

**Borough of Ho-Ho-Kus
Bergen County, New Jersey
Planning Board Minutes
July 20, 2017
Work Session**

Meeting Called to Order at 7:35PM by Chairman Hanlon

Open Public Meetings Statement: Read into the record by the Board Secretary.

Roll Call: Messrs. Berardo (absent), Pierson, Reade, Newman (absent), Carrick (absent), Policastro, Jones, Councilman Rorty (absent), Chairman Hanlon, Mayor Randall (absent)

Also in Attendance: Gary J. Cucchiara, Esq., Board Attorney; Mr. E. Snieckus, Burgis Associates, Inc., Borough Planner; Ms. Mary Beth Lonergan, Clarke, Caton, Hintz; Mr. Dan Hauben, Clarke, Caton, Hintz; Ms. JoAnn Carroll, Board Secretary

Chairman Hanlon: stated tonight's meeting was the second public hearing of the month; the discussion would be regarding the proposed amendments to the Master Plan; no Board Member conflicts were identified; the notice of hearing has been published in both the Ridgewood News and The Record; the information has been sent to the County Planning Board, the Office of State Planning, surrounding towns: Township of Washington, Hillsdale, Ridgewood, Waldwick and Saddle River; copy of the information has been on file for public inspection.

Mr. E. Snieckus, Ms. Mary Beth Lonergan and Mr. Dan Hauben: sworn in by Mr. Cucchiara.

Mr. Snieckus: stated at the last meeting there was a discussion regarding the Master Plan Reexamination Report; the Housing Element and Fair Share Plan are part of the settlement agreement; the presentation this evening is regarding the Fair Share Plan and Housing Element; the overlay ordinance will also be quickly identified because it has been referred to the Board in connection with the Reexamination Plan.

Mr. Hauben: stated in July, 2015 the Borough filed the declaratory judgment action to the court seeking immunity from exclusionary zone ordinances and builder's remedies; in December, 2016 the Borough entered into a settlement agreement with the Fair Share Housing Center and Chamberlain Developer's Inc.; the settlement agreement established the Borough's obligation and confirmed what the mechanisms would be that the Borough would use to

address that obligation; the court approved the settlement agreements in May and the deadline is next week to adopt and endorse the Housing Element and Fair Share Plan; the obligation the Borough has to address according to the settlement agreement is a rehabilitation share of 7 units which presumably reflects the number of housing units in the Borough that are in poor condition and are occupied by low income households; there is a prior round new construction obligation of 83 units which is similar to what was established by the COAH back in 1993 when they adopted their second round rules; the settlement agreement identified a third round new construction obligation of 195 units for the period of 1999 projected forward to 2025; the agreement granted the Borough a vacant land adjustment which created a 30 unit realistic development potential that reflects the lack of land in the Borough to address the full 278 unit prior and third round cumulative obligation; the Borough is required by the settlement agreement to address the RDP of 30 units with 8 units from the HHK Crossings, mixed use and inclusionary development that was approved in 2015, the Frasco 4 unit mixed-use inclusionary development which is required by the settlement agreement with Chamberlain Developers and what is being referred to as the Borough owned commuter parking site which will be developed with a 13 unit, 100% affordable housing site that will have units for low income families and include special needs units and will also have a veteran's preference for half the units; that site is also required by the Chamberlain settlement agreement; of the 278 cumulative 1987 to 2025 new construction Fair Share obligation, the remaining 248 units will be addressed as unmet need; the settlement agreement requires unmet need to be addressed with three mechanisms; the first is a Development Fee ordinance which the Borough had adopted previously to comply with their unmet need in the second round; this remains in effect; the Borough is also required to adopt a downtown inclusionary overlay district which will permit the creation of multi-family units in the downtown according to the requirements that vary based on the four different sectors of the downtown; it permits multi-family units as long as there is a 20% set aside for low and moderate income households; the third item addressing the unmet need is a Borough wide inclusionary overlay which requires 15% set aside for rental developments, multi-family rental development and 20% set aside for family for sale development that might occur elsewhere in the Borough outside of the downtown overlay; the requirements of that Borough wide inclusionary requirement don't supersede the downtown overlay; the cut off is for a multi-family that provides densities at or above 6 units an acre; the settlement agreement also had a number of other requirements that the Borough must adhere to which include annually monitoring to make sure the Borough is doing what it is required to do by COAH's rules and by the requirements of the settlement agreement; Fair Share Housing Center required that the Borough include a number of community outreach organizations within its affirmative marketing plan; the affirmative marketing plan lays out the program that the Borough must follow to advertise the availability of affordable units; a minimum of 50% of all affordable units created in the

