

**MINUTES  
TOWNSHIP COMMITTEE  
SPECIAL MEETING  
DECEMBER 19, 2019**

Mayor Selen called the Special Meeting of the Township Committee of the Township of Chatham to order at 6:30 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 December 13, 2019; notice was posted on the bulletin board in the main hallway of the Municipal Building on December 13, 2019; and notice was filed with the Township Clerk on December 13, 2019.

Mayor Selen led the Flag Salute.

**Roll Call**

Answering present to the roll call were Committeewoman Ness, Committeewoman Swartz, Deputy Mayor Kelly and Mayor Selen. Committeeman Ritter arrived at 8:02 PM.

**Approval of Agenda**

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

**Executive Session**

**RESOLUTION 2019-P-21  
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
3. It is anticipated that the minutes on the subject matter of the Executive Session will be made public upon conclusion of the matter under discussion; and in any event, when appropriate pursuant to N.J.S.A. 10:4-7 and 4-13.
4. The Committee will come back into Regular Session and may take further action.
5. This Resolution shall take effect immediately.

Committeewoman Ness moved to adopt Resolution 2019-P-21 to enter Executive Session at 6:32 PM. Deputy Mayor Kelly seconded the motion.

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

The Committee returned to Public Session at 7:35 PM.

## **Update regarding Affordable Housing Litigation Case Management Conference.**

Attorney Cruz provided a case management conference held on December 17<sup>th</sup> regarding the status of the Township's affordable housing plan compliance. Attorney Cruz said that the Judge did not rule on the Township's request for an extension, but rather required the Township to make a formal request and set up a briefing schedule for the Township to submit a motion seeking the extension by January 10<sup>th</sup>. The Fair Share Housing Center will have until January 24<sup>th</sup> to submit their opposition and cross motion, and the Special Master will have until February 12<sup>th</sup> to review all submissions and submit a recommendation to the Judge. On February 14<sup>th</sup>, there will be a hearing before Judge Gaus at 1:30 PM at which all motions and submissions will be heard and a ruling will be delivered. Attorney Cruz said that the Township's immunity to builders remedy lawsuits has been extended to February 14<sup>th</sup>. Attorney Cruz advised that in the interim the Township should continue to review the alternative sites and demonstrate good faith toward fulfilling the Township's Settlement Agreement and Constitutional obligation.

Deputy Mayor Kelly said that the Township Committee is in agreement that the Township needs to move forward regarding affordable housing. He said that direction has been given to Township professionals to identify potential sites for review. Deputy Mayor Kelly said that sites being considered include the Municipal Building, the Skate Park, a foreclosure property on River Road, an area of Chatham Glen, the Tanglewood compost area, and a lot at the end of Gibbons Place. He noted that the Gibbons Place site is only being considered for a potential group home for people with special needs.

Committeewoman Swartz commented on the 2020 Recycling Brochure, and asked residents to read it rather than simply discarding it.

## **Hearing of Citizens**

Mayor Selen opened the Hearing of Citizens.

1. Susan Hoag, 76 Canterbury Road, said that pursuant to an OPRA Request copies were obtained of the three letters sent to the Police Chief in 2015, 2016 and 2018. She said that the letters indicate that copies were also sent to Mayor Sullivan and Mayor Ritter, and the letters cite the physical deficiencies in the Police Headquarters. Mrs. Hoag said that as early as 2015 there were at least members of the Township Administration that were aware of the necessary upgrades.
2. Mike Oien, 3 Hillcrest Avenue, thanked Deputy Mayor Kelly for the update on sites being reviewed. He also asked about the open process by which the public will be aware of the Township's progress. Committeewoman Ness said that the plan is to assess the various options and their respective costs and then present the different options to the public so that feedback can be presented. Mr. Oien said that the Saturday sessions that Deputy Mayor Kelly has been conducting have been helpful, and he asked that those sessions be continued into 2020. Committeewoman Swartz noted that those sessions will not be the venue for information to be presented to the whole Township.
3. Rich Matlaga, 36 Dale Drive, said that the Township's Settlement Agreement is a negotiated settlement, and he said that municipalities are not required to agree to build affordable housing or give up municipal land for its construction. Mr. Matlaga said he does not understand why the Township would agree to foster the construction of 98 standalone rental units. Attorney Cruz said that there was a policy decision made by the Township Committee to mitigate the total number of units that would occur in the Township, and the best way to do so is to have a 100% affordable housing development sponsored by the municipality. Attorney Cruz said that if the Township Committee had opted for inclusionary development, developers would get to build more units than normal in order to also build affordable housing. He also said that with inclusionary development, the density could be 10 units or more per acre. The extra development would include a greater impact on schools and traffic. Attorney Cruz also reiterated that in a builders remedy lawsuit, a municipality loses control over zoning regulations. Mr. Matlaga said that the Settlement Agreement presumes that the Township has available land for the affordable development, and

that such land may not exist. He also said that he does not see any compensation for environmentally sensitive areas or the extension of sewer service, and that the potential cost to the Township should not be unlimited. Mr. Matlaga also stated a concern about the amount of noise from the DPW facility and the gun range that the residents in affordable housing at the Skate Park site will need to deal with, and he does not think that is a good site to assimilate the residents into the Township. He cited an affordable housing development in Madison that is in the center of town and is a convenient location for the residents. Attorney Cruz said that Dixiedale site had the potential for much greater development, and the Fair Share Housing Center had brought suit against the Township challenging the rezoning. He said that at the time of the Settlement Agreement, there was available land. Attorney Cruz also said that the Skate Park site has been zoned for affordable housing for several decades, and if a developer wants to build affordable housing at that site then the Township must consider the option. Mr. Matlaga said that the facts at the time of the Settlement Agreement may have changed.

