

**TOWNSHIP OF CEDAR GROVE
ESSEX COUNTY NEW JERSEY**

SPECIAL PUBLIC MEETING

MINUTES

SEPTEMBER 17, 2018

1. ROLL CALL AND FLAG SALUTE

Mayor Cicala called the meeting to order at 7:00 p.m.

Present: Councilmembers Kumburis, Peterson, Tanella, Deputy Mayor Vargo, Mayor Cicala

Also Present: Township Manager Tucci, Alternate Township Attorney Semeraro, Township Clerk Stutz

The flag salute was led by Mayor Cicala.

Mayor Cicala made the required announcement concerning the Open Public Meetings Act as follows: Adequate notice of this meeting was duly provided to the Verona-Cedar Grove Times and the Star Ledger by fax and on August 22, 2018, filed with the Township Clerk, and posted on the public bulletin board in the Municipal Building Lobby in accordance with the Open Public Meeting Act.

2. EXTRAORDINARY BUSINESS

a) Presentations by Township Professionals Relevant to Pending Ord. 18-829 & 18-830

- Mark Semeraro, Esq. of the firm Kaufman, Semeraro & Leibman; Alternate Township Attorney

Attorney Semeraro explained how the affordable housing law evolved and the essence of the law. Attorney Semeraro stated that in the spring of 1975 the Supreme Court concluded that the State constitution required municipalities to provide affordable housing on a regional basis. Attorney Semeraro stated that municipalities were required to enact zoning regulations to achieve their affordable housing obligation, and is referred to as the Mount Laurel Doctrine. Attorney Semeraro provided a historical chronology of affordable housing to date, including builder remedy lawsuits, enactment of Fair Housing Act in 1985, subsequent creation of Council On Affordable Housing (COAH) to determine a municipality's obligation and establish guidelines for compliance, first two compliance rounds (1987 and 1999), failure of COAH to determine 3rd round obligations and establish regulations, and ultimate dissolution of COAH. Attorney Semeraro stated that the Township had complied with its first and second round obligation and had submitted its anticipated third round compliance for certification prior to COAH disbanding, despite COAH's failure to establish 3rd round regulations and definitive obligations. Attorney Semeraro explained that the State Supreme Court intervened in 2015, and jurisdiction of all Mount Laurel (affordable housing) matters throughout the State was transferred to the trial courts in each county to decide the 3rd round obligation and regulations. Attorney Semeraro further explained that the Supreme Court mandated that previously compliant municipalities file a declaratory judgment to receive continued immunity from builder remedy lawsuits. Attorney Semeraro also explained the role of Essex County's Court-appointed Master Planner Elizabeth McKenzie, a planning expert to provide the Court advice in resolving each municipality's affordable housing obligation. Attorney Semeraro also noted that Fair

Share Housing Center (FSHC) is the municipality's adversary in Court. Attorney Semeraro further explained that the Township retained State-recognized experts in affordable housing matters to seek the best solution for the Township. Attorney Semeraro stated that it was the opinion of both Township's experts and governing body that the Township has more to lose than gain by continuing to litigate and has sought to reach a settlement. Attorney Semeraro stated that the Township's professionals were present to provide insight to the public concerning affordable housing, current litigation, and specifically the proposed ordinances. Semeraro advised that the proposed settlement plan is the best that could be achieved by Township officials given the circumstances, and if approved, will culminate three years of litigation.

Attorney Semeraro further commented that the recent citizen generated petitions would do more harm to the Township. Attorney Semeraro discussed the detriments of the petitions; that neither petition reduces the Township's affordable obligation, could in fact derail the proposed settlement, result in a loss of builder remedy immunity, and result in a greater affordable housing obligation and undesired high density development. Attorney Semeraro also commented that the governing body shares resident sentiments regarding high density development and has worked hard to try to minimize the impact of the required affordable housing obligation on the Township. Attorney Semeraro further explained that the goal of the introduced ordinances is to guide development to meet affordable housing obligation, rather than have development imposed on the Township by the Court. Attorney Semeraro also referenced the Jacobsen decision, the first case that adjudicated the first decision on municipal affordable housing obligations and has been widely accepted as a legitimate rational and means for a municipality to calculate its obligation.

Councilman Kumburis left the dais at 7:35 p.m.

