

MINUTES OF SPECIAL MEETING OF MAYOR AND COUNCIL  
OF THE BOROUGH OF EATONTOWN  
DECEMBER 22, 2008 AT 7:45 P.M.

1) ROLL CALL. Mayor Tarantolo opened the meeting, noted our compliance with the Open Public Meetings Act, and asked for the roll call. PRESENT: Mayor Tarantolo, Council President DaVis, Councilman Sohl, Councilwoman Rau, Councilwoman Forbes, Councilman Schiels. ABSENT: Councilwoman Hopkins. Also Present: Rich Cramer, Jeff Surenian

Mr. Jeff Surenian explained that there were new COAH rules adopted in May and September 2008 to address the appellate division's decision from January 2007, and we have until December 31<sup>st</sup> to adopt and file a new plan with the courts regarding our responsibilities. A court appointed master will review the plan which attempts to adjust our growth share number of units from 490 to 238 based on a claim of a lack of land. There are also many expenses associated with this plan which will be reviewed and approved by the court. The State can seize the trust fund money if we don't secure these approvals. Mayor Tarantolo explained that this fund can only be spent on COAH issues specifically encumbered, \$1.7 million plus currently. Councilman Schiels confirmed with Mayor Tarantolo that in order to qualify for approximately \$250,000 of those funds, the Pine Tree park would have to provide 130 units of affordable housing to the Borough of Eatontown; also, the senior citizen housing Meadowbrook II will be receiving \$1.5 million when they provide the affordable units. Mr. Rich Cramer of T & M Associates, noted that previously our COAH number was 503 units through 1999. The Round 3 plan now includes the Pine Tree Mobile Home Park and Meadowbrook II; the other approved compliance mechanisms approved by the court previously will stay in place; 22 surplus credits will be carried forward to any new round. Additionally, the Planning Board noted that there are two additional units available at Spring House, increasing the surplus to 24 credits. The plan outlines areas where COAH credit is anticipated: Fort Monmouth redevelopment, old Borough redevelopment, Spring House, Meadowbrook II, Industrial Way East growth share, Pine Tree Mobile Home Park phase II, Mill Pond, bonus credits, etc., providing a total of 240 units. The Borough also has a rehabilitation obligation of 32 units, which service is provided by Monmouth County.

2) RESOLUTION 257-2008 OF THE COUNCIL OF THE BOROUGH OF EATONTOWN TO REQUEST THE COURT TO REVIEW AND APPROVE THE BOROUGH'S DRAFT SPENDING PLAN

WHEREAS, the Council of the Borough of Eatontown will ask the Court for a Judgment of Compliance and Repose in December of 2008 to approve its Amended Housing Element Amendment and Fair Share Plan; and WHEREAS, the Borough of Eatontown has adopted an updated development fee ordinance; and WHEREAS, the Court approved the updated development fee ordinance via an Order entered by Judge O'Brien on December 15, 2008; and WHEREAS, the development fee ordinance establishes an affordable housing trust fund that includes development fees, payments from developers in lieu of constructing affordable units on-site, barrier free escrow funds, rental income, repayments from affordable housing program loans, recapture funds, proceeds from the sale of affordable units, and/or funds collected in connection with the Borough's affordable housing program; and WHEREAS, a municipality with an affordable housing trust fund should receive approval of a spending plan prior to spending any of the funds in its housing trust fund; and WHEREAS, N.J.A.C. 5:97-8.10 requires a spending plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity; and
2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned; and
3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
4. A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. 5:97-8.7, 8.8, and 8.9; and
5. A schedule for the expenditure of all affordable housing trust funds; and
6. If applicable, a schedule for the creation or rehabilitation of housing units; and
7. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing; and
8. A plan to spend the trust fund balance as of July 17, 2008 within four years of the Council's approval of the spending plan, or in accordance with an implementation schedule approved by the Council; and