4. Doug Pitney, 54 Mountainview Road, said that it would be a good idea for the Township Committee to consider coordinating with Chatham Borough to not have special meetings on the same night regarding affordable housing so that residents do not have to choose one meeting over another.
5. Mark Hamilton, 132 Highland Avenue, said that Committeewoman Ness posted on Facebook about the Court paying attention to the statements made by Township officials about affordable housing. Mr. Hamilton asked if the Court reached out to the Township about public conversations. Attorney Cruz said that the attorney for the Fair Share Housing Center reached out to him and the Township Planner, and the Special Master reached out to the Township Administrator, in all instances to see if the Township was moving away from the Settlement Agreement. Attorney Cruz said that it would be unlikely for the Judge to reach out to an attorney outside of a formal hearing. Attorney Cruz noted that a resolution at the last meeting reaffirmed the Township's commitment to the Settlement Agreement. Mr. Hamilton said he is not surprised that the Judge did not rule on the extension at a telephonic conference. He asked if the is detail available about the nature of the Fair Share Housing Center's opposition to the extension. Attorney Cruz said that prior extensions were granted during conference calls, and he does not want to speculate what the Fair Share Housing Center may or may not do. He further noted that the Court has set a hearing schedule, and he will respond to the Court consistent with the direction he has received from the Township Committee. Mr. Hamilton asked about the Police Headquarters, and if the Department of Corrections had informed the Township that the building has to be brought up to code. Administrator Hoffmann confirmed that the Township received said notification. Mr. Hamilton said that the Statute requires several items, and all municipalities are subject to the requirements. He further noted that the State can exempt a municipality from the standards if the facility is in compliance with the general intent and purpose of the standards and if compliance would cause undue hardship on a municipality. Mr. Hamilton asked if the Township is requesting an exemption. Administrator Hoffmann said that he has reached out to the Department of Corrections for an extension beyond October 2021 so that a long-term plan can be developed.
6. Christina Mott, 22 Nicholson Drive, asked Attorney Cruz if there will be a ruling on the extension on February 14<sup>th</sup>. Attorney Cruz said that it is likely that the Judge will deliver a ruling at the hearing, and if not then the ruling will come shortly thereafter. Mrs. Mott asked if the Township would need to immediately identify the site if the extension is not granted. Attorney Cruz said he will need to know the nature of the opposition before he can give an opinion on the question. He also said that Deputy Mayor Kelly indicated that the Township Committee will be moving forward in trying to find an appropriate site between now and February 14<sup>th</sup>.
7. Larry Fechtner, 3 Rolling Hill Drive, asked if environmental studies are conducted when sidewalks are installed. Administrator Hoffmann said that he does not know if they were conducted in years prior to his employment with the Township, and he will

check with the Township Engineer and respond to Mr. Fechtner once he has an answer.

8. Ed Barmakian, 19 Cherry Lane (Chatham Borough) and TAPInto Chatham Editor, asked if the Township will issue a response to any cross motions from the Fair Share Housing Center. Attorney Cruz said that time is built into the schedule for him to submit a response by February 7<sup>th</sup>. Mr. Barmakian also asked the name of the Judge. Attorney Cruz said that the matter is before Judge Michael C. Gaus.
9. Geri Nigro, 475 River Road, asked if the foreclosure property on River Road is adjacent to the Fire Department. Deputy Mayor Kelly said that it is across the street and adjacent to the Cardinal Hill Apartments. Mrs. Nigro asked about affordable housing on the river side of the street, noting that there are protected wetlands and a lack of sewer service. Administrator Hoffmann said that having a septic system on the river side of the street to service the affordable housing is being investigated. He noted the wetlands constraints that limit what can be done.
10. Stacey Ewald, 54 Nicholson Drive, asked if the time frame in which the Township Committee will need to designate a site has been accelerated because the Judge did not approve the request for an extension. Deputy Mayor Kelly said that it is unknown at this time, and the Township Committee will continue to review sites. Mayor Selen said that the Court will be looking to see progress. Mrs. Ewald said she wants to be sure the public is kept aware of the Township's progress.
11. Mike Oien, 3 Hillcrest Avenue, said that he is confused about the intention of the January 10<sup>th</sup> deadline, and if it has bought the Township time to make a better decision or if a designated site has to be ready. Attorney Cruz said that the formal request for an extension will be submitted by January 10<sup>th</sup>, and as a practical matter he does not believe the Township Committee will be able to come up with an alternative site by then. Mr. Oien asked there might be a proposal for multi-site development. Attorney Cruz said that the Township Committee has to work within the confines of the existing Settlement Agreement, and that Mr. Oien appears to be asking for the Agreement to be renegotiated. Attorney Cruz also said that he will not be renegotiating the Settlement Agreement. Mr. Oien said that he understands the River Road option to be the potential building of affordable housing on the steep slope side of the street with a sewer system on the opposite side of the street. Administrator Hoffmann said that if the site for the housing can be developed, the question is if there is a location for a septic system to be built for the development.
12. Mark Lois, 15 Gates Ave, asked if there has been discussion about combining jail facilities with neighboring municipalities. Deputy Mayor Kelly said it has been explored, but there are not any municipalities that are willing to accept detainees from other towns. He also said that any municipality bringing a detainee to another town would need to send officers to monitor the detainee during the holding period, which would present additional costs and staffing issues. Mr. Lois asked if the Police Department is an opportunity for a shared service. Deputy Mayor Kelly said he is not aware of any study to merge the police departments. Committeeman Ritter asked if numbers were discussed when the Chief reached out to the Borough about shared holding facilities. Deputy Mayor Kelly said that numbers were not discussed, but the concern was that no town wanted to be a regional jailer and there were other concerns about staffing issues and related costs that the Township would face. Mr. Lois commented on the lack of parking for Township residents at the Chatham Train Station, and he said that younger generations want more access to public transportation. He also said that when he lived in Springfield there was a jitney to a local train station. Mr. Lois said that increased access to the Train Station will help maintain property values on the Township. Committeeman Ritter said that there was a survey conducted which showed significant interest, however the vendor was not willing to take the financial risk and the Township was not willing to offset the costs of the initial two-week period. Mr. Lois said that a two-week pilot program is not long enough. He also said that Madison is using the boxcar app. Committeeman Ritter commented on other shuttle related options.

