

Affordable Housing Board Meeting
Thursday, November 15, 2012
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The following are the minutes of the Affordable Housing Board meeting, which was held on Thursday, November 15, 2012 in the Community Development Conference Room, located in the Lawrence Township Municipal Building.

I. Statement of Proper Notice

Adequate notice of the regular meeting of the Lawrence Township Affordable Housing Board has been provided by filing an annual meeting schedule with the Municipal Clerk, and by filing the agenda with the Municipal Clerk, posting prominently in the Municipal Building, and mailing to the Trenton Times, the Trentonian and the Lawrence Ledger.

Present: Peter Ferrone, Susan McCloskey, Kevin VanHise, Jean Washington, Walker Ristau

Absent: James Kownacki, Council Liaison

Excused Absence: Andrew Link, Liaison; William Capell, John Masso

Also Present: Susan Snook, Secretary

II. Approval of Minutes:

The October 18, 2012 minutes were approved as amended by unanimous vote.

III. Approval of 2013 Meeting Schedule:

The 2013 Meeting Schedule was approved as amended by unanimous vote.

IV. Public Comment:

None

V. Status of Changes at State Level:

Chairperson VanHise provided a summary of the arguments made before the New Jersey Supreme Court regarding the various challenges to COAH's third round rules and the growth share methodology. Present for arguments were attorneys for the League of Municipalities; Fair Share Housing Center; COAH, the NJ Builders Association; the National Association of Industrial and Office Providers, and attorney's representing individual clients.

Chairperson VanHise stated that each of the attorney's had approximately 5 minutes for a brief introduction and then were asked questions by the Court. The major question focused on by the Court was whether or not COAH's rules were consistent with the provisions of the Fair Housing Act. The Municipal Attorney's argued that growth share is a methodology that is consistent and should be upheld. Chairperson VanHise continued to explain that the first iteration of COAH's third round rules was if you grow you have an obligation, but the Appellate Division struck down those rules based on lack of foundation and unchecked discretion by municipalities. COAH then promulgated revised third round rules, requiring municipalities to plan and zone to meet certain target projections; but the actual obligation is triggered by actual growth. A plan must be in place if you grow to maximum capacity.

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However, the Court questioned the attorneys regarding language in the Fair Housing Act that requires addressing a "regional" need and COAH's rules appear based on a Statewide need but essentially administered and addressed locally. The foundation for a regional consideration is grounded in the idea that even if a large commercial site is constructed in a municipality, employees will look to live not just in that Township, but in surrounding communities as well, and that will generate a need for regional affordable housing opportunities. The Court emphasized that the Legislature's enactment of the Fair Housing Act created a statutory framework requiring a regional approach, and questioned how a methodology reliant upon growth in individual municipalities address that requirement? The response by the municipal attorneys and COAH's DAG is that that regional obligation is built into the overall formula.

Underlying the growth share concept is not just the number of residential units that are built, but there are also formulas for different types of commercial and industrial and retail buildings that trigger an affordable housing obligation. Even if a municipality could re-zone all of its remaining land for commercial use, they will still have an affordable housing obligation. The municipal attorneys advanced the idea that as the Fair Housing Act came out of the Mount Laurel II decision in 1983, it has been 30 years with no fundamental changes, and with the passage of time and municipal compliance, maybe the doctrine should be looked at. Chairperson VanHise explained the Fair Housing Act and the rules established which include COAH.

For instance, one study quoted that approximately 35,000 affordable housing units were created in the first three rounds, and Fair Share quoted a figure around 60,000 units being created. Anywhere from 700,000 – 800,000 building permits were issued during that time. As one of the attorneys cited, even with all of the complex rules in place, the actual production of units has been approximately 5% of total residential production. Thus, one of the attorneys argued for a 10% total obligation, noting that if such a rule had been imposed by the Mount Laurel II Court, we would have had double the number of units produced.

The Court was confronted with the question whether the aim of the doctrine is zoning, whether it is the production of affordable housing units, or other purposes such as righting social injustices such as getting inner city residents out of the cities and into the suburbs. For instance, Fair Share argued that Mount Laurel always contained a racial component to the doctrine for the economic exclusions of classes, and as such, hard caps are needed to ensure municipal compliance. Thus, it should not matter what the economy is, whether or not the Townships do or don't have tax rates; etc., each should have an obligation to produce units, make opportunities available and get inner city residents out and into the suburbs.

There was a lot of discussion regarding the Appellate Division decision that Judge Skillman, an affordable housing judge, wrote, essentially negating COAH's efforts to implement growth share rules as inconsistent with the existing doctrine, for COAH's lack of production in making new rules and providing supporting information, the unwieldy application of the rules and process, and the inability to leave towns to their own compliance devices. However, Judge Skillman also added a foot note in his opinion that acknowledged as an intermediate court, the Appellate Division did not have the power to change the doctrine, but that it might be time for the Supreme Court to re-evaluate the doctrine and consider whether or not such a methodology could comply. Justice Albin questioned the attorneys on the impact of Judge Skillman's footnote, seeming to agree that growth share might not comply with the dictates of the Fair Housing Act, but if the FHA was adopted pursuant to the confines of the Court's holding in Mount Laurel II, maybe the time has come to reevaluate how the doctrine could accommodate other compliance mechanisms not previously considered.

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Chairperson VanHise stated that neither he nor other attorneys in the field have any idea what the Court is intending to do. From the tenor of the questioning, it would seem to be very easy for the Court to say that growth share as a methodology is inconsistent with the FHA, and that the Act is consistent with the Mt. Laurel II doctrine. However, that would leave the essential question of whether or not the Court will affirm the Appellate Division and a return to COAH's Round 1 and 2 methodology, or whether the Court will seek to modify the Mt. Laurel doctrine, for instance to acknowledge that Mount Laurel II set forth one permissible scheme for municipal compliance that the Legislature relied upon in the creation of the FHA, but the Court never intended that to be the only method of compliance, and therefore the Legislature is free to permit other methods. Alternatively, while seemingly unlikely, the Court could reverse the Appellate Division and uphold COAH's methodology, deferring to the administrative agency charged with administering affordable housing in the State.

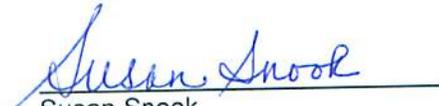
There is currently no timeframes for the Court to issue its decision. Additionally, while not part of the current arguments, the second issue currently pending before the Court is whether or not the Governor has the ability to seize local affordable housing trust funds, essentially to help balance the budget using unspent monies. While these issues remain pending, the reality is the general uncertainty over the affordable housing doctrine combined with the state of the economy has resulted in limited to no housing being built in the state.

VI. Other Business:

None

VII. Adjournment:

The meeting was adjourned at 7:08 p.m. The next meeting will be held on December 20, 2012.



Susan Snook
Secretary

SJS

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