

**MINUTES
TOWNSHIP COMMITTEE
REGULAR MEETING
OCTOBER 24, 2019**

Mayor Selen called the Regular Meeting of the Township Committee of the Township of Chatham to order at 7:30 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 4, 2019; notice was posted on the bulletin board in the main hallway of the Municipal Building on January 4, 2019; and notice was filed with the Township Clerk on January 4, 2019.

Mayor Selen invited Chatham resident Fran Drew to lead the Flag Salute.

Roll Call

Answering present to the roll call were Committeewoman Ness, Committeewoman Swartz, Committeeman Ritter, Deputy Mayor Kelly and Mayor Selen.

Approval of Agenda

The Township Clerk indicated that the report by the Historical Society will be deferred to a future meeting due to the change in timing of tonight's Executive Session.

Deputy Mayor Kelly moved to approve the agenda as amended. Committeewoman Ness seconded the motion, which carried unanimously.

Executive Session

**RESOLUTION 2019-P-19
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. Personnel: Police Department SLEO III
 - c. Collective Bargaining Negotiations: PBA
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.

Deputy Mayor Kelly moved to adopt Resolution 2019-P-19 to enter Executive Session at 7:34 PM. Committeewoman Ness seconded the motion.

Roll call: Committeewoman Ness, Aye; Committeewoman Swartz, Aye; Committeeman Ritter, Aye; Deputy Mayor Kelly, Aye; Mayor Selen, Aye.

Public Session was resumed at 8:32 PM.

Reports

Committeeman Ritter reported that his Out of the Darkness walk in September was successful, and he is still soliciting donations on behalf of the American Foundation for Suicide Prevention. He also reported that the Turkey Trot is being held on Thanksgiving, and registrations are now open. Committeeman Ritter further reported on potential shuttle service to the Chatham Train Station, and he said that a survey is available online.

Committeewoman Swartz reported that the Senior Center Shred Event was so well attended that the truck was filled up prior to the scheduled end time. She noted that it is a well supported fundraiser for the Senior Center. Committeewoman Swartz also reported on the events held by both of the Fire Departments for Fire Prevention Week. Committeewoman Swartz reported that she was invited to the Work-Family Connection at Southern Boulevard School recently, and she met with a group of K through 3 students. She noted that the Empire State Building is lit up this evening in the colors of the Lights On After School program. Committeewoman Swartz stressed that it is important for parents to be aware that there are after school programs available to serve those school children who do not have a parent at home right after school.

Committeewoman Ness reported that the Colony Pool Committee has not recently met. She also reported that a macadam path has been constructed around the Colony Pool facility, and the lawn sprinkler system is being repaired. Committeewoman Ness further reported that the Environmental Commission is moving forward with an energy aggregation program, and a meeting will be held with a potential vendor on October 29th.

Deputy Mayor Kelly reported that the Community Garden Committee will be repairing the gate at the facility once the harvest season is complete.

The Township Clerk reported that the Flu Clinic held on October 16th was well attended. He further reported that the rabies clinic will be held on November 2nd from 9:00 AM to 10:00 AM at the Public Works Garage, and is open to residents of any municipality.

Engineer Ruschke reported that public information sessions were held regarding the Lafayette Avenue Safe Routes to School project were held, and some residents raised concerns about trees scheduled for removal. Committeeman Ritter asked if there was any concern that the project was in jeopardy, and Engineer Ruschke said that the funding has been secured. Committeewoman Swartz asked if there is an updated timeline for the project. Engineer Ruschke said that information is not yet available from the DOT.

Administrator Hoffmann reported that the Township will be having a plaque unveiling on October 25th in memory of former DPW Foreman Robert Lanner, who passed away last year. He also reported that he and Engineer Ruschke will be meeting with the Morris County Open Space Trust Committee on October 29th to answer questions about the Township's grant application. Administrator Hoffmann further complimented the members of the Planning Board for their dedication and hard work regarding the Dixiedale and Arbor Green applications.

Attorney Cruz asked Engineer Ruschke about the purpose of Resolution 2019-201. Engineer Ruschke said that it allows the developer to apply to the DEP for extension of sewers. He also confirmed that there is sewer capacity available for the project.

Mayor Selen noted that the recent Planning Board meeting went until approximately 1:15 AM, and the members of the audience remained until the meeting was finished. Mayor Selen thanked the members of the Planning Board and the members of the public for their dedication. Mayor Selen reported that he, Deputy Mayor Kelly and Administrator Hoffmann attended the event held by Morris County to celebrate the 25th anniversary of the founding of the Open Space Trust Fund. He noted that the County participated in the purchase of the Giralda Farms open space tract, which is widely used.

Hearing of Citizens

Mayor Selen opened the Hearing of Citizens.

1. Fran Drew, 32 Inwood Road (Chatham Borough), asked if Chatham Township has a shade tree commission. She said that if there was such a commission, perhaps that tree canopy on Lafayette Avenue could have been saved. Mrs. Drew said she spoke with a contractor who was recently conducting tree removal in the right-of-way, and they

informed her that the work did not require a permit. Mrs. Drew opined that a shade tree commission would require a permit for such work, and an arborist would assess the health of any trees proposed for removal. Mrs. Drew provided information packets for the Township Committee showing how tree removal is handled in Chatham Borough. She also noted that the stumps from trees recently removed are still in place. Mrs. Drew asked that the Township Committee help protect mature trees.

Committeeman Ritter asked if the trees were removed by PSE&G. Committeewoman Swartz said that the trees were removed as part of a utility right-of-way maintenance program, which is subject to federal and state regulations rather than municipal jurisdiction. Mrs. Drew said that utilities lines can be run underground. Committeewoman Swartz noted that the cost of conversion will be in the millions of dollars. She also noted that JCP&L has a tree farm to replace trees that are removed under the maintenance program.

2. Stacey Ewald, 54 Nicholson Drive, commented on the lateness of the recent Planning Board meeting, and suggested that such lateness be discouraged moving forward. She also asked why the Planning Board was able to veer from the zoning ordinance adopted by the Township Committee for the Dixiedale property. Mrs. Ewald also asked who will make sure that the 40% open space requirement is met. Attorney Cruz said that it is within the jurisdiction of the Planning Board to waive certain requirements, and only a use variance cannot be granted by the Planning Board. Regarding the open space aspect, Engineer Ruschke confirmed that a calculation was performed. Mrs. Ewald said that when the Township Committee approved multi-family dwelling rather than single-family dwelling, the potential property value was increased by approximately \$35 million. She expressed a concern that the Township Committee passed an ordinance for the zoning on this site and an amenity for the Township was waived by the Planning Board. Attorney Cruz reiterated that under the Municipal Land Use Law, land use boards have the authority to grant variances. Committeewoman Ness noted that she attended the Planning Board meeting, and the applicant's professionals testified that the internal walking trail would have been a benefit to the property. Attorney Cruz said that the Planning Board will adopt a resolution to explain their reasoning for approving the application with any waivers.
3. Henry Nassif addressed the Skate Park. Mr. Nassif said that the Skate Park is a safe community for children to skate, and he noted that skaters come from many other towns to use the Skate Park. He also noted that if the Township wanted another football field or soccer field, they would likely find one, and he asked why a location has not yet been found to relocate the Skate Park.
4. Max Chapple said that the skating community is working to save the Skate Park.

Committeewoman Ness noted that the current Skate Park facility is beyond its useful life, and the manufacturer has indicated that it is not suitable to be moved. She also suggested that Morris County be contacted to see if a new skate park could be built at the Passaic River Park. Committeeman Ritter suggested that the Recreation Committee investigate potential sites for a new Skate Park.

5. Rich Matlaga, 36 Dale Drive, commented he was at the recent Planning Board meeting, and the public had their opportunity to speak. He also said that in 1959, the Port Authority was trying to build a Jetport in the Great Swamp, which was successfully fought by Township residents. Mr. Matlaga also said that when the Fairmount Country Club was formed, the land was potentially to be developed as 250 homes. Mr. Matlaga also asked if the Township still has an obligation to build 74 affordable housing rental units. Attorney Cruz said that the Township does still have that commitment. Mr. Matlaga asked if the units will be build on properties listed in the document. Attorney Cruz explained the purpose of the Vacant Land Adjustment, and the properties listed are lands that potentially could be developed so as to quantify the Township's realistic development potential to help reach the Township's obligation. He said that those properties are not necessarily the site or sites that will be chosen for the fulfillment of the Township's obligation to build 74 affordable units. Mr. Matlaga asked about relocating the Skate Park at the Giralda Farms open space tract. Attorney Cruz said that Giralda Farms was purchased with Green Acres funds, which carries restrictions.

6. Autumn Chapple, 16 Overlook Road, said that the Township has indicated that alternative sites for the Skate Park are being sought, and she asked if that is an active process. She also said that if a site is found, the community can have a fundraiser to help make it happen. Committeewoman Ness said that everyone assumed the Skate Park would be moved until it became apparent that it needed to be demolished. Attorney Cruz clarified that the current Skate Park site is heavily encumbered by wetlands, and the Skate Park itself falls within a recently re-delineated buffer zone. He noted that it was the DEP that made the delineation and required the removal of the Skate Park. Administrator Hoffmann added that before other locations can be evaluated, the Township first has to determine where the affordable housing obligation will be located. Committeewoman Ness noted the difficulty of finding a spot that is not encumbered by open space restrictions or wetlands. She also invited Mrs. Chapple to work with her to form a community group to work on this matter. Committeeman Ritter noted that surrounding towns are all facing the same type of affordable housing requirements. He also pointed out that the public has indicated that residents of other towns are using the Skate Park, and he said that if funds are raised then perhaps another town could serve as a new location. Mayor Selen noted that the Township has not given up on trying to find a new site. Engineer Ruschke said that the matter has not been ignored, citing that he and former Township Administrator Tom Ciccarone had visited several sites to assess the suitability for a skate park. He said that there is not an ideal site in the Township, citing the deed restrictions and wetlands on much of the Township's open space. Committeewoman Ness asked Engineer Ruschke what his experience has been with grant applications for projects such as a skate park. Engineer Ruschke said he thinks that Mr. Ciccarone had approached the County on this matter, but he was not part of the discussion.
7. Rez Estevez, 126 Southern Boulevard, said that the affordable housing requirements are cramping the Township. She also said that the Borough will be building 200+ affordable units. Mrs. Estevez asked if a cul-de-sac can be built on Hillside Avenue. She also asked that someone on the Township Committee take leadership on the matter. Deputy Mayor Kelly said that the Borough residents who requested the cul-de-sac went to the Borough to request that it be built, and the Borough does not support it because traffic would be diverted to other roads. Mrs. Estevez asked that the Township have a discussion about a potential cul-de-sac. Deputy Mayor Kelly said that a conversation has been had, and his opinion is that it would be a mistake to push the existing traffic onto other roads. Administrator Hoffmann suggested that he and the Borough Administrator work with the municipal professionals to present objective information on the matter.
8. Henry Nassif asked if the Skate Park could be rebuilt if a fundraiser was conducted. Mayor Selen said that a location will still be needed, but suggested that fundraising efforts begin and pledged \$50.

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

Public Hearing/Final Adoption of Ordinances

Ordinance 2019-14

ORDINANCE 2019-14

AN ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, AMENDING CHAPTER XXIX, TITLED "AFFORDABLE HOUSING" OF THE REVISED GENERAL ORDINANCES TO ADD A NEW SUBSECTION 29-2, TITLED DEVELOPMENT FEES

BE IT ORDAINED by the Township Committee of the Township of Chatham, in the County of Morris, State of New Jersey, as follows:

Section 1. Subsection 29-2 titled "Development Fees" of Revised General Ordinances of the Township of Chatham, is hereby added as follows:

29-2 Development Fees.