13. Mike Movsoovich, 3 Sycamore Drive, said that a proposal had been made to the Court for an extension regarding affordable housing, and he said that Attorney Cruz reported on a hearing schedule. Mr. Movsoovich asked if the hearing schedule is the same as what the Township Committee proposed at the last meeting. Attorney Cruz said that at the last meeting the only authorization that was given to him was to request the extension. Mr. Movsoovich asked if the motion to be submitted will have the same schedule as what was laid out by the Township Committee at the December 12<sup>th</sup> meeting. Attorney Cruz said that it will likely be a different schedule, and he does not know at this time if an additional resolution will be needed. Attorney Cruz added that he will be consulting with Township professionals in the process, and if he cannot consult with the full Township Committee then he will at least consult with the Mayor. Mr. Movsoovich suggested that a further resolution be adopted regarding the schedule. Committeewoman Ness said that the Township Committee will be continuing to work on various options and will report back to the public when more information is available. She also said that the Township Committee needs to continue reviewing sites while waiting for the hearing on the motion for the extension. Mr. Movsoovich noted that it was clear that the Township might not receive the extension.
  
14. Mark Hamilton, 132 Highland Avenue, said that it was erroneously reported by the press that the request for the extension was rejected, but instead the Court directed the Township to submit a formal motion to articulate the need for the extension. He also addressed the briefing schedule. Attorney Cruz said that he does not think that the Court will agree to the schedule previously proposed by the Township Committee. Mr. Hamilton also asked about the scheduled hearing on the two ordinances on this evening's agenda. The Township Clerk confirmed that the ordinances are scheduled for public hearing and possible adoption. Mr. Hamilton alleged that the public was unaware that the items had been scheduled. Attorney Cruz said that the items were clearly listed for public hearing and final adoption, and the Township Clerk noted that it was clearly announced at the prior meeting that the items were being carried to this meeting.

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

**Public Hearing/Final Adoption of Ordinances**

**Ordinance 2019-19**

**ORDINANCE 2019-19**

**AN ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, ESTABLISHING AN INCLUSIONARY AFFORDABLE HOUSING OVERLAY ZONE IN THE PI-1 PROFESSIONAL INSTITUTIONAL DISTRICT AND AMENDING CHAPTER XXX, TITLED "LAND DEVELOPMENT", ARTICLE 7, TITLED "ZONING REGULATIONS" APPLICABLE TO BLOCK 128, LOT 9, LOCATED AT 466 SOUTHERN BOULEVARD TO ADDRESS A PORTION OF THE TOWNSHIP OF CHATHAM'S THIRD ROUND 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 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 entered into a Settlement Agreement with the Fair Share Housing Center, Inc. on December 13, 2018 ("Settlement Agreement") that determines the Township's affordable housing obligation and the mechanisms for how the obligation will be addressed; and

**WHEREAS**, the Township's Planning Board adopted a Housing Element and Fair Share Plan, that comprehensively provides for the creation of affordable housing in the Township in a manner consistent with all applicable affordable housing statutes and regulations and the Settlement Agreement; and

**WHEREAS**, the Township identified one parcel of land determined to be appropriate for development of higher-density inclusionary residential development in the Township located on Block 128, Lot 9 located at 466 Southern Boulevard within the PI-1 District which possesses sufficient land area to accommodate inclusionary residential development at appropriate inclusionary zoning densities to address a portion of the Township's Third Round affordable housing obligation; and

**WHEREAS**, the zoning amendments herein support residential inclusionary development consistent with the Settlement Agreement and the Township’s Housing Element and Fair Share Plan.

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

**Section 1.** Article XXX, Subsection 30-75.1 titled “Zone Districts” is hereby amended to add a new overlay zone titled "PI-AHO” Professional and Institutional Affordable Housing Inclusionary Overlay Zone as follows:

**30-75.1 Zone Districts.**

For the purpose of this Chapter, the Township is hereby subdivided into twenty-two (22) zone districts known as:

- CP County Park District
- WA Wilderness Area District
- R-1 Residence District
- R-1A Residence District
- R-2 Residence District
- R-2A Residence District
- R-2B-1 Residence District
- R-2B-2 Residence District
- R-3 Residence District
- R-4 Residence District
- R-5 Residence District
- R-5A Residence District
- R-6A Townhouse District
- R-6B Townhouse District
- R-6C Residence District
- R-7 Apartment District
- AH Affordable Housing District
- B-1 Business Center District
- B-2 Neighborhood Business District
- PI-1 Professional Institutional District
- PI-2 Professional Institutional District
- PCD Planned Commercial District

