's adoption of ordinances implementing its Fair Share Plan within forty-five (45) days of receipt of substantive certification; and

**WHEREAS**, COAH'S Resolution specifically provides that if "Middletown Township fails to timely adopt its Fair Share Ordinances, COAH's grant of substantive certification shall be void and of no force and effect. . . ."; and

**WHEREAS**, in accordance with the Municipal Land Use Law at N.J.S.A. 40:55D-62, the Township Committee is charged with the responsibility of adopting ordinances designed to effectuate the goals, objectives and recommendations of the Master Plan, including the Housing Element and Land Use Element; and

**WHEREAS**, consistent with the intent and purpose of the Housing and Land Use Elements of the Township Master Plan, the Planning Board has recommended making certain zoning changes in accordance therewith; and

**WHEREAS**, it is in the best interests of the taxpayers of the Township of Middletown to plan for inclusionary development in a manner consistent with sound planning and zoning principles; and

**WHEREAS**, it is in the best interests of the taxpayers of the Township of Middletown to take these steps to ensure it is effectively protected from litigation by developers in the form of Builder's Remedy actions.

**NOW, THEREFORE, BE IT ORDAINED** by the Township Committee of the Township of Middletown in the County of Monmouth, State of New Jersey that Chapter 16 of the Revised General Ordinances of the Township of Middletown be supplemented and amended as follows:

**SECTION 1**

Block 600, Lots 34, 35.01 & 35.02 shall be rezoned as Residential Multifamily (RMF-3) per the following standards:

16-9.53 Standards and Regulations Affecting the RMF-3 Zone

A. Minimum Regulations

1. Gross Lot Area

30 ACRES

- 2. Tract Frontage Minimum 100 FT
- 3. Minimum Building Setbacks
  - i. From Arterial or Collector Roadway 50 FT.
  - ii. From any other public right of way 10 FT.
  - iii. From Tract Boundary 50 FT.
  - iv. From any existing residence/residential zone 75 FT
- 4. Parking or Driveway Setback
  - i. From Arterial or Collector Roadway 50 FT.
  - ii. From any existing residence/residential zone 75 FT.
  - iii. From other Right of Way 10 FT.
- 5. Open Space 20%
- 6. Affordable Housing Set-Aside 20%

B. Maximum Regulations

- 1. Dwelling Unit Density 12 DU/ACRE
- 2. Building Height 40'
- 3. Maximum Building Coverage 40%
- 4. Lot Coverage 45%

C. Architectural and Site Design Standards – In addition to the specific Architectural and Building Design Standards set forth in Section 16-6.4, the following design standards shall apply:

- 1. Neither rear building facades nor garages shall be oriented to directly face a public right of way.
- 2. Exterior building facades shall incorporate design features such as offsets, balconies, projections, window reveals, or similar elements to preclude large expanses of uninterrupted building surfaces. Along the vertical face of a building, such features shall occur at a minimum of every 30 feet, and on each floor shall, to the greatest degree practicable, contain a minimum of two of the following features:
  - a. Recesses (e.g. deck, patio, courtyard, entrance, window reveals) that have a minimum depth of 3 feet;
  - b. Extensions (e.g. floor area, deck, patio, entrance) that have a minimum depth of 2 feet and minimum length of 4 feet; and/or
  - c. Offsets or breaks in roof elevation of 2 feet or greater in height.
- 3. Adequate, accessible and secure storage space shall be provided for each dwelling unit. A minimum of 112 cubic feet of enclosed storage shall be required separate from each living unit. This is an area 4' x 4' x 7'. Garages and storage units adjoining a dwelling (e.g. attached to decks and patios) shall qualify as storage space.
- 4. Trash receptacles shall not be located in any front yard setback, or within 75 feet of an adjacent property line.

D. Lighting. In addition to the specific Lighting Standards set forth in Section 16-6.23, the following design standards shall apply:

- 1. Freestanding lighting standards or poles, and building-mounted lighting fixtures shall be focused and/or shielded to avoid glare on adjacent property or dwelling units.

E. Buffer Areas and Screening. In addition to the requirements set forth in Section 16-6.6, the following standards shall apply:

- 1. If a berm is proposed as part of the landscaped buffer screen, naturalized berms are preferred with plantings throughout the entire contour of the berm.