Borough are available to family households which is not age restricted and 13% of all units have to be affordable to very low income households; at least 25% of the units have to be rentals and no more than 25% of the units can be age restricted; within the Housing Plan there are several appendixes that are also being approved as part of the whole plan; they include the spending plan; it addresses a statutory requirement committing that funds received are committed within 4 years; the Plan also includes an affirmative marketing plan; the affordable housing ordinance that includes the Borough wide inclusionary set aside requirement and the downtown overlay ordinance; recommends the Board adopts the Housing Element and Fair Share Plan and the endorsement by the Borough Council; the Borough will request a full judgment of compliance and will repose from the court until 2025 which would provide the Borough with immunity from exclusionary zoning and builder remedy lawsuits; there is a small modification that will be made to the affordable housing ordinance; in the file version it is a provision that is consistent with the settlement agreement which states that any projects that are funded with the low income housing tax credits must have affordability controls for 30 years plus a 15 year extension period; none of the projects are expected to be funded with low income housing tax credits so it has no impact on the plan as it is written now.

Mr. Snieckus: stated as the Board may know this was identified at the last meeting; this will be a component element of the Master Plan; it is required by the MLUL; the Board is looking at adopting this specific document; asked Ms. Lonergan if the document was being adopted this evening for consideration and certification by the court.

Ms. Lonergan: stated it is the judgement of compliance.

Mr. Snieckus: stated that is the ultimate approval of this document but the Board approves it and recommends it to the Governing Body for endorsement and referral to the court for consideration; the document that has been addressed is dated July 7, 2017.

Mr. Pierson: asked for clarification; the allocation criteria or one category is that 13% of units would be set aside for low income tenants would be below 30% of the median and there would be no age restriction; asked if is ever tested.

Mr. Hauben: stated yes, that was correct.

Ms. Lonergan: stated it is definitely tested; part of the package will be the Borough will be retaining an experienced affordable housing administrator entity; Piazza and Associates; he will do the income qualification of anyone coming into any of the units except for where the Borough will be working with the non-profit entity; Bergen County United Way; they will be doing the

administration of the 13 Borough sponsored units; the COAH realm doesn't permit any annual follow up to determine if you are still income eligible over the years; tax credit regulations do; the low income housing tax credit program is a program of the IRS; they do an annual check but not the COAH units.

Mr. Pierson: asked if it were possible, that if you are young and you do not make a lot of money, and you fit this category that you might have appreciable income growth but you are still in a very affordable unit.

Ms. Lonergan: stated she has been working in the affordable housing field for almost 25 years; it is smaller unit; with most people it is the same with people earning above low or moderate income; once they get to a certain age they are moving out of a rental into a home; it really is the same type of self-regulation.

Mr. Jones: stated the hypothetical given is more common in the purchase of a unit.

Ms. Lonergan: stated it is very important to have an experienced administrative agent; they will help and assist the Borough in overseeing the long term administration; this is a program that will be going on for 30+ years; the Borough has done a good job with the plan by having the rental units and especially by having the non-profit; these units will potentially have a veteran's preference; there could be senior citizens or a young family; there is more control over rentals than sales; this puts the Borough in a good position.

Mr. Reade: asked, in regards to the overlay zones which are being created downtown, if the intent is that the 248 units that the Borough is obliged to provide could be developed.

Mr. Hauben: stated not necessarily; with the vacant land adjustment there is an RDP; the town has to provide a very clear number of units from eligible projects that meet that number; in the Borough's case the RDP is 30 units; it is required that the Borough provide enough units to meet the 30 unit RDP; the unmet need is a more passive form of addressing the affordable housing obligation; there has to be a mechanism that can realistically create a substantial number of affordable house units; an overlay will provide an opportunity for a large number of units; doesn't know if 248 is the number which will be arrived at; the idea is that there is something that can create opportunities for redevelopment that will result in more affordable housing.

Mr. Jones: stated if someone chose to, they have to put in an affordable unit; if at some point and time someone said they want multi-family housing on the other side of town, this agreement states if you change your zoning in the future it still has to be 20% in any high-density area; it is a way of getting to the number; this is not changing the ability for there to be a storefront with a couple of apartments over the top.

Mr. Hauben: stated he forgot to touch on one more topic; the Borough has a 7 unit rehabilitation obligation; this means the Borough has to provide some sort of a mechanism by which a home that is occupied by a low income household, that exists, is suffering some type of structural deficiency, there is a program available that they can use to rehabilitate their home; the program would require that home to continue to be affordable or restricted to a low income household for a certain number of years afterward; the Borough intends to use the County's federally CDBG (Community Development Block Grant) funded home improvement program which would provide loans to homeowners that are income eligible that live in Bergen County; the Borough does not have to do anything; loans can be taken out to do rehabilitation of the home that can be counted towards the Borough's credit of its rehabilitation obligation; COAHs rules also require that there is an ability for renter households that are in that income category to also get those rehabilitative services; federally funded programs do not have that option for renters, only for homeowners; currently working on how the rental obligation of the rehabilitation share is going to be provided; the County has a program that is being considered but typically Borough's use a private administrative agent to handle that portion of the work.