- Mike Jedziniak, Esq. of the firm Jeffrey R. Surenian and Associates, LLC; Township's COAH Counsel

Attorney Jedziniak detailed the Township's history of compliance with affordable housing obligations to date, beginning with voluntary compliance with 1st round in 1987, and 2nd round in 1994. Attorney Jedziniak further explained that COAH did adopt two versions of regulations for 3rd round compliance that were subsequently overturned by the Courts. Attorney Jedziniak stated that the Township did voluntarily adopt new plans in response to the regulations and petitioned for approval/certification while COAH still existed. Attorney Jedziniak explained that an objector filed a builder remedy lawsuit but the Township prevailed. Attorney Jedziniak stated that since then, the statewide litigation followed. Attorney Jedziniak stated that voluntary compliance with affordable housing obligations enables a municipality to maintain control of its own planning destiny, provides protection against builder remedy lawsuits. Attorney Jedziniak further commented that voluntarily compliance with COAH regulations for the past 30 years has enabled the Township to seek settlement rather than go to trial, which equates to the governing body controlling its planning destiny.

- David Banisch, P.P., A.I.C.P.; Township's Affordable Housing Planner

Mr. Banisch explained that COAH was the agency established to create regulations to guide municipalities in meeting affordable housing obligations and avoid a court process to obtain

municipal compliance. Mr. Banisch stated that the first two rounds of affordable housing obligations each addressed a six year period, 1987 – 1993 and 1993 – 1999, whereas the third and current round addressed a 25-year period, from 2000 – 2025. Mr. Banisch stated that COAH's regulatory process broke down in 2000, the agency was ultimately dissolved, and the Township was forced to enter into the Court process in 2015, despite its efforts to obtain third round certification. Mr. Banisch explained that the character of a community is driven by its zoning, which is also the means by which a municipality addresses its affordable housing obligation and maintains control of its obligation, and the zoning must provide a realistic opportunity for development. Planner Banisch stated that the governing body recognized that the first line of attack to achieve voluntary compliance and effect settlement was to negotiate the number of obligation; then identify site(s) to address that obligation.

Planner Banisch cited the directives to the COAH professionals from governing body:

- Negotiate the number of units
- Identify all potential sites, i.e. vacant/underdeveloped property
- Select site(s) that has least intrusive impact on most number of people
- Meet affordable housing obligation
- End litigation

Mr. Banisch stated that the first target of the affordable housing issue for the governing body was to negotiate the number of units of obligation, then identify site(s) to address that obligation. Mr. Banisch advised that the original number of 450 was able to be negotiated using Jacobsen methodology to 245-260. Mr. Banisch provided a detailed description of the five identified potential vacant/underdeveloped sites; three sites along Rt. 23, two on opposite sides in the south end, one in the north end, the fourth the Cliffside Drive property. Mr. Banisch stated that the fifth site was the Newark watershed property, which the governing body wanted removed from the vacant land calculation and protected from development, which could not be accomplished until a plan was devised to meet the third round affordable housing obligation. Mr. Banisch stated that the initial approach was to spread necessary development throughout the municipality. Mr. Banisch further explained that once potential sites were reviewed for suitability, it was determined that the scattered sites approach did not yield a significant number of affordable housing units to address the Township's obligation, which led to the focus on the Cliffside Drive property and decision to re-zone to accommodate the proposed inclusionary affordable housing development. Mr. Banisch detailed the positive factors of the Cliffside property, particularly the ability to significantly address the affordable housing obligation to achieve a proposed settlement of the litigation, automatic buffers provided by PSE&G easements, a viable development proposal submitted by the current property owner, which resulted in the proposed re-zoning ordinance (18-829).

Planner Banisch further commented that during the site selection process, the Township's planner, Jason Kasler suggested the idea of utilizing currently developed industrial sites to address affordable housing obligations, which brought about the zoning overlay ordinance, the second ordinance under consideration for final adoption. Mr. Banisch explained that because the majority of the properties in the industrial areas are currently occupied, the areas do not provide realistic development potential immediately, but might in the future, so the zoning overlay ordinance was proposed to address future affordable housing obligations and will benefit the Township in the next round of affordable housing obligations.