§29-2.1 Purpose

- A. In Holmdel Builder's Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing

Act of 1985 (“Act”), N.J.S.A. 52:27D-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (“COAH's”) adoption of rules.

- B. Pursuant to P.L.2008, c.46 section 8 (N.J.S.A. 52:27D-329.2) and the Statewide Non-residential Development Fee Act (N.J.S.A. 40:55D-8.1 through 8.7), COAH is authorized to adopt and promulgate regulations necessary for the establishment, implementation, review, monitoring and enforcement of municipal affordable housing trust funds and corresponding spending plans. Municipalities that are under the jurisdiction of the Council or court of competent jurisdiction and have a COAH-approved spending plan may retain fees collected from nonresidential development.
- C. In Re Adoption of N.J.A.C. 5:96 and 5:97 by COAH, 221 N.J. 1 (2015) (“Mount Laurel IV”), the Supreme Court remanded COAH’s duties to the Superior Court. As a result, affordable housing development fee collections and expenditures from municipal affordable housing trust funds to implement municipal Third Round Fair Share Plans through July 7, 2025 are under the Court’s jurisdiction and are subject to approval by the Court.
- D. This article establishes standards for the collection, maintenance, and expenditure of development fees pursuant to COAH's regulations and in accordance P.L. 2008, c.46, §§ 8 and 32-38. Fees collected pursuant to this article shall be used for the sole purpose of providing low- and moderate-income housing. This article shall be interpreted within the framework of COAH's rules on development fees, codified at N.J.A.C. 5:93-8.

§ 29-2.2 Definitions.

As used in this Subsection, the following terms shall have the meanings indicated:

AFFORDABLE HOUSING DEVELOPMENT

A development included in the Housing Element and Fair Share Plan, and includes, but is not limited to, an inclusionary development, a municipal construction project or a one-hundred-percent affordable development.

COAH or THE COUNCIL

The New Jersey Council on Affordable Housing established under the Act which has primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in the state.

DEVELOPER

The legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.

DEVELOPMENT FEE

Money paid by a developer for the improvement of property as permitted in N.J.A.C 5:93-8.3

EQUALIZED ASSESSED VALUE

The assessed value of a property divided by the current average ratio of assessed-to-true value for the municipality in which the property is situated, as determined in accordance with sections 1, 5, and 6 of P.L.1973, c.123 (N.J.S.A. 54:1-35a through N.J.S.A. 54:1-35c).

SUBSTANTIVE CERTIFICATION

A determination by COAH approving a municipality's housing element and fair-share plan in accordance with the provision of the Fair Housing Act (N.J.S.A. 52:27D-301 et seq.) and the rules and criteria as set forth herein.

§ 29-2.3 Development fees.

A. Residential development fees.

(1) Imposed fees.

- (a) Within the Township of Chatham, residential developers, except for developers of the types of development specifically exempted below, shall pay a fee of 1.5% of the equalized assessed value for residential development, provided no increased density is permitted.

(b) When an increase in residential density pursuant to N.J.S.A. 40:55D-70d(5) (known as a "d" variance) has been permitted, developers may be required to pay a development fee of 4% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application. Example: If an approval allows four units to be constructed on a site that was zoned for two units, the fees could equal 1.5% of the equalized assessed value on the first two units; and the specified higher percentage up to 4% of the equalized assessed value for the two additional units, provided zoning on the site has not changed during the two-year period preceding the filing of such a variance application.

(2) Eligible exactions, ineligible exactions and exemptions for residential development:

- (a) Affordable housing developments and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- (b) Developments that have received preliminary or final site plan approval prior to the adoption of a municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- (c) Except as provided in Subsection A(2)(d) below, development fees shall be imposed and collected when an existing residential structure undergoes a change to a more intense use, is demolished and replaced, or is expanded where the volume of the change, replacement, or expansion is greater than 1,500 cubic feet. The development fee shall be calculated on the increase in the equalized assessed value of the improved structure.
- (d) Developers of residential structures demolished and replaced as a result of fire, or natural disaster, or other catastrophic events shall be exempt from paying a development fee.

B. Nonresidential development fees.

(1) Imposed fees.

- (a) Within all zoning districts, nonresidential developers, except for developers of the types of development specifically exempted, shall pay a fee equal to 2.5% of the equalized assessed value of the land and improvements, for all new nonresidential construction on an unimproved lot or lots.
- (b) Nonresidential developers, except for developers of the types of development specifically exempted, shall also pay a fee equal to 2.5% of the increase in equalized assessed value resulting from any additions to existing structures to be used for nonresidential purposes.
- (c) Development fees shall be imposed and collected when an existing structure is demolished and replaced. The development fee of 2.5% shall be calculated on the difference between the equalized assessed value of the preexisting land and improvement and the equalized assessed value of the newly improved structure, i.e., land and improvement, at the time a final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the nonresidential development fee shall be zero.

(2) Eligible exactions, ineligible exactions and exemptions for nonresidential development.

- (a) The nonresidential portion of a mixed-use inclusionary or market-rate development shall be subject to the development fee of 2.5% unless otherwise exempted below.
- (b) The fee of 2.5% shall not apply to an increase in equalized assessed value resulting from alterations, change in use within existing footprint, reconstruction, renovations and repairs.
- (c) Nonresidential developments shall be exempt from the payment of nonresidential development fees in accordance with the exemptions required pursuant to P.L.2008, c.46, as specified in the Form N-RDF "State of New Jersey Non-Residential Development

Certification/Exemption." Any exemption claimed by a developer shall be substantiated by that developer.

- (d) A developer of a nonresidential development exempted from the nonresidential development fee pursuant to P.L.2008, c.46, shall be subject to it at such time the basis for the exemption no longer applies, and shall make the payment of the nonresidential development fee, in that event, within three years after that event or after the issuance of the final certificate of occupancy of the nonresidential development, whichever is later.
- (e) If a property which was exempted from the collection of a nonresidential development fee thereafter ceases to be exempt from property taxation, the owner of the property shall remit the fees required pursuant to this section within 45 days of the termination of the property tax exemption. Unpaid nonresidential development fees under these circumstances may be enforceable by the Township as a lien against the real property of the owner.

§ 29-2.4 Exempt development types.

The following development types are exempt from development fees:

- A. Nonprofit and public education buildings.
- B. Houses of worship.
- C. Public amenities (recreational, community, or senior centers).
- D. Parking lots and structures.
- E. Nonprofit hospital relocation or improvement.
- F. State, county and local government buildings.
- G. Transit hubs, transit villages, and light-rail hubs.
- H. Commercial farm buildings and Use Group U structures.
- I. Developments with a general development plan approval, or executed developer's or redeveloper's agreement, prior to July 17, 2008, with a fee or affordable housing requirement the equivalent of at least 1% of equalized assessed value.

§ 29-2.5 Collection procedures.

- A. Upon the granting of a preliminary, final or other applicable approval, for a development, the applicable approving authority (Planning or Zoning Board) shall direct its staff to notify the construction official responsible for the issuance of a building permit.
- B. For nonresidential developments only, the developer shall also be provided with a copy of Form N-RDF "State of New Jersey Non-Residential Development Certification/Exemption" to be completed as per the instructions provided. The Developer of a nonresidential development shall complete Form N-RDF as per the instructions provided. The construction official shall verify the information submitted by the nonresidential developer as per the instructions provided in the Form N-RDF. The Township Tax Assessor shall verify exemptions and prepare estimated and final assessments as per the instructions provided in Form N-RDF.
- C. The construction official responsible for the issuance of a building permit shall notify the Township Tax Assessor that he has prepared to be issued the first building permit for a development, at which time an amount of 50% of the total fee is due at the issuance of the first building permit. The remaining amount owed will be paid at the issuance of a final certificate of occupancy.
- D. Within 30 days of receipt of that notice, the Township Tax Assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development and the fee is calculated as cited above.
- E. The construction official responsible for the issuance of a final certificate of occupancy notifies the Township Tax Assessor of any and all requests for the scheduling of a final inspection on property.
- F. Within 10 business days of a request for the scheduling of a final inspection, the Township Tax Assessor shall confirm or modify the previously estimated equalized assessed value of the improvements of the development; calculate the development fee; and thereafter notify the developer of the remaining amount of the fee due.
- G. Should the Township fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth in subsection b. of section 37 of P.L.2008, c.46 (N.J.S.A. 40:55D-8.6).

H. Fifty percent of the development fee shall be collected at the time of issuance of the building permit. The remaining portion shall be collected at the issuance of the certificate of occupancy. The developer shall be responsible for paying the difference between the fee calculated at building permit and that determined at issuance of certificate of occupancy.

I. Appeal of development fees.

(1) A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest-bearing escrow account by the Township. Appeals from a determination of the Board may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

(2) A developer may challenge nonresidential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest-bearing escrow account by the Township. Appeals from a determination of the Director may be made to the Tax Court in accordance with the provisions of the State Tax Uniform Procedure Law, N.J.S.A. 54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.

§ 29-2.6 Affordable Housing Trust Fund.

A. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and nonresidential developers and proceeds from the sale of units with extinguished controls.

B. The following additional funds shall be deposited in the Affordable Housing Trust Fund and shall at all times be identifiable by source and amount:

- (1) Payments in lieu of on-site construction of affordable units;
- (2) Developer-contributed funds to make 10% of the adaptable entrances in a townhouse or other multistory attached development accessible;
- (3) Rental income from municipally operated units;
- (4) Repayments from affordable housing program loans;
- (5) Recapture funds;
- (6) Proceeds from the sale of affordable units; and
- (7) Any other funds collected in connection with the Township's affordable housing program.

C. The Township previously provided COAH with written authorization, in the form of a three-party escrow agreement between the Township, a bank, COAH, to permit COAH to direct the disbursement of the funds as provided for in N.J.A.C. 5:93-8. The Superior Court shall now have jurisdiction to direct the disbursement of the Township's trust funds.

D. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities approved by COAH or a court of competent jurisdiction.

§ 29-2.7 Use of funds.

A. The Township shall not spend development fees until COAH or a court of competent jurisdiction has approved a plan for spending such fees. Thereafter, the expenditure of all funds shall conform to the spending plan approved by COAH or a court of competent jurisdiction. Funds deposited in the housing trust fund may be used for any activity approved by COAH or a court of competent jurisdiction to address the Township's fair share obligation and may be set up as a grant or revolving loan program. Such activities include, but are not limited to, preservation or purchase of housing for the purpose of maintaining or implementing affordability controls, rehabilitation, new construction of affordable housing units and related costs, accessory apartment, market to affordable, or regional housing partnership programs, conversion of existing nonresidential buildings to create new affordable units, green building strategies designed to be cost saving and in accordance with accepted national or state standards, purchase of land for affordable housing, improvement of land to be used for affordable housing, extensions or improvements of roads and infrastructure to affordable housing sites, financial assistance designed to increase affordability, administration necessary for implementation of the Housing Element and Fair Share Plan, or any other activity as permitted pursuant to N.J.A.C. 5:93-8 and specified in the approved spending plan.

