

**Borough of Watchung
Planning Board Meeting
th
July 20 , 2010
Minutes**

Chairman Speeney called the meeting to order at 7:38pm. Salute to the flag. The Chair called for a roll call. Present at the call of the roll were: Speeney (X) Boyd (X) Havas (A) Haveson (X) Addario (A) Pennett (A) Schaefer (X) Beck-Clemens (X) Panzarella (X) Ellis (A) Pote (X)

Chairman Speeney indicated there was a quorum to conduct business and indicated that Mrs. Beck-Clemens and Mr. Panzarella will be voting at this meeting. The Chair stated that this meeting was being held in compliance with N.J.S.A. 10:4-6 et. seq. of the open public meetings law and proper notification of this meeting has been made. Chairman Speeney sought a motion to approve the minutes of the meeting of June 15th, 2010 as published and waive the reading. That motion was made by Mr. Boyd, seconded by Mr. Haveson and approved by voice vote. The minutes were approved.

The Chair moved to the public hearing on the Housing Element and Fair Share Plan. The Chair said that Marcia Schiffman of Maser Consulting would make a presentation. Ms. Schiffman, a professional planner for the Borough came to the microphone and was sworn in by Mr. Linnus. Ms. Schiffman explained she is employed by Maser Consulting and is a professional planner appointed as planner for the Borough in terms of the Housing Plan. Ms. Schiffman said that the board received two documents. One is the Housing Element and Fair Share Plan adopted by this board in December of 2008, and has now been amended dated July of this year. The Chair explained that the process would be for Ms. Schiffman to make a presentation tonight and the board would ask questions. Then there will be an opportunity for the public to ask questions and make comments. There is also a memorandum written by Ms. Schiffman regarding affordable housing overlay zoning study. Ms. Schiffman went over the history of when she was last before this board in December of 2008 when the housing plan was adopted. Once the H.E.F.S.P. was adopted by the Planning Board, it went before the Mayor and Council, who approved it for filing with COAH. The plan was filed with COAH on December

30th, 2008. At the beginning of February of 2009 COAH came back and said that the plan was complete. After that, the H.E.F.S.P. was published for public notice and public comment. At that time, there were two objectors to the plan. The two objectors were the Fair Share Housing Center who has objected to many of the plans before COAH and one resident of Watchung, Kevin Hammel of East Drive, who was objecting to the affordable housing site on East Drive. We received a report from COAH called the pre-mediation report. This report described the plan, the objector's comments, and had a number of items that needed to be addressed by the Borough to complete the plan. She said that there have been two mediation sessions held. They were held in December and January. There was additional documentation that needed to be done that was done by the Borough and submitted to COAH. Ms. Schiffman said that there are 3 elements that affect this plan that have to be addressed. The Borough directed Ms. Schiffman to prepare the zoning overlay study. This study addresses one of the issues, which is "unmet need". The results of that report have been incorporated into this study. Ms. Schiffman said that mediation is almost terminated, although the Borough has not gotten the official notification from COAH yet. Once terminated the process will move forward with COAH. Then the Borough can progress through certification. The reason the Borough amended the housing element was to address changes that were made by COAH. The changes included two elements. One element was looking at the growth share projections that were done as part of the third round plan. Through 2018, you must project what kind of development will occur, both residential and non-residential. Ms. Schiffman said that in the data provided by the state, there were some errors in the certificate of occupancy data, and the growth share analysis that was done had to be amended. The plan shows the amendment to those numbers. The Borough did some additional research and looked at some housing that could be considered as demolitions. COAH has some specific regulations on what you can consider as a residential or non-residential demolition as to what you can get credit for. The Borough was able to include 3 housing units as demolition. In the plan, what has changed is the table on page 34 and 35. Our number, according to the new calculations has gone down slightly. In 1994 COAH determined that if you had an unmet need, you had to take certain actions. A development fee ordinance and an accessory apartment regulation were implemented to try and give a realistic attempt to meet this unmet need. COAH in this pre-mediation report has said to the Borough that they want the Borough to see how it can better address this unmet need. This is the reason for the overlay zone. In terms of the growth share COAH projected 73 units, based on the vacant land assessment. The Borough looked at the vacant land and what has already been built. Some properties could be excluded from the growth share obligation. The amount was reduced

