

Mayor and Council & Planning Board  
of the Borough of Allendale  
Special Joint Work Session Meeting Minutes  
September 14, 2017

PRESENT: Mayor Elizabeth White and Council members Ari Bernstein, Liz Homan, Jackie McSwiggan, Steve Sasso, Jim Strauch, and Amy Wilczynski

Chairman Kevin Quinn and Planning Board members Joseph Daloisio, Matthew O'Toole, Councilman Sasso, Chief George Scherb, Mayor Elizabeth White, and Thomas Zambrotta

ABSENT: Planning Board member Edward O'Connell

ALSO PRESENT: Borough Attorney Ray Wiss  
Planning Board Attorney Christopher Botta  
Municipal Clerk Anne Dodd

A Special Joint Work Session Meeting of the Mayor and Council and Planning Board of the Borough of Allendale was held in the Municipal Building at 500 West Crescent Avenue, Allendale, NJ on September 14, 2017. The meeting was called to order at 7:00 p.m. by Mayor White who asked that the Municipal Clerk read the open public meetings statement:

““In compliance with the Open Public Meetings Act, the notice requirements have been satisfied. The meeting dates for the year are confirmed at the Annual Meeting, are posted on the public bulletin board in the Municipal Building, published in the Record within the first 10 days of the New Year, and copies are sent to the Ridgewood News and Star Ledger. Notice of this meeting by Resolution #17-226 and September 7, 2017 Sunshine Notice has been sent to the Record, Ridgewood News, and Star Ledger and has been posted on the public bulletin board and Borough website.”

***Presentations:***

**Review of Proposed COAH Litigation Settlement Agreement – Presented by Mary Beth Lonergan, Borough Affordable Housing Consultant**

Mayor White explained that, over the past two and a half years, the Council's Committee on Affordable Housing of which she is a member together with Councilwoman McSwiggan and Councilwoman Wilczynski, has worked countless hours with the Borough Counsel, Municipal Planner, and Affordable Housing Consultant to secure this draft agreement between the Borough and the Fair Share Housing Center (FSHC.) She expressed her belief that this agreement will protect Allendale for the next eight years against builders' remedy lawsuits which seek to develop high density housing on property that is not currently zoned for such. This agreement is designed to protect Allendale from high density developments that would strain the town's resources including water, schools, and roads while allowing the charm of the town to be maintained. She noted that she has spent the past 10 years working on the Borough's COAH plan and expressed her opinion that Allendale has done an outstanding job of attempting to address its obligation.

Borough Attorney Wiss provided an explanation of how the mandate of affordable housing in the State was promulgated and evolved. He reviewed a number of significant court decisions that have shaped the affordable housing obligations to which municipalities are held, the most recent of which took place in 2015, when the Supreme Court stepped in and set up a declaratory judgment for evaluating "constitutional compliance." At that time, COAH was declared defunct and going

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forward the determination of affordable housing obligations would be administered by the County courts throughout the State. The statewide COAH litigation, to which Allendale is currently a party, is the outgrowth of this 2015 Supreme Court decision. Allendale was required to file a declaratory judgment action by July 8, 2015. On behalf of the Borough, this action was filed by the deadline to comply with this obligation.

Mary Beth Lonergan, Affordable Housing Consultant, reviewed the history of Allendale's compliance with the Mt. Laurel obligations. She advised that Allendale is 1 of only 300 towns receiving 2<sup>nd</sup> round certification and 1 of only 68 towns that received 3<sup>rd</sup> Round certification from COAH prior to the Appellate Division of the Supreme Court invalidating the third round "growth share" rules in 2010. She explained that, because the Borough had received 3<sup>rd</sup> round certification, the Supreme Court acknowledged this fact and gave the Borough the highest ranking in the 2015 decision, acknowledging the Borough as a certified town. She reviewed the various prior round mechanisms employed to meet the Borough's 137-unit obligation. She noted that many of these units have been completed and in existence and occupied by low and moderate-income households for many years. She advised that the Borough received 107 credits and 37 bonuses for producing rentals for which COAH gives an incentive. She stated that the Borough has always maximized those bonuses, noting that there is a surplus from the 2<sup>nd</sup> round of 5 units.

Mayor White discussed the actions taken by the Borough since 2015 which included the hiring of Mary Beth Lonergan, Special Planning Consultant, consulting with Ed Sniekus, Borough Planner, and participating in a Municipal Consortium. Ms. Lonergan and Mr. Sniekus have worked together to ensure that Allendale, once again, has developed a plan to meet its affordable housing obligations.