- Elizabeth C. McKenzie; Court Appoint Special Master

Ms. McKenzie explained the Court's position related to the affordable housing litigation. Ms. McKenzie advised that Judges are under pressure to close the suits. Ms. McKenzie confirmed that Fair Share Housing Center is the affordable housing advocate throughout the State and consistently advocates for higher numbers of affordable housing obligations. Ms. McKenzie also stated that trials do not usually go well for municipalities that choose to go to trial. Ms. McKenzie explained that it is in a municipality's best interest to settle and determine the least impactful plan to meet its affordable housing obligation. Ms. McKenzie also commented that the citizen petition to acquire land prior to settlement would jeopardize the Township's immunity from builder remedy lawsuits. Ms. McKenzie also commented that the Township would still have an affordable housing obligation. Ms. McKenzie stated that once the affordable housing is addressed for the third round obligation, the Township could acquire vacant sites. Ms. McKenzie further explained that in the settlement scenario a municipality has the opportunity to negotiate development density, which does not occur in a trial situation. Ms. McKenzie also stated that the Township's settlement of the affordable housing litigation depends on the adoption of the current proposed zoning amendments. Responding to Attorney Semeraro's request to project the impact of the referendum petition to repeal proposed ordinance 18-829, Ms. McKenzie commented that would most likely result in the Township's loss of immunity from builder remedy lawsuits, be viewed as "bad faith" and end settlement negotiations, resulting in a trial and the higher calculated affordable housing obligation.

3. PUBLIC HEARING

- a) To consider adoption of Pending Bond Ord. #18-829, Amending Chapter 268 of the Township Code entitled Zoning to Establish Inclusionary Development Regulations for Multi-family Housing to Address Municipal Affordable Housing Obligations

The ordinance was read by title only:

AN ORDINANCE AMENDING CHAPTER 268, ZONING, OF THE CODE OF THE TOWNSHIP OF CEDAR GROVE COUNTY OF ESSEX AND STATE OF NEW JERSEY, TO ESTABLISH INCLUSIONARY DEVELOPMENT REGULATIONS FOR MULTI-FAMILY HOUSING TO ADDRESS MUNICIPAL AFFORDABLE HOUSING OBLIGATIONS

Mayor Cicala opened the meeting to anyone wishing to be heard on this item only.

David Hart; 41 Squirehill Dr. – Mr. Hart raised questions concerning the Township's affordable housing obligations that were addressed by Mr. Banisch, Attorney Jedziniak, and Ms. McKenzie.

John Martinelli; 30 Hillside Ave. – Mr. Martinelli voiced concern regarding the governmental imposition of affordable housing obligations without regard to the impact on a municipality's infrastructure, traffic, schools, municipal services and ultimate tax burden on current residents and changes to the character of a community. Mr. Martinelli described similar changes that he experienced elsewhere that brought him to reside in Cedar Grove. Councilman Tanella solicited explanation from Ms. McKenzie of the ongoing Statewide constitutional obligation of providing

affordable housing throughout the State which is effected through municipal zoning. Ms. McKenzie further explained that affordable housing obligation does not end, but rather is recalculated as the State population increases or decreases. Attorney Jedziniak confirmed that without an amendment to the Constitution affordable housing obligation is permanent, but changes can be made through legislative efforts. Attorney Jedziniak further explained that the legislature has the ability to enact legislation to soften the obligation impact such as providing funding for infrastructure improvements, and is a current topic in the legislature. Attorney Jedziniak also commented that the best way for municipalities and residents to effect change is to participate in hearings and suggested that residents to contact their State Legislature representatives.

Emmett Accocella; 321 Bowden Rd. – Mr. Accocella voiced numerous concerns with the pending re-zoning ordinance (#18-829) and requested postponement of adoption and re-consider the re-zoning. At Mayor Cicala's request, Planner Banisch provided an overview of proposed development resulting from the proposed ordinance; 347 luxury apartments, including 56 affordable housing units, building coverage to comprise 15% of entire area, maximum 35% impervious coverage. Mr. Banisch further explained that the proposed ordinance also contains an open space set-aside requirement.

Jeff Freitas; 19 Woodlawn Terr. – Mr. Freitas requested that the governing body postpone adoption of ordinance. Following additional speaker comments, Planner Banisch clarified that the proposed development is not all affordable housing units, rather luxury rental apartments with approximately 56 affordable housing units included.

Paul Burns; 2 Elm Dr. – Mr. Burns also requested the governing body to postpone adoption of ordinance and submitted a petition to repeal Ord. No. 18-829. Mr. Burns also commented that the presentations by the professionals have given him pause to re-think the proposed ordinance.

Dave Fletcher; 29 The Glen – Mr. Fletcher raised questions regarding line of sight of proposed development that were addressed by Planner Banisch. Following Mr. Banisch's comments, Mr. Fletcher stated that the map that was circulated to residents related to the re-zoning ordinance (18-829) is misleading as it does not reflect the specific area of development and amount of open space described during the presentation.

