

**BOROUGH OF BERGENFIELD  
PLANNING BOARD TELECONFERENCE  
MEETING VIA ZOOM  
MEETING MINUTES  
JULY 20, 2020**

Chairman Rivas called the meeting to order at 8:12 PM.

**ROLL CALL**

**Present:** Mayor Amatorio, Mr. Rivas, Mr. Abenoja, Mr. Berger, Mr. Cabrera, Mr. Knowles, Councilman Lodato (joined at 8:21pm), Mr. Naylis, and Mr. Acosta

**Absent:** Mr. Vasquez and Mr. Polandick

**Also Present:** Ron Mondello, Planning Board Attorney, Joseph Pomante, Planning Board Engineer, and Hilda Tavitian, Planning Board Clerk

**PLEDGE OF ALLEGIANCE**

Led by Mr. Cabrera.

**APPROVE MINUTES OF PREVIOUS MEETING – June 15, 2020**

**Motion by:** Mr. Berger

**Second by:** Mr. Knowles

**All ayes. None Opposed.**

**CORRESPONDENCE**

Review of Fair Share Plan

Borough Attorney John Schettino stated Bergenfield, like most municipalities in New Jersey, has been subject to affordable housing litigation and has to receive certification in order to be protected as what is known as a builder's remedy lawsuit. The court has approved a settlement but there is a process the town has to go through. The focus of the planning board is to review the ordinances that need to be adopted. The board's rehab obligation, according to the settlement, is 129 units. Mr. Schettino stated that number would be reduced by Brookside, which is a county facility with over 100 units, and if it can be established that capital funds have already been expended in these units. The prior round obligation from 1987-1999 was 87 units. The third round obligation which was from 1999-2025 is 140 units. Mr. Schettino stated because Bergenfield was designated as an urban aid municipality in 2016, there is a 0 number of unit prospective need which reduces the total number of the town's obligation significantly. They received credits for the Landmark development that contains 9 affordable housing units. The town received 4 credits for the project at 51 East Main Street. Mr. Schettino stated any future construction above five units or more requires a set aside for affordable housing. If it's a rental, it is 15% for the total and if it's sales, it is 20%. Mr. Schettino stated those numbers are uniform and standard throughout the state.

The other major part of the settlement has to do with the overlay zones. Foster Village would be part of the overlay zone that would allow residential units to be built over the existing retail space. Based upon the size of that location, it could be up to 230 units. At this time there is no intention of developing that site with residential units. However, the town still has the benefit of that being a location and is helpful that it can be included in the plan. There is another ordinance for an overlay zone on Washington Avenue from Clinton Avenue to the Dumont border which allows for an increased height and density, allowing for a forty-foot structure. It would allow for a third story of residential units. The board is aware that it is

the governing body's intention to do this regardless of the affordable housing plan because it was a recommendation made by the planner to revitalize the business area. It's been the trend throughout municipalities similar to Bergenfield for mixed uses of residential units on top of retail space.

Mr. Schettino stated Bergen County has a very high median income and it would be individuals that would be starting out as teachers, police officers or any public employment that would qualify for the affordable housing units. The units being made available by affordable housing are not uncommon to the demographic that already exist in Bergenfield. It allows for young residents who grew up in Bergenfield to continue to live in Bergenfield. They would qualify as they begin their employment to live in one of the affordable housing units.

Mayor Amatorio inquired if the set aside for rentals of 15% and 20% for new construction is uniform throughout the state. Mayor Amatorio inquired what would the likelihood be if the borough thought the numbers were too high and want the numbers lowered.

Mr. Schettino stated the 15% for rental and 20% for town houses or condominiums set aside is standard throughout the state, if not higher. Those numbers are not going to change. The likelihood of the numbers being lowered are 0. The special master, who has the most influence, is appointed to the board and is considered to be neutral. It is extremely unlikely for the special master and the fair share housing to recommend the numbers of 15% and 20% as being consistent throughout the state and being fair and reasonable. It would be costly to litigate the agreement. If you are unsuccessful, not only do you have to pay your own legal fees but fair share housing's legal fees. Bergenfield is not in a situation like Englewood Cliffs. Englewood Cliffs is being crushed by their dispute. The 15% and 20% set aside is based on the high density the developers are receiving and that's the trade-off.