Borough Attorney Wiss reviewed the litigation process in which the Borough has been involved for the past two plus years. He advised that the Borough's committee, his office, and the Borough Planners have participated in a hybrid litigation/mediation process with the Fair Share Housing Center, a statewide advocacy group that the Supreme Court has recognized as an intervener in every municipal litigation in the State. Allendale and the Fair Share Housing Center have developed competing plans regarding the extent of Allendale's affordable housing obligation and the way in which that obligation would be met. In the forefront of Allendale's position, was maintaining the character of the community while complying with the judicially imposed constitutional obligation to provide affordable housing. In shaping the Borough's plans, they were guided by judicial decisions emanating from other counties as well as the court's special planning master's input. Borough Attorney Wiss explained that, throughout the process, the Borough's committee was mindful, absent a settlement, that the ultimate outcome would be imposed on the Borough by the court. Based upon the good faith participation by the Borough in the process, the court, on multiple occasions, extended the Borough's immunity from developers' lawsuits. Borough Attorney Wiss noted that many surrounding communities are facing impending litigation with developers and the Fair Share Housing Center which could effectively significantly reshape the character of those communities. Through the proposed settlement, the details of which Ms. Lonergan will highlight, the Borough was able to avoid extended and expensive litigation, maintain the character of Allendale, and provide for immunity from developer lawsuits through the expiration of the current cycle which ends in 2025. The numerous case management conferences, negotiation sessions, and telephone conferences have resulted in a 40% reduction in the affordable housing obligation originally advocated by the Fair Share Housing Center as well as the Fair Share Housing Center agreeing to withdraw its request for 2<sup>nd</sup> and 3<sup>rd</sup> floor affordable housing zoning on the entire business district.

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Mayor White noted that Allendale did join with over 200 other municipalities in an effort to employ an independent consultant to develop an analysis of affordable need housing in New Jersey. The Fair Share Housing Center had the statewide need number set at 145,000 unit whereas the consortium arrived at a number of 32,000 units.

Ms. Lonergan commended the Borough for the job that they did in negotiating the 40% reduction as this reduction is one of the highest agreed to by Fair Share Housing Center in the 125 to 150 settlements that they have reached thus far. She noted that the Realistic Development Potential (RDP) is 54 units. She explained that Allendale is a vacant land adjustment community meaning that the Borough has limited suitable developable vacant land for multi-family development. The Borough has analyzed almost 100 vacant, municipally-owned, County-owned, and State-owned properties. There were approximately eight sites that generated this 54-unit RDP. The Borough had its own plan which consisted of built, existing units, allowing the Borough to keep Rohslers as it is currently zoned. Between the surplus from the prior round and the Borough's ongoing efforts to meet its affordable housing obligations, virtually 80% of the 54 units have already been addressed with completed units. She reviewed the sites that meet the 54-unit need and explained that there is an unmet need of 254 units. In COAH's regulations which are shared by the court, the thought is that there may be potential redevelopment opportunities over time for municipalities like Allendale having limited vacant land. She reviewed sites upon which overlay zones were placed for this potential redevelopment, noting that the Borough consciously decided which sites made sense to offer for future redevelopment opportunities. Mayor White added that there were very specific use sites that the Borough was mandated to consider. Borough Attorney Wiss pointed out that Fair Share Housing Center was advocating for different sites that would have been more impactful on the community.

Mr. Zambrotta asked for confirmation that from now until 2025 these properties are locked into the current uses and if the use was to change, they would have to be developed for high density housing. He further inquired what the limitations of use would be.

Ms. Lonergan confirmed that Mr. Zambrotta's first statement is correct. Borough Attorney Wiss advised that it is a matter of degree as far as change of use and the further removed from the existing use, the more likely that it will be deemed a discontinuation of use.

Ms. Lonergan advised that Fair Share Housing Center has required that virtually every vacant land adjustment community have a mandatory affordable housing set aside ordinance which is triggered if the Borough, from now until 2025, adopts multi-family rezoning, "d" variance, etc. at 6 units per acre. She noted that the Borough has had an affordable housing development fee ordinance on the books for many years which has helped the Borough to produce most of its affordable housing.

Mayor White explained that, with respect to Guardian Angel Church, both the court and the Fair Share Housing Center were centered on finding locations in the downtown area with access to transportation and shopping. She expressed her hope that Guardian Angel Church will continue to be the vibrant parish that it has been for many years to come.