Overlay Districts:

- Great Swamp Watershed Overlay District (Ord. No. 2017-16)
- Upper Passaic River Watershed Overlay District (Ord. No. 2017-16)
- Professional and Institutional Affordable Housing Inclusionary Overlay Zone

**Section 2.** Article XXX, Subsection 30-75.2 titled “Map and Schedule” is hereby amended to include the following: one (1) new overlay zone designation, "PI-AHO” Professional and Institutional Affordable Housing Inclusionary Overlay Zone as indicated on the “Official Zoning Map, Township of Chatham, Morris County, New Jersey,” dated March, 1999, which is hereby replaced by the “Official Zoning Map, Township of Chatham, Morris County, New Jersey,” dated March, 1999, revised as of October, 2019, and listed below:

Block 128, Lot 9

**Section 3.** Amend Article XXX to include a new Section 30-84, titled “Requirements for PI-AHO Professional and Institutional Affordable Housing Inclusionary Overlay Zone”, to the Revised General Ordinances of the Township of Chatham as follows:

(a) Purpose.

The Township recognizes its obligation under the New Jersey Fair Housing Act to provide for its "fair share" of the regional need of low and moderate income (affordable) housing. The PI-AHO Professional and Institutional Affordable Housing Inclusionary Overlay Zone is established to provide an affordable housing overlay development option allowing townhouses and/or apartments on Block 128, Lot 9 to address a portion of the Township's affordable housing obligation subject to the affordable housing set-asides prescribed below.

(b) Area and Density Requirements.

1. Minimum Area. Each development shall have a minimum tract area of three (3) acres. Public or private roads, easements or rights-of-way shall not be deemed to divide acreage of a development.
2. Maximum Density. Twelve (12) dwelling units/acre.
3. Minimum Lot Size Per Dwelling. A minimum lot size of 1,200 square feet shall be required for all fee simple townhouse dwelling units.

(c) Maximum Building Coverage.

1. The total ground floor area of all buildings shall not exceed thirty (30%) percent of the lot area.

(d) Maximum Impervious Coverage.

1. The total area of all impervious surfaces shall not exceed sixty (60%) percent of the lot area.

(e) Setback Requirements.

1. No principal building shall be located within thirty (30) feet of a public street or exterior property line of the tract nor within ten (10) feet of any internal roadway.
2. No townhouse dwelling structure shall have more than two (2) continuous attached dwelling units with the same front building line, and such variations in the building line shall be offset at least four (4) feet.

(f) Distance Between Buildings. Minimum distances as specified below shall be maintained between principal buildings:

		Positions of Building Walls	Minimum Distance Between Buildings at Any Point	
(g) Building		Front facing front	50'	Requirements.
		Front facing rear	50'	
		Front facing side	25'	
		Rear facing rear	50'	
		Rear facing side	30'	
		Side facing side	15'	

1. Height. No building shall exceed a height of two and one-half (2 1/2) stories or thirty-five (35) feet whichever is the lesser, except that existing buildings in excess of the permitted number of stories or height may be re-used for any permitted principal or accessory use.
2. Units Per Building. No townhouse building shall contain more than six(6) dwelling units.

(h) Dwelling Unit Requirements.

1. Each dwelling unit shall contain as a minimum a separate living room, a separate bedroom, a separate bath, a room for storage and utilities, and a kitchen, which kitchen facility shall be located separate and apart from other rooms in the unit with the exception of the dining room.
2. Minimum Floor Area. Each dwelling unit shall have a minimum floor area, as "floor area" is defined in Section 30-6, in accordance with the following schedule:

Number of Bedrooms	Minimum Required Floor Area Per Dwelling Unit (in Sq. Ft.)
1	900
2	1,150
For each additional	200 additional

3. No basement shall contain a bedroom.
4. Each dwelling unit shall have at least two (2) private outside entrances.
5. Each dwelling unit shall contain its own heating plant and system and shall constitute a separate, independent unit for metering and all other purposes with respect to all required utilities and similar conveniences. No central or common laundry or similar facilities intended for two (2) or more units shall be permitted.

6. Each dwelling unit shall have at least one (1) individual private yard area, balcony, deck, open patio or court adjoining the unit and having a width of at least fifteen (15) feet and an area of at least one hundred fifty (150) square feet. Each private yard area, patio, court or deck shall be effectively screened in order to provide a reasonable degree of privacy.
7. In addition to the above requirements, a storage space with separate access and containing a minimum of eighty (80) square feet of floor area shall be provided for each dwelling unit in the basement of the building in which the unit is located or in the garage serving the unit. Storage space located in a garage shall not encroach upon or be located above a minimum area of ten feet by twenty (10' by 20') feet for the parking of a motor vehicle.
8. The layout and arrangement of buildings and their design shall incorporate energy saving and green design features where practicable.

(i) Accessory Buildings.

1. Setbacks. Accessory buildings shall meet the street, property line and internal roadway setbacks of the principal buildings and shall be at least twenty-five (25) feet from a principal building and fifteen (15) feet from another accessory building. Detached garages shall be at least fifteen (15) feet from a principal building or from any other garage or accessory building. Clubhouses, swimming pools and recreation facilities shall be at least one hundred (100) feet from a property line.
2. Height. The maximum height of an accessory building shall be fifteen (15) feet except for clubhouses which shall not exceed twenty-eight (28) feet in height. Existing buildings in excess of the permitted number of stories or height may be re-used for any permitted principal or accessory use.
3. When a clubhouse or other accessory building is attached to a building containing a permitted principal use, the bulk requirements for the permitted principal use shall apply.
4. Design. Architectural design and materials used in the construction of accessory buildings shall conform to or complement the style of construction of principal buildings.
5. Except to the extent inconsistent with the specific provisions of this Subsection, the provisions of Subsection 30-96.13 shall be followed.
6. Signs. The provisions of Section 30-98 shall be followed.

