

**MINUTES
TOWNSHIP COMMITTEE
SPECIAL MEETING
JANUARY 7, 2020**

Mayor Kelly called the Special Meeting of the Township Committee of the Township of Chatham to order at 6:00 P.M.

Adequate Notice of this meeting of the Township Committee was given as required by the Open Public Meetings Act as follows: Notice was given to both The Chatham Courier and the Morris County Daily Record on January 3, 2020; notice was posted on the bulletin board in the main hallway of the Municipal Building on January 3, 2020; and notice was filed with the Township Clerk on January 3, 2020.

Mayor Kelly led the Flag Salute.

Roll Call

Answering present to the roll call were Committeewoman Ewald, Committeewoman Fondaco, Committeewoman Swartz, Deputy Mayor Ness and Mayor Kelly.

Approval of Agenda

Deputy Mayor Swartz moved to approve the Agenda. Committeewoman Ewald seconded the motion, which carried unanimously.

Executive Session

**RESOLUTION 2020-P-01
RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CHATHAM IN
THE COUNTY OF MORRIS, STATE OF NEW JERSEY, AUTHORIZING CONFERENCE OF
THE TOWNSHIP COMMITTEE WITH THE PUBLIC EXCLUDED**

WHEREAS, N.J.S.A. 10:4-12 of the Open Public Meetings Act permits the exclusion of the public from a meeting in certain circumstances; and

WHEREAS, the Township Committee of the Township of Chatham is of the opinion that such circumstances presently exist.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, as follows:

1. The public shall be excluded from discussion of the specified subject matter.
2. The general nature of the subject matter to be discussed is as follows:
 - a. Litigation: In the Matter of the Township of Chatham for a Judgment of Compliance of its Third Round Housing Element and Fair Share Plan Docket No. MRS-L-1659-15
 - b. Litigation: Christopher & Ashley Felice v. Township of Chatham Docket No. 002717-19
3. It is anticipated that the minutes on the subject matter of the Executive Session will be made public upon conclusion of the matter under discussion; and in any event, when appropriate pursuant to N.J.S.A. 10:4-7 and 4-13.
4. The Committee will come back into Regular Session and may take further action.
5. This Resolution shall take effect immediately.

Committeewoman Swartz moved to adopt Resolution 2020-P-01 to enter Executive Session at 6:03 PM. Deputy Mayor Ness seconded the motion.

Roll call: Committeewoman Ewald, Aye; Committeewoman Fondaco, Aye; Committeewoman Swartz, Aye; Deputy Mayor Ness, Aye; Mayor Kelly, Aye.

The Committee returned to Public Session at 7:33 PM.

Resolutions

**RESOLUTION 2020-040
RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF
CHATHAM APPOINTING MEMBER TO THE BOARD OF HEALTH**

BE IT RESOLVED by the Township Committee of the Township of Chatham that the following appointment be made effective immediately:

Board of Health

Term Expires

Katherine Fowler

December 31, 2022

Deputy Mayor Ness moved to adopt Resolution 2020-40. Committeewoman Ewald seconded the motion.

Roll call: Committeewoman Ewald, Aye; Committeewoman Fondaco, Aye; Committeewoman Swartz, Aye; Deputy Mayor Ness, Aye; Mayor Kelly, Aye.

Update and General Discussion Regarding Affordable Housing

Mayor Kelly said that the purpose of this meeting is to update the public on recent affordable housing actions, to consider public comments, and to authorize the Township Attorney to Make necessary Court filings pertaining to affordable housing litigation. Mayor Kelly elaborated that Judge Gaus required the Township to file the request for an extension by motion, and that paperwork needs to be filed by January 10, 2020. A hearing will be held on February 14th regarding the extension request. Mayor Kelly said that an update will be given on the Township's progress by the Township Administrator, and the Township Attorney will explain the draft resolution authorizing the filing of the requisite court documents. Public comment will also be entertained, after which the Township Committee will discuss the resolution. Mayor Kelly said that a vote on the resolution is anticipated at this meeting.