to 42 from 48 units. COAH is still reviewing this study, and we are hopeful it will be approved. The implementation schedule has also been changed in the plan, as shown on page 35. Construction of East Drive project will be earlier than we had planned. Originally this was to start in 2012 or 2013, but under COAH rules, is now is amended to go out with an RFP by the end of 2010. Ms. Schiffman said those are the two elements that have changed. The third element that has been changed in the plan is adding an affordable housing overlay zone. Ms. Schiffman said that in the pre-mediation report, this was specifically identified by COAH as an option that the Borough could consider. The objectors in the mediation also identified it. COAH toured the Borough in 2009 and reviewed the maps and vacant land, and specifically honed in on Mount Saint Mary's frontage as being a potential opportunity for an overlay zone for an opportunity to build affordable housing. Ms. Schiffman explained that an overlay zone is a tool that creates a special zoning district over the base zoning. It has special provisions to allow development in addition to base zoning. In this case an overlay zone was considered affecting two properties, Mount Saint Mary's and Liccardi Ford. The underlying zoning still remains. If it is already zoned commercial, you can build a permitted commercial use on that property. The overlay zone is designed to provide the 37 unit unmet need, and if it provides more than that, some potential growth share requirements. Ms. Schiffman said that they looked at the Route 22 corridor from Blue Star Shopping Center to the Wal-Mart Shopping Center. Mr. Linnus asked Ms. Schiffman to mark the aerial photograph as exhibit A-1, dated 7/20/10 and the overlay zone map showing the two properties that were included in the overlay zone as exhibit A-2, dated 7/20/10. Ms. Schiffman marked a map that looked at environmental constraints as exhibit A-3 dated 07/20/10. This map was based on DEP data. It included wetlands, floodplain areas, flood prone areas, steep slopes and other factors. She said that they also looked at DEP data for sites that have been identified as being contaminated. Also looked at, were building conditions and utilization ratio, which is the ratio between the building value and the land value. She said that they also looked at what would be the minimum size property that they would need to build a reasonable size project on the site. They determined that they would need a minimum of four acres with a certain setback relative to wetlands. Ms. Schiffman said that of all the properties, they identified 10 properties that were four acres or larger. One property was ruled out (Watchung VF, LLC) behind BJ's due to steep slopes and wetlands. Then they looked at redevelopment potential. Others were ruled out because it was not reasonable to assume that an overlay would work for them, realistically. They went from 10 down to 3 properties in this process. This left Liccardi Ford, Mount Saint Mary's and Sears Auto Center. Sears Auto was ruled out due to the fact that it is listed on the NJDEP contaminated sites list.

Liccardi Ford is a five acre property. Another map marked exhibit A-4 was introduced dated 7/20/10 showing Liccardi Ford and a portion of Mount Saint Mary's property. She said that in terms of the overlay zone, they made recommendations of what the density should be. They determined either 14 units per acre for market sale units and 18 units for rental. For Liccardi, there is a potential of either 70 or 90 units. Mount Saint Mary's overlay contains only a portion of the frontage that includes an area next to Liccardi and an area along the current driveway going up to the main buildings. It does not include the tennis courts or ball fields. It measures about 13.7 acres. There are about 5 1/2 acres constrained by wetlands. There would be a possible 192 for sale residences and over two hundred units for rental, with 50 of these affordable. Ms. Schiffman said that both sites together would exceed the unmet need. The draft plan includes the issue of unmet need, a summary of the results of the study and proposes to recommend a zoning overlay for those two properties. It includes a draft ordinance that includes the standards for the zone. It would permit as an overlay zone, garden apartments, and three stories with 35 feet as the maximum height. It would have a maximum gross density of 14 units for sale and 18 units for rentals. There are measurement requirements, parking requirements and affordable housing requirements. Ms. Schiffman said that the three changes are that the numbers went down, the schedule changed, and the overlay zone was added. Other than that, the plan stays the same.