Mayor White stated that Allendale has demonstrated an almost 20-year commitment to comply voluntarily with its affordable housing obligations. This proactive compliance had allowed Allendale to develop an agreement that was acceptable to both the Borough and the Fair Share Housing Center. Allendale has been considered a leader in the State in providing quality, affordable housing

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to the developmentally disabled, seniors, and low-income populations. Because of this litigation resulting from the lack of leadership in Trenton, and the dissolution of the Council on Affordable Housing, she commented that it is frustrating and extremely disappointing that the Borough has had to spend significant funds and time on negotiations with Fair Share Housing Center in order to reach this agreement. These funds spent could have been spent actually building affordable units for people who need them the most. She expressed her hope that this presentation has been helpful in providing an understanding of the litigation with Fair Share Housing Center and the settlement agreement that has been arrived at in order to protect and preserve the charm and character of Allendale. She thanked Mayor Barra for leading the Borough in 2008 down the path of addressing these needs. She advised that, as part of this settlement agreement, the Borough's real number over the next 8 years is 9 units which the Borough has already accounted for in its plan. She expressed her belief that this settlement agreement will prevent builders' remedy lawsuits and avoid costly litigation that other towns are currently facing.

**Mayor and Council & Allendale Planning Board Discussion of Proposed COAH Litigation Settlement Agreement**

Councilman Strauch commented that Allendale did face a builders' remedy lawsuit many years ago and advised that he does not want to see Allendale become involved in another builders' remedy where the Borough loses control over zoning. He noted that this lawsuit caused him and many others to embrace and work towards meeting the affordable housing obligations.

Councilwoman Wilczynski remarked that the builders' remedy lawsuit that the Borough faced years ago is the reason that she and Councilwoman Homan became involved in politics. She stated that they were appalled at the rezoning that occurred as a result of this lawsuit. She noted that the rules and regulations have changed with each round which has been very frustrating. She expressed her hope that this presentation has helped to clarify the process and all of the steps that have been taken to get to this point.

**Public Comment:**

Kristen Tsarnas, 74 Heights Road, inquired the reason that 2<sup>nd</sup> and 3<sup>rd</sup> floor living was not acceptable.

Mayor White explained that there is already existing housing stock on the 2<sup>nd</sup> story in most of downtown. She further explained that there were parking and traffic concerns which lead to the conclusion that 2<sup>nd</sup> and 3<sup>rd</sup> floor living would not be beneficial to Allendale.

Michael O'Reilly, 25 Elmwood Avenue, asked for confirmation that all 9 units to which the Borough is obligated have been accounted for in this plan. He further inquired whether, should the areas reserved for the unmet need change hands or use, they would then become fair game for high density housing and whether there would be pressure to build.

Mayor White confirmed that the 9 units have been planned for in the Borough's current affordable housing plan. She explained that no one will be forced to change use, but rather, only if the use happens to change will these properties be subject to redevelopment.

Mr. Sniekus clarified that if the property goes to another organization that will be using it for the same use, this requirement is not imposed.

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James Thomas, 30 Arlton Road, questioned whether this plan includes all of Boroline Road.

Mayor White clarified that it is just 40 Boroline Road.

Mr. Thomas expressed his belief that that entire E-M Zone had been zoned for low-income housing and inquired why it was not included.

Mayor White explained that the area on Commerce Drive has been designated as wetlands and the court would not allow this area to be included in the plan. In terms of Boroline Road, she advised that it was not necessary to designate the entire area.

Mr. Thomas inquired what needs to be done by the Borough between now and 2025.

In addition to the 9 units, Ms. Lonergan advised that there has to be annual monitoring of the compliance mechanisms that have been listed as well as a mid-term lookback at the Borough's progress.

Mr. Thomas noted that one of the candidates running for Governor has announced plans for a constitutional amendment to COAH and inquired whether this agreement would be affected if an amendment is successful.

Borough Attorney Wiss noted that, over the past 40 years, the Supreme Court has answered the question that this number is the constitutional obligation, but time will tell if a proposed amendment is found constitutional.

***Adjournment:***

There being no further business to come before the Mayor and Council, on a motion by Councilman Strauch, second by Councilman Bernstein, and unanimously carried, to adjourn this meeting. The meeting was adjourned at 7:52 p.m.

There being no further business to come before the Planning Board, on a motion by Mr. Daloisio, second by Mr. Zambrotta, and unanimously carried, to adjourn this meeting. The meeting was adjourned at 7:52 p.m.

Respectfully submitted,

Anne Dodd, RMC  
Municipal Clerk

