

**BOROUGH OF DUMONT
BERGEN COUNTY, N.J.
SPECIAL MEETING MINUTES
MAYOR AND COUNCIL AND JOINT LAND USE BOARD
HIGH SCHOOL AUDITORIUM
APRIL 21, 2016
7:00 PM**

The Mayor called the meeting to order at 7:00PM
Flag Salute; Moment of Silence
Captain Conner made a safety public announcement.

Sunshine Law: This special meeting was called pursuant to the provisions of the Open Public Meetings Law. Notices of this meeting were e-mailed to the *Record* and the *Ridgewood News*. In addition, copies of notices were posted on the bulletin board in the Municipal Building and filed with the Municipal Clerk.

Roll Call:

Council members: Correa, Di Paolo, Hayes, Morrell, Riquelme, Zamechansky-present
Mayor James Kelly-present

The clerk of the Joint Land Use Board read the Sunshine Law and roll call.

Mayor Kelly stated that this meeting was called to address a resolution agreeing to implement the housing element and fair share plan and master plan upon approval by the Court at the May 12, 2016 fairness hearing.

Darlene Green, a representative from Maser Consulting, stated that her office has prepared a draft Housing Element and Fair Share Plan. The Court has directed them to prepare it solely to address the borough's prior round obligation prior to the fairness hearing on May 12, 2016. In December, 2013 the Governing Body and Joint Land Use Board adopted and endorsed the 2013 Housing Element and Fair Share Plan. That plan was based on the third round rules in place at that time as well as the third round obligation. After that plan was submitted to COAH, Dumont was sued by Landmark in early 2014. On March 10, 2015 the Supreme Court invalidated the third round rules and obligation, which our plan had been based on. Therefore, the 2013 housing plan had to be updated and rely on the prior round rules. The census data was also updated. The Court haven't yet issued obligations for the rehab or the third round or determined whether any town in New Jersey has a gap obligation, which is a time period between 1999 and 2015. The Judge also directed them to include the settlement with Landmark. Ms. Green reviewed the contents of the draft plan. Ms. Green explained that there are basically two main experts in New Jersey battling obligations: one is the Fair Share Housing Center, which is an affordable housing advocacy group being funded by the Builder's Association. They claim the Borough of Dumont owes 251 affordable units for their third round, which would span from 2015-2025. In response to this, over 280 municipalities have formed a consortium and have hired E-Consult. They issued their first report in December 2015 and recently revised their report in March 2016. Their report claims Dumont owes an obligation of 0 for the same ten year period. However, that

report relied on tax data that was not yet updated which said the farm's six acre parcel was commercial, not vacant. The minute the Builder's Remedy lawsuit was filed, the course of action in Dumont changed. If you do not proceed at the Judge's direction, we will not have immunity. We will go to court and the Judge will make the decision.

Mr. Paster, after discussing our situation with other attorneys and planners, advised the Governing Body that the best scenario would be eighteen units to the acre. In litigation setting you would probably see something between twenty and thirty. This is occurring all over the county. He feels that 142-144 units are a lot better than 207-210 units. Getting protection of the judgment of compliance and unlimited future immunity is worth it. The current zoning on the large parcel is P-park, public use, which is legally unsustainable. It's a privately owned parcel of property, which cannot sustain a P designation. The default zoning is RA single family 7500 but that doesn't happen until an application is filed. Landmark never filed an application. Instead, they filed a suit that they knew would put the borough in a bad position because of its historic lack of affirmative action with COAH and not having a filed a certified plan. If we had rezoned twelve units in 2014 when it first came up it might have shown the Judge good faith. That wasn't done due to a huge protest. Now we are in a worse position because the Supreme Court took that jurisdiction and there is no COAH to get some protection from. To the planner, the Joint Land Use Board attorney and himself, twelve units to the acre was a good faith number that we could defend the borough in the builder's remedy should it come to pass. What has been agreed to in the settlement is the basics-the density, the height of the building, the setback. Everything else goes to the JLUB.