Administrator Hoffmann reported that the DEP has given a positive response to the Township's request to allow additional development at the Skate Park site using a 75-foot buffer rather than a 150-foot buffer. He stated that Engineer Ruschke had arranged a meeting with DEP Assistant Commissioner for Land Use Management Ginger Kopkash on November 20th, and she found that the Township's request to use the space currently occupied by the Skate Park for additional affordable housing has merit. She was also sympathetic to the Township's timeline for the implementation of the Court-approved agreement to construct rental housing units. A meeting with DEP staff was fast-tracked, and Administrator Hoffmann said that he and Engineer Ruschke met with representatives of the DEP on December 17th to review the Township's request.

Engineer Ruschke said that the developer for Arbor Green sought a General Permit from the DEP, and their plans did not infringe upon the 150-foot buffer. The Township has pursued a redevelopment permit within the 150-foot buffer zone. The DEP has allowed development within a 75-foot buffer, and some permitting will need to be sought.

Administrator Hoffmann reported that the Township was served a Complaint in Lieu of a Prerogative Writ related to the designation of the Municipal Building as a potential site for affordable housing. He said that the pending litigation will limit the Township's ability to comment on some aspects of the affordable housing progress. Administrator Hoffmann noted that the Township has a Constitutional obligation to meet affordable housing needs, which should be done in a way that uses sound planning methods. Administrator Hoffmann also explained that the Settlement Agreement prevented the development of up to 800 market rate units in order to yield the necessary number of affordable housing units. The Township Staff and Township Committee have met with 6 developers for proposals to develop affordable housing on a different site.

Attorney Cruz read aloud the draft resolution authorizing him to file the necessary paperwork for the motion requesting an extension for compliance with the Settlement Agreement. Attorney Cruz also said that the Township has incurred costs related to affordable housing, particularly regarding the ongoing payments to the Vernon Grove Condominium Association, however the Township has not collected development fees to offset those costs. The Township Committee will adopt a spending plan to govern how development fees will be spent toward meeting the affordable housing obligation, and the spending plan will be an estimate of the costs and revenues. Attorney Cruz also cited a recent case in which a municipality lost immunity from builders remedy lawsuits when they requested a 90-day extension. Attorney Cruz also said that an extension for the start date of construction will be requested.

Committeewoman Swartz asked how the request for a 120-day extension for the compliance hearing relates to an extension for the commencement of construction. Attorney Cruz explained the application cycle for tax credits, and said that the cycle is why construction start date would be extended a year. Mayor Kelly asked about the relation between legal precedence and the 130-day extension request. He also asked if it will be enough time. Administrator Hoffmann said that time will be tight, but it is feasible to have a site selected within the timeframe.

Committeewoman Ewald asked about the process for submitting documents to the Court. Attorney Cruz said that the schedule is set by the Court.

Hearing of Citizens

Mayor Kelly welcomed the members of the public present at the meeting. He reiterated that the Township Committee will not be able to discuss the pending litigation challenging the Township's designation of 58 Meyersville Road as a site for affordable housing. Mayor Kelly said that the complaint will be posted on the Township website. Mayor Kelly also said that the Township Committee welcomes the suggestions received for potential affordable housing sites, however the pros and cons of specific sites cannot be addressed at this meeting because additional information is still being gathered.

Mayor Kelly opened the Hearing of Citizens.

1. Mike Oien, 3 Hillcrest Avenue, said that in order to have a multi-site plan, more sites than the 6 originally presented will need to be identified. Mr. Oien addressed the costs of property acquisition, and said that he developed a metric to analyze relative costs. Mr. Oien shared some of his analysis on the costs related to some of the sites. Mr. Oien also said that the cost of a new property should be compared with the value of a property that would be given away.
2. Doug Pitney, 54 Mountainview Road, presented a potential alternate layout for the Skate Park site. He also described his background in civil engineering. Administrator Hoffmann asked to have a meeting with Mr. Pitney to further review the proposal. Engineer Ruschke noted that the DEP will hold the Township to the 75-foot buffer zone.
3. Rich Matlaga, 36 Dale Drive, congratulated the new members of the Township Committee. Mr. Matlaga also said that he got involved with affordable housing matters to address the proposed amount of parking at the Arbor Green site. Mr. Matlaga questioned if there would be enough parking at the Municipal Building site for the proposed number of affordable units. He also said that there is not enough room for storage, and raised a concern about the neighboring wetlands.
4. Matt Kahn, 2 Country Club, said that resident proposals to move all the affordable housing to the Skate Park site and move the Police Department to the current Municipal Building is not an equitable solution. He said there will be strong opposition from the Rolling Hills neighborhood if the Township Committee selects that option. Mr. Kahn said that the affordable housing should be spread throughout the Township. Mr. Kahn further said that the litigation brought forth by the Felice's is problematic, because it reduces transparency and wastes the Township's time and money having to address it.

