

**MAYOR AND BOROUGH COUNCIL  
and  
BOROUGH OF CHATHAM PLANNING BOARD**

**JOINT SPECIAL MEETING**

**MINUTES  
December 2, 2015**

Mayor Bruce A. Harris called the Joint Special Meeting of the Mayor and Council of the Borough of Chatham and Borough of Chatham Planning Board to order on Wednesday, December 2, 2015 at 7:30 p.m. in the Council Chambers in the Municipal Building, 54 Fairmount Avenue, Chatham, New Jersey.

**SALUTE TO FLAG**

The Mayor led the assembled in the Pledge of Allegiance.

**MOMENT OF SILENCE**

Mayor Harris asked for a moment of silence for those who have given their lives for our country.

**STATEMENT OF ADEQUATE NOTICE**

Robin R. Kline, Municipal Clerk, read the following statement of adequate notice:

Pursuant to the requirements of R.S. 10:4-10, adequate notice of this joint Special Meeting had been provided to the press on November 24, 2015 and a copy was posted on the Municipal Bulletin Board on the main floor of Borough Hall.

The purpose of this joint Special Meeting will be to discuss and consider support for the filing of the *Draft 2015 Housing Element and Fair Share Plan for the Borough of Chatham* prepared by Susan G. Blickstein, AICP/PP, PhD, the Borough's Planner, with the Morris County Superior Court, Law Division. Formal action may be taken at the joint Special Meeting by both public bodies.

Following the joint Special Meeting, the Borough of Chatham Planning Board will continue with its regularly scheduled business.

**ROLL CALL | MAYOR AND BOROUGH COUNCIL**

On a call of the roll, the following officials were present:

Mayor Bruce A. Harris  
Council Member James J. Collander  
Council Member John Holman  
Council Member Victoria Fife  
Council President Gerald J. Helfrich  
Council Member Alida Kass  
Robert J. Falzarano, Borough Administrator  
James L. Lott, Jr., Borough Attorney  
Robin R. Kline, Borough Clerk

Council Member James Lonergan was absent.

## **ROLL CALL | BOROUGH OF CHATHAM PLANNING BOARD**

On a call of the roll, the following officials were present:

Mayor Bruce A. Harris  
Council Member Victoria Fife  
Mrs. Janice Piccolo  
Mr. Matthew Wagner  
Mr. H.H. Montague [arrived at 7:45 p.m.]  
Mr. James Mitchell  
Mr. Joseph Mikulewicz  
Mr. William Heap, 1<sup>st</sup> Alternate  
Mr. Wolfgang Robinson, 2<sup>nd</sup> Alternate  
Vincent Loughlin, Board Attorney  
Dr. Susan Blickstein, Board Planner  
Liz Holler, Recording Secretary

Chairman Susan W. Favate and Mr. John Bitar were absent.

Mayor Harris opened the meeting to the public for public comments. He announced that a second public comment period would be added to the agenda after the Borough Council and Planning Board have discussed the *Draft 2015 Housing Element and Fair Share Plan for the Borough of Chatham* to allow an opportunity for interested individuals to give comments related to the report.

Mayor Harris proceeded to open the meeting to the public for public comments about any other issues.

### **MEETING OPEN TO THE PUBLIC**

#### **NOTICE OF PUBLIC COMMENT TIME LIMIT**

Hearing of citizens during the Public Comment section of the Agenda is an opportunity for any member of the public to be heard about issues, which are/are not topics scheduled for Public Hearing tonight. To help facilitate an orderly meeting, and to permit all to be heard, speakers are asked to limit their comments to a reasonable length of time.

Seeing no one wishing to speak, Mayor Harris closed public comments and proceeded with the discussion item on the agenda.

### **DISCUSSION ITEM**

***Draft 2015 Housing Element and Fair Share Plan for the Borough of Chatham, prepared by Susan G. Blickstein, AICP/PP, PhD***

Mayor Harris opened the discussion by asking Mr. Lott to provide a brief background regarding affordable housing in New Jersey and the recent New Jersey Supreme Court decision on COAH.

