

**FOR CONSIDERATION AT THE FEBRUARY 17, 2011 MEETING OF THE  
NEW JERSEY HIGHLANDS WATER PROTECTION AND PLANNING COUNCIL  
Petition for Plan Conformance – Final Consistency Review and Recommendations Report**

**Comments From:** Guliet D. Hirsch, Esq., Archer & Greiner. Representing Pondview Estates.

The submission included Documents for the Record as follows:

- September 14, 2010 letter from Guliet Hirsch and all enclosures provided therewith:

1. December 24, 2009 Order Appointing Kelly Engineering in Morris Commons, LLC v. Township of Rockaway, Docket No. MRS-L-3271-07;
2. June 1, 2009 Order Appointing a Special Master, also in Morris Commons, LLC v. Township of Rockaway, et al; Mary 3, 2010 Order in Pondview Estates, Inc. v. Township of Rockaway, Docket No. MRS-L-230-07;
3. September 11, 2009 letter report of John T. Chadwick, IV, P.P. ;
4. November 7, 2007 Decision of New Jersey Council on Affordable Housing in Re: Rockaway Township, Docket No. 06-1817). This letter summarizes the status of Pondview and related litigation as well as the Pondview site's special status as a builder's remedy site.

**Comment 1:** "Please be advised that Pondview Estates has not agreed to Alternative B, or to any reduction in the approved development capacity."

**Response:** The comment is noted. The matter is part of on-going litigation involving Pondview and the Township. The Highlands Council has reviewed both Alternatives and has determined both Alternatives are consistent with the Highlands Regional Master Plan for the purposes of an approval of Plan Conformance.

**Comment 2:** "The only question with regard to the Pondview Estates site is the source of the water supply for the affordable housing development. Options include: construction of wells on the Pondview site; or the use of water currently available from the Rockaway Township public water system and from adjacent municipalities and utility authorities. As mentioned at page 10 of the Final Draft Report, the onsite wells would require a major modification to the Rockaway Township Water Allocation Permit preceded by a Highlands Council consistency determination. The other alternative --- involving service from the existing Rockaway Township public water supply and for adjacent municipalities and utility authorities --- would not however, involve major modifications to water allocation permits and therefore would not require a consistency determination. As indicated in both the enclosed New Jersey DEP Division of Water Supply printout and the enclosed report from Kelly Engineering, the Rockaway Township Water Department presently has a substantial amount of available potable water:"...

"Since the Law Division of Superior Court is presently overseeing the evaluation to determine the extent of public water available for the Pondview Estates site, this Council need not take any action in this regard other than to acknowledge, as it has done at page 10 of the Final Draft Report, that water supply options other than onsite wells exist --- and do not raise RMP consistency issues."

**Response:** The Highlands Council acknowledges that alternatives to the provision of water service to the site are involved in ongoing litigation between Pondview and the Township. At present, a Major Modification to Rockaway Township's Water Allocation Permit has been submitted to the NJDEP. The Permit application was deemed administratively incomplete, requiring several items including a consistency determination by the Highlands Council. In accordance with Section 74 of the Highlands Act, the Legislature amended the

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authority of NJDEP under the Water Supply Management Act to specify that “[n]o action taken by the [NJDEP] pursuant to the provisions of P.L.1981, c.262 (C.58:1A-1 et al.) or P.L.1993, c.202 (C.58:1A-7.3 et al.) shall be inconsistent with the provisions of ...” the Highlands Act or the RMP. As to the consistency of any other methods to supply water to the site, the Highlands Council cannot determine consistency until those other methods are presented to the Council. However, the Highlands Council recognizes that there are under review certain methods for water supply that may not require a modification to the Rockaway Township Water Allocation Permit for this project. Should such an alternative be selected, the condition in Section D.1(g)2 would be deemed complete. The Final Report is modified from the Final Draft Report regarding that potential.