5. Chris Battone, 9 Dogwood Drive, said that there is still not a publicly available appraisal of the Municipal Building or any cost-benefit analysis of a single site or multi-site solution. He said that there also have not yet been any studies on the impact to traffic and schools. Mr. Battone also addressed a concern about the potential of school overcrowding. He also addressed the court-imposed deadlines, and said that an extension to February is not enough time. Mr. Battone suggested that the Township consider private properties. Mr. Battone said that being exposed to a builders remedy lawsuit is also not an option. He also said that he has not heard any resident agree that a single-site solution will work. Mr. Battone urged residents to review the Mt. Laurel Doctrine, noting that there were several years between Mt. Laurel I and Mt. Laurel II.

Administrator Hoffmann said that appraisal reports for both the Municipal Building and the Police Department are due by January 24th. Mayor Kelly noted that the Township is wisely using the time afforded to gather information from various professionals regarding the various considerations for affordable housing, and a wide range of expertise is being tapped. Committeewoman Swartz noted that when she and Mayor Kelly were first elected in 2014, the projected obligation for Round III was significantly higher. She noted the vast amount of work that went into negotiating the obligation down to the current level. Committeewoman Swartz further reiterated that it was due to the nature of litigation that the Township Committee was unable to discuss certain aspects of affordable housing in public. Deputy Mayor Ness noted that while there is a value to the land that the Township will give up for affordable housing, there is a cost to purchasing privately held land. She also stated that the Settlement Agreement requires a municipally sponsored affordable housing development.

6. Jenn McNally, 19 Ferndale Road, asked if there was any discussion about potential sites during the negotiation of the Settlement Agreement. Mayor Kelly said that it was unusual for the Settlement Agreement to not specify the site. The site was not specified because the intended site was involved in tax foreclosure at the time of negotiations. Once the Township had access to the site, the concept plan submitted by a developer was deemed unacceptable by the Township Committee. Mrs. McNally asked how the Township is paying for the affordable housing costs that are being incurred. Mayor Kelly said that the costs are being paid by property taxes. Mrs. McNally also raised a concern about the unwelcoming demeanor that some people have exhibited toward the potential affordable housing residents.
7. David Workman, 19 Susan Drive, asked if there is anything that the Township Committee can tell the public about the new litigation. Mayor Kelly said that the complaint will be posted on the Township website. Attorney Cruz said that the complaint was served upon the Township on January 3, 2020. The matter was referred to the Morris County Joint Insurance Fund to determine if there is insurance coverage. Attorney Cruz said that the complaint is a challenge to the Township Committee's action to designate the Municipal Building as the site for affordable housing. Mr. Workman commented on the need for available transportation in the vicinity of affordable housing, and said that the Township could purchase private property to make it available for affordable housing. He also asked if the Township could act as a developer. Attorney Cruz said the Township possibly could act as a developer, however municipalities traditionally do not make good developers or landlords. Mr. Workman asked if affordable housing could be built as part of a lend-lease program. Attorney Cruz said that such a program would trigger the Prevailing Wage Act.
8. Jennifer Terrone, 154 Meyersville Road, commented on the traffic on Meyersville Road, and said that a traffic impact study will be needed. Mayor Kelly said that any project will need to go before the Planning Board, and that process will include a traffic study.
9. Chris Felice, 20 Candace Lane, said that his lawsuit against the Township is not counterproductive. Mr. Felice said that the lawsuit was filed because time was running out to file action. He also said that there are other residents supporting the

litigation. Mr. Felice also alluded to a willingness to drop the suit if the Township Committee were to rescind the decision to designate the Municipal Building as the site for affordable housing. Mr. Felice also said that the process to determine the value of the Municipal Building should have been started before the Township knew that that site would be considered.