(j) Off-Street Parking and Internal Roadways. Off-street parking and internal roadways shall conform to the provisions of Subsection 30-64.2, and, in addition, the following requirements shall be met:

1. All off-street parking areas and internal roadways shall be paved, bounded by permanent curbing and constructed in accordance with Township of Chatham road specifications; provided, however, that, upon recommendation of the Township Engineer, the requirement of curbing may be waived or modified when found not to be needed for control of storm water, protection of pavement and similar purposes.
2. Parking areas shall be located at least five (5) feet from a building and fifteen (15) feet from a property line.
3. Except as otherwise provided in the New Jersey Residential Site Improvement Standards, internal roadways shall be at least twenty-four (24) feet in width for two (2)-way traffic and twelve (12) feet in width for one (1)-way traffic and shall not enter a street within fifty (50) feet of an existing intersection. Drives leading from internal roadways to parking areas shall be at least twenty (20) feet in width.
4. The arrangement and location of garages, parking areas and internal roadways shall be subject to approval of the Planning Board and shall be designed to insure maximum safety, proper circulation and maximum convenience for residents and their guests.
5. Sidewalks shall be provided along at least one side of any internal road serving the development.

6. Unless otherwise provided in the New Jersey Residential Site Improvements Standards, minimum requirements for off-street parking spaces shall be as follows for low and moderate income housing units:

1 bedroom	1.75 parking spaces
2 bedroom unit	2.0 parking spaces
3 or more bedroom unit	2.5 parking spaces

(k) Landscaping and Common Open Space.

1. There shall be provided a minimum of thirty (30%) percent of the entire tract for common open space, which shall be deed restricted against future development and managed by the homeowners association. Said open space shall not contain any impervious surfaces, detention facilities or other structural or infrastructure improvements.
2. The common open space, where improved, shall be attractively landscaped with varieties of flowering plants, grasses, trees and shrubs that will serve to minimize water use. All proposed landscaping, including existing and new trees, shrubs and natural screening shall be shown on the site plan submitted to the Planning Board for approval.
3. Except as otherwise provided in the New Jersey Residential Site Improvement Standards, sidewalks or walkways constructed in accordance with the Township specifications shall be provided in such locations and of such widths as required and approved by the Planning Board to insure safe and convenient pedestrian traffic.
4. Sidewalks shall be provided along Southern Boulevard within the development.
5. Effective screening by a fence or wall no less than five (5) feet nor more than seven (7) feet in height shall be provided to shield parking areas and other common facilities from view of adjoining residential properties, provided, however, screening by hedge or other natural landscaping may be substituted for the required fence or wall if approved by the Planning Board as part of the site plan.
6. Lighting. Adequate artificial lighting shall be provided in parking areas and along sidewalks, walkways and internal roadways. The source of lighting shall be directed downward, away from buildings and adjoining streets and property lines. Lighting fixtures shall be so arranged that the direct source of light is not visible from any adjacent property.

(l) Utilities.

1. Adequate provision shall be made for storm water drainage, water supply and sewage treatment and disposal.
2. All telephone, electric and CATV service, including outdoor lighting on the property, shall be by underground conduit.
3. Fire Hydrants. Fire hydrants shall be installed at locations specified by the Township. Such hydrants shall be provided with appropriate water pressure and otherwise adequately maintained by the owner or owners of the dwelling units. All such hydrants shall conform to the standards of the National Board of Fire Underwriters or Township requirements, whichever is more restrictive.
4. Solid Waste, Including Recyclable Materials. Suitable provision shall be made for the orderly deposit and pick-up of solid waste, including recyclable materials. The locations and numbers of all facilities for such purposes shall be subject to approval by the Planning Board and shall meet all regulations of the Township Board of Health and applicable provisions of Section 18-1 of the Revised General Ordinances of the Township of Chatham as well as the following:
  - (a) Each receptacle shall be located in a completely enclosed building.
  - (b) Buildings used solely for the purpose of housing receptacles shall be located at least five (5) feet from an internal roadway and shall otherwise meet the requirements for accessory buildings.

(c) Buildings used to house receptacles shall be so located as to permit convenient vehicular access.

(m) Developer's Obligation to Provide Affordable Housing.

1. Prior to the issuance of any construction permit, and as a condition precedent to the grant of any approval of a development application by the Planning Board, Board of Adjustment or Zoning Officer, as applicable, a developer shall be required to enter into an agreement with the Township Committee to construct at least 15 percent to 20 percent of all dwelling units as low and moderate income housing units as prescribed in Subsection 30-84(m)2 below. At least 50% of the rental units shall be available to low income households with the remainder available to moderate income households. The required agreement shall make provisions for the developer's obligation to construct the affordable units and the phasing of construction of market units shall provide for the construction of affordable units in tandem with the market units according to the requirements of N.J.A.C.5:93-5.6(d).
2. The required minimum residential densities and affordable housing set asides shall be as follows:
  - (a) Townhouse or other for-sale units: 12 dwelling units per acre with a 20% affordable housing set-aside; and/or.
  - (b) Multi-family rental housing, such as garden apartments:  
12 dwelling units per acre with a 15% affordable housing set-aside.
  - (c) Townhouse and multi-family at the prescribed densities and set-asides identified above may be mixed on single parcel of land.
- (n) Development Option.