9. A plan to spend and/or contractually commit all development fees and any payments in lieu of construction within three years of the end of the calendar year in which funds are collected, but no later than the end of third round substantive certification period; and
10. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and
11. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

WHEREAS, the Borough of Eatontown has prepared a spending plan consistent with N.J.A.C. 5:97-8.10 and P.L. 2008, c.46. NOW THEREFORE BE IT RESOLVED that the Council of the Borough of Eatontown, County of Monmouth, requests that the Court review and approve the Borough of Eatontown's spending plan. (Offered by Council Member Sohl, seconded by Council Member Rau and approved on a unanimous roll call vote as follows: Ayes – DaVis, Sohl, Rau, Forbes and Schiels; Absent - Hopkins.)

3) RESOLUTION 258-2008 OF THE COUNCIL OF THE BOROUGH OF EATONTOWN TO FILE A DECLARATORY RELIEF ACTION FOR APPROVAL OF ITS ADOPTED AMENDED HOUSING ELEMENT AND FAIR SHARE PLAN IN ACCORDANCE WITH SECTION 313(a) OF THE FAIR HOUSING ACT

WHEREAS, the Planning Board of the Borough of Eatontown, County of Monmouth, State of New Jersey, adopted its a Housing Element and Fair Share Plan pursuant to N.J.S.A. 40:55D-28 on December 12, 2005; and WHEREAS, the Eatontown Borough Council endorsed the Housing Element and Fair Share Plan on December 14, 2005; and WHEREAS, on December 20, 2005, the Borough filed a declaratory action pursuant to N.J.S.A. 52:27D-313, seeking judicial review and approval of its adopted and endorsed Housing Element and Fair Share Plan; and WHEREAS, the Borough of Eatontown has not yet received a Judgment of Compliance and Repose from the Court; and WHEREAS, in January of 2007, the Appellate Division partially invalidated the regulations that were the basis of the affordable housing plan adopted in December of 2005; and WHEREAS, on May 6, 2008 and September 22, 2008, COAH adopted new regulations to address the issues that the Appellate Division identified; and WHEREAS, the Planning Board of the Borough of Eatontown, County of Monmouth, State of New Jersey, adopted an Amended Housing Element and Fair Share Plan on December 22, 2008 in light of the new round three regulations; and WHEREAS, a true copy of the resolution of the Planning Board adopting the Amended Housing Element and Fair Share Plan is attached pursuant to N.J.A.C. 5:96-2.2(a)2; and WHEREAS, the Borough of Eatontown wishes to endorse the Amended Housing Element and Fair Share Plan; authorize the Borough's professionals to file the Amended Housing Element and Fair Share Plan with COAH and to thereafter seek approval of the Amended Housing Element and Fair Share Plan from the Court.

NOW THEREFORE BE IT RESOLVED BY THE COUNCIL OF THE BOROUGH OF EATONTOWN:

1. That it hereby endorses the Amended Housing Element and Fair Share Plan as adopted by the Eatontown Borough Planning Board; and
2. That it authorizes and directs its representatives to file with COAH by December 31, 2008 (i) this Amended Housing Element and Fair Share Plan, (ii) the resolutions of the Planning Board and Borough adopting/endorsing same with COAH and (iii) any such other documents as the Township's professionals deem necessary or desirable; and
3. That, pursuant to the provisions of N.J.S.A. 52:27D-313 et seq., it authorizes and directs its representatives to file an amendment to the Borough's declaratory relief action seeking Court approval of said Amended Housing Element and Fair Share Plan and to seek to maintain the temporary immunity that currently exists in conjunction therewith so that the Court can review the plan and so that the Borough can respond to any concerns of the Court or its master free from unnecessary lawsuits brought on the basis of the Mount Laurel doctrine; and
4. That notice of the application for approval of the Borough's Amended Housing Element and Fair Share Plan shall be published in a newspaper of regional circulation and the Borough shall otherwise provide all the notice the Court deems appropriate of the date the Court sets a hearing on whether the Amended Housing Element and Fair Share Plan satisfies the Borough's affordable housing responsibilities under applicable laws. Said notice shall give the public sufficient time to review the Borough's Amended Housing Element and Fair Share Plan and offer any comments that individual or entity may deem appropriate. (Offered by Council Member Rau, seconded by Council Member DaVis and approved on a unanimous roll call vote as follows: Ayes – DaVis, Sohl, Rau, Forbes and Schiels; Absent - Hopkins.)