10. James Damato, 144 Meyersville Road, said that the Municipal Building is a community resource, and has also been a home to the Board of Education. Mr. Damato suggested that the empty space in the building be put to its fullest use. He also said that to build a new municipal building would cost \$500 per square foot. Mr. Damato also said that he does not believe there is available land for a new municipal building. He also suggested that the Board of Education should start using the building again. Mr. Damato also questioned why the School District was charged rent for use of the building in the past. He also said that Berkeley Heights is building a new municipal building for \$35 million.

Deputy Mayor Ness noted that the School District rented office space at the Municipal Building, and they are intimately familiar with the various issues with the building. She also noted that the site was included in a 2005 study performed by the School District, and it would be cheaper to build a new school than to reconvert the Municipal Building back into a school. Deputy Mayor Ness also commented on the cyclical nature of school enrollment, and noted that kindergarten classes have needs that other classrooms do not.

Mr. Damato said that he did not mean to imply that the Municipal Building be turned back into a school, however some of the space could be used for educational purposes. He offered his services to assist the Township in that effort.

Administrator Hoffmann noted that the Borough of Wanaque recently built a new 28,000 square foot municipal building at a cost of \$9.2 million, which comes to \$325 per square foot.

Mayor Kelly noted that School District was charged rent for their use of the Municipal Building. He noted that while they rented approximately half the building, the rent they paid covered less than half of the annual utility costs for the building.

11. Laura Mariano, 736 Fairmount Avenue, thanked Mr. Oien and Mr. Pitney for the work they have done in recent weeks to help the Township with affordable housing matters. Mrs. Mariano said that residents were shocked by the designation of the Municipal Building as a site for affordable housing because there are homes immediately adjacent to the property. She said that if the site is ultimately chosen, she would prefer to see a two-story alternative. Mrs. Mariano also opined that the Southern Boulevard site is more conducive to multi-family housing.
12. Rich Rein, 11 Rolling Hill Drive, commented on how the Southern Boulevard Corridor is already overly congested, and adding additional multi-family housing will make matters worse. Mr. Rein also said that there is an impression being given that the people who live near the Municipal Building want to dump all the affordable housing in the Rolling Hill area. Mr. Rein also asked that a study be conducted to see how response time would be impacted by moving the Police Department to the Municipal Building. Mr. Rein further said that the potential of a builders remedy lawsuit is not merely fear mongering. Mayor Kelly concurred that builders remedy lawsuits do happen, and the Township Committee does not want to see a loss of local control over zoning regulations.
13. Jean Earle, 37 Rose Terrace, said that she is the CFO of ECLC. She commented on the need for consideration for people with special needs when finding sites for affordable housing.
14. Ted Godfrey, 21 Evergreen Road, asked if the proposed affordable housing at the Municipal Building would be three-stories high. Mayor Kelly said that the proposal for 65 units would be three stories. Mr. Godfrey said that would appear to be four

stories from where he lives. He also spoke about using porous paving by the Police Department so that there would not be any runoff issues. Mr. Godfrey asked if an LOI was sought or an averaging plan requested at the Skate Park site. He also addressed the traffic impact on Mountainview Road from on-street parking, and asked about a potential shooting range. Mr. Godfrey also asked if the affordable units would have to be rental units.

Mayor Kelly said that there is a pistol range at the Police Department, and there is not any discussion about moving it. He further stated that most people know someone who would qualify for affordable housing, and any town benefits from a diverse population. Mr. Godfrey said that his nuance is to seek affordable ownership properties rather than affordable rental properties, as owners tend to show greater care for their homes. Deputy Mayor Ness said that the Settlement Agreement requires rental properties. Mayor Kelly agreed that rental properties need to be supervised, and he said that there already is excellent rental housing in the Township.

Mr. Godfrey further asked about road conditions, and said that financial analysis needs to be performed.