Mr. Lott reported that pursuant to the March 12, 2015 New Jersey Supreme Court decision, municipalities that had attained substantive certification under the invalidated Third Round Rule, or were participating in the COAH process under these rules, would have 120 days from the date of the Court's decision to file a declaratory judgment action seeking temporary immunity from Builder's Remedy litigation. Municipalities who filed declaratory judgment actions would then have five months to submit their housing element and fair share plan for judicial review and approval or risk being sued under the Builder's Remedy doctrine. The Borough Council authorized the filing of a Declaratory Judgment with the court and in doing so gained temporary immunity from potential actions under the Builder's Remedy doctrine until January 7, 2016. Mr. Lott further reported that, according to a report

prepared by the New Jersey Fair Share Housing Center, an advocacy group, the Borough would be required to provide 486 affordable housing units.

Mr. Lott further reported that the Borough needs to submit a housing element and fair share plan prior to the expiration of the period of immunity. He mentioned that both the Borough Council and Planning Board have held several closed sessions to discuss this matter and have taken some pro-active actions, such as retaining Dr. Blickstein, the Borough's planner, to prepare a housing element and fair share compliance plan, which is the subject of tonight's discussion. He further mentioned that if the 2015 Draft *Housing Element and Fair Share Plan for the Borough of Chatham* is approved by the Mayor and Borough Council and the Planning Board tonight, the draft report would be filed with the Superior Court before the end of the week. He reported that the draft report would be released to the public upon its filing with the court.

Mr. Lott reminded the Borough Council and members of the Planning Board that they must ensure that all attorney-client privileges are maintained throughout this hearing since the Borough is in litigation.

Dr. Blickstein presented the 2015 Draft *Housing Element and Fair Share Plan for the Borough of Chatham* (the "Fair Share Plan") and explained that the report relies on population, demographic and housing data generated from the U.S. Census Bureau and American Community Survey program in addition to state and county data. Dr. Blickstein reported that the Fair Share Plan confirms that the Borough fully complied with its prior round obligation of Realistic Development Potential ("RDP") consisting of 23 units, and further reported that the Borough's "present need," previously referred to as the "Rehabilitation Share," has also been met.

Dr. Blickstein stated the RDP is addressed through a plan for 22 new affordable units and 8 units that the Borough extended controls on at Schindler Court. Dr. Blickstein emphasized that the Borough's Fair Share Plan relies on the 2013 Master Plan and inclusionary zoning of the Gateway Overlay, M Districts and Bowers Lane areas. She stated that the Gateway Overlay would contribute towards satisfying the Borough's affordable housing obligation because the zoning requires a 20% affordable housing component. For every five units built, one unit must be affordable.

In closing her presentation, Dr. Blickstein noted that there are certain administrative actions, including updating the Borough's affordable housing ordinance, that the Borough must address in order to fully-implement its Fair Share Plan. She expressed her opinion that the plan provides a reasonable opportunity for the construction of affordable housing.

Mayor Harris invited questions from the Borough Council and the Planning Board.

Mr. Mikulewicz inquired whether the Madison Chatham Joint Meeting would be able to handle the additional capacity needed to satisfy the Borough's RDP. Mayor Harris responded that the Madison Chatham Joint Meeting performed a capacity study, which confirmed there was sufficient capacity; however, collection systems and infrastructure would need to be improved.

Mr. Mikulewicz further inquired how much of the unmet affordable housing need from prior COAH rounds would still need to be met. Dr. Blickstein responded that the Gateway Overlay was rezoned to address unmet need and the re-zoning positions the Borough needed to be able satisfy its RDP.

Council Member Holman expressed concern on the impact that large-scale residential development may have on the school district and questioned its financial burden on taxpayers. Dr. Blickstein responded that the Borough is in a good position to present a strong argument that the housing advocates figure of 486 affordable housing units is not feasible. She further mentioned that a fiscal analysis has not yet been prepared.