Mayor Amatorio inquired how long it would take to challenge the agreement.

Mr. Schettino stated it would take a year. Judge Padavano is our judge. All the judges are consistent with this. A 40 foot structure could be 4 stories but would probably be 3 stories to allow for the roof. A parapet and equipment would be required even if it was a flat roof.

Mr. Knowles stated that the planning board had already approved in the master plan the allowance of 40 ft. structures with retail space on the bottom and residential units on Washington Avenue from Clinton Avenue to Main Street.

Mr. Schettino stated Mr. Knowles is correct. Some of the changes that are incorporated in the plan were already endorsed by the borough.

Mr. Naylis stated that recommendation was overridden by the council. They expanded that zone all the way to the Dumont line. The proposal by the planning board was in the central business district. Mr. Naylis stated that going back 3 years, the borough's planner had discussed receiving financial credits from the Highlands program to assist the borough with dealing with the infrastructure mandates the additional housing would put onto the borough. It specifically addressed roads, sewers, schools, and other infrastructure types of improvements that would increase costs when the number of housing units are increased. Mr. Naylis inquired about what happened with the potential participation in that program and the funding the town would get so that that cost would not be shifted to the taxpayer. Mr. Naylis stated this program was specifically to deal with the housing issue. He is surprised and disappointed that it was not pursued as part of the settlement agreement.

Mr. Schettino stated he believes that funding would be available. The Mayor and council have a company that pursues those grants. If the money is available, then they would be able to apply for it. Bergenfield

would qualify based on the designation of Bergenfield being an urban aid municipality. Mr. Schettino stated it doesn't have to be included in the settlement agreement. Fair share housing isn't needed for the town to be able to apply for a grant. One has nothing to do with the other.

Mayor Amatorio stated that 3 years ago, in order for Bergenfield to do the 20% set aside, the state would have given Bergenfield some sort of grant to compensate for the increase of housing. Mayor Amatorio inquired if there were any guidelines or provisions that ties up the infrastructure with the number of fair share housing units.

Mr. Schettino stated there are 500 municipalities in New Jersey, almost all of which are subject to the 15% and 20% rule. If there are grants for infrastructure, it would have to be pursued independently and not be part of any settlement. Mr. Schettino stated they should hope it's not tied to infrastructure, but to demographics because Bergenfield's numbers is on the low end. He has never heard of a infrastructure grant tied or sponsored by fair share housing. Mr. Schettino stated rather than build affordable housing, they would collect money and offer it to another town to build the affordable housing units. If the other town accepted the money and used it to build affordable housing, the initial town would get credit. Mr. Schettino stated he doesn't believe that is allowed anymore.

Mr. Cabrera stated he recalls that the organization could match Bergenfield up with a town that had the space and if Bergenfield helped fund it, they could build the affordable housing and Bergenfield could get credit for it.

Mr. Naylis stated that was not the program the planner had pointed out. The Highlands program was specifically to provide funding for infrastructure and the planning board's master plan committee had gone through it extensively. They made a presentation to the planning board and recommended it to the council. Mr. Naylis inquired why it wasn't a precursor to the agreement or at least at same time. Mr. Naylis inquired who has to pay the infrastructure cost that will result from the increased density that Bergenfield is going to have imposed upon which is nothing more than social engineering by the state.

Mr. Schettino stated a judge won't allow a town to go into an agreement contingent upon funding that may or may not be available. Mr. Schettino stated the supreme court has addressed this three times already and it is not going to change. If Foster Village decides to develop, they will have to pay for all of the improvements. Mr. Schettino stated there is no way anyone can measure if there is going to be a new street or a street is going to wear down quicker. Some of the larger municipalities that doubled their populations with high risers didn't pass on additional costs to the developers for the streets. The cost of the roads can't be quantified. It would be discriminatory to just assess infrastructure costs for affordable housing.

Mr. Naylis stated the density is being increased beyond the zoning which is what the infrastructure was constructed around. All of the services are increased when the density is increased. Mr. Naylis stated no matter what they do, they have to swallow this. It's an obligation that will be held over our heads.