B. Funds shall not be expended to reimburse the Township for past housing activities.

- C. At least 30% of all development fees collected and interest earned shall be used to provide affordability assistance to low- and moderate-income households in affordable units included in the municipal Fair Share Plan. One-third of the affordability assistance portion of development fees collected shall be used to provide affordability assistance to those households earning 30% or less of median income by region.
 - (1) Affordability assistance programs may include down-payment assistance, security deposit assistance, low-interest loans, rental assistance, assistance with homeowners' association or condominium fees and special assessments, and assistance with emergency repairs.
 - (2) Affordability assistance to households earning 30% or less of median income may include buying down the cost of low- or moderate-income units in the municipal Fair Share Plan to make them affordable to households earning 30% or less of median income.
 - (3) Payments in lieu of constructing affordable units on site and funds from the sale of units with extinguished controls shall be exempt from the affordability assistance requirement.
- D. The Township may contract with a private or public entity to administer any part of its Housing Element and Fair Share Plan, including the requirement for affordability assistance, in accordance with N.J.A.C. 5:93-8.16(d).
- E. No more than 20% of all revenues collected from development fees, may be expended on administration, including, but not limited to, salaries and benefits for municipal employees or consultant fees necessary to develop or implement a new construction program, a Housing Element and Fair Share Plan, and/or an affirmative marketing program. In the case of a rehabilitation program, no more than 20% of the revenues collected from development fees shall be expended for such administrative expenses. Administrative funds may be used for income qualification of households, monitoring the turnover of sale and rental units, and compliance with COAH's monitoring requirements as set forth in the Court-approved Settlement Agreement with FSHC, dated December 13, 2018. Legal or other fees related to litigation opposing affordable housing sites or objecting to the Council's regulations and/or action are not eligible uses of the affordable housing trust fund.

§ 29-1.9 Monitoring.

On or about December 13 of each year through 2025, the Township shall provide annual reporting of trust fund activity to the DCA, COAH, or NJLGS, or other entity designated by the State of New Jersey, with a copy provided to Fair Share Housing Center and posted on the municipal website. This reporting shall include an accounting of all housing trust fund activity, including the collection of development fees from residential and nonresidential developers, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, barrier-free escrow funds, rental income, repayments from affordable housing program loans, and any other funds collected in connection with the Township's housing program, as well as to the expenditure of revenues and implementation of the plan approved by COAH or a court of competent jurisdiction. All monitoring reports shall be completed on forms designed by COAH or other entity designated by the State of New Jersey.

§ 29-1.10 Ongoing collection of fees.

The ability for the Township to impose, collect and expend development fees shall expire with its Court-issued Judgment of Compliance and Repose unless the Township has (1) filed an adopted Housing Element and Fair Share Plan with COAH, a court of competent jurisdiction or other entity designated by the State of New Jersey; (2) has petitioned for substantive certification or filed a declaratory judgment action; (3) and has received COAH's or a court of competent jurisdiction's approval of its Development Fee Ordinance. If the Township fails to renew its ability to impose and collect development fees prior to the expiration of its Judgment of Compliance and Repose, it may be subject to forfeiture of any or all funds remaining within its municipal trust fund. Any funds so forfeited shall be deposited into the "New Jersey Affordable Housing Trust Fund" established pursuant to section 20 of P.L.1985, c.222 (N.J.S.A. 52:27D-320). The Township shall not impose a residential development fee on a development that receives preliminary or final site plan approval after the expiration of its judgment of compliance; nor shall the Township retroactively impose a development fee on such a development. The Township shall not expend development fees after the expiration of its judgment of compliance.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a

separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This Ordinance shall not become effective until approved by the Superior Court of New Jersey.

Attorney Cruz explained that Ordinance 2019-14 was referred to the Planning Board for a Master Plan consistency review. The Planning Board has concluded that amendments be made to only have the developer fee **be applicable for** new construction. He also said that the Planning Board has deemed Ordinance 2019-14 to be inconsistent with the Master Plan, and the Township Committee would need to adopt a Reasons Resolution in order to adopt the ordinance as introduced. Attorney Cruz recommended that the Township Committee hold the scheduled public hearing on the Ordinance, and then provide direction how they would like to proceed.

Mayor Selen opened the Public Hearing on Ordinance 2019-14.

1. Rez Estevez, 126 Southern Boulevard, claimed that the Developer Fee would be a punitive tax. Mrs. Estevez spoke against having fees on homeowners. Mrs. Estevez said that the Township's obligation is to have a reasonable opportunity for affordable housing through zoning laws.
2. Stacey Ewald, 54 Nicholson Drive, asked if the Township would have discretion about the minimum size to which the developer fee would apply.
3. Mrs. Estevez said that the ordinance currently sets a low threshold for the level of renovations to which the developer fee would apply, and she said the fee is unwelcome.
4. Maureen Kelly, 67 Mountain Avenue, pointed out that the Township has a lot of upcoming expenses regarding affordable housing, and said that if there is not a developers fee, then the cost burden will be borne by all the property owners in the Township. She said it would be better to charge a fee to those who have the money to improve their homes rather than having a tax impact on senior citizens.
5. Rich Matlaga, 36 Dale Drive, said that he has lived in the Township for 40 years. He said that as the town gets larger, people are moving out. Mr. Matlaga also said he does not want taxes to be increased.

Seeing no further comment, Mayor Selen closed the Public Hearing.

Attorney Cruz said that a procedural motion is needed in order to open discussion on the ordinance among the Township Committee members.

Committeeman Ritter moved to adopt Ordinance 2019-14. Committeewoman Ness seconded the motion.

Mayor Selen said that the Township Committee can adopt the ordinance as introduced, or they could amend it to change how the fee would apply.

Committeeman Ritter moved to amend Ordinance 2019-14 consistent with the recommendations presented by the Planning Board. Deputy Mayor Kelly seconded the motion.

Deputy Mayor Kelly noted that whatever costs are not covered by the developers fee will need to be covered through general taxation, and he said that the public does not appear to want an increase in taxes.

Attorney Cruz summarized the options available to the Township Committee to move forward with the ordinance, and how the options can procedurally be accomplished. He advised against taking action on the ordinance at this meeting, as a Reasons Resolution would be needed to adopt the ordinance as introduced. He also noted that amendments will result in republication with an additional public hearing.

Committeewoman Swartz noted that this topic was extensively discussed by the Planning Board. She also said that the developers fee should apply to rebuilds but not to additions.

Committeeman Ritter asked if there is a legal definition of a tear-down. Administrator Hoffmann said that a definition can be sought. Attorney Cruz said that there are nuances to situations where some portion of an existing home remains so that the new home is not considered to have been a tear-down situation.

Attorney Cruz said that a developer fee is a onetime fee. He also explained that the rationale for having a developer fee apply to a tear-down is that typically new homes are not as affordable as the homes that they replaced.

Committeewoman Ness said that she would like to understand the Township's financial obligation before taking any action. She pointed out that the Township has had a developer fee ordinance in effect since 2008 but has elected to not collect the fees. Committeewoman Ness noted that the Township has a short amount of time to figure out how to raise between \$3 million and \$4 million, since the developer fee was not collected. She also opined that the developer fee moving forward will not be sufficient to meet the Township's needs.

Administrator Hoffmann noted that the Township has agreed to pay the Vernon Grove Association \$29,000 per year for the next 30 years, and Attorney Cruz said that payment is a condition of the agreement to extend the affordability controls on the existing units. Administrator Hoffmann cited other annual expenses that are already being incurred by the Township for affordable housing.

Attorney Cruz noted that there are many ways to meet the Township's affordable housing obligation. He said that the Township Committee had decided not to meet the obligation through inclusionary development, but rather to utilize a municipally sponsored 100% affordable development, and the Township will need to be willing to make up the shortfall of whatever funding the developer cannot otherwise raise.

Attorney Cruz noted that the Township Planner will need to prepare the final spending plan, and complimented Administrator Hoffmann on the preliminary analysis he performed.

The consensus of the Township Committee was to remove additions from the developer fee ordinance.

Attorney Cruz asked if the Township Committee wants to have a fee only on new construction, or to have the fee assessed on new construction and tear downs. He also said that there would be a definition developed for tear downs.

Committeewoman Ness reiterated that the only two funding sources for affordable housing costs are developers fees and general taxation, and she wants to understand the financial impact better before taking action.

Attorney Cruz said that he will draft two ordinances for consideration; one to include both new construction and tear downs, the other only including new construction.

Engineer Ruschke suggested that the Township Committee consider the FEMA definitions for substantial improvements before opting out of including improvements in the developers fee ordinance.

Committeewoman Ness noted the downward trend in teardowns.

Committeewoman Swartz said that an ordinance should be based on philosophy rather than anticipation of changing future financial needs.

Attorney Cruz said that the spending plan will be for a five-year period, and any ordinance can be amended in the future.

Attorney Cruz suggested that the current ordinance as introduced could either be carried to the next meeting, or it could be tabled so that a new draft can be considered. He noted that a new ordinance will have to be referred to the Planning Board for a Master Plan consistency review.

Committeewoman Ness said that the Township has to plan for future financial needs, and costs are already being accrued. As the money to pay for those costs has to come from somewhere, Committeewoman Ness said that the Township Committee should find a method that has as little

of an impact as possible on the majority of taxpayers, reiterating that the general fund is the other option.

Attorney Cruz said that he will have a new draft for the next meeting. He advised that the Township Committee table Ordinance 2019-14 so that a new draft can be considered.

Committeeman Ritter moved to table Ordinance 2019-14. Committeewoman Ness seconded the motion.

Roll call: Committeewoman Ness, Aye; Committeewoman Swartz, Aye; Committeeman Ritter, Aye; Deputy Mayor Kelly, Aye; Mayor Selen, Aye.

Committeewoman Swartz said that the Planning Board is not taking into consideration that the financial obligation is a moving target. Attorney Cruz confirmed that the Planning Board is only measuring the ordinance against the Master Plan.

Ordinance 2019-15

ORDINANCE 2019-15

AN ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, REPEALING CHAPTER XXIX, TITLED “AFFORDABLE HOUSING” OF THE REVISED GENERAL ORDINANCES AND REPLACING WITH A NEW CHAPTER XXIX, TITLED “AFFORDABLE HOUSING” TO ADDRESS THE REQUIREMENTS OF THE FAIR HOUSING ACT (FHA) AND THE UNIFORM HOUSING AFFORDABILITY CONTROLS (UHAC) REGARDING COMPLIANCE WITH THE TOWNSHIP’S AFFORDABLE HOUSING OBLIGATIONS

WHEREAS, the Township of Chatham (“Township”) filed a Declaratory Judgment Action in the Superior Court of New Jersey, Morris County, captioned IMO Township of Chatham, Docket No. MRS-L-1659-15 (“Declaratory Judgment Action”), in furtherance of the Supreme Court’s March 10, 2015, decision In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Supreme Court Decision”); and

WHEREAS, the Township of Chatham entered into a Settlement Agreement with the Fair Share Housing Center, Inc. (“FSHC”), dated December 13, 2018, and authorized by Township Committee Resolution No. 2018-210, arising out of the Declaratory Judgment that determines the Township’s affordable housing obligation and the mechanisms for how the obligation will be addressed (“Settlement Agreement”); and

WHEREAS, the Settlement Agreement was approved by the Superior Court of New Jersey, Morris County Law Division (“Court”), on February 22, 2019 at a duly noticed Fairness Hearing; and

WHEREAS, the Settlement Agreement and the Court approval require certain changes to the Township’s ordinances to address compliance issues; and

WHEREAS, this Ordinance shall be known as the “Affordable Housing Ordinance” or the “Chatham Township Third Round Affordable Housing Ordinance.”

BE IT ORDAINED by the Township Committee of the Township of Chatham, Morris County, New Jersey, that Chapter XXIX of the Revised General Ordinances of the Township of Chatham titled “Affordable Housing” is hereby repealed and replaced in its entirety with the following:

Section 29-1. Affordable Housing

29-1.1 Monitoring and Reporting Requirements

The Township of Chatham shall comply with the following monitoring and reporting requirements regarding the status of the implementation of the Court approved Settlement Agreement:

1. Beginning on December 13, 2019, and on every anniversary of that date through December 13, 2025, the Township agrees to provide annual reporting of its Affordable Housing Trust Fund activity to the New Jersey Department of Community Affairs, Council on Affordable Housing, or Local Government Services, or other entity designated by the State of New Jersey, with a copy provided to FSHC and posted on the municipal website, using forms developed for this purpose by the New Jersey Department of Community Affairs (“NJCA”), Council on Affordable Housing (“COAH”), or Local Government Services (“NJLGS”). The reporting shall include an accounting of all Affordable Housing Trust Fund activity, including the source and amount of funds collected and the amount and purpose for which any funds have been expended.
2. Beginning on December 13, 2019, and on every anniversary of that date through February 1, 2025, the Township of Chatham agrees to provide annual reporting of the status of all affordable housing activity within the municipality through posting on the municipal website with a copy of such posting provided to FSHC, using forms previously developed for this purpose by COAH or any other forms endorsed by the Special Master and FSHC.