Mr. Heap pointed out that Chatham Borough likely has a smaller COAH obligation compared to municipalities such as Randolph Township or Mount Olive Township, which have large tracts of

developable land. He inquired whether the State has penalized communities that have not complied with their affordable housing obligation, or if developers have filed actions under the Builder's Remedy. Dr. Blickstein responded that Builder's Remedy litigation has been a primary tool used by developers.

Mr. Montague inquired whether the Borough could re-initiate a Regional Contribution Agreement ("RCA") with another community as it has done in past years. Dr. Blickstein reported that RCA's are no longer permitted and that communities must satisfy their affordable housing obligation within its municipal boundaries. Mr. Lott further advised that the state legislature eliminated the RCA; however, a judicial immunity would protect the Borough from Builder's Remedy litigation.

Seeing that there were no more questions from the Borough Council or Planning Board, Mayor Harris closed discussion and opened the meeting for public comments.

## **PUBLIC COMMENT**

Andrew Clark, 37 Girard Avenue, inquired what procedural steps the Borough must take to receive protections from a Builder's Remedy lawsuit against the Borough. Dr. Blickstein responded that if the Borough's Fair Share Plan were accepted by the court, the Borough would be provided immunity from builder's remedy lawsuits.

Michael Dean, 181 North Passaic Avenue, inquired when the public would have an opportunity to review the 2015 Draft *Housing Element and Fair Share Plan for the Borough of Chatham* and provide input. He also inquired whether senior housing would satisfy the affordable housing obligation and questioned the impact of flooding and other environmental conditions on the Borough's ability to further develop. Lastly, Mr. Dean noted that Bowers Lane is the only area in the downtown area included in the Borough's Fair Share Plan and commented that he hoped that no additional parking and development would be considered for this area.

Mr. Lott responded that if the court approves the Borough's draft plan, the Borough would then finalize the plan. The public would have an opportunity to provide input before the Fair Share Plan is finalized. Dr. Blickstein further responded that a town could not meet its entire COAH obligation through construction of age-restricted housing.

Nancy Conrad, 18 Orchard Road, inquired if affordable housing applies to both rental and owned residential units and questioned what other areas in the Borough have been re-zoned for affordable housing development. She further inquired whether property belonging to the Stanley Congregational Church was being considered for affordable housing and what input a citizen might have in challenging the potential development of housing on that property. Dr. Blickstein responded that both rental and owned units qualify for affordable housing credits. She also stated that the Stanley Congregational Church property is not included in the Borough's Fair Share Plan.

Jean-Eudes Haeringer, 62 North Summit Avenue, asked what the cost might be should the Borough not satisfy its affordable housing obligation and inquired if developers could seize land for development as they see fit. Mr. Lott responded that should the Borough do nothing, it would be in violation of a Court Order and could expose itself to a Builder's Remedy lawsuit. Mayor Harris clarified that under the Builder's Remedy, the court would grant developers approval to build, and the Borough would have limited opportunities to object.

Kevin Murphy, 14 Orchard Road, sought clarification on what properties in the Borough are zoned for inclusionary zoning. He inquired whether the Stanley Congregational Church property could be re-zoned for affordable housing and inquired what would happen if private property owners did not sell their land and there were no opportunities for affordable housing development in the Borough. Mr. Lott advised that the Borough has an obligation to provide zoning potential that creates affordable housing

opportunities. Dr. Blickstein confirmed that the Stanley Congregational Church property is not included in the Borough's Fair Share Plan.

Patrick Carroll, 163 Hillside Avenue, sought clarification on the number of affordable housing units the Borough is required to provide. Dr. Blickstein reported that the formula put forth by the affordable housing advocates states the Borough has an obligation to accommodate 486 affordable housing units. She explained that the Borough's RDP calculation of 30 units was documented in the Plan and that the Borough is seeking a vacant land adjustment.