Barbara O'Connell; 27 Bennet Ave. – Ms. O'Connell commended Township officials and professionals for their diligence and efforts to address affordable housing obligations. Ms. O'Connell stated the presentations provided a deeper understanding of actions taken by the governing body. Ms. O'Connell inquired the type of housing of the proposed development and relationship of density to size of unit. Planner Banisch explained that the real estate market drives the type of units developed based on sellability and affordable housing regulations dictate the percentages of required number of bedroom units. Ms. OConnell also expressed concern regarding the impact of the proposed development on the school system.

Ms. Zalca; 96 The Fairway – Mr. Zalca voiced concern regarding increase of school children from proposed development and impact on school system. Ms. Zalca also expressed concerns regarding proximity of electromagnetic field to proposed development. Ms. McKenzie explained the projected impact of types of market units (i.e. 1, 2, 3 bedroom) on school population.

John Vera; 343 Little Falls Rd. – Mr. Vera raised concerns regarding impact on water run-off, impact on wastewater facility and traffic. Attorney Semeraro stated that several speakers' comments are land use management issues that will be addressed by land use board(s) and are outside the governing body's jurisdiction. Attorney Jedziniak discussed the municipality's ability to amend its compliance plan after approval of the settlement agreement, if necessary, with Court approval, which Ms. McKenzie confirmed.

Mark Sandimenico; 52 Lakewood Ave. – Mr. Sandimenico commented that the governing body should be prepared to address resident concerns regarding proposed development.

Frank Rossi; 15 Highpoint – Mr. Rossi his objection to “forced development”, i.e. imposition of affordable housing obligations.

Mark Petracco; 100 Lakewood Ave. – Mr. Petracco voiced his preference to fight affordable housing issue in courts rather than settle. Mr. Petracco further remarked that he thinks the governing body is not fully prepared to address residents' concerns regarding impact of proposed development on the community.

Bridget Bauer; 47 Rose Terr. – Ms. Bauer inquired how affordable housing number determined, to which Ms. McKenzie responded. Ms. Bauer urged residents to reach out to legislators on the issue of affordable housing. Ms. Bauer thanked the governing body for its efforts to address the affordable housing issues. Ms. Bauer further commented that she is more concerned what will happen if governing body does not act.

Kevin McVey; 19 Briarwood Terr. – Mr. McVey stated that after hearing presentation/explanations from professionals that he has complete faith in the governing body's decisions. Mr. McVey noted that should the ordinance pass the Township will have two affordable housing projects under development simultaneously.

Michael Cohen; 319 Little Falls Rd. – Mr. Cohen requested that the governing body postpone consideration of ordinance.

Ryan Mattesky; 55 Myrtle Ave. – Mr. Mattesky inquired how the affordable housing obligation number is determined. Planner Banisch provided a detailed explanation. Councilman Tanella noted a common theme of speakers' comments is for the governing body to postpone its affordable housing settlement decision and requested Attorney Jedziniak to re-iterate outcome of postponement. Attorney Jedziniak stated that delay means it would be more likely that Fair Share Housing removes settlement as an option for the Township, the Judge schedules trial and the Township's affordable housing obligation is determined by the Court. Attorney Jedziniak re-affirmed his recommendation that the Township move forward with settlement.

Isabel Spagnardi; 511 Holly Lane – Ms. Spagnardi inquired how a Township keeps track of its affordable housing units. Ms. McKenzie stated that part of the compliance plan requires an ordinance to administer affordable housing.

Mark Petracco; 100 Lakewood Ave. – Mr. Petracco requested name of Judge hearing case.

Emmett Accocella; 321 Bowden Rd. – Mr. Accocella expressed concern with water run-off and traffic impact of the proposed development. Mr. Accocella recommended that the governing body postpone adoption of the re-zoning ordinance. Attorney Semeraro explained that the speaker's concerns constitute stormwater management issues that are addressed at site plan level, i.e. Planning Board.

Ryan Mattesky; 55 Myrtle Ave. - Mr. Mattesky raised concern should the proposed project prove problematic during the planning hearing process. Ms. McKenzie clarified that the purpose of certain required reports during the hearing process, such as a traffic study, is to determine what improvements the developer must undertake and financially contribute to address development impact. Ms. McKenzie also addressed Mr. Mattesky's inquiries concerning developer's potential withdrawal from project for cost factors and subsequent impact on Township's affordable housing obligation.