15. Carol Ahmad, 49 Meyersville Road, said that her initial reaction was to wonder what the affordable housing will mean for the Township, and there are still unanswered questions. Mayor Kelly said that when the Planning Board heard the application for Arbor Green, there were many experts who presented testimony on professional studies and analysis including traffic. Deputy Mayor Ness described how the projections for the school impact were developed. Mrs. Ahmad said that it seems backward to pick a site before the Planning Board process works out, and asked if there is a backup plan in case the chosen site does not work. Deputy Mayor Ness said that the Arbor Green site has gone through the Planning Board process already. She also said that an educated process is used to select a site, and noted that there is a “sweet spot” for it to be worth a developer’s while to build an affordable housing project. Deputy Mayor Ness noted that it might be financially preferable to have the affordable housing at one location, while at the same time public opinion wants the affordable housing spread around the Township. Mrs. Ahmad said that she does not want there to be a perception that the neighborhood does not want “those people” moving in, and the recent uproar is due to a perceived lack of transparency. She also said that the process has been more collaborative lately, and a lot of good ideas have been presented.
16. John Stricko, 156 Noe Avenue, said that most of the concern he has observed is whether a single site can accommodate the needed affordable housing units, and said that spreading the affordable housing around the Township would allow the new residents to better assimilate into the community. Mr. Stricko also spoke in favor of having the Police Department remain at the current location, as they are better enabled to respond to emergencies from that location.
17. Dan Miller, 465 Green Village Road, opined that had a developer proposed a three-storey apartment building at the Municipal Building site prior to the affordable housing discussions, it is unlikely that the Planning Board would grant approval. He also said that residents are generally not concerned about the type of resident who will live in the affordable housing. Mr. Miller also addressed the need for accessibility for people with special needs, and noted the lack of venues within walking distance from the Municipal Building.
18. Mike Maloney, 15 Evergreen Road, asked if the affordable housing on Southern Boulevard is a done deal, and if there are any other projects that are solidified. Deputy Mayor Ness said that there is a potential for additional units at the Skate Park site, and the 24 units have been approved by the Planning Board. Mr. Maloney spoke in favor of having residents participate in the process, and said that there had not previously been enough transparency. He also asked where a new municipal building would be located. Mayor Kelly said that the option involving moving the Municipal Building would be to have a municipal complex at the site of the Police Department. Mr. Maloney said that emergency medical services and fire departments need to be

centrally located, however a police department does not need to be because there are always cars on the road.

Deputy Mayor Ness noted that because of the pending litigation, the Coffee with a Committeeman events are on hiatus. The Township Committee will continue to address the affordable housing matters at official meetings.

19. Pat Wells, 184 Southern Boulevard, said that there will be more traffic in the Township regardless of the solution, and she would prefer that the traffic be spread around rather than have it disproportionately affect a single neighborhood.
20. Mike Oien addressed fair market value of privately owned properties, and noted that the density potential of a property affects the value. He also offered suggestions as to what the Township should be willing to pay for property acquisitions. Mayor Kelly said that the Township Engineer is offering data on projected cost per unit on the various options. Mr. Oien asked about the speed at which a property could be purchased. Mayor Kelly said that it would be speculative to assume the willingness of a seller to sell property to the Township.

Committeewoman Ewald said that the current process is what should have been happening all along, and thanked the residents who have offered input. She asked if brainstorming sessions with members of the public could be held. Mayor Kelly said that the Coffee with a Committeeman events have been open to everyone, and Administrator Hoffmann has been willing to meet with residents. He also said that a formal advisory committee would be difficult to create with adequate geographic and professional distribution.