The Highlands Council has an obligation to take action on this matter in accordance with the requirements of Highlands Act, at N.J.S.A. 13:20-14 and 15, which require the Highlands Council to formally review Rockaway’s revised master plan (and related land use documents), including the Housing Element and Fair Share Plan, and “approve, reject or approve with conditions” the municipal Petition for Plan Conformance. As Rockaway Township’s Fair Share Plan and Housing Element included the Pondview Estates site, the Highlands Council examined whether this aspect of the Fair Share Plan and Housing Element were consistent with the Highlands Regional Master Plan. As a separate action, NJDEP has required that the construction of new wells on the Pondview property requires a major modification to the Rockaway Township Water Allocation Permit. An application to that effect was filed in 2010, and the Highlands Council is reviewing the consistency of that application with the RMP. That consistency determination is not part of the Plan Conformance review.

**Comments From:** John T. Chadwick, IV, P.P., as submitted by Guliet Hirsch, Esq., on behalf of Pondview Estates. These comments are specific to the site reviews conducted for three sites included in the Township’s Fair Share Plan: Villages at Rockaway, Commons Way 3.06 and Commons Way 3.07. The letter provides detailed comments on each site and the following summary, based on reviews of the RMP consistency report tool. Also included is the following supplemental information:

1. Map of Pondview site prepared by Schoor DePalma showing extent of disturbed area on site and installed infrastructure;
2. Engineering Report, Water Capacity Analysis, Township of Rockaway by Kelly Engineering dated May 2010 (In the Matters of Morris Commons, LLC v. Township of Rockaway and Pondview Estates v. Township of Rockaway).
3. December 15, 2010 printout from the NJDEP Division of Water Supply website;
4. Certification of David Applegate and Tony Dilodovico, re: Water Availability;
5. Certification of Counsel Michael L. Rich, April 15, 2009 re: Certificates of Occupancy issued, and water supply.
6. Certification of Theodore Cassera, re: Feasibility of water supply connection to Pondview to the Rockaway Township water system.

**Comment:** “The consistency reports for these three sites strongly conflict with the conclusion in Final Draft Report dated November 19, 2010, notwithstanding qualifying statements that the sites “do not appear to have

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significant consistency issues with the RMP.” The conclusions are in direct conflict with the findings of these three sites contained within the RMP Consistency Report for each site and the Final Draft Report dated November 19, 2010 – Appendix B.

For example, under Commons Way One (Lot 3.06), Appendix B states that a detailed site analysis is required showing the proposed area of disturbance. Despite the absence of this information, the report concludes that there is sufficient area on the site to develop without impacting Highlands resources. This conclusion is hard to harmonize with the maps in the consistency report.

With respect to Commons Way Twp (Lot 3.07), the report suggests that the project will have to meet the resource protection standards of the RMP and that this may affect the development potential of the site based on the extent of Highlands open water buffers. The entire site is covered by Highlands open water buffers and according to the RMP, no disturbance is permitted in this Highlands resource area.

The report states that the Villages has all local approvals and therefore would not be required to meet the resource protection standards of the RMP if development as approved. The Township proposes, under Alternative B, to increase the number of units by approximately 50%. The plan must then meet consistency standards. The site is nearly covered by open water protection area and would be unable to meet consistency standards.”

**Response:** As noted in the Highlands Council Final Draft Consistency Review Report:

“The initial Highlands Council review indicated potential RMP consistency issues with a number of the proposed sites. After meeting with the municipality, it was determined that due to the status of approvals and existing infrastructure, the RMP consistency issues were not significant enough to prevent the developments, as proposed. At this time the projects as proposed shall be considered to be viable components of the Township’s Fair Share Plan. If at any time during the Court’s review of the Fair Share Plan or during any approval process for the individual sites it is determined that any of these projects are no longer viable, then the Township will be required to provide a revised Fair Share Plan for consideration. Local approvals in place for sites as noted above may no longer be valid if substantial amendments are required to address the change in the number of units as proposed under Alternative B. In the case where such local approvals are no longer valid and therefore not excluded under proposed Highlands Area Land Use Ordinance, these sites would be required to meet the resource protection standards of the Highlands Area Land Use Ordinance.”