The "PI-AHO" Professional and Institutional Affordable Housing Inclusionary Overlay Zone provides a development option allowing townhouses and/or apartments on Block 128, Lot 9 at the election of the owner. The "PI-AHO" Professional and Institutional Affordable Housing Inclusionary Overlay Zone does not supersede the existing underlying PI-1 Professional Institutional District and does not render existing uses on Block 128, Lot 9 non-conforming.

**Section 4.** All other Ordinances, part of Ordinances, or other local requirements that are inconsistent or in conflict with this Ordinance are hereby repealed to the extent of any inconsistency or conflict, and the provisions of this Ordinance apply.

**Section 5.** Notwithstanding that any provision of this Ordinance is held to be invalid or unconstitutional by a court of competent jurisdiction, all remaining provisions of the Ordinance shall continue to be of full force and effect.

**Section 6.** This Ordinance shall take effect immediately upon (1) adoption; (2) publication in accordance with the laws of the State of New Jersey; and (3) filing of the final form of adopted Ordinance by the Clerk with the Morris County Planning Board pursuant to N.J.S.A. 40:55D-16.

Attorney Cruz said that Ordinance 2019-19 and Ordinance 2019-22 were subject to a Master Plan Consistency Review at the December 16<sup>th</sup> Planning Board meeting. He said that for both ordinances, the Planning Board determined that the ordinances were inconsistent with the Master Plan, but recommended that the ordinances be adopted and the Township Planner's recommendation memoranda have been circulated to the Township Committee. As such, the Township Committee has jurisdiction to take action on the ordinances at this meeting. Attorney Cruz said that if the Township Committee is inclined to adopt the ordinances, the Township Committee would first need to adopt a reasons resolution for each ordinance prior to adoption.

Attorney Cruz further explained that the Fairmount Commons overlay is provides the property owner an additional opportunity to develop the property, now or in the future, for residential use with up to 12 units per acre with an affordable housing set aside of 15% if they are rental units or 20% if they are for-sale units. Administrator Hoffmann said he spoke with the property owner, and their plan is to keep it as a commercial property for office space for the foreseeable future.

Deputy Mayor Kelly reiterated that it was announced at the last meeting that the two ordinances on this meeting's agenda would be carried to this meeting, which was done to give the Planning Board the opportunity to conduct the Master Plan Consistency Review. Deputy Mayor Kelly also highlighted that the Planning Board recommended the adoption of the ordinances because, although they are technically inconsistent with the Master Plan, they do advance the goals and

objectives of the Master Plan. The Township Clerk added that the agenda was posted on the Township website last week to further inform the public that the ordinances would be considered at this meeting.

Mayor Selen opened the Public Hearing on Ordinance 2019-19.

1. Rich Matlaga, 36 Dale Drive, stated a concern that the Township may not be able to meet the requirement for 74 units, and asked if the Township could be forced to use eminent domain on a property with an overlay zone. Attorney Cruz said that the law does not authorize condemnation for an overlay zone, and the ordinance is to satisfy a portion of the unmet need.

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

#### **RESOLUTION 2019-229**

### **RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CHATHAM IN THE COUNTY OF MORRIS OUTLINING THE REASONS FOR ENACTING ORDINANCE 2019-19 AN ORDINANCE OF THE TOWNSHIP OF CHATHAM, COUNTY OF MORRIS, STATE OF NEW JERSEY, ESTABLISHING AN INCLUSIONARY AFFORDABLE HOUSING OVERLAY ZONE IN THE PI-1 PROFESSIONAL INSTITUTIONAL DISTRICT AND AMENDING CHAPTER XXX, TITLED “LAND DEVELOPMENT”, ARTICLE 7, TITLED “ZONING REGULATIONS” APPLICABLE TO BLOCK 128, LOT 9, LOCATED AT 466 SOUTHERN BOULEVARD TO ADDRESS A PORTION OF THE TOWNSHIP OF CHATHAM’S THIRD ROUND AFFORDABLE HOUSING OBLIGATIONS**

**WHEREAS**, Township Committee of the Township of Chatham referred Ordinance 2019-19 to the Planning Board for statutory review pursuant to NJSA 40:55D-26; and

**WHEREAS**, the Planning Board determined that the referenced ordinance, which establishes an affordable housing overlay zone in the PI – Planned Institutional Zone is inconsistent with the 2011 Land Use Plan (LUP) and 2008 Housing Element and Fair Share Plan (HEFSP); and

**WHEREAS**, despite the referenced inconsistency, the Planning Board nonetheless recommended adoption because the overlay zone advances multiple objectives of the LUP and HEFSP and specifically advances Chatham Township’s efforts to address unmet need for the third round; and

**WHEREAS**, the Township Committee concurs with the findings of the Planning Board that the specific goals and objectives of the Land Use Plan include Goal 6 which seeks to “Promote a balance of housing types for all segments of the population.”; and

**WHEREAS**, the Planning Board determined that the goals of the 2008 HEFSP are advanced by this proposed Affordable Housing Overlay ordinance; and

**WHEREAS**, the proposed Affordable Housing Overlay zoning will advance the objectives of the Housing Element and Fair Share Plan, which “... is designed to ensure the provision of the required affordable housing in the Township “; and

**WHEREAS**, the affordable housing overlay zone is one of the components specified in the settlement with the Fair Share Housing Center;

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

1. That Ordinance 2019-19 substantially advances objectives of the adopted Chatham Township Master Plan.
2. That the reasons outlined in this resolution are sufficient to enact said ordinances despite any inconsistencies with the Land Use Plan and Housing Element and Fair Share Plan.
3. That the Township Committee hereby adopts Ordinance 2019-19.
4. This Resolution shall take effect immediately.