F. Other Regulations

1. Temporary construction trailers shall be permitted where active construction work is proposed. Such trailers shall not be placed on site until building permits have been issued and in no case more than seven days prior to the commencement of work. Trailers shall not remain on site more than seven days after the completion of all work. Temporary construction trailers shall not be placed with the right-of-way of any improved public road.
2. All affordable units shall be constructed and maintained in a manner consistent with the rules and regulations adopted by the New Jersey Council on Affordable Housing. Affordable housing units shall be deed restricted to remain affordable for a period of 30 years, unless the rules adopted by the New Jersey Council on Affordable Housing are changed. Should such a change occur, the term of the affordability deed restriction shall be consistent with any new rule(s).

16-9.1 Zoning Map

The Official Zoning Map is hereby amended to change the zone designation for Block 600, Lots 34, 35.01 & 35.02 to Residential Multifamily (RMF-3).

16-9.2.B Schedule of Permitted Uses

The Schedule of Permitted Uses is hereby amended as follows for the RMF-3 Zone:

All principal, accessory and conditional uses permitted for the RTH Zone shall be permitted principal, accessory and conditional uses in the RMF-3 Zone.

16-9.2.C Schedule of Area, Yard and Building Requirements

The Schedule of Area, Yard and Building Requirements is hereby amended to incorporate the provisions of 16-9.53(A) and 16-9.53(B).

**SECTION 2**

Block 795, Lots 23 and 24 shall be rezoned as Residential Multifamily (RMF-4) per the following standards:

16-9.54 Standards and Regulations Affecting the RMF-4 Zone

A. Minimum Regulations

- |   |         |
|---|---------|
| 1. Gross Lot Area                                 | 5 ACRES |
| 2. Tract Frontage                                 | 150 FT  |
| 3. Minimum Building Setbacks                      |         |
| i. From Arterial or Collector Roadway             | 50 FT.  |
| ii. From Tract Boundary                           | 40 FT.  |
| iii. From any existing residence/residential zone | 75 FT   |
| 4. Parking or Internal Driveway/Roadway Setback   |         |
| iv. From Arterial or Collector Roadway            | 75 FT.  |
| v. From Tract Boundary or other Right of Way      | 60 FT.  |
| 5. Open Space                                     | 40%     |
| 6. Affordable Housing Set-Aside                   | 25%     |

B. Maximum Regulations

- |                              |           |
|------------------------------|-----------|
| 1. Dwelling Unit Density     | 8 DU/ACRE |
| 2. Building Height           | 40'       |
| 3. Building Stories          | 3.5       |
| 4. Maximum Building Coverage | 35%       |
| 5. Lot Coverage              | 40%       |

- C. Architectural and Site Design Standards – In addition to the specific Architectural and Building Design Standards set forth in Section 16-6.4, the following design standards shall apply:
1. Neither rear building facades nor garages shall be oriented towards a public right of way.
  2. Exterior building facades shall incorporate design features such as offsets, balconies, projections, window reveals, or similar elements to preclude large expanses of uninterrupted building surfaces. Along the vertical face of a building, such features shall occur at a minimum of every 30 feet, and on each floor shall, to the greatest degree practicable, contain a minimum of two of the following features:
    - a. Recesses (e.g. deck, patio, courtyard, entrance, window reveals) that have a minimum depth of 3 feet;
    - b. Extensions (e.g. floor area, deck, patio, entrance) that have a minimum depth of 2 feet and minimum length of 4 feet; and/or
    - c. Offsets or breaks in roof elevation of 2 feet or greater in height.
  3. Adequate, accessible and secure storage space shall be provided for each dwelling unit. A minimum of 112 cubic feet of enclosed storage shall be required separate from each living unit. This is an area 4' x 4' x 7'. Garages and storage units adjoining a dwelling (e.g. attached to decks and patios) shall qualify as storage space.
  4. Trash receptacles shall not be located in any front yard setback, or within 75 feet of an adjacent property line.
- D. Lighting. In addition to the specific Lighting Standards set forth in Section 16-6.23, the following design standards shall apply:
1. Freestanding lighting standards or poles, and building-mounted lighting fixtures shall be focused and/or shielded to avoid glare on adjacent property or dwelling units.
- E. Buffer Areas and Screening. In addition to the requirements set forth in Section 16-6.6, the following standards shall apply:
1. If a berm is proposed as part of the landscaped buffer screen, naturalized berms are preferred with plantings throughout the entire contour of the berm.
- F. Other Regulations
1. Temporary construction trailers shall be permitted where active construction work is proposed. Such trailers shall not be placed on site until building permits have been issued and in no case more than seven days prior to the commencement of work. Trailers shall not remain on site more than seven days after the completion of all work. Temporary construction trailers shall not be placed with the right-of-way of any improved public road.
  2. All affordable units shall be constructed and maintained in a manner consistent with the rules and regulations adopted by the New Jersey Council on Affordable Housing. Affordable housing units shall be deed restricted to remain affordable for a period of 30 years, unless the rules adopted by the New Jersey Council on Affordable Housing are changed. Should such a change occur, the term of the affordability deed restriction shall be consistent with any new rule(s).