21. Mark Lois, 15 Gates Avenue, said that people have a weight they want to carry, and it should not matter what part of the Township they are from if they want to participate in the process. Mr. Lois said that if there is a competition of ideas, the Township's professionals can vet those ideas. Mr. Lois also commented on the idea of creating better access to the Chatham Train Station, which would increase property value. He said that he hopes that the work begun by Committeeman Ritter will continue. Committeewoman Swartz said that she believes Mr. Ritter will continue his private projects now that he has finished his term of office.
22. Rich Rein asked if the Judge gave a rationale why a motion was required rather than approving the request for an extension during the proceeding on December 17th. Attorney Cruz said that the December 17th proceeding was a conference call, and there was opposition to granting an extension. Attorney Cruz said that he suspects that the Judge wanted a formal record to be created. He also noted a recent case in which a municipality was stripped of builders remedy immunity despite a recommendation of a 90-day extension from a special master. Attorney Cruz also reiterated that the Township is using the time leading up to the February hearing to continue to be compliant with the Settlement Agreement. Mr. Rein asked if there has been a consensus regarding possibly moving the shooting range. Deputy Mayor Ness said that there are no plans to move the shooting range.

Seeing no further comment, Mayor Kelly closed the Hearing of Citizens.

Mayor Kelly said that the Township Committee will meet again on January 16th to discuss goals and objectives pertaining to the Budget, and affordable housing matters will not be scheduled for that meeting. The next regular business meeting is scheduled for January 30th at 7:30 PM. The Township Committee expects to be able to review the responses to the opposition to the motion requesting an extension. There will also be a regular meeting on February 13th. Deputy Mayor Ness said that a special meeting can be scheduled if necessary once reports are received and the information is adequately reviewed.

Mr. Workman asked if it is possible to sign up for email blasts with meeting information. The Township Clerk said that meeting agendas are posted on the Township website, and the public can sign up for website update alerts. He also noted that agendas are posted on the Friday before

a meeting, with updates posted in the days following. Deputy Mayor Ness added that the Township has a Facebook page on which information is posted.

RESOLUTION 2019-041

RESOLUTION OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, AUTHORIZING THE TOWNSHIP ATTORNEY TO FILE A MOTION IN THE TOWNSHIP'S AFFORDABLE HOUSING LITIGATION SEEKING THE FOLLOWING RELIEF: APPROVAL OF DEVELOPMENT FEE ORDINANCE AND RELATED SPENDING PLAN, EXTENSION OF TIME FOR COMPLIANCE AND TEMPORARY IMMUNITY FROM BUILDER'S REMEDY LAWSUITS AND ADJUSTMENT OF CONSTRUCTION START DATE

WHEREAS, at the December 17, 2019 Case Management Conference in the Township of Chatham affordable housing declaratory judgment action, Judge Michael C. Gaus, J.S.C., directed that if the Township desired an extension of the time for compliance and temporary immunity from builder's remedy lawsuits, that the Township should do so by motion to be filed no later than January 10, 2020; and

WHEREAS, the Township desires to file such a motion and to so direct the Township Attorney; and

WHEREAS, the Township desires that the motion seek the following relief: (a) that Township Ordinance 2019-22, a Development Fee Ordinance, and related Spending Plan be approved; (b) that the Township be granted until June 14, 2020 for compliance, with a Compliance Hearing to be scheduled thereafter; (c) that the construction start date of the 100% municipally sponsored affordable housing development be adjusted until June 30, 2022 and (d) that the Township's immunity from builder's remedy lawsuits be extended until the Compliance Hearing; and

WHEREAS, the Township Committee hereby reaffirms the terms and conditions of the December 13, 2018 Settlement Agreement with the Fair Share Housing Center, Inc. as to be modified by the motion.

NOW, THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, as follows:

1. The Township Attorney is hereby directed to file the motion described in this Resolution by January 10, 2020 and to file any necessary responses or opposition to any cross-motion.
2. This Resolution shall take effect immediately.

Attorney Cruz noted that the resolution authorizes him to respond to any cross motions. He also advised that the date of June 14, 2020 be inserted into the blank space in the draft.

Committeewoman Swartz moved to adopt Resolution 2020-41. Deputy Mayor Ness seconded the motion.

Roll call: Committeewoman Ewald, Aye; Committeewoman Fondaco, Aye; Committeewoman Swartz, Aye; Deputy Mayor Ness, Aye; Mayor Kelly, Aye.

Committeewoman Swartz moved to adjourn at 10:22 PM. Committeewoman Fondaco seconded the motion, which carried unanimously.

Gregory J. LaConte
Municipal Clerk