3. By July 22, 2020, as required pursuant to N.J.S.A. 52:27D-313, the Township of Chatham will post on its municipal website, with a copy provided to FSHC, a status report as to its implementation of its Housing Element and Fair Share Plan and an analysis of whether any unbuilt sites or unfulfilled mechanisms continue to present a realistic opportunity and whether any mechanisms to meet unmet need should be revised or supplemented. Such posting shall invite any interested party to submit comments to the municipality, with a copy to FSHC, regarding whether any sites no longer present a realistic opportunity and should be replaced and whether any mechanisms to meet unmet need should be revised or supplemented. Any interested party may by motion request a hearing before the Court regarding these issues.
3. By December 13, 2020, and every third year thereafter, as required by N.J.S.A. 52:27D-329.1, the Township will post on its municipal website, with a copy provided to FSHC, a status report as to its satisfaction of its very low-income requirements, including its family very low-income requirements. Such posting shall invite any interested party to submit comments to the municipality and FSHC on the issue of whether the municipality has complied with its very low-income and family very low-income housing obligations.

Section 29-1.2. Definitions

A. All definitions contained in N.J.A.C. 5:96-1.1 et seq., as may be amended by the decision in In re Adoption of N.J.A.C. 5:96 & 5:97 by N.J. Council on Affordable Housing, 221 N.J. 1 (2015) (“Mount Laurel IV”) or a court of competent jurisdiction, Procedural Rules of the New Jersey Council on Affordable Housing, and N.J.A.C. 5:97-1.1. et seq., as may be amended by the decision in Mount Laurel IV or a court of competent jurisdiction, Substantive Rules of the New Jersey Council on Affordable Housing, are hereby incorporated and adopted as if set forth in full herein. For convenience, the following definitions are provided for reference purposes. In the event of any conflict or amendment to the New Jersey Administrative Code (“N.J.A.C.”), the definitions and rules duly promulgated pursuant to the Administrative Procedures Act shall govern this chapter.

B. The following terms when used in this Ordinance shall have the meanings given in this Section:

“Act” means the Fair Housing Act of 1985, P.L. 1985, c. 222 (N.J.S.A. 52:27D-301 et seq.)

“Adaptable” means constructed in compliance with the technical design standards of the Barrier Free Subcode, N.J.A.C. 5:23-7.

“Administrative agent” means the entity designated by the Township to administer affordable units in accordance with this Ordinance, N.J.A.C. 5:93, and UHAC (N.J.A.C. 5:80-26).

“Affirmative marketing” means a regional marketing strategy designed to attract buyers and/or renters of affordable units pursuant to N.J.A.C. 5:80-26.15.

“Affordability average” means the average percentage of median income at which new restricted units in an affordable housing development are affordable to low- and moderate-income households.

“Affordable” means, a sales price or rent level that is within the means of a low- or moderate-income household as defined within N.J.A.C. 5:93-7.4, and, in the case of an ownership unit, that the sales price for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.6, as may be amended and supplemented, and, in the case of a rental unit, that the rent for the unit conforms to the standards set forth in N.J.A.C. 5:80-26.12, as may be amended and supplemented.

“Affordable housing development” means a development included in or approved pursuant to the Housing Element and Fair Share Plan or otherwise intended to address the Township's fair share obligation, and includes, but is not limited to, an inclusionary development, a municipal construction project or a 100 percent affordable housing development.

“Affordable housing program(s)” means any mechanism in a municipal Fair Share Plan prepared or implemented to address a municipality’s fair share obligation.

“Affordable unit” means a housing unit proposed or created pursuant to the Act and approved for crediting by the Court and/or funded through an affordable housing trust fund.

“Agency” means the New Jersey Housing and Mortgage Finance Agency established by P.L. 1983, c. 530 (N.J.S.A. 55:14K-1, et seq.).

“Age-restricted unit” means a housing unit designed to meet the needs of, and exclusively for, the residents of an age-restricted segment of the population such that: 1) all the residents of the development wherein the unit is situated are 62 years of age or older; or 2) at least 80 percent of the units are occupied by one person who is 55 years of age or older; or 3) the development has been designated by the Secretary

of the U.S. Department of Housing and Urban Development as “housing for older persons” as defined in Section 807(b)(2) of the Fair Housing Act, 42 U.S.C. § 3607.

"Alternative living arrangement" means a structure in which households live in distinct bedrooms, yet share kitchen and plumbing facilities, central heat and common areas. Alternative living arrangements include, but are not limited to: transitional facilities for the homeless; Class A, B, C, D and E boarding homes as regulated by the State of New Jersey Department of Community Affairs; residential health care facilities as regulated by the New Jersey Department of Health; group homes for the developmentally disabled and mentally ill as licensed and/or regulated by the New Jersey Department of Human Services; and congregate living arrangements.

“Assisted living residence” means a facility that is licensed by the New Jersey Department of Health and Senior Services to provide apartment-style housing and congregate dining and to assure that assisted living services are available when needed for four or more adult persons unrelated to the proprietor and that offers units containing, at a minimum, one unfurnished room, a private bathroom, a kitchenette and a lockable door on the unit entrance.

“Certified household” means a household that has been certified by an Administrative Agent as a low-income household or moderate-income household.

“COAH” means the Council on Affordable Housing, as established by the New Jersey Fair Housing Act (N.J.S.A. 52:27D-301, et seq.).

“DCA” means the State of New Jersey Department of Community Affairs.

“Deficient housing unit” means a housing unit with health and safety code violations that requires the repair or replacement of a major system. A major system includes weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and/or load bearing structural systems.

“Developer” means any person, partnership, association, company or corporation that is the legal or beneficial owner or owners of a lot or any land included in a proposed development including the holder of an option to contract to purchase, or other person having an enforceable proprietary interest in such land.

“Development” means the division of a parcel of land into two or more parcels, the construction, reconstruction, conversion, structural alteration, relocation, or enlargement of any use or change in the use of any building or other structure, or of any mining, excavation or landfill, and any use or change in the use of any building or other structure, or land or extension of use of land, for which permission may be required pursuant to N.J.S.A. 40:55D-1, et seq.

“Inclusionary development” means a development containing both affordable units and market rate units. This term includes, but is not limited to: new construction, the conversion of a non-residential structure to residential use and the creation of new affordable units through the gut rehabilitation or reconstruction of a vacant residential structure.

“Low-income household” means a household with a total gross annual household income equal to 50 percent or less of the regional median household income by household size.

“Low-income unit” means a restricted unit that is affordable to a low-income household.

“Major system” means the primary structural, mechanical, plumbing, electrical, fire protection, or occupant service components of a building which include but are not limited to, weatherization, roofing, plumbing (including wells), heating, electricity, sanitary plumbing (including septic systems), lead paint abatement and load bearing structural systems.

“Market-rate units” means housing not restricted to low- and moderate-income households that may sell or rent at any price.

“Median income” means the median income by household size for the applicable housing region, as adopted annually by COAH or a successor entity approved by the Court.

“Moderate-income household” means a household with a total gross annual household income in excess of 50 percent but less than 80 percent of the regional median household income by household size.

“Moderate-income unit” means a restricted unit that is affordable to a moderate-income household.

“Non-exempt sale” means any sale or transfer of ownership other than the transfer of ownership between husband and wife; the transfer of ownership between former spouses ordered as a result of a judicial decree of divorce or judicial separation, but not including sales to third parties; the transfer of ownership

between family members as a result of inheritance; the transfer of ownership through an executor’s deed to a class A beneficiary and the transfer of ownership by court order.

“Random selection process” means a process by which currently income-eligible households are selected for placement in affordable housing units such that no preference is given to one applicant over another except for purposes of matching household income and size with an appropriately priced and sized affordable unit (e.g., by lottery).

“Regional asset limit” means the maximum housing value in each housing region affordable to a four-person household with an income at 80 percent of the regional median as defined by duly adopted Regional Income Limits published annually by COAH or a successor entity.

“Rehabilitation” means the repair, renovation, alteration or reconstruction of any building or structure, pursuant to the Rehabilitation Subcode, N.J.A.C. 5:23-6.

“Rent” means the gross monthly cost of a rental unit to the tenant, including the rent paid to the landlord, as well as an allowance for tenant-paid utilities computed in accordance with allowances published by DCA for its Section 8 program. In assisted living residences, rent does not include charges for food and services.

“Restricted unit” means a dwelling unit, whether a rental unit or an ownership unit, that is subject to the affordability controls of N.J.A.C. 5:80-26.1, as amended and supplemented, but does not include a market-rate unit financed under UHORP or MONI.

“Settlement Agreement” means the settlement agreement between the Township of Chatham and Fair Share Housing Center, Inc., dated December 13, 2018, in the Matter of the Application of the Township of Chatham, County of Morris, Docket No. MRS-1659-15.

“UHAC” means the Uniform Housing Affordability Controls set forth in N.J.A.C. 5:80-26, et seq.

“Very low-income household” means a household with a total gross annual household income equal to 30 percent or less of the regional median household income by household size.

“Very low-income unit” means a restricted unit that is affordable to a very low-income household.

“Weatherization” means building insulation (for attic, exterior walls and crawl space), siding to improve energy efficiency, replacement storm windows, replacement storm doors, replacement windows and replacement doors, and is considered a major system for purposes of a rehabilitation program.

Section 29-1.3. Applicability

1. The provisions of this Ordinance shall apply to all affordable housing developments and affordable housing units that currently exist and that are proposed to be created within the Township of Chatham pursuant to the Township's most recently adopted Housing Element and Fair Share Plan.
2. Moreover, this Ordinance shall apply to all developments that contain low-and moderate-income housing units, including any currently unanticipated future developments that will provide low-and moderate-income housing units.
3. This Ordinance specifically applies to the Township of Chatham’s Third Round affordable housing obligations identified in the Settlement Agreement, which sets forth the following affordable housing obligations.

Component of Third Round Obligation:	Kinsey	Court
Rehabilitation Share:	63	6
Prior Round Obligation (pursuant to <u>N.J.A.C. 5:93</u>):	83	83
Third Round (1999-2025):	387	387

4. This Ordinance applies to the Township of Chatham’s Third Round affordable housing compliance mechanisms that are identified in the Settlement Agreement, which sets forth the following affordable housing compliance techniques:
 - a. Prior Round Obligation
 - Vernon Grove Condominium for 75 family for-sale units
 - Group home located at Block 67, Lot 3 for 4 units
 - b. Rehabilitation
 - 6 units through Morris County Housing Rehabilitation Program

c. Third Round Prospective Share:

- 100% affordable housing project (24 units) located on Block 48.16, Lot 117.27 (aka Skate Park).
- 100% affordable housing project (74 units) located at sites to be determined.
- The creation of a Mandatory Set-aside Ordinance for single-family and multifamily development at a gross density of 6 units per acre with a 15% set-aside for rental development and a 20% set-aside for for-sale developments.
- R-12 Inclusionary Overlay Zone permitting family rental or for-sale units on Block 128, Lot 9 at 12 units per acre with a 15% set-aside for rental development and 20% set-aside for for-sale development.