Mr. Schettino stated it needs to be accepted and would be a huge cost to fight it. There has been a total of 9 affordable housing units built in the recent five years. The projection is that it won't all be built in our lifetime.

Mr. Knowles stated he recalls reading that there has been no participation in the Highlands program.

Mayor Amatorio stated he spoke with Jerry Naylis but did not have the opportunity to speak with Ernesto Acosta. Mayor Amatorio stated he spoke with John Schettino, read the report, and asked him some questions. Mr. Schettino told him the same things he discussed tonight. Everyone just has to swallow this

and accept it. The judge and the planner negotiated the number and it is practical for Bergenfield. In the past five years, the town has only complied with 14 units. Mayor Amatorio questioned who knows if it will happen in their lifetime. Mayor Amatorio stated approval has to go from the planning board to the council. The council will be meeting tomorrow and the next council meeting is in August. Mayor Amatorio stated now would be the opportune time to vote.

Mr. Rivas stated the master committee meets and then brings the report to the board. Mr. Rivas inquired if there is a deadline.

Mr. Naylis stated he still stands by his comments. They are boxed into a corner and resents the entire process the state has gone through. It is going to be the taxpayers who will have to pay for all of this. Mr. Naylis stated he looked at some reports that came out relative to the impact of affordable housing over the past 20 years and the impact of some things such as water supply. Mr. Naylis stated there have been studies done in which in coming years there will be difficulty with the water supply but nobody seems to care.

Mr. Acosta inquired if it is approved, the town is going to be opened to a flood of developments. He agrees with Mr. Naylis.

Mr. Rivas reminded everyone the borough attorney had stated it would not happen in everyone's lifetime.

Mayor Amatorio stated the fair share numbers is not an invitation to develop. It is required of a developer to comply. A developer will come to Bergenfield because they want to develop here regardless of the number.

Mr. Naylis stated it's going to be a sword hung over their heads. There is a piece of property in town that was approved for a subdivision for five single family houses. Now, there is going to be an application before the zoning board to change that to build a 16 unit multi-family dwelling so it complies to the fair share housing requirement. The entire character of Washington Avenue is going to change with four story buildings. They don't look what's above the roof in the building code. Mr. Naylis stated they do not have an alternative in the matter.

**MOTION TO APPROVE**

**Motion By:** Mayor Amatorio

**Second By:** Mr. Abenoja

Robert Rivas	Yes	Councilman Lodato	Yes
Romeo Abenoja	Yes	Gerald Naylis	No
Jerald Berger	Yes	Ernesto Acosta	No
Ben Cabrera	Yes	Mayor Amatorio	Yes
Michael Knowles	Yes		

**VERBAL COMMUNICATIONS**

Any resident may comment or question any subject not on the agenda.

None.

**Motion to Close Verbal Communications**

**Motion By:** Mr. Berger

**Second By:** Mr. Knowles

**All ayes. None opposed.**

## **COMMITTEE REPORTS**

1. Site Plan – None
2. Parking/Legal – None
3. Capital Improvements – The bids for the new borough hall were rejected.
4. Master Plan – None.

5. Liaison to Board of Adjustment – Mr. Knowles stated at the Zoning Board meeting there was an application for 109 Westminster Avenue. The applicant was for looking for side yard variance and front yard coverage for a pool 20x40. The house was built several years ago with approval for a basketball court. The basketball court was never built. Applicant reduced the size of the pool to 20x38 so no side yard variance was required. The pool was going to be placed where the basketball court was never built. Approval was granted. The second case heard was for 88 Rector Court. It was for an addition to the rear of the house. The applicant agreed with the engineer's report of retention system. It will be five bedrooms with 2 parking spaces provided. There will be a patio added to the rear of the property and pervious pavers will be used. The application was approved unanimous.

## **MOTION TO ADJOURN MEETING**

**Motion by:** Mr. Knowles

**Second by:** Mr. Berger

**All ayes. None opposed.**

Meeting adjourned at 9:03 PM.

NOTE: No applications will be heard by the Board that were not on the agenda at the time of publications release to the newspaper or applications that do not comply with Article VIII title "Hearings contained in the By-Laws of the Bergenfield Board".

Respectfully Submitted,

Hilda Tavitian  
Planning Board Clerk