



## State of New Jersey

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*Lt. Governor*

**CARL J. RICHKO**  
*Chairperson*

**LISA J. PLEVIN**  
*Executive Director*

### MEMORANDUM

**To:** All Council Members

**From:** Christine LaRocca, Chief Counsel  
Jason Brandon Kane, Deputy Attorney General

**Re:** Consideration of Stay Request for Highlands Council Resolution 2020-03 Approving Chester Borough's Amended Petition for Plan Conformance

**Date:** July 10, 2020

On January 16, 2020 at a public meeting of the Highlands Council, the Council adopted Resolution 2020-03 granting an Amended Petition to Chester Borough for Center Designation, and authorized additional funding to the Borough.

On March 1, 2020, DPF Chester, LLC ("DPF"), filed an appeal of Resolution 2020-03 in the Superior Court, Appellate Division, Docket No. A-2605-19. On February 28, 2020, DPF requested the Council grant a stay of Resolution 2020-03 pending the appeal.<sup>1</sup> We received briefs from DPF and Chester Borough. These briefs are in your meeting packet. Please review the submissions and prepare to deliberate and vote upon the stay request at the July 16, 2020 public meeting.

The resolution should only be stayed if DPF satisfies the test of Crowe v. DeGioia, 90 N.J. 126, 132-34 (1982). Under that test, DPF must demonstrate, by clear and convincing evidence that:

- (1) there is a threat of irreparable harm;
- (2) DPF has a reasonable probability of success on the merits of its appeal; and
- (3) the relative hardships to the parties weigh in favor of a stay.

The public interest may also be considered in evaluating whether to grant a stay.

DPF argues that it demonstrates each of the three factors, discussing: irreparable harm primarily on pages 2-4, its reasonable probability of success on pages 4-9, and that the relative hardships weigh in favor of a stay on page 9. Chester Borough opposes a stay and responds that DPF does not

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<sup>1</sup> On February 18, 2020, the court notified DPF of a filing deficiency, resulting in the stay request being submitted to the Council prior to the March 1 accepted filing of the appeal.

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demonstrate the factors for a stay, discussing: irreparable harm on pages 6-7, that DPF does not have a reasonable probability of success on pages 4-6, and that the relative hardships weighs against a stay on pages 7-9.

If you have any questions concerning this application, please contact me. If you have any legal questions concerning this application, you can discuss them with DAG Kane by telephone appointment, or in Executive Session at the July 16 meeting, where he may provide legal advice to the Council.

cc: Lisa Plevin, Executive Director