Section 29-1.4. Affordable Housing Program - Rehabilitation

The Township of Chatham has determined that it will use the following mechanisms to satisfy its affordable housing obligations:

a. *A Rehabilitation Program.*

1. The Township of Chatham's rehabilitation program shall be designed to renovate deficient housing units occupied by low- and moderate-income households such that, after rehabilitation, these units will comply with the New Jersey State Housing Code pursuant to N.J.A.C. 5:28.
2. Both owner occupied and renter occupied units shall be eligible for rehabilitation funds.
3. The Township of Chatham will address its rehabilitation requirement of six (6) units through its participation in the Morris County Homeowner Rehabilitation Program.
4. The program is maintained by the Morris County Division of Community Development. The program is funded through the U.S. Department of Housing and Urban Development (HUD). This program is a cooperative effort of the Federal government through the Morris County Board of Chosen Freeholders and thirty-seven (37) municipalities to meet housing and neighborhood needs throughout the County. The Housing Rehabilitation Program is only one of the many activities receiving funding through this annual grant. Funds are to be used for major repairs or conditions related to health or safety. Examples of Work: roof replacement, furnace replacement, upgrade electrical, construct new well or septic, sewer or water hook-ups, provide handicapped access; and Type of Assistance: No Interest, No Payment 6-Year or 10-Year Forgivable Loan (Term is dependent on amount of assistance).
5. All rehabilitated units shall remain affordable to low- and moderate-income households for a period of ten (10) years (the control period). For owner occupied units the control period will be enforced with a lien and for renter-occupied units the control period will be enforced with a deed restriction.
6. The Township of Chatham shall dedicate a minimum of ten thousand (\$10,000.00) dollars from its Housing Trust Fund for each unit to be rehabilitated through this program, reflecting the minimum hard cost of rehabilitation for each unit.
7. The Township of Chatham shall designate, subject to the approval of COAH, the Morris County Division of Community Development to administer the rehabilitation program in accordance with N.J.A.C. 5:96 and N.J.A.C. 5:97. The County shall provide a rehabilitation manual for the owner occupancy rehabilitation program and a rehabilitation manual for the rental occupancy rehabilitation program to be adopted by resolution of the governing body and subject to approval of COAH. Both rehabilitation manuals shall be available for public inspection in the Office of the Municipal Clerk and in the office(s) of the County.
8. Units in a rehabilitation program shall be exempt from N.J.A.C. 5:97-9 and Uniform Housing Affordability Controls (UHAC), but shall be administered in accordance with the following:
 - (a) If a unit is vacant, upon initial rental subsequent to rehabilitation, or if a renter-occupied unit is re-rented prior to the end of controls on affordability, the deed restriction shall require the unit to be rented to a low- or moderate-income household at an affordable rent and affirmatively marketed pursuant to N.J.A.C. 5:97-9 and UHAC.
 - (b) If a unit is renter-occupied, upon completion of the rehabilitation, the maximum rate of rent shall be the lesser of the current rent or the maximum permitted rent pursuant to N.J.A.C. 5:97-9 and UHAC.

- (c) Rents in rehabilitated units may increase annually based on the standards in N.J.A.C. 5:97-9.
- (d) Applicant and/or tenant households shall be certified as income-eligible in accordance with N.J.A.C. 5:97-9 and UHAC, except that households in owner occupied units shall be exempt from the regional asset limit.

Section 29-1.5. Affordable Housing Program - Alternative Living Arrangements

1. The administration of an alternative living arrangement shall be in compliance with N.J.A.C. 5:93-5.8 and UHAC, with the following exceptions:
 - a. Affirmative marketing (N.J.A.C. 5:80-26.15), provided, however, that the units or bedrooms may be affirmatively marketed by the provider in accordance with an alternative plan approved by the Court;
 - b. Affordability average and bedroom distribution (N.J.A.C. 5:80-26.3).
2. With the exception of units established with capital funding through a 20-year operating contract with the Department of Human Services, Division of Developmental Disabilities, alternative living arrangements shall have at least 30-year controls on affordability in accordance with UHAC, unless an alternative commitment is approved by the Court.
3. The service provider for the alternative living arrangement shall act as the Administrative Agent for the purposes of administering the affirmative marketing and affordability requirements for the alternative living arrangement.

Section 29-1.6. Affordable Housing Program - Township-wide Mandatory Set-Aside

- A. Paragraph 8 of the December 13, 2018 Settlement Agreement requires the Township of Chatham to adopt a Township-wide ordinance that requires any new development in the Township to include a set-aside for low- and moderate-income households of not less than 20%. Consistent with those requirements, this section of the ordinance hereby requires that any new multi-family or single-family attached residential development, permitted by zoning or through variance, at a gross density of 6 units or greater per acre shall include a mandatory 20% set-aside of affordable housing units. Such developments include any residential portion of a mixed use development, part of a redevelopment plan, or areas in need of redevelopment or rehabilitation.
- B. This Township-wide mandatory set-aside requirement does not supersede the effects or requirements of any inclusionary overlay zoning districts.
- C. In the event that the inclusionary set-aside of the total number of residential units does not result in a full integer, the developer may choose one of two options of addressing the fractional unit:
 1. The developer shall round the set-aside upward to construct a whole additional affordable unit; or
 2. If the set-aside includes a fractional unit equal to 0.49 or less, the developer may round the set-aside downward and construct the lesser whole number of affordable units, but must also make a payment in-lieu of constructing the fractional additional unit (“fractional payment in-lieu”).
 - (a) The fractional payment in-lieu dollar amount shall be calculated as the fractional unit multiplied by the estimated payment in-lieu to construct an affordable unit.
 3. For Example: If seven (7) total units are developed at an inclusionary site, a 20% set-aside would require 1.4 affordable units. Per the requirements above:
 - (a) The developer shall round up the 0.4 unit to one (1) whole affordable unit so as to construct a total of two (2) affordable housing units; or
 - (b) The developer shall round the set aside downward so as to construct only (1) affordable unit and shall pay into the Township’s affordable housing trust fund a fractional in-lieu payment equal to the cost to construct an affordable unit multiplied by 0.4 units.

Section 29-1.7. New Construction Requirements

1. Low/Moderate Split and Bedroom Distribution of Affordable Housing Units:
 - a. The fair share obligation shall be divided equally between low- and moderate-income units, except that where there is an odd number of affordable housing units, the extra unit

shall be a low-income unit. At least 13 percent of all restricted rental units shall be very low-income units (affordable to a household earning 30 percent or less of regional median income by household size). The very low-income units shall be counted as part of the required number of low-income units within the development.

- b. In each affordable development, at least 50 percent of the restricted units within each bedroom distribution shall be very low or low-income units.
- c. Affordable developments that are not age-restricted shall be structured in conjunction with realistic market demands such that:
 - 1) The combined number of efficiency and one-bedroom units shall be no greater than 20 percent of the total low- and moderate-income units;
 - 2) At least 30 percent of all low- and moderate-income units shall be two bedroom units;
 - 3) At least 20 percent of all low- and moderate-income units shall be three bedroom units; and
 - 4) The remaining units may be allocated among two and three bedroom units at the discretion of the developer.
- d. Affordable developments that are age-restricted shall be structured such that the number of bedrooms shall equal the number of age-restricted low- and moderate-income units within the inclusionary development. This standard may be met by having all one-bedroom units or by having a two-bedroom unit for each efficiency unit.

2. Accessibility Requirements:

- a. The first floor of all restricted townhouse dwelling units and all restricted units in all other multistory buildings shall be subject to the technical design standards of the Barrier Free SubCode, N.J.A.C. 5:23-7 and the following:
- b. All restricted townhouse dwelling units and all restricted units in other multistory buildings in which a restricted dwelling unit is attached to at least one other dwelling unit shall have the following features:
 - 1) An adaptable toilet and bathing facility on the first floor; and
 - 2) An adaptable kitchen on the first floor; and
 - 3) An interior accessible route of travel on the first floor; and
 - 4) An adaptable room that can be used as a bedroom, with a door or the casing for the installation of a door, on the first floor; and
 - 5) If not all of the foregoing requirements in b.1) through b.4) can be satisfied, then an interior accessible route of travel must be provided between stories within an individual unit, but if all of the terms of paragraphs b.1) through b.4) above have been satisfied, then an interior accessible route of travel shall not be required between stories within an individual unit; and
 - 6) An accessible entranceway as set forth at P.L. 2005, c. 350 (N.J.S.A. 52:27D-31 1a, et seq.) and the Barrier Free SubCode, N.J.A.C. 5:23-7, or evidence that Chatham has collected funds from the developer sufficient to make 10 percent of the adaptable entrances in the development accessible:
 - a) Where a unit has been constructed with an adaptable entrance, upon the request of a disabled person who is purchasing or will reside in the dwelling unit, an accessible entrance shall be installed.
 - b) To this end, the builder of restricted units shall deposit funds within the Township of Chatham's Affordable Housing Trust Fund sufficient to install accessible entrances in 10 percent of the affordable units that have been constructed with adaptable entrances.
 - c) The funds deposited under paragraph 6)b) above shall be used by the Township of Chatham for the sole purpose of making the adaptable entrance of an affordable unit accessible when requested to do so by a

person with a disability who occupies or intends to occupy the unit and requires an accessible entrance.

- d) The developer of the restricted units shall submit a design plan and cost estimate to the Construction Official of the Township of Chatham for the conversion of adaptable to accessible entrances.
- e) Once the Construction Official has determined that the design plan to convert the unit entrances from adaptable to accessible meet the requirements of the Barrier Free SubCode, N.J.A.C. 5:23-7, and that the cost estimate of such conversion is reasonable, payment shall be made to the Township's Affordable Housing Trust Fund in care of the Township Treasurer who shall ensure that the funds are deposited into the Affordable Housing Trust Fund and appropriately earmarked.
- f) Full compliance with the foregoing provisions shall not be required where an entity can demonstrate that it is "site impracticable" to meet the requirements. Determinations of site impracticability shall be in compliance with the Barrier Free SubCode, N.J.A.C. 5:23-7.

3. Design:

- a. In inclusionary developments, to the extent possible, low- and moderate-income units shall be integrated with the market units.
- b. In inclusionary developments, low- and moderate-income units shall have access to all of the same common elements and facilities as the market units.