Committeewoman Swartz moved to adopt Resolution 2019-229. Deputy Mayor Kelly seconded the motion.

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

Deputy Mayor Kelly moved to adopt Ordinance 2019-19. Committeewoman Ness seconded the motion.

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

Ordinance 2019-22

**ORDINANCE 2019-22**  
**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).

#### SUBSTANTIAL IMPROVEMENT

Any reconstruction, addition, or other improvement of a structure, the cost of which exceeds fifty (50%) percent of the equalized assessed value of the structure before the start of construction of the improvement.

#### 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 29-2.3A(2)(d) below, development fees shall be imposed and collected on new residential construction or when an existing residential structure undergoes a substantial improvement as defined in Section 29-2.2 above, is demolished and replaced, or is expanded where the size of the change, replacement, or

expansion is greater than 2,500 square feet. The development fee shall be calculated on the increase in the equalized assessed value of the new or 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.

#### § 29-1.8 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.

#### § 29-1.9 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.

Mayor Selen opened the Public Hearing on Ordinance 2019-22.

1. Ashley Felice, Candace Lane, said that she is opposed to Ordinance 2019-22, and alleged that it is a penalty tax for adding value to a property. Mrs. Felice said that adding value to a property should be encouraged, which will result in an increase in property taxes. She also theorized that developers will pass along the cost of a development fee to prior property owners, and the fee will discourage development. Mrs. Felice further suggested that the Township's trust fund would instead be controlled by the State, and said that the Township does not have the infrastructure to support additional development. Mrs. Felice further theorized that roads will be congested, trains will be packed and the Chatham schools will lose their prestige if affordable housing is built.

Mayor Selen noted that the trust fund will be managed by the Township rather than by the State.

Mrs. Felice said that some municipalities do not have development fee ordinances. Attorney Cruz asked for examples, which Mrs. Felice was unable to provide. Attorney Cruz also said that the trust fund would be locally managed, and funds would be dispersed in accordance with a court-approved spending plan.

2. Rich Matlaga, 36 Dale Drive, asked about the existing development fee ordinance and if it had been rescinded. He also asked if there is anticipation that the development fee will raise all the money that the Township will need for affordable housing or just a portion.

Deputy Mayor Kelly said that the Township was unable to adopt a spending plan to implement the development fee ordinances adopted in 2008 and 2009 because the housing obligation and compliance mechanisms were unknown. He also said that the expense and income data are unknown, therefore it is unknown if the development fees will cover all costs. Deputy Mayor Kelly also said that based on projections from historical data, it is not anticipated that the development fees will cover all costs. Mr. Matlaga said that the development fee is a punitive tax that he opposes. Deputy Mayor Kelly said that not having the development fee will result in a higher cost to all taxpayers. Mr. Matlaga claimed that he will have to pay a fee if he sells his home to a developer. He also asked what the difference is between residential development and non-residential development. Attorney Cruz said that one is residential, the other is commercial.

3. Mark Lois, 15 Gates Ave, said that the development fee ordinance fails to match known costs and known revenues. He also said that Chatham Township is a wonderful place to live, and he does not know why the Township would want to raise revenues.

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

Administrator Hoffmann pointed out that municipalities have a 2% cap on tax levies, and the development fee will help the Township avoid exceeding that cap.

#### **RESOLUTION 2019-230**

#### **A RESOLUTION OF THE TOWNSHIP COMMITTEE OF THE TOWNSHIP OF CHATHAM IN THE COUNTY OF MORRIS OUTLINING THE REASONS FOR ENACTING ORDINANCE 2019-22 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"**

**WHEREAS**, Township Committee of the Township of Chatham referred Ordinance 2019-22 to the Planning Board for statutory review pursuant to NJSA 40:55D-26; and

**WHEREAS**, the Planning Board determined that the referenced ordinance, which provides for the collection and use of development fees, is inconsistent with the 2008 Housing Element and Fair Share Plan (HEFSP); and

**WHEREAS**, Chatham Township agreed to provide funding for a variety of constitutional compliance components specified in the settlement with the Fair Share Housing Center; and

**WHEREAS**, despite the inconsistency, the Planning Board nonetheless recommended adoption because this ordinance advances the affordable housing objectives of the 2011 Land Use Plan and the strategies advanced in the 2008 Housing Element and Fair Share Plan; and

**WHEREAS**, the Township Committee concurs with the findings of the Planning Board that the specific goals and objectives of the Land Use Plan include Goal 6, which seeks to "Promote a balance of housing types for all segments of the population"; and

**WHEREAS**, the Planning Board determined that the goals of the 2008 HEFSP are advanced by this ordinance, which will assist the Township with a variety of strategies to address the affordable housing constitutional obligation, including the collection and use of development fees; and

**WHEREAS**, the proposed development fee regulations will advance the objectives of the 2008 Housing Element and Fair Share Plan, which "... is designed to ensure the provision of the required affordable housing in the Township"; and

**WHEREAS**, the collection of development fees will enable Chatham Township to provide funding to assist constitutional compliance;

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

1. That Ordinance 2019-22 substantially advances objectives of the adopted Chatham Township Master Plan.
2. That the reasons outlined in this resolution are sufficient to enact said ordinances despite any inconsistencies with the Land Use Plan and Housing Element and Fair Share Plan.
3. That the Township Committee hereby adopts Ordinance 2019-22.
4. This Resolution shall take effect immediately.