16-9.1 Zoning Map

The Official Zoning Map is hereby amended to change the zone designation for Block 795, Lots 23 and 24 to Residential Multifamily (RMF-4).

16-9.2.B Schedule of Permitted Uses

The Schedule of Permitted Uses is hereby amended as follows for the RMF-4 Zone:

All principal, accessory and conditional uses permitted for the RTH Zone shall be permitted principal, accessory and conditional uses in the RMF-4 Zone.

16-9.2.C Schedule of Area, Yard and Building Requirements

The Schedule of Area, Yard and Building Requirements is hereby amended to incorporate the provisions of 16-9.54(A) and 16-9.54(B).

**SECTION 3**

Block 795, Lot 19 and that portion of Lot 5.01 situated north of Lot 19 and south of Lot 20.01 shall be rezoned as Residential Multifamily (RMF-5) per the following standards:

16-9.55 Standards and Regulations Affecting the RMF-5 Zone

A. Minimum Regulations

1. Gross Lot Area 5 ACRES
2. Tract Frontage 200 FT
3. Minimum Building Setbacks
  - i. From Arterial or Collector Roadway
    - Buildings with less than 3 stories 35 FT.
    - Buildings 3 stories or greater 40 FT.
  - ii. From Tract Boundary 40 FT.
  - iii. From any existing residence/residential zone 75 FT
4. Parking or Internal Driveway/Roadway Setback
  - vi. From Arterial or Collector Roadway 45 FT.
  - vii. From Tract Boundary 35 FT.
5. Open Space 50%
6. Affordable Housing Set-Aside 25%

B. Maximum Regulations

1. Dwelling Unit Density 8 DU/ACRE
2. Building Height 40'
3. Building Stories 3.5
4. Maximum Building Coverage 35%
5. Lot Coverage 40%

C. Architectural and Site Design Standards

1. Neither rear building facades nor garages shall be oriented towards a public right of way.
2. Maximum Setbacks for Buildings Facing an Arterial or Collector Road
  - i. Less than 3 stories 45'
  - ii. 3 stories or greater 50'
3. Exterior building facades shall incorporate design features such as offsets, balconies, projections, window reveals, or similar elements to preclude large expanses of uninterrupted building surfaces. Along the vertical face of a building, such features shall occur at a minimum of every 30 feet, and on each floor shall, to the greatest degree practicable, contain a minimum of two of the following features:
  - a. Recesses (e.g. deck, patio, courtyard, entrance, window reveals) that have a minimum depth of 3 feet;
  - b. Extensions (e.g. floor area, deck, patio, entrance) that have a minimum depth of 2 feet and minimum length of 4 feet; and/or
  - c. Offsets or breaks in roof elevation of 2 feet or greater in height.

4. Adequate, accessible and secure storage space shall be provided for each dwelling unit. A minimum of 112 cubic feet of enclosed storage shall be required separate from each living unit. This is an area 4' x 4' x 7'. Garages and storage units adjoining a dwelling (e.g. attached to decks and patios) shall qualify as storage space.
5. Trash receptacles shall not be located in any front yard setback, or within 75 feet of an adjacent property line.