4. Maximum Rents and Sales Prices:

- a. In establishing rents and sales prices of affordable housing units, the Administrative Agent shall follow the procedures set forth in UHAC, utilizing the most recently published regional weighted average of the uncapped Section 8 income limits published by HUD. To calculate this regional income limit, the HUD determination of median income for a family of four is multiplied by the estimated households within the county according to the most recent decennial Census. The resulting product for each county within the housing region is summed. The sum is divided by the estimated total household from the most recent decennial Census in the Township's housing region. This quotient represents the regional weighted average of median income for a household of four. The income limit for a moderate-income unit for a household of four shall be 80 percent of the regional weighted average median income for a family of four. The income limit for a low-income unit for a household of four shall be 50 percent of the regional weighted average median income for a family of four. The income limit for a very low-income unit for a household of four shall be 30 percent of the regional weighted average median income for a family of four. The income limits shall be adjusted by household size based on multipliers used by HUD to adjust median income by household size. In no event shall the income limits be less than those for the previous year.
- b. The maximum rent for restricted rental units within each affordable development shall be affordable to households earning no more than 60 percent of median income, and the average rent for restricted rental units shall be affordable to households earning no more than 52 percent of median income.
- c. The developers and/or municipal sponsors of restricted rental units shall establish at least one rent for each bedroom type for both low-income and moderate-income units, provided that at least 13 percent of all low- and moderate-income rental units shall be affordable to very low-income households, which very low-income units shall be part of the low-income requirement.
- d. The maximum sales price of restricted ownership units within each affordable development shall be affordable to households earning no more than 70 percent of median income, and each affordable development must achieve an affordability average of 55 percent for restricted ownership units; in achieving this affordability average, moderate-income ownership units must be available for at least three different sales prices for each bedroom type, and low-income ownership units must be available for at least two different sales prices for each bedroom type.
- e. In determining the initial sales prices and rent levels for compliance with the affordability average requirements for restricted units other than assisted living facilities and age-restricted developments, the following standards shall be used:
 - 1) A studio shall be affordable to a one-person household;
 - 2) A one-bedroom unit shall be affordable to a one and one-half person household;
 - 3) A two-bedroom unit shall be affordable to a three-person household;

- 4) A three-bedroom unit shall be affordable to a four and one-half person household; and
 - 5) A four-bedroom unit shall be affordable to a six-person household.
- f. In determining the initial sales prices and rents for compliance with the affordability average requirements for restricted units in assisted living facilities and age-restricted developments, the following standards shall be used:
- 1) A studio shall be affordable to a one-person household;
 - 2) A one-bedroom unit shall be affordable to a one and one-half person household; and
 - 3) A two-bedroom unit shall be affordable to a two-person household or to two one-person households.
- g. The initial purchase price for all restricted ownership units shall be calculated so that the monthly carrying cost of the unit, including principal and interest (based on a mortgage loan equal to 95 percent of the purchase price and the Federal Reserve H.15 rate of interest), taxes, homeowner and private mortgage insurance and condominium or homeowner association fees do not exceed 28 percent of the eligible monthly income of the appropriate size household as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the price shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- h. The initial rent for a restricted rental unit shall be calculated so as not to exceed 30 percent of the eligible monthly income of the appropriate size household, including an allowance for tenant paid utilities, as determined under N.J.A.C. 5:80-26.4, as may be amended and supplemented; provided, however, that the rent shall be subject to the affordability average requirement of N.J.A.C. 5:80-26.3, as may be amended and supplemented.
- i. The price of owner-occupied low- and moderate-income units may increase annually based on the percentage increase in the regional median income limit for each housing region. In no event shall the maximum resale price established by the Administrative Agent be lower than the last recorded purchase price.
- j. The rents of very low-, low- and moderate-income units may be increased annually based on the permitted percentage increase in the Housing Consumer Price Index for the Northeast Urban Area. This increase shall not exceed nine percent in any one year. Rents for units constructed pursuant to low- income housing tax credit regulations shall be indexed pursuant to the regulations governing low- income housing tax credits.

Section 29-1.8. Phasing Schedule for Inclusionary Zoning

In inclusionary developments the following schedule shall be followed:

Maximum Percentage of Market-Rate Units Completed	Minimum Percentage of Low- and Moderate-Income Units Completed
25	0
25+1	10
50	75
90	100

Section 29-1.9. Utilities

Affordable units shall utilize the same type of heating source as market units within an inclusionary development.

Tenant-paid utilities included in the utility allowance shall be set forth in the lease and shall be consistent with the utility allowance approved by the NJDCA for its Section 8 program.

Section 29-1.10. Occupancy Standards

In referring certified households to specific restricted units, the Administrative Agent shall, to the extent feasible and without causing an undue delay in the occupancy of a unit, strive to:

- 1. Provide for at least one occupant and not more than two occupants per bedroom.

Section 29-1.11. Control Periods for Restricted Ownership Units and Enforcement Mechanisms

1. Control periods for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.5, as may be amended and supplemented, and each restricted ownership unit shall remain subject to the requirements of this Ordinance for a period of at least thirty (30) years, until Chatham takes action to release the unit from such requirements; prior to such action, a restricted ownership unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
2. The affordability control period for a restricted ownership unit shall commence on the date the initial certified household takes title to the unit.
3. Prior to the issuance of the initial certificate of occupancy for a restricted ownership unit and upon each successive sale during the period of restricted ownership, the Administrative Agent shall determine the restricted price for the unit and shall also determine the non-restricted, fair market value of the unit based on either an appraisal or the unit's equalized assessed value without the restrictions in place.
4. At the time of the initial sale of the unit, the initial purchaser shall execute and deliver to the Administrative Agent a recapture note obligating the purchaser (as well as the purchaser's heirs, successors and assigns) to repay, upon the first non-exempt sale after the unit's release from the restrictions set forth in this Ordinance, an amount equal to the difference between the unit's non-restricted fair market value and its restricted price, and the recapture note shall be secured by a recapture lien evidenced by a duly recorded mortgage on the unit.
5. The affordability controls set forth in this Ordinance shall remain in effect despite the entry and enforcement of any judgment of foreclosure with respect to restricted ownership units.
6. A restricted ownership unit shall be required to obtain a Continuing Certificate of Occupancy or a certified statement from the Construction Official stating that the unit meets all Code standards upon the first transfer of title following the removal of the restrictions provided under N.J.A.C. 5:80-26.5(a), as may be amended and supplemented.

Section 29-1.12. Price Restrictions for Restricted Ownership Units, Homeowner Association Fees and Resale Prices

Price restrictions for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, including:

1. The initial purchase price for a restricted ownership unit shall be approved by the Administrative Agent.
2. The Administrative Agent shall approve all resale prices, in writing and in advance of the resale, to assure compliance with the foregoing standards.
3. The master deeds of inclusionary developments shall provide no distinction between the condominium or homeowner association fees and special assessments paid by low- and moderate-income purchasers and those paid by market purchasers.
4. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of anticipated capital improvements. Eligible capital improvements shall be those that render the unit suitable for a larger household or the addition of a bathroom. See Section 13.

Section 29-1.13. Buyer Income Eligibility

1. Buyer income eligibility for restricted ownership units shall be in accordance with N.J.A.C. 5:80-26.1, as may be amended and supplemented, such that low-income ownership units shall be reserved for households with a gross household income less than or equal to 50 percent of median income and moderate-income ownership units shall be reserved for households with a gross household income less than 80 percent of median income.
2. Notwithstanding the foregoing, the Administrative Agent may, upon approval by the Committee of the Township of Chatham, and subject to the Court's approval, permit a moderate-income purchaser to buy a low-income unit if and only if the Administrative Agent can demonstrate that there is an insufficient number of eligible low-income purchasers in the housing region to permit prompt occupancy of the unit and all other reasonable efforts to attract a low-income purchaser, including pricing and financing incentives, have failed. Any such low-income unit that is sold to a moderate-income household shall retain the required pricing and pricing restrictions for a low-income unit.
3. A certified household that purchases a restricted ownership unit must occupy it as the certified household's principal residence and shall not lease the unit; provided, however, that the

Administrative Agent may permit the owner of a restricted ownership unit, upon application and a showing of hardship, to lease the restricted unit to another certified household for a period not to exceed one year.

4. The Administrative Agent shall certify a household as eligible for a restricted ownership unit when the household is a low-income household or a moderate-income household, as applicable to the unit, and the estimated monthly housing cost for the particular unit (including principal, interest, taxes, homeowner and private mortgage insurance and condominium or homeowner association fees, as applicable) does not exceed 33 percent of the household's eligible monthly income.

Section 29-1.14. Limitations on Indebtedness Secured by Ownership Unit; Subordination

1. Prior to incurring any indebtedness to be secured by a restricted ownership unit, the owner shall apply to the Administrative Agent for a determination in writing that the proposed indebtedness complies with the provisions of this Section, and the Administrative Agent shall issue such determination prior to the owner incurring such indebtedness.
2. With the exception of First Purchase Money Mortgages, neither an owner nor a lender shall at any time cause or permit the total indebtedness secured by a restricted ownership unit to exceed 95 percent of the maximum allowable resale price of the unit, as such price is determined by the Administrative Agent in accordance with N.J.A.C.5:80-26.6(b).

Section 29-1.15. Capital Improvements To Ownership Units

1. The owners of restricted ownership units may apply to the Administrative Agent to increase the maximum sales price for the unit on the basis of capital improvements made since the purchase of the unit. Eligible capital improvements shall be those that render the unit suitable for a larger household or that add an additional bathroom. In no event shall the maximum sales price of an improved housing unit exceed the limits of affordability for the larger household.
2. Upon the resale of a restricted ownership unit, all items of property that are permanently affixed to the unit or were included when the unit was initially restricted (for example, refrigerator, range, washer, dryer, dishwasher, wall-to-wall carpeting) shall be included in the maximum allowable resale price. Other items may be sold to the purchaser at a reasonable price that has been approved by the Administrative Agent at the time of the signing of the agreement to purchase. The purchase of central air conditioning installed subsequent to the initial sale of the unit and not included in the base price may be made a condition of the unit resale provided the price, which shall be subject to 10-year, straight-line depreciation, has been approved by the Administrative Agent. Unless otherwise approved by the Administrative Agent, the purchase of any property other than central air conditioning shall not be made a condition of the unit resale. The owner and the purchaser must personally certify at the time of closing that no unapproved transfer of funds for the purpose of selling and receiving property has taken place at the time of or as a condition of resale.

Section 29-1.16. Control Periods for Restricted Rental Units

1. Control periods for restricted rental units shall be in accordance with N.J.A.C. 5:80-26.11, as may be amended and supplemented, and each restricted rental unit shall remain subject to the requirements of this Ordinance for a period of at least 30 years, until the Township of Chatham takes action to release the unit from such requirements. Prior to such action, a restricted rental unit must remain subject to the requirements of N.J.A.C. 5:80-26.1, as may be amended and supplemented.
2. Deeds of all real property that include restricted rental units shall contain deed restriction language. The deed restriction shall have priority over all mortgages on the property, and the deed restriction shall be filed by the developer or seller with the records office of the County of Morris. A copy of the filed document shall be provided to the Administrative Agent within 30 days of the receipt of a Certificate of Occupancy.
3. A restricted rental unit shall remain subject to the affordability controls of this Ordinance despite the occurrence of any of the following events:
 - a. Sublease or assignment of the lease of the unit;
 - b. Sale or other voluntary transfer of the ownership of the unit; or
4. The entry and enforcement of any judgment of foreclosure on the property containing the unit.

Section 29-1.17. Rent Restrictions for Rental Units; Leases

1. A written lease shall be required for all restricted rental units and tenants shall be responsible for security deposits and the full amount of the rent as stated on the lease. A copy of the current lease for each restricted rental unit shall be provided to the Administrative Agent.
2. No additional fees or charges shall be added to the approved rent (except, in the case of units in an assisted living residence, to cover the customary charges for food and services) without the express written approval of the Administrative Agent.
3. Application fees (including the charge for any credit check) shall not exceed five percent of the monthly rent of the applicable restricted unit and shall be payable to the Administrative Agent to be applied to the costs of administering the controls applicable to the unit as set forth in this Ordinance.
4. No rent control ordinance or other pricing restriction shall be applicable to either the market units or the affordable units in any development in which at least 15% of the total number of dwelling units are restricted rental units in compliance with this Ordinance.

Section 29-1.18. Tenant Income Eligibility

1. Tenant income eligibility shall be in accordance with N.J.A.C. 5:80-26.13, as may be amended and supplemented, and shall be determined as follows:
 - a. Very low-income rental units shall be reserved for households with a gross household income less than or equal to 30 percent of the regional median household income by household size.
 - b. Low-income rental units shall be reserved for households with a gross household income less than or equal to 50 percent of the regional median household income by household size.
 - c. Moderate-income rental units shall be reserved for households with a gross household income less than 80 percent of the regional median household income by household size.
2. The Administrative Agent shall certify a household as eligible for a restricted rental unit when the household is a very low-income household, low-income household or a moderate-income household, as applicable to the unit, and the rent proposed for the unit does not exceed 35 percent (40 percent for age-restricted units) of the household's eligible monthly income as determined pursuant to N.J.A.C. 5:80-26.16, as may be amended and supplemented; provided, however, that this limit may be exceeded if one or more of the following circumstances exists:
 - a. The household currently pays more than 35 percent (40 percent for households eligible for age-restricted units) of its gross household income for rent, and the proposed rent will reduce its housing costs;
 - b. The household has consistently paid more than 35 percent (40 percent for households eligible for age-restricted units) of eligible monthly income for rent in the past and has proven its ability to pay;
 - c. The household is currently in substandard or overcrowded living conditions;
 - d. The household documents the existence of assets with which the household proposes to supplement the rent payments; or
 - e. The household documents reliable anticipated third-party assistance from an outside source such as a family member in a form acceptable to the Administrative Agent and the owner of the unit.
3. The applicant shall file documentation sufficient to establish the existence of the circumstances in 1.a. through 2.e. above with the Administrative Agent, who shall counsel the household on budgeting.