Janice Perrone, 82 Fairmount Avenue, inquired when Judge Hansbury would rule on the Borough's Declaratory Judgment action and further inquired whether additional affordable housing unit credits are given for units that are built close to transportation centers. She asked if there was a possibility that additional development could be built near the train station. Dr. Blickstein answered that under the New Jersey Smart Growth program, smart growth planning areas may qualify for a slight bonus of a third (1/3) of a unit for every one unit of affordable housing that may be constructed. She reported that other than Bowers Lane and the Gateway Overlay, no other area in the Borough has been re-zoned for affordable housing. Dr. Blickstein lastly responded that the area near the train station is an important parking resource for commuters and has not been examined for affordable housing build-out.

Seeing no one else wishing to speak, Mayor Harris closed public comments.

## **RESOLUTIONS REQUIRING SEPARATE ACTION**

Mayor Harris asked Council Member Collander to proceed with Resolution #15-364.

### **RESOLUTION #15-364**

**RESOLUTION OF THE MAYOR AND COUNCIL OF THE BOROUGH OF CHATHAM, COUNTY OF MORRIS, NEW JERSEY, SUPPORTING THE FILING OF THE DRAFT 2015 HOUSING ELEMENT AND FAIR SHARE PLAN FOR FILING WITH THE MORRIS COUNTY SUPERIOR COURT, LAW DIVISION, IN CONNECTION WITH THE DECLARATORY JUDGMENT ACTION FILED BY THE BOROUGH, I/M/O THE BOROUGH OF CHATHAM AFFORDABLE HOUSING COMPLIANCE, DOCKET NO. MRS-L-1906-15**

Council Member Collander offered the following Resolution and moved its adoption:

**BE IT RESOLVED**, that this Resolution as read by title be adopted and passed.

Council Member Holman seconded the motion.

Mayor Harris asked the Borough Clerk for a Roll Call Vote.

Name	Motion	Second	Yes	No	Abstain	Absent
Collander	X		X			
Lonergan						X
Holman		X	X			
Fife			X			
Helfrich			X			
Kass			X			

Mayor Harris asked Planning Board Member Mr. Montague to proceed with Resolution #PB15-22.

**BOROUGH OF CHATHAM PLANNING BOARD  
RESOLUTION #PB 15-22**

**RESOLUTION SUPPORTING THE FILING OF THE DRAFT 2015 HOUSING ELEMENT  
AND FAIR SHARE PLAN FOR FILING THE MORRIS COUNTY SUPERIOR COURT, LAW  
DIVISION, IN CONNECTION WITH THE DECLARATORY JUDGMENT ACTION FILED BY  
THE BOROUGH, I/M/O THE BOROUGH OF CHATHAM AFFORDABLE HOUSING  
COMPLIANCE, DOCKET NO. MRS-L-1906-15**

Mr. Montague offered the following Resolution and moved its adoption:

**BE IT RESOLVED**, that this Resolution as read by title be adopted and passed.

Mr. Wagner seconded the motion.

Mayor Harris asked the Borough Clerk for a Roll Call Vote.

Name	Motion	Second	Yes	No	Abstain	Absent
Mayor Harris			X			
Council Member Fife			X			
Mrs. Piccolo			X			
Chairman Favate						X
Mr. Wagner		X	X			
Mr. Montague	X		X			
Mr. Bitar						X
Mr. Mitchell			X			
Mr. Mikulewicz			X			
Mr. Heap [1 <sup>st</sup> Alt.]			X			
Mr. Robinson [2 <sup>nd</sup> Alt]			X			

Having no further business to conduct at the joint Special Meeting, Mayor Harris adjourned the joint Special Meeting and announced that the Planning Board would hold its regular scheduled meeting immediately following the joint Special Meeting

**ADJOURNMENT**

Meeting adjourned 8:46 p.m.

Respectfully Submitted:

*Robin R. Kline*

Robin R. Kline, MAS, RMC, CMR  
Borough Clerk  
BOROUGH OF CHATHAM