

RESOLUTION NO. 11-169

**TOWNSHIP OF MIDDLETOWN
COUNTY OF MONMOUTH**

**RESOLUTION AUTHORIZING SETTLEMENT
AGREEMENT WITH BAMM HOLLOW, LLC**

WHEREAS, Bamm Hollow, LLC is the owner of certain real property located in Middletown Township, County of Monmouth, known and designated as Block 1048, Lots 35, 66 & 68 and Block 1049, Lots 10, 11, 16, & 51 as shown on the Middletown Township Tax Map constituting approximately 280 acres; and

WHEREAS, on December 20, 2005, Township of Middletown (“Township”) petitioned the New Jersey Council on Affordable Housing (“COAH”) for substantive certification in connection with the Township’s Third Round affordable housing obligation based on the original third round COAH rules adopted in 2004; and

WHEREAS, on March 20, 2006, Bamm Hollow filed objections to the Township’s petition for substantive certification; and

WHEREAS, on January 25, 2007, the Appellate Division invalidated COAH’s original third round rules that had been adopted in 2004 and under which the Township developed its housing plan in 2005; and

WHEREAS, on June 2, 2008 COAH adopted revised third round rules, with amendments adopted on October 20, 2008, requiring the Township to file an amended third round COAH plan by December 31, 2008; and

WHEREAS, on December 31, 2008, the Township re-petitioned COAH for substantive certification on the basis of an amended housing plan adopted by the Township Committee on December 11, 2008; and

WHEREAS, Bamm Hollow filed objections that resulted in COAH-sponsored mediation proceedings with the Township during which Bamm Hollow presented a proposal for 1,204 multifamily units, in which the Township was ordered to keep confidential as part of the mediation process; and

WHEREAS, over Bamm Hollow's objections, on October 14, 2009, COAH granted substantive certification to the Township of its Housing Plan which did not include Bamm Hollow on October 14, 2009, which then filed an appeal in the Appellate Division; and

WHEREAS, on October 8, 2010, the Appellate Division issued its decision in the appeals of COAH's revised third round rules at N.J.A.C. 5:96 and 5:97 in which the Court reversed and remanded portions of COAH's revised third round rules, including the use of the growth share methodology for determining third round prospective affordable housing obligations; and

WHEREAS, in response to the Appellate Division's decision, on October 19, 2010, Bamm Hollow filed a motion for Summary Disposition seeking site specific relief to construct 1,204 multi-family units including hundreds of COAH units to which the Township filed briefs in opposition to; and

WHEREAS, on November 19, 2010, Bamm Hollow's motion for summary disposition was denied; and

WHEREAS, on December 8, 2010 the Township's application for a stay before COAH was granted pending the outcome of a decision by the Courts regarding the revised third round rules, however, the litigation with Bamm Hollow was not stayed and has been ongoing; and

WHEREAS, Bamm Hollow has a current application pending for the development of 50 single family homes generally permitted under current zoning, but

approval of this application would not result in dismissal or withdrawal of Bamm Hollow's pending appeal leaving hundreds of developable acres of property remaining; and

WHEREAS, given the lack of legislative action to reform COAH, the Court's overturning of the Governor's attempts to eliminate COAH by executive order, continued uncertainty as to what course of action the New Jersey Supreme Court may take with respect to the revised third round COAH rules, and the parties having negotiated in good faith to come to a reasonable resolution of this matter that has cost taxpayers significantly over the course of many years.

NOW, THEREFORE, BE IT RESOLVED by the Township Committee in the Township of Middletown in the County of Monmouth, State of New Jersey that the Mayor and Township Attorney are hereby authorized and directed to execute the Litigation Settlement Agreement attached hereto and made part hereof with Bamm Hollow, LLC to settle this matter pursuant to the terms and conditions contained therein allowing for the construction of up to 190 single family homes with average lot sizes in excess of 1 acre, no COAH units, and the preservation of approximately 120 acres of open space by municipal dedication or conservation easement.