Committeewoman Swartz said that she will vote against the reasons resolution based on her experience as a Planning Board member. She said that there is no substantial reason to override the Master Plan.

Deputy Mayor Kelly moved to adopt Resolution 2019-230. Committeewoman Ness seconded the motion.

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

Committeewoman Ness asked if the Settlement Agreement included the development fee and a bonding plan to fund affordable housing. Attorney Cruz said that the Settlement Agreement does include a trust fund and a spending plan will be required. He said that the spending plan will include an intent to bond. Committeeman Ritter asked if the development fees are statutory. Attorney Cruz said that regulations set 1.5% for residential development and 2.5% for non-residential development. He also said that the Township Committee further discussed the situations in which the residential fee would apply. Committeewoman Ness said that she will support the development fee because the Township needs to support the Settlement Agreement.

Committeewoman Swartz said that she opposes the development fee because it targets a subset of the Township's population. Committeewoman Ness asked what Committeewoman Swartz thought would happen when the Township Committee approved a Settlement Agreement that requires a development fee. Committeewoman Swartz said that if she sells her own house to a developer, a development fee will likely be charged. Committeeman Ritter said that the understanding at the time of the Settlement Agreement was that the development fee would only be charged on tear-downs and new construction.

Deputy Mayor Kelly said that he supports the development fee because he does not want a tax increase on all residents. He also pointed out that those who make significant improvements to their homes are able to afford to do so, whereas a general tax increase impacts those who are less able to afford to pay more.

Mayor Selen said that there are costs being accrued by the Township that need to be paid, and said that the improvements upon which a fee will be required are substantial improvements.

Deputy Mayor Kelly noted that the Planning Board voted 8 to 1 to recommend adoption of the development fee ordinance as it advances the goals of the Master Plan.

Committeewoman Ness moved to adopt Ordinance 2019-22. Deputy Mayor Kelly seconded the motion.

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

### **Resolutions**

Attorney Cruz explained that the Planning Board's approval of the Dixiedale and Arbor Green applications require the developer to enter into developer's agreements with the Township, and the proposed resolutions approve those agreements. Committeeman Ritter asked if the Dixiedale project is being delayed by the pending litigation matters. Attorney Cruz said that the Court has

not taken any action, and his recommendation is that the Township Committee continue to move forward with the Dixiedale and Skate Park development.

**RESOLUTION 2019-231**

**RESOLUTION OF THE TOWNSHIP OF CHATHAM, COUNTY MORRIS, STATE OF NEW JERSEY APPROVING DEVELOPER'S AGREEMENT WITH STERLING/SUN AT CHATHAM LLC**

**WHEREAS**, the Planning Board of the Township of Chatham, by resolution dated December 16, 2019, has granted preliminary and final site plan approval to Sterling/Sun at Chatham, LLC for premises located at Block 66, Lot 1, on the current tax map of the Township; and

**WHEREAS**, said approval requires the execution of a Developer's Agreement with the Township as a condition of said approvals, which agreement has been submitted, reviewed by the Township Attorney, and been found acceptable;

**NOW, THEREFORE, BE IT RESOLVED**, by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, that said Developer's Agreement with Sterling/Sun at Chatham, LLC is hereby approved in substantially the form of the Developer's Agreement on file with the Township Clerk subject to the final approval of the Township Administrator and Attorney, and that once the Township Administrator and Attorney approve the Agreement, that the Mayor and Clerk are hereby authorized to execute same.

Deputy Mayor Kelly moved to adopt Resolution 2019-231. Mayor Selen seconded the motion.

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

**RESOLUTION 2019-232**

**RESOLUTION OF THE TOWNSHIP OF CHATHAM, COUNTY MORRIS, STATE OF NEW JERSEY APPROVING DEVELOPER'S AGREEMENT WITH SOUTHERN BOULEVARD URBAN RENEWAL, LLC**

**WHEREAS**, the Planning Board of the Township of Chatham, by resolution dated December 16, 2019, has granted preliminary and final site plan approval to Southern Boulevard Urban Renewal, LLC for premises located at Block 48.16, Lot 117.27, on the current tax map of the Township; and

**WHEREAS**, said approval requires the execution of a Developer's Agreement with the Township as a condition of said approvals, which agreement has been submitted, reviewed by the Township Attorney, and been found acceptable;

**NOW, THEREFORE, BE IT RESOLVED**, by the Township Committee of the Township of Chatham, County of Morris, State of New Jersey, that said Developer's Agreement with Southern Boulevard Urban Renewal, LLC is hereby approved in substantially the form of the Developer's Agreement on file with the Township Clerk subject to the final approval of the Township Administrator and Attorney, and that once the Township Administrator and Attorney approve the Agreement, that the Mayor and Clerk are hereby authorized to execute same.

Deputy Mayor Kelly moved to adopt Resolution 2019-232. Mayor Selen 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.

1. Rich Matlaga, 36 Dale Drive, said that Chatham Borough officials met with representatives of the School District of the Chathams to plan for schools, and he is

disappointed that there were not Township representatives at that meeting. He said that he would like to see the Township participate in those sort of meetings.

Administrator Hoffmann said that he and the Township's financial advisor met with the Superintendent of Schools and the School District's Business Administrator, and the Township's projections of how