Councilwoman Correa asked if the JLUB and Council members had enough time to read this plan. Chairman Bochicchio feels that there is a lack of communication and that the Joint Land Use Board and Governing Body should be working together. The Councilwoman was away and didn't have time to completely read the packet that was mailed to her.

Ms. Green explained that those voting tonight are being asked to accept the Plan and commit to adopt it if the Judge approves it in May. If it is accepted, we will have a judgment of compliance and repose and immunity. If we don't proceed with the Judge's direction it is highly likely that Fair Share Housing Center will join Landmark in their lawsuit and perhaps the Builder's Association as well. We will then have three entities fighting us. Immunity has always been the incentive COAH used to have towns comply with their affordable housing obligation. She said that many of her towns have affordable housing sub-committees which include members of the Council, Planning Board, herself and other professionals to decide how to control their destiny. She stated that she and Maser started in Dumont in 2007 to start the Housing Plan. They worked on it in 2007 and 2008 and at that time the Borough decided not to move forward with the submission to COAH. Mr. Paster added that he doesn't know why it was decided not to proceed but it was against his and Maser's advice. In 2013 when it became clear that D'Angelo's was being sold Ms. Green and Mr. Layton were brought back and they had enough information to put together the plan quickly enough to submit by the end of 2013. This enabled us to get the first two counts of the Builder's Remedy suit temporarily dismissed without prejudice until the court took jurisdiction back.

The Mayor opened to the public for comments and questions related directly to the Housing Element and Fair Share Housing Plan

1. Tom Kelly, 70 Beacon Street, asked for clarification-that this resolution is being considered because of the settlement only. Mr. Paster responded that it is under a consolidated docket and part of the same action but it is primarily in furtherance of the settlement. We were

never denied immunity but were under threat of the reinstatement of the two counts of the Builder's Remedy that had been dismissed if we didn't proceed with the settlement. Mr. Kelly asked in order for the Builder's Remedy to be awarded, we would have to be found deficient in our obligation. He spoke of the third round credits. He asked why we didn't let E-consult know D'Angelo's was vacant. Ms. Green responded that E-consult is not accepting any data from the towns. They are only obligated to calculate the obligations based on the State level data. The Judge is only looking at the settlement and moving us toward a fairness hearing. He is only dealing with the prior round obligation. Eventually the Judge will give us a number and compliance mechanisms. Once we have that, we can do a vacant land adjustment. Mr. Kelly asked about immunity. Ms. Green said we will have immunity until the Judge gives us an obligation number. Mr. Kelly asked if D'Angelo's property doesn't provide us with enough credits, would CVS or Stop 'n Shop be able to sue the town? Ms. Green replied that we will have immunity as long as a valid Housing Plan is submitted. Dumont has a very healthy number of credits to apply against whatever it is assigned. Mr. Kelly asked if the Council knew about the E-consult numbers. Mr. Paster replied that we were under a court deadline and far into the settlement discussion, it wasn't worth taking a chance-it's the expert's number, not the number. He said that Mr. Banish was very interested in the density in Dumont and how many rentals there are in town. Mr. Kelly questioned the apartments, single family, two family, three family information. Ms. Green responded that that is the demographic data required by the Municipal Land Use Law. Those numbers have no bearing on our obligation for credits. Mr. Kelly asked about credits being carried over.

2. Bill Brophy, 65 Margaret Ct., asked how this plan differs with the 2013 plan. Ms. Green answered that the 2013 Housing Plan was based on the third round rules, which were invalidated. She also was able to use the 2010 census data, much of which were unavailable in 2013. Advanced Housing was also added. Mr. Brophy asked about age-restricted and non-age restricted credits in the plan. He asked that the plan be amended.

3. Karen Valido, asked if the Joint Land Use Board was included in discussion regarding other Landmark's proposals for D'Angelo's. The Mayor said that Landmark came to one Council meeting. The statement Ms. Valido began to read did not pertain to tonight's subject.

4. Matthew Bailin, 12 Elizabeth St., stated that builders force their way into towns. He feels that some of the details of the settlement are one-sided toward the developers.