Ms. Lonergan: stated she wanted to remind the Board that the settlement agreement with the Fair Share Housing Center actually has a provision where if ultimately, whether it is a court, legislature, potentially a new governor, there may be legislative action again to re-up COAH or create some other administrative entity; if Ho-Ho-Kus' third round obligation is at least 20% lower than the 195 and a court determines that the Borough's number is not 195 but it is at least 20% less than that, the RDP will stay at 30; no one thinks the number will come down to 30, but maybe it will come down to 100; the pressure on the unmet need will come down; if, generally speaking across the State, if there are 100 +/- towns with vacant land adjustments, some of them have tremendous unmet need; over time the thought is to try to grab some affordable housing production; in ten years the town may address it with 2-3 units; the mechanisms have been put in place; it is the market; we hope there are economic incentives into the mandatory set-aside Borough wide ordinance as well as the downtown ordinance to encourage; the Borough has met its realistic opportunity by adopting this.

Opened to the public for questions/comments; no public in attendance; public portion closed.

Mr. Cucchiara: stated, at this stage, Mr. Snieckus made a presentation of the Board's periodic reexamination report of the Borough's Master Plan; recommended to memorialize the approval of the reexamination report by reviewing the resolution that is before the Board; it would be appropriate at this time to entertain a motion to adopt the resolution.

Motion to memorialize the resolution of the periodic reexamination report of the Master Plan: Jones, Pierson

Ayes: Pierson, Reade, Policastro, Jones, Chairman Hanlon

Nays: None

Mr. Cucchiara: stated this would be an appropriate time to review the resolution with regard to the adoption of the 3rd round Housing Element and Fair Share Plan and entertain a motion to adopt the resolution.

Motion to adopt the resolution adopting the 3rd round Housing Element and Fair Share Plan: Pierson, Policastro

Ayes: Pierson, Reade, Policastro, Jones, Chairman Hanlon

Nays: None

Mr. Snieckus: stated Ordinance 2017-10 identifies the downtown inclusionary overlay residential mixed use zones 1-4; that section 85-13.1 was hereby added to Chapter 85 article IV; it speaks about the purpose of the overlay zone and the areas affected; there are special rules associated with each of the four zones; the overlay zones “overlay” the existing zoning, they do not replace the existing zoning; provides basic bulk requirements and unit requirements relevant to the types of overlay developments that will be built under the regulations; permitted uses within the various overlay zones; accessory building and structures as well as prohibited uses; in addition it provides some bulk standards relative to the specific overlay zone requirements; including density requirements, number of stories, as well as a parking requirement relative to those developments; there are mechanisms provided to allow for shared parking based on the ordinance for the mixed use aspect; circulation and landscape requirements; certain building design elements and architectural standards within the requirements; good planning rationale to the buildings and details; the document is to realize and as recommended by the now adopted reexamination report, the requirement of the settlement agreement and is a direct reflection to the 3rd round Housing Element and Fair Share Plan and its substantially consistent with those specific statements within the 3rd round Housing Element and Fair Share Plan as well as the statement within the periodic reexamination report that was adopted at the July 13, 2017 meeting of the Board that identified that those areas should be rezoned in accordance with the specific standards of the overlay zone; this is directly consistent with that; offers to the Board that, in his professional opinion, there would be no findings of inconsistency with the Master Plan; that is primarily what the MLUL is looking for is the recommendation to the Governing Body about any inconsistencies.

Chairman Hanlon: asked if this ordinance helped to address the Board of Adjustment’s concern.

Mr. Snieckus: stated no; that is a separate recommendation; this ordinance does not address that issue; that was the issue of the second story setback; that will be addressed at another time.

Motion to recommend to the Mayor & Council adoption of Ordinance 2017-10 pursuant to the MLUL: Jones, Policastro

Ayes: Pierson, Reade, Policastro, Jones, Chairman Hanlon

Nays: None

Mr. Cucchiara: stated, in view of the recommendation of the Board, we will now report back to the Mayor & Council that the Board has recommended the adoption of Ordinance 2017-10; this can be done by a letter by either the Board Secretary or himself so that it is properly documented; this letter would serve as the Board's report to the Governing Body in respect to its review of the ordinance.

Motion to adjourn: Jones, Pierson

All in Favor

None Opposed

Meeting adjourned at 8:15PM

Respectfully submitted by:

JoAnn Carroll
Planning Board Secretary
August 2, 2017