Commons Way 3.06. Appendix B as referenced in Mr. Chadwick’s comment letter refers to the appendix of the Highlands Council Letter to the Court, which is attached as Appendix A of the Final Draft Consistency Review and Recommendations Report. The process of consistency review for affordable housing sites does not require detailed site information to be submitted. For the purposes of the Township’s petition for plan conformance sufficient information was submitted to make a determination that Module 3 is consistent with the Regional Master Plan and that there is not sufficient reason to identify the site as being inconsistent with the RMP and therefore not presenting a reasonable potential for development. However, as the site moves forward in the development review process additional information including a review of the limits of the existing disturbed areas will be required.

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Commons Way 3.07. It is stated that this site would not require a consistency determination from the Highlands Council due to the presence of existing infrastructure. However, the site would be required to meet the resource protection standards as found in the Highlands Area Land Use ordinance. The most significant issue associated with the site is the extent of the Highlands Open Water Buffers on the site. The Township states and the aerial photography confirm that a significant portion of the site is already disturbed. The protection standards for Highlands Open Waters, in the Planning Area, permit development under certain conditions including development in previously disturbed areas. It would appear that site could be developed; however, as noted the site would be required to meet the resource protection standards of the Highlands Area Land Use Ordinance. Therefore for the purposes of the Township's petition for plan conformance there is not sufficient reason to identify the site as being inconsistent with the RMP and not representing a reasonable potential for development.

Villages at Rockaway: The site has existing approvals that would permit the development of the site as proposed under Alternative A. Alternative B proposes an increased density on the site that may render the local approvals invalid and therefore would require the site to comply with the Highlands Area Land Use Ordinance. The site has been disturbed and clearing limits established. The increase in density would need to fit within those clearing limits, or if the development expanded beyond the clearing limits the development would have to meet the resource protection standards in the Highlands Area Land Use Ordinance, as noted in the Final Draft Consistency Review and Recommendations Report.

**Comments From:** Steven Firkser, Esq., Greenbaum, Rowe, Smith & Davis. Representing Morris Commons (owners of Commons Way sites located as Block 22401, Lots 3.06 and 3.07).

**Comment 1:** “The Council’s reference to a potential buffer issue affecting Commons Way 3.07 is easily resolved. Although part of the property is located in the Highlands Open Water buffer area, the portion of the property where development will occur was previously disturbed, and is therefore exempt from the buffer restriction. See RMP Objective 1D4e and 1D4f. In fact, the soils in this area were stripped basically to within inches of the bedrock by the prior owner of this site in order to ready the property for development.”

**Response:** The comment is noted. The Highlands Area Land Use Ordinance (section 6.2.5.H.2) provides for allowances for development within previously disturbed areas of Highlands Open Water Buffers in the Planning Area.

**Comment 2:** “Morris Commons, LLC presently has approvals on the Commons Way 3.06 and Commons Way 3.07 properties from the Township for an office/warehouse development consisting of three industrial buildings with associated parking. The Commons Way 3.06 property has approvals for two office/warehouse buildings consisting of approximately 89,914 and 85,419 square feet respectively and the Commons Way 3.07 property has approval for an office/warehouse building consisting of approximately 78,043 square feet. All three approved buildings have 30% office space and 70% warehouse space. The sites have been cleared and have ready access to public water and sewer connections. Further, sites are adjacent to an existing residential neighborhood and can readily be utilized for an affordable housing development.

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Morris Commons stands ready to develop the Commons Way properties to provide a substantial contribution to the Township's affordable housing obligation and to satisfy the Constitutional mandate established under the Mount Laurel decisions. The proposed development for affordable housing is fully consistent with both the spirit and the letter of the RMP, and should be fully supported by the Council."

**Response:** As noted in the Final Draft Consistency Review and Recommendations Report, it is agreed that the provision of infrastructure to the site would not require a consistency determination from the Highlands Council. The Council agrees that inclusion of the sites in the Fair Share Plan appears to be consistent with the RMP for purposes of Plan Conformance.