Section 29-1.19. Municipal Housing Liaison

1. The Township of Chatham shall appoint a specific municipal employee to serve as a Municipal Housing Liaison responsible for overseeing the Township's affordable housing program, including overseeing the administration of affordability controls on the affordable units and the affirmative marketing of available affordable units in accordance with the Township's Affirmative Marketing Plan; fulfilling monitoring and reporting requirements; and supervising Administrative Agent(s). Chatham Township shall adopt an Ordinance creating the position of Municipal Housing Liaison and a Resolution appointing the person to fulfill the position of Municipal Housing Liaison. The Municipal Housing Liaison shall be appointed by the governing body and may be a full or part time municipal employee. The Municipal Housing Liaison shall

be approved by the Court and shall be duly qualified through a training program sponsored by Affordable Housing Professionals of New Jersey before assuming the duties of Municipal Housing Liaison.

2. The Municipal Housing Liaison shall be responsible for oversight and administration of the affordable housing program for the Township of Chatham, including the following responsibilities which may not be contracted out to the Administrative Agent:
 - a. Serving as the Township of Chatham's primary point of contact for all inquiries from the State, affordable housing providers, Administrative Agents and interested households;
 - b. Monitoring the status of all restricted units in the Township of Chatham's Fair Share Plan;
 - c. Compiling, verifying, submitting and posting all monitoring reports as required by the Court and by this Ordinance;
 - d. Coordinating meetings with affordable housing providers and Administrative Agents, as needed; and
 - e. Attending continuing education opportunities on affordability controls, compliance monitoring and affirmative marketing at least annually and more often as needed.
3. Subject to the approval of the Court, the Township of Chatham shall designate one or more Administrative Agent(s) to administer and to affirmatively market the affordable units constructed in the Township in accordance with UHAC and this Ordinance. An Operating Manual for each affordable housing program shall be provided by the Administrative Agent(s) to be adopted by resolution of the governing body and subject to approval of the Court. The Operating Manual(s) shall be available for public inspection in the office of the Township Clerk, in the office of the Municipal Housing Liaison, and in the office(s) of the Administrative Agent(s). The Municipal Housing Liaison shall supervise the work of the Administrative Agent(s).

Section 29-1.20. Administrative Agent

An Administrative Agent shall be an independent entity serving under contract to and reporting to the municipality. The fees of the Administrative Agent shall be paid by the owners of the affordable units for which the services of the Administrative Agent are required. The Administrative Agent shall perform the duties and responsibilities of an Administrative Agent as set forth in UHAC, including those set forth in Sections 5:80-26.14, 16 and 18 thereof, which includes:

1. **Affirmative Marketing:**
 - a. Conducting an outreach process to affirmatively market affordable housing units in accordance with the Affirmative Marketing Plan of the Township of Chatham and the provisions of N.J.A.C. 5:80-26.15; and
 - b. Providing counseling or contracting to provide counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
2. Household Certification:
 - a. Soliciting, scheduling, conducting and following up on interviews with interested households;
 - b. Conducting interviews and obtaining sufficient documentation of gross income and assets upon which to base a determination of income eligibility for a low- or moderate-income unit;
 - c. Providing written notification to each applicant as to the determination of eligibility or non-eligibility;
 - d. Requiring that all certified applicants for restricted units execute a certificate substantially in the form, as applicable, of either the ownership or rental certificates set forth in Appendices J and K of N.J.A.C. 5:80-26.1 et seq.;
 - e. Creating and maintaining a referral list of eligible applicant households living in the housing region and eligible applicant households with members working in the housing region where the units are located;

- f. Employing a random selection process as provided in the Affirmative Marketing Plan of the Township of Chatham when referring households for certification to affordable units; and
 - g. Notifying the following entities of the availability of affordable housing units in the Township of Chatham: Fair Share Housing Center, the New Jersey State Conference of the NAACP, the Latino Action Network, The Morris County Chapter of the NAACP, Newark NAACP, East Orange NAACP, Housing Partnership for Morris County, Community Access Unlimited, Inc., NORWESCAP, Homeless Solutions of Morristown, and the Supportive Housing Association.
3. Affordability Controls:
- a. Furnishing to attorneys or closing agents forms of deed restrictions and mortgages for recording at the time of conveyance of title of each restricted unit;
 - b. Creating and maintaining a file on each restricted unit for its control period, including the recorded deed with restrictions, recorded mortgage and note, as appropriate;
 - c. Ensuring that the removal of the deed restrictions and cancellation of the mortgage note are effectuated and properly filed with the Morris County Register of Deeds or Morris County Clerk's office after the termination of the affordability controls for each restricted unit;
 - d. Communicating with lenders regarding foreclosures; and
 - e. Ensuring the issuance of Continuing Certificates of Occupancy or certifications pursuant to N.J.A.C. 5:80-26.10.
4. Resales and Rerentals:
- a. Instituting and maintaining an effective means of communicating information between owners and the Administrative Agent regarding the availability of restricted units for resale or rental; and
 - b. Instituting and maintaining an effective means of communicating information to low- (or very low-) and moderate-income households regarding the availability of restricted units for resale or re-rental.
5. Processing Requests from Unit Owners:
- a. Reviewing and approving requests for determination from owners of restricted units who wish to take out home equity loans or refinance during the term of their ownership that the amount of indebtedness to be incurred will not violate the terms of this Ordinance;
 - b. Reviewing and approving requests to increase sales prices from owners of restricted units who wish to make capital improvements to the units that would affect the selling price, such authorizations to be limited to those improvements resulting in additional bedrooms or bathrooms and the depreciated cost of central air conditioning systems;
 - c. Notifying the municipality of an owner's intent to sell a restricted unit; and
 - d. Making determinations on requests by owners of restricted units for hardship waivers.
6. Enforcement:
- a. Securing annually from the municipality a list of all affordable housing units for which tax bills are mailed to absentee owners, and notifying all such owners that they must either move back to their unit or sell it;
 - b. Securing from all developers and sponsors of restricted units, at the earliest point of contact in the processing of the project or development, written acknowledgement of the requirement that no restricted unit can be offered, or in any other way committed, to any person, other than a household duly certified to the unit by the Administrative Agent;
 - c. Posting annually, in all rental properties (including two-family homes), a notice as to the maximum permitted rent together with the telephone number of the Administrative Agent where complaints of excess rent or other charges can be made;
 - d. Sending annual mailings to all owners of affordable dwelling units, reminding them of the notices and requirements outlined in N.J.A.C. 5:80-26.18(d)4;

- e. Establishing a program for diverting unlawful rent payments to the municipality's Affordable Housing Trust Fund; and
 - f. Creating and publishing a written operating manual for each affordable housing program administered by the Administrative Agent, to be approved by the Township Council and the Court, setting forth procedures for administering the affordability controls.
7. Additional Responsibilities:
- a. The Administrative Agent shall have the authority to take all actions necessary and appropriate to carry out its responsibilities hereunder.
 - b. The Administrative Agent shall prepare monitoring reports for submission to the Municipal Housing Liaison in time to meet the Court-approved monitoring and reporting requirements in accordance with the deadlines set forth in this Ordinance.
 - c. The Administrative Agent shall attend continuing education sessions on affordability controls, compliance monitoring, and affirmative marketing at least annually and more often as needed.

Section 29-1.21. Affirmative Marketing Requirements

1. The Township of Chatham shall adopt by resolution an Affirmative Marketing Plan, subject to approval of the Court, that is compliant with N.J.A.C. 5:80-26.15, as may be amended and supplemented.
2. The Affirmative Marketing Plan is a regional marketing strategy designed to attract buyers and/or renters of all majority and minority groups, regardless of race, creed, color, national origin, ancestry, marital or familial status, gender, affectional or sexual orientation, disability, age or number of children to housing units which are being marketed by a developer, sponsor or owner of affordable housing. The Affirmative Marketing Plan is intended to target those potentially eligible persons who are least likely to apply for affordable units in that region. It is a continuing program that directs marketing activities toward Housing Region 2 and is required to be followed throughout the period of restriction.
3. The Affirmative Marketing Plan shall provide a regional preference for all households that live and/or work in Housing Region 2, comprised of Morris, Monmouth and Ocean Counties.
4. The municipality has the ultimate responsibility for adopting the Affirmative Marketing Plan and for the proper administration of the Affirmative Marketing Program, including initial sales and rentals and resales and re-rentals. The Administrative Agent designated by the Township of Chatham shall implement the Affirmative Marketing Plan to assure the affirmative marketing of all affordable units.
5. In implementing the Affirmative Marketing Plan, the Administrative Agent shall provide a list of counseling services to low- and moderate-income applicants on subjects such as budgeting, credit issues, mortgage qualification, rental lease requirements, and landlord/tenant law.
6. The Affirmative Marketing Plan shall describe the media to be used in advertising and publicizing the availability of housing. In implementing the Affirmative Marketing Plan, the Administrative Agent shall consider the use of language translations where appropriate.
7. The affirmative marketing process for available affordable units shall begin at least four months (120 days) prior to the expected date of occupancy.
8. Applications for affordable housing shall be available in several locations, including, at a minimum, the County Administration Building and/or the County Library for each county within the housing region; and the municipal administration building in the municipality in which the units are located; and the developer's rental office. Applications shall be mailed to prospective applicants upon request.
9. The costs of advertising and affirmative marketing of the affordable units shall be the responsibility of the developer, sponsor or owner.
10. The affirmative marketing plan shall specifically notify the following community and regional organizations in advertisement for affordable housing:
 - a. Fair Share Housing Center, Cherry Hill.
 - b. NJ State Conference of the NAACP, Trenton.
 - c. Latino Action Network, Freehold.

- d. The Morris County Chapter of the NAACP, Morristown.
- e. Newark NAACP, Newark.
- f. East Orange NAACP, East Orange.
- g. Housing Partnership for Morris County, Dover.
- h. Community Access Unlimited, Inc., Elizabeth.
- i. NORWESCAP, Phillipsburg
- j. Homeless Solutions of Morristown, Cedar Knolls.
- k. Supportive Housing Association, Cranford.