John Vera; 343 Little Falls Rd. – Mr. Vera raised questions regarding to use of senior citizen housing to address affordable housing obligation, infrastructure cost concern, and whether other sites were considered to address affordable housing obligation. Ms. McKenzie explained that senior citizen housing can address a portion of a municipality's obligation and certain infrastructure costs are borne by the developer. Planner Banisch identified and detailed other sites considered by the governing body.

Dave Fletcher, 29 The Glen – Mr. Fletcher inquired whether development plans are available. The Township Manager advised that concept plans are available in the Manager's office as well as site line drawings from Little Falls Road. Mr. Fletcher commented that the governing body was faced with an incredibly difficult decision and thanked the governing body for their efforts.

There being no one else present wishing to be heard, Mayor Cicala closed the public hearing. Mayor Cicala invited comments from Councilmembers. Councilman Kumburis returned to the dais.

Deputy Mayor Vargo commented that after great deliberation by the governing body and consideration of recommendations of professionals, he was not willing to gamble the future of Cedar Grove in protracted litigation.

Councilwoman Peterson read a prepared statement that summarized the affordable housing issues facing the governing body and its ultimate decision to propose settlement of the litigation that resulted in the proposed ordinances.

Councilman Tanella concurred with Councilwoman Peterson's comments. Councilman Tanella also commented that he was born and raised in Cedar Grove and also raising his family in Cedar Grove. Councilman Tanella stated that after careful deliberation of all the facts, that he is not willing to gamble the Township's future by going to trial and leaving the decision to the Court.

Mayor Cicala stated resident frustration has not fallen on deaf ears, and has been felt by each Councilmember.

Councilman Tanella moved for adoption of Ordinance #18-829 at second reading, published in the Verona-Cedar Grove Times as a passed ordinance to take effect as prescribed by law, in the interest of complying with Cedar Grove's New Jersey Constitutional obligation to provide for the reasonable probability of the development of Affordable Housing under Mount Laurel. The Governing Body adopts the Ordinance reluctantly but is satisfied that it promotes a variety of housing styles, types and developments as encouraged by the Municipal Land Use Law. The Ordinance provides for measured development and promotes the public good by ensuring adequate light, air and open space. The Ordinance promotes appropriate development of land in a fashion that promotes public health, safety and the general welfare. The Ordinance presents development opportunity that does not conflict with neighboring municipalities, the county or State. The Ordinance promotes development which is well planned and furthers the multiple purposes of the Municipal Land Use Law as set forth in N.J.S.A. 40:55D-2. The Governing Body also observes that the Master Plan Housing Element was last updated over ten years ago in 2006 and the Master Plan itself is statutorily out of date inasmuch as it is required to be updated at least once a decade, N.J.S.A. 40:55D-89. Accordingly, the Planning Board's recommendation is rejected. The motion was seconded by Deputy Mayor Vargo, and passed by the following vote:

AYE: Councilmember Peterson, Tanella, Deputy Mayor Vargo, Mayor Cicala

NO: None

ABSTAIN: Councilman Kumburis

- b) To consider adoption of Pending Ord. #18-830 – Amend Chapter 268 of the Township Code entitled Zoning to Establish Overly Inclusionary Zoning Standards for Townhouse & Multi-family Housing to Address Continuing Long Term Affordable Housing Obligations

The ordinance was read by title only:

AN ORDINANCE AMENDING CHAPTER 268, ZONING, OF THE CODE OF THE TOWNSHIP OF CEDAR GROVE, COUNTY OF ESSEX AND STATE OF NEW JERSEY, TO ESTABLISH OVERLAY INCLUSIONARY ZONING STANDARDS FOR TOWNHOUSE & MULTI-FAMILY HOUSING TO ADDRESS CEDAR GROVE TOWNSHIP'S CONTINUING LONG TERM AFFORDABLE HOUSING OBLIGATIONS

Mayor Cicala opened the meeting to anyone wishing to be heard on this item only. There being no one present wishing to be heard, Mayor Cicala closed this portion of the meeting.

Deputy Mayor Vargo moved for adoption of Ordinance #18-830 at second reading, published in the Verona-Cedar Grove Times as a passed ordinance to take effect as prescribed by law, in the interest of complying with Cedar Grove's New Jersey Constitutional obligation to provide for the reasonable probability of the development of Affordable Housing under Mount Laurel. The Governing Body adopts the Ordinance reluctantly but is satisfied that it promotes a variety of housing styles, types and developments as encouraged by the Municipal Land Use Law. The Ordinance provides for measured development and promotes the public good by ensuring adequate light, air and open space. The Ordinance promotes appropriate development of land in a fashion that promotes public health, safety and