5. Rachel Bunin, 9 Poplar St., asked why Landmark is exempt from the Development Fee Program. Ms. Green explained that if you provide affordable units, you do not have to pay the Development Fee. Mr. Paster added that it is statutory.

6. Cathy Doherty, Roxbury Rd., referred to the statement Mr. Paster made regarding the Council not moving forward with the Fair Share Housing Plan in 2008. Did he advise the new council members after that? Mr. Paster responded that it was after the deadline. Ms. Doherty said that there was a house missing on Landmark's plan. She asked if the Joint Land Use Board has examined the accuracy of the builder's plan. Mr. Bochicchio responded that the building department, the Board and their engineer look at the site plan to make sure there are no flaws. No site plan has been submitted yet. Ms. Doherty asked about Landmark's presentation in 2013. Mayor Kelly explained that it was just drawings. The new plan includes two story buildings, which the Council feels is important for the people who live in the area. By also using 50 Washington Avenue, it keeps the buildings at two stories and the affordable housing out of the D'Angelo property. Ms. Doherty asked if Landmark is obligated to build according to the

renderings. Mr. Paster answered that the townhouse style is what they are obligated to build. Ms. Doherty stated that if we don't accept this plan tonight, this is the last chance we have of gambling. Mr. Paster responded that if the plan is not accepted, Landmark will have a motion to enforce a settlement in court seeking sanctions by Monday and ask that the Special Master replace the Joint Land Use Board as the ultimate decider of what gets built there and how. This provides the court with an assurance that the Borough and Board will live up to the agreement if it's approved by the court. In exchange for that, we get our judgment of compliance and continued immunity until the third round. Ms. Doherty asked about the Borough acquiring D'Angelo's. Mr. Paster responded that once it was under contract, the Borough could not interfere.

7. Carl Manna, 108 Harding Ave., spoke of rent control apartments. He said that our obligation in prior rounds is 0. Ms. Green replied that the obligation is 34. We have satisfied our prior obligation. Mr. Manna said we have a surplus of 177 credits. If the D'Angelo's seven acres go, where will the next obligations come from? Does the Borough have to go into the real estate business to acquire property to provide affordable housing? Do we have mechanisms in place now? Ms. Green responded that they have not been directed by the Judge to do that in this plan.

8. Mr. Grijalva, 4 Lexington Ave., talked about the zoning and said that traffic will be horrendous.

9. Russ Moore, McKinley Ave., said Stop 'n Shop is for sale and asked about CVS.

10. Bruce de Lyon, 67 Beacon Street, said that the perception is that the Governing Body is not doing the Fair Share plan for the community. The ball was dropped along the way.

11. Lynne Vietri, 41 Wilkens Dr., asked what would have happened if the settlement wasn't approved. Mr. Paster replied that Landmark would have submitted their rebuttal to our housing matrix, which was submitted the day before Thanksgiving and we would have started hashing out potential affordable housing needs. Ms. Vietri questioned the obligations. She asked if the Judge could rule that we've done what we needed to do. Mr. Paster said not until third round figures are established.

12. Linda Unger, Larch Ave., asked about affordable housing at 50 Washington Avenue and the fact that they are supposed to be indistinguishable. Mr. Paster explained that the reason the Special Master felt that it was an acceptable plan rather than sprinkling them all over because the middle of town is more accessible to stores, transportation, etc.

Motion to adopt **Resolution #16-119** Resolution Agreeing to Implement the Housing Element and Fair Share Plan and Master Plan upon Approval by the Court at the May 12, 2016 Fairness Hearing: Councilman Morrell

Second: Councilwoman Zamechansky

Roll call vote: Council members Di Paolo, Hayes, Morrell, Riquelme, Zamechansky-yes

Councilwoman Correa-no She repeated that she did not have time to educate herself enough on the plan and after listening to residents tonight she has more to think about.

Motion to adjourn: Councilman Morrell

Second: Councilman Riquelme

All in favor.

Meeting was adjourned at 10:00PM

Minutes respectfully submitted by:

Susan Connelly, RMC

Municipal Clerk

(Minutes of the Joint Land Use Board will also be available.)