Section 29-1.22. Enforcement of Affordable Housing Regulations

1. Upon the occurrence of a breach of any of the regulations governing an affordable unit by an Owner, Developer or Tenant, the municipality shall have all remedies provided at law or equity, including but not limited to foreclosure, tenant eviction, a requirement for household recertification, acceleration of all sums due under a mortgage, recuperation of any funds from a sale in violation of the regulations, injunctive relief to prevent further violation of the regulations, entry on the premises, and specific performance.
2. After providing written notice of a violation to an Owner, Developer or Tenant of a low- or moderate-income unit and advising the Owner, Developer or Tenant of the penalties for such violations, the municipality may take the following action(s) against the Owner, Developer or Tenant for any violation that remains uncured for a period of 60 days after service of the written notice:
 - a. The municipality may file a court action pursuant to N.J.S.A. 2A:58-11 alleging a violation or violations of the regulations governing the affordable housing unit. If the Owner, Developer or Tenant is adjudged by the Court to have violated any provision of the regulations governing affordable housing units the Owner, Developer or Tenant shall be subject to one or more of the following penalties, at the discretion of the Court:
 - 1) A fine of not more than \$500.00 per day or imprisonment for a period not to exceed 90 days, or both, provided that each and every day that the violation continues or exists shall be considered a separate and specific violation of these provisions and not a continuation of the initial offense;
 - 2) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment into the Township of Chatham Affordable Housing Trust Fund of the gross amount of rent illegally collected;
 - 3) In the case of an Owner who has rented a low- or moderate-income unit in violation of the regulations governing affordable housing units, payment of an innocent tenant's reasonable relocation costs, as determined by the Court.
 - b. The municipality may file a court action in the Superior Court seeking a judgment that would result in the termination of the Owner's equity or other interest in the unit, in the nature of a mortgage foreclosure. Any such judgment shall be enforceable as if the same were a judgment of default of the First Purchase Money Mortgage and shall constitute a lien against the low- or moderate-income unit.
 - 1) The judgment shall be enforceable, at the option of the municipality, by means of an execution sale by the Sheriff, at which time the low- and moderate-income unit of the violating Owner shall be sold at a sale price which is not less than the amount necessary to fully satisfy and pay off any First Purchase Money Mortgage and prior liens and the costs of the enforcement proceedings incurred by the municipality, including attorney's fees. The violating Owner shall have his right to possession terminated as well as his title conveyed pursuant to the Sheriff's sale.
 - 2) The proceeds of the Sheriff's sale shall first be applied to satisfy the First Purchase Money Mortgage lien and any prior liens upon the low- and moderate-income unit. The excess, if any, shall be applied to reimburse the municipality for any and all costs and expenses incurred in connection with either the court action resulting in the judgment of violation or the Sheriff's sale. In the event that the proceeds from the Sheriff's sale are insufficient to reimburse the municipality in full as aforesaid, the violating Owner shall be personally responsible for the full extent of such deficiency, in addition to any and all costs incurred by the municipality in connection with collecting such deficiency. In the event that a surplus remains after satisfying all of the above, such surplus, if any, shall be placed in escrow by the municipality for the Owner and shall be held in such escrow for a maximum period of two years or until such earlier time as the Owner shall make a claim with the municipality for such. Failure of the Owner to claim such balance within the two-year period shall automatically result in a forfeiture of such balance to the municipality. Any interest accrued or earned on such balance while being held in escrow

shall belong to and shall be paid to the municipality, whether such balance shall be paid to the Owner or forfeited to the municipality.

- 3) Foreclosure by the municipality due to violation of the regulations governing affordable housing units shall not extinguish the restrictions of the regulations governing affordable housing units as the same apply to the low- and moderate-income unit. Title shall be conveyed to the purchaser at the Sheriff's sale, subject to the restrictions and provisions of the regulations governing the affordable housing unit. The Owner determined to be in violation of the provisions of this plan and from whom title and possession were taken by means of the Sheriff's sale shall not be entitled to any right of redemption.
- 4) If there are no bidders at the Sheriff's sale, or if insufficient amounts are bid to satisfy the First Purchase Money Mortgage and any prior liens, the municipality may acquire title to the low- and moderate-income unit by satisfying the First Purchase Money Mortgage and any prior liens and crediting the violating owner with an amount equal to the difference between the First Purchase Money Mortgage and any prior liens and costs of the enforcement proceedings, including legal fees and the maximum resale price for which the low- and moderate-income unit could have been sold under the terms of the regulations governing affordable housing units. This excess shall be treated in the same manner as the excess which would have been realized from an actual sale as previously described.
- 5) Failure of the low- and moderate-income unit to be either sold at the Sheriff's sale or acquired by the municipality shall obligate the Owner to accept an offer to purchase from any qualified purchaser which may be referred to the Owner by the municipality, with such offer to purchase being equal to the maximum resale price of the low- and moderate-income unit as permitted by the regulations governing affordable housing units.
- 6) The Owner shall remain fully obligated, responsible and liable for complying with the terms and restrictions of governing affordable housing units until such time as title is conveyed from the Owner.

Section 29-1.23. Appeals

Appeals from all decisions of an Administrative Agent appointed pursuant to this Ordinance shall be filed in writing with the Court.

REPEALER

All Ordinances or parts of Ordinances inconsistent herewith are repealed as to such inconsistencies.

SEVERABILITY

If any section, subsection, sentence, clause, phrase or portion of this Ordinance is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision, and such holding shall not affect the validity of the remaining portions thereof.

EFFECTIVE DATE

This Ordinance shall become effective according to law.

Attorney Cruz reported that the Planning Board conducted a Master Plan consistency review on Ordinance 2019-15, and concluded that the ordinance is not inconsistent with the Master Plan and adoption is recommended. He noted that the double-negative language is consistent with the provisions of the Municipal Land Use Law.

Attorney Cruz also noted that there is a typographical error in the ordinance, and it should refer to "sites" to be determined rather than "a site." He recommended that the ordinance be amended prior to the public hearing, and noted that it is non-substantive.

Committeewoman Ness moved to amend Ordinance 2019-15. Deputy Mayor Kelly seconded the motion.

Roll call: Committeewoman Ness, Aye; Committeewoman Swartz, Aye; Committeeman Ritter, Aye; Deputy Mayor Kelly, Aye; Mayor Selen, Aye.

Mayor Selen opened the Public Hearing on Ordinance 2019-15.

1. Ed Barmakian, Editor of The Alternative Press, said that the Township Committee is voting to build 74 affordable housing units and to guarantee the builder's shortfall. Attorney Cruz said that the ordinance is for the implementation of the Settlement Agreement. Mr. Barmakian asked if the sites to be developed for affordable housing will be disclosed before the Township Committee adopts the ordinance, and said that the public should know what is being considered. Attorney Cruz said that the sites have not yet been determined, and he explained the purpose of the ordinance. Mr. Barmakian asked what sites are being considered for development. Attorney Cruz said it would be premature to announce what sites might be developed.
2. Rez Estevez, 126 Southern Boulevard, asked if the vacant land analysis indicates that the Township does not have any vacant land. Attorney Cruz explained that it says what vacant land exists, and presents the realistic development capacity of the land. Mrs. Estevez asked if there is enough vacant land for development of the 74 units. Attorney Cruz said that the Settlement Agreement says that the Township's obligation is 200 units. Mrs. Estevez asked if there is enough land to meet that obligation. Attorney Cruz referred to the Vacant Land Adjustment (VLA), which says that the RDP in areas with sewers is 154, and the RDP in areas without sewers is 46. Mrs. Estevez asked if the obligation may change. Attorney Cruz said that it has been settled for the Third Round, which extends through 2025. He also noted that the State has not dealt with affordable housing through legislative means, and has instead allowed litigation to set policy. He said that the public should press their state legislators to take action, noting that the New Jersey Supreme Court has also asked the State Legislature to address the issue. Mrs. Estevez said that the Township is being forced to accept an urbanization process as affordable housing plays out.
3. Rich Matlaga, 36 Dale Drive, asked about the realistic development potential, and also asked if there will not be any affordable housing if the properties do not turn over. Attorney Cruz said that the properties and mechanisms in the plan are where affordable housing will be built. He said that the VLA is a tool to develop the RDP, which in turn helps form the basis of the plan to meet the affordable housing obligation. Mr. Matlaga asked if the 74 units meet the Township's requirements for the Third Round. Attorney Cruz said that the Township will have compliance through 2025. He also noted that the Third Round began in 1999, and the process has been delayed because COAH became defunct. Attorney Cruz also addressed the "gap period" during which litigation was pending. He also said that if the State Legislature had taken action, the "gap period" would not exist. Attorney Cruz also noted that affordable housing is a constitutional mandate, and said that municipalities have typically lost litigation regarding affordable housing. Mr. Matlaga also pointed out a typographical error in the ordinance regarding a block & lot designation. Attorney Cruz said that the ordinance will need to be further amended. Mr. Matlaga also asked about the number of credits for the group home, and Attorney Cruz said that the matter was clarified before the Superior Court.

Seeing no further comment, the Public Hearing was closed.

Committeewoman Ness moved to amend Ordinance 2019-15. Deputy Mayor Kelly seconded the motion.

Roll call: Committeewoman Ness, Aye; Committeewoman Swartz, Aye; Committeeman Ritter, Aye; Deputy Mayor Kelly, Aye; Mayor Selen, Aye.

Committeeman Ritter asked about affirmative marketing requirements, and if the list included is a standard list. Attorney Cruz said that it is a standard list, and the Settlement Agreement required specific agencies for notification. He said that the Township can add to the list, noting that it would be a substantive change that can be made later.

Committeewoman Ness asked about the mandatory set-aside, and if there are any pending developments to which the set-aside would apply. Attorney Cruz said that the requirement is that if a property is rezoned to 6 or more units per acre, or if a variance is granted by the Board of Adjustment, then the ordinance will apply.

Deputy Mayor Kelly noted that the Township website has several documents showing what steps the Township has already taken toward compliance. He also said that the Township could have

done nothing and set itself up for builders remedy lawsuits, which could have resulted in much more development than what is currently proposed. He also said that it was deemed preferable to have a financial cost than face the environmental costs have having 500 units rather than 100 units.

Committeewoman Ness moved to adopt Ordinance 2019-15. Committeewoman Swartz seconded the motion.

Roll call: Committeewoman Ness, Aye; Committeewoman Swartz, Aye; Committeeman Ritter, Aye; Deputy Mayor Kelly, Aye; Mayor Selen, Aye.

The Township Clerk noted that per bylaws, a motion is needed to entertain new business past 11:00 PM.

Deputy Mayor Kelly moved to consider new business. Committeewoman Ness seconded the motion, which carried unanimously.

Consent Agenda

**RESOLUTION 2019-198
RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF
CHATHAM, ACKNOWLEDGING RECEIPT OF REPORTS**

BE IT RESOLVED by the Township Committee of the Township of Chatham that the following monthly reports of departments be acknowledged as received:

CFO – September
Tax Collector – September
Police Department – September

**RESOLUTION 2019-199
RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF
CHATHAM APPROVING MINUTES OF MEETINGS**

BE IT RESOLVED that the Township Committee of the Township of Chatham acknowledges receipt of and approves the minutes of the Township Committee meetings held on October 10, 2019.

**RESOLUTION 2019-200
RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP
OF CHATHAM APPROVING EXECUTIVE SESSION MINUTES OF MEETINGS**

BE IT RESOLVED that the Township Committee of the Township of Chatham acknowledges receipt of and approves Executive Session minutes of the Township Committee meetings held on October 10, 2019.

**RESOLUTION 2019-201
RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF
CHATHAM AUTHORIZING ENDORSEMENT OF TREATMENT WORKS
APPROVAL FOR STERLING/SUN AT CHATHAM, LLC**

WHEREAS, Sterling/Sun at Chatham, LLC has applied for municipal endorsement of a Treatment Works Approval for the proposed connection of the Dixiedale Residential Development into the Township's existing sanitary sewer system; and

WHEREAS, said application has been reviewed by the Township Engineer;

NOW, THEREFORE, BE IT RESOLVED by the Township Committee of the Township of Chatham that endorsement of the Treatment Works Approval for Sterling/Sun at Chatham, LLC is hereby approved and the Township Administrator is hereby authorized to execute said endorsement.

Committeewoman Ness moved to approve the Consent Agenda. Deputy Mayor Kelly seconded the motion.

Roll call: Committeewoman Ness, Aye; Committeewoman Swartz, Aye; Committeeman Ritter, Aye; Deputy Mayor Kelly, Aye; Mayor Selen, Aye.

Hearing of Citizens/Petitions

Mayor Selen opened the Hearing of Citizens.
Seeing no comment, Mayor Selen closed the Hearing of Citizens.

Committeewoman Swartz moved to adjourn at 11:31 PM. Committeewoman Ness seconded the motion, which carried unanimously.

Gregory J. LaConte
Municipal Clerk