D. Lighting. In addition to the specific Lighting Standards set forth in Section 16-6.23, the following design standards shall apply:

1. Freestanding lighting standards or poles, and building-mounted lighting fixtures shall be focused and/or shielded to avoid glare on adjacent property or dwelling units.

E. Buffer Areas and Screening. The requirements set forth in Section 16-6.6 shall apply, except for the following:

1. The requirements for buffer areas may be reduced to 30 feet.
2. If a berm is proposed as part of the landscaped buffer screen, naturalized berms are preferred with plantings throughout the entire contour of the berm.

#### 16-9.1 Zoning Map

The Official Zoning Map is hereby amended to change the zone designation for Block 795, Lot 19 and that portion of Lot 5.01 situated north of Lot 19 and south of Lot 20.01 to Residential Multifamily (RMF-5).

#### 16-9.2.B Schedule of Permitted Uses

The Schedule of Permitted Uses is hereby amended as follows for the RMF-5 Zone:

All principal, accessory and conditional uses permitted for the RTH Zone shall be permitted principal, accessory and conditional uses in the RMF-5 Zone.

#### 16-9.2.C Schedule of Area, Yard and Building Requirements

The Schedule of Area, Yard and Building Requirements is hereby amended to incorporate the provisions of 16-9.55(A) and 16-9.55(B).

### SECTION 4

Block 732, Lots 10, 11, 12, 13 and 21 shall be zoned per the following standards:

#### 16-9.46 Standards and Regulations Affecting the RTH-9 Zone

##### A. Minimum Regulations

##### Residential

- |    |   |         |
|----|---|---------|
| 1. | Gross Lot Area                            | 4 ACRES |
| 1. | Lot Frontage                              | 500 FT  |
| 3. | Minimum Building Setbacks                 |         |
|    | From Arterial or Collector Roadway        | 35 FT.  |
|    | From Tract Boundary                       | 20FT.   |
|    | From Single Family Res. Zone              | 40 FT.  |
|    | From Internal Streets                     | 5 FT.   |
| 4. | Parking Setbacks                          |         |
|    | From Arterial or Collector Roadway        | 40 FT.  |
|    | From Tract Boundary or other Right of Way | 20 FT.  |
|    | ( Other than internal streets )           |         |
|    | From Principal Buildings                  | 5 FT.   |
| 5. | Minimum Open Space                        | 30%     |

- 6. Minimum Buffer from Single Family Zones 40 Ft.
- 7. Affordable Housing Set-Aside 25%

**B. Maximum Regulations**

- Maximum Dwelling Unit Density 8 UNITS / ACRE
- Maximum Building Height 3.5 STORIES/40 FT.
- Maximum Lot Coverage 60%
- Maximum Building Coverage 40%

**16-9.2.B Schedule of Permitted Uses**

The Schedule of Permitted Uses is hereby amended as follows for the RTH-9 Zone:

All principal, accessory and conditional uses permitted for the RTH Zone shall be permitted principal, accessory and conditional uses in the RTH-9 Zone.

**16-9.2.C Schedule of Area, Yard and Building Requirements**

The Schedule of Area, Yard and Building Requirements is hereby amended to incorporate the provisions of 16-9.46(A) and 16-9.46(B).

**SECTION 5**

Section 16-9.43.B, Residential Over Commercial Standards, is hereby amended to include the following properties in the Residential Over Commercial Overlay:

- 8. Block 260 Lot 2
- 9. Block 646 Lot 29
- 10. Block 499 Lot 2

**SECTION 6**

If a court of competent jurisdiction shall declare any section, paragraph, subsection, clause or provision of this ordinance invalid, such decision shall not affect the validity of this ordinance as a whole or any part hereof.

**SECTION 7**

This ordinance shall take effect immediately upon final passage. Notice of adoption shall be published as provided by law.

PASSED FIRST READING: October 19, 2009

RE-INTRODUCED AS AMMENDED: November 2, 2009

PASSED AND APPROVED: November 16, 2009

  
 PAMELA BRIGHTBILL, MAYOR  
 TOWNSHIP OF MIDDLETOWN

ATTEST:

  
 HEIDI ABS, TOWNSHIP CLERK