4) RESOLUTION 259-2008 CALLING ON THE GOVERNOR AND THE LEGISLATURE OF THE STATE OF NEW JERSEY TO DELAY IMPLEMENTATION AND REVISE ROUND III COAH REGULATIONS

WHEREAS, the State of New Jersey has required municipalities under the jurisdiction of the Council on Affordable Housing (COAH) to meet unrealistic deadlines for the submission of Round III COAH rules by December 31, 2008; and WHEREAS, senior officials of COAH have issued public statements that conflict with published regulatory requirements for Round III COAH rules; and WHEREAS, the Office of Legislative Services of New Jersey Legislature has found that the sources of funding available to municipalities for Round III COAH obligations are “seriously insufficient,” amounting to a cumulative municipal deficit statewide of over \$2 billion a year for ten years; and WHEREAS, COAH nevertheless requires municipalities to commit to funding any shortfall in its affordable housing programs that may arise due to inadequate funding from other sources; and WHEREAS, this requirement directly conflicts with the Fair Housing Act, which says that “nothing [in this Act] shall require a municipality to raise or expend municipal revenues in order to provide low and moderate income housing” (N.J.S.A. 52:27D-311d); and WHEREAS, the consequences for failing to comply with COAH Round III rules include loss of municipal control of affordable housing funds and so-called “developers remedy” lawsuits that strip planning and zoning authority from municipalities; and WHEREAS, the economy of the State of New Jersey is in a state of crisis, including rapid job loss, declines in home values, and reduction in the property tax base upon which most municipalities rely; and WHEREAS, the absence of sufficient funding for COAH Round III affordable housing obligations imposes a huge unfunded mandate on municipalities across New Jersey. NOW, THEREFORE BE IT RESOLVED, that the Mayor and Council of the Borough Eatontown call upon the Governor and the Legislature of the State of New Jersey should take immediate action to delay the effective dates of Round III COAH rules for at least 12 months until December 31, 2009; and BE IT FURTHER RESOLVED, that the Governor and the Legislature of the State of New Jersey should take immediate action to freeze any existing or proposed “developers remedy” lawsuits for a period of at least 12 months until no earlier than December 31, 2009; and BE IT FURTHER RESOLVED, that the Governor of New Jersey should convene a special panel on the economic crisis facing New Jersey to develop a comprehensive plan for economic revitalization, infrastructure improvement, protection of environmental quality, reduction of municipal property tax burdens, and a strategic plan for housing, including affordable housing, to conclude its deliberations no later than June 30, 2009; and BE IT FURTHER RESOLVED, that a copy of this resolution be forwarded to Jon. S. Corzine the Governor of the State of New Jersey; Speaker of the General Assembly Joseph Roberts, Senate President Richard Cody, Commissioner of the Department of Community Affairs Joseph Doria, Senator Sean T. Kean, Assemblywoman Mary Pat Angelini and Assemblyman David P. Rible. (Offered by Council Member Sohl, seconded by Council Member DaVis and approved on a unanimous roll call vote as follows: Ayes – DaVis, Sohl, Rau, Forbes and Schiels; Absent - Hopkins.)

5) MOTION TO ADJOURN MEETING

(Offered by Councilwoman Rau, seconded by Councilman DaVis, and passed on a unanimous voice vote)

---

KAREN R. SIANO, MMC (approved 1/14/09)  
BOROUGH CLERK

(Exhibits are on file in the Borough Clerk’s office, according to the New Jersey State Records Retention Schedule established by N.J.S.A. 47:3-15 et seq. and approved by the State Records Committee)