Chairman Speeney opened to discussion from the board. Mr. Boyd asked what the process was to make this happen, since the land is privately owned. Ms. Schiffman explained that the first step is for the Planning Board to approve this plan, then COAH mediation and certification. The Borough will have to repetition this revised plan with COAH. There will be another public hearing with an opportunity for people to respond. Once adopted, it would be up to the property owner to utilize the overlay zoning if they wished. There is nothing to force the property owners to participate; these properties could remain with the base zoning. Chairman Speeney asked relative to satisfying the Borough's affordable housing, if we move ahead with this overlay and at some point the property owners say that they do not want to participate, what happens to the Borough's liability? Ms. Schiffman replied nothing...the Borough has made a realistic effort and provided an opportunity and it is up to the property owner and the market. Mr. Haveson said that if the property owner does not participate, that this only meets the unmet need on paper. Ms. Schiffman said that yes, on paper it meets the need. If it doesn't get built, at least the Borough has done it's due diligence. Chairman Speeney worried about COAH coming back and saying that if it doesn't happen, COAH would not think that the Borough has met it's need. Chairman Speeney asked why we haven't done

this overlay before? Mr. Haveson asked what if East Drive doesn't get built? Ms. Schiffman said that the rules and the obligations stay the same, and it needs to get built. If it doesn't, the Borough needs to come up with another site. Mr. Haveson asked what if the Governor makes the changes that are talked about, and COAH as we know it goes away? He asked what will happen to East Drive then? Ms. Schiffman said that we will have to see what those changes are. The Borough could then go ahead and change the plan again according to what the new rules are. She said that currently S-1 was adopted by the Senate and is now before the assembly. She said that in S-1, there is still a growth share obligation, and the question is what will happen with the prior round or unmet need.

The Chair said that it is important to understand the importance of the overlay zone and its impact, and what we have done with East Drive and its impact. He said that Ms. Schiffman has indicated quite clearly that the participation of the land owners is the trigger point. Mr. Panzarella said if the Borough runs out of land, we'll be going after property owners all over. Ms. Schiffman said that there is very limited property available right now in the Borough. She said that if this doesn't get built, you're not going to be responsible, but have made a good faith effort. Ms. Schiffman said this is all based on current rules, and we don't know what is going to happen, but likely there will be a change. Mr. Linnus agreed that these rules are in a state of flux, and that you can only make your decisions based on what the current rules are. The Chair said that his greatest fear is that if we find ourselves in a position where we have no land to develop, that a developer will find that land and develop it. Hearing no one else from the board, the Chair opened the public portion for comments. Ned Cohn, Esq. came to the microphone as a representative of the Liccardi property. Mr. Cohn said he might have misheard or misunderstood, but asked if this ordinance was adopted and his client was to make a conforming application under current zoning for a shopping center or expansion of his dealership unrelated to the overlay, does he have any COAH responsibility then? Mr. Linnus said none. Mr. Linnus said that there are other regulations that might be in effect such as the developer's fee, growth share contributions etc. Mr. Linnus said there was nothing to stop Mr. Cohn's client from submitting a conforming application under current zoning to whatever appropriate board there is. Mr. Cohn asked if this overlay would not prejudice this application. Mr. Linnus said that it should not prejudice the application. Mr. Cohn said that what brought his client here tonight is the fear that their property is being zeroed in on to fulfill a town need. Mr. Linnus said that if they have a conforming application before an appropriate board, there is no reason why they should not get an approval. Mr. Linnus said he is trying to look into the future and that is

not appropriate. He said that the Planning Board is not adopting any ordinances, and his questions are beyond the scope of this board. Mr. Cohn said that he just wanted it on the record that from his point of view, that he wanted to make sure that his client wasn't being punished or prejudiced because they happened to own the property that had been picked out along Route 22. Mr. Cohn had no more questions and thanked the board for it's time. Mrs. Gerry Breitenbach came to the microphone. Mrs. Breitenbach stated she lives on 76 Skyline Drive in Watchung. She said she has been a resident of Watchung for over 40 years and has seen many changes. She rode on the Rescue Squad for years and was not surprised by the recent bad accidents that happened on Route 22 and Bonnie Burn Road. She said she has never agreed with all that COAH has done. Mrs. Breitenbach said she is wondering why COAH would allow a town to build houses and put people in such a dangerous area. She said her street is peaceful and quiet. She said that when explaining to her friends where she lives, she explains that it is like living on an island, she can't get on and she can't get off. She said it is like that everyday, and it is a dangerous situation that COAH has gotten us into. Seeing no one else from the public coming forward the Chair asked for a motion to close the public portion of the hearing. Mrs. Schaefer made that motion, seconded by Mr. Haveson and called for a voice vote. Voice vote was unanimous to close the public portion. The Chair went back to the board for discussion. Chairman Speeney asked Ms. Schiffman a question regarding page 23 of the plan dealing with growth share. He said that in the housing projections it shows 131 housing units, which generate a third round obligation of 26.2. Chairman Speeney asked if the 26.2 is added to the 131. Ms. Schiffman said no. Hearing no further discussion, the Chair suggested that the board entertained a resolution supporting the H.E.F.S.P. as amended and forwarded it to the Mayor and Council. Chairman Speeney explained that Mr. Linnus, in anticipation of a possible recommendation this evening, has written a resolution reflecting that and the Chair read the resolution into the record. Chairman Speeney read resolution PB10-R8. Mr. Linnus said there was a clarification on findings of fact number 1. Mr. Linnus asked Ms. Schiffman if it was the Borough who adopted the H.E.F.S.P. on December 2nd, 2008 or was it this Planning Board. Ms. Schiffman said that the HEFSP was adopted by the Planning Board on December 2nd, 2008, but the Borough petitioned COAH. Mr. Linnus said it was finding of fact number 1 which should read "the Borough Planning Board adopted and the Borough petitioned COAH". Mr. Linnus said that likewise on findings of fact number two it should state that the Borough Planning Board proposes to amend it's H.E.F.S.P. Chairman Speeney thanked Mr. Linnus. Chairman Speeney accepted the reading of this resolution into the record as a motion to approve

and sought a second. Mr. Haveson seconded the motion. Mr. Haveson said while he doesn't agree with what the rules are, he suggested we stop at findings of fact number 5. He said that on number 6, he doesn't agree with the word "enhances" affordable housing opportunities. The Chair suggested substituting the word enable instead of the word enhanced. Councilman Pote said he agreed with Mr. Haveson. He said he didn't see anything of value in number 6, that isn't already in number 5. Ms. Schiffman said that she thought it was very important to include the phrase "to provide for the Borough's unmet need" in the findings of fact. She said that is the main purpose for why we are doing this. After much discussion, there was an amendment to the motion to completely delete findings of fact numbers 5 and 6. All points were made in findings of fact number 2. The Chair asked if there was any further discussion. Hearing none, the Chair asked the Clerk to call the roll. The roll call vote was as follows.

Speeney (yes) Boyd (yes) Haveson (yes) Schaefer (yes) Beck-Clemens (yes) Panzarella (yes) Pote (yes)

The motion carried.

Chairman Speeney thanked Ms. Schiffman and Mr. Linnus for all their work. The Chair asked

Chairman Speeney introduced a letter dated July 19th, 2010 to Councilwoman Debra Joren from the Planning Board ordinance committee who responded to a request to once again look at the issue of large homes on small lots. Chairman Speeney said that the ordinance committee met and reviewed several mechanisms that other towns have used. He said it is complicated to say the least and they drafted a letter back to Councilwoman Joren, but this letter must come from the Planning Board. He asked that board members listened to the significant points of this letter, and either agree or disagree to send it back to the Council Ordinance Committee of which Councilwoman Joren is Chair. This committee met to discuss large homes on small lots specifically in the R-A and R-B zones, but also in the R-R zone. The committee agrees with the fundamental issue that building should proceed in accordance to existing zone specifications. Chairman Speeney said his primary concern is to maintain the character of neighborhoods and not change bulk or other setback requirements. Wildwood Terrace and Beechwood were two examples of oversized homes for the character of the neighborhoods. They did not know of variances that were granted, however. The committee wants to stick to the current zone plan. Councilman Pote said that he wasn't sure that the board was addressing the issue at hand. He said that this was generated from the home at the top of Washington Rock Road. What it has is the max size footprint for the size of the

land it has. What the Council is trying to do is to get the Planning Board to look at that house, for example which doesn't violate any requirements of its zone, but has a footprint that far exceeds what should be built there. That home is on three acres, but it is a 22,000 sq. ft. home. Councilman Pote said it just doesn't belong on three acres, and we are trying to avoid another situation of someone else buying two lots and putting them together putting a home that just doesn't belong there. Mr. Haveson said that he understands what Councilman Pote is trying to say, but he thought the draft letter addresses what he is trying to do. Mr. Haveson said that the plans for the Washington Rock home never came before this board. Mr. Linnus explained that if someone has a single lot that doesn't require a subdivision and has a conforming application for zoning, that it goes straight to the Zoning Official who checks the setbacks and zoning and that is it. Mr. Linnus said that what you may need is an ordinance change. Mr. Haveson said that in the draft letter, they state that this board has no knowledge of what variances have been granted by the board of adjustment. It states that we have not received any reports from the board of adjustment as required by the MLUL, concerning the types of variances that are being granted. Mr. Haveson said that he believes that the Council ordinance committee should not be before this board with this question. He believes that this should be asked of the Board of Adjustment, who are making these decisions. Mr. Haveson said that he believes Councilwoman Joren is asking this board to respond to something that we have nothing to do with. Chairman Speeney said that the house on Rock Road east was never conveyed as the primary motive is to why this issue was raised. He was under the impression that it was an issue of infill on streets that were already established. He said that this home is not a typical problem in this Borough. He thought the real issue is in the R-A and R-B zones. Mr. Herits advised there is another one of these scenarios in the process right now on Jared Court. This will be another home of approximately 20,000 square feet. Councilman Pote said that when there are no non-conforming issues these homes don't go before either board. Chairman Speeney said that this problem was not conveyed to the subcommittee. Councilman Pote said that he had sat and spoken with the Chair about this. Tom Herits said if you just look at the zoning requirements, 15% of three acres is about 20,000 square feet. Mrs. Schaffer said there is another home on Skyline drive that is huge. Chairman Speeney said that you could put a limit on building coverage. Mr. Linnus cited from the Cox book Rumson estate vs. the Mayor of Fairhaven. Rumson upheld a cap for floor area. He said that the Council could consider an ordinance capping the floor area for a single dwelling irregardless of the lot size. He said this might help to avoid this situation. Ms. Schiffman said that studies need to be done for special

requirements in the R-A and R-B zones. Ms. Schiffman said that floor area ratio is a tool which could be used. Ms. Schaffer brought up the idea of using a percentage of the lot. The board decided to send a letter back to the Council Ordinance Committee saying that three things that they can explore are a cap on floor area, floor area ratio and building coverage. The Chair asked the Clerk to send a letter making these suggestions to the Council Ordinance Committee. The Chair said that as a sub-committee he admits that they missed the boat. The Chair asked for a voice vote for this letter to be sent. The committee all agreed by voice vote.

The Chair asked if there was anyone from the public who wished to speak. Hearing none, closed the public portion of the meeting. Mr. Boyd proposed a site visit to the site of the upcoming application by Horst Oertel. The site visit subcommittee scheduled a site visit.

Hearing no more discussion, the Chair adjourned the meeting until the next meeting of August 17th, 2010.

Respectfully Submitted,

Carolyn Taylor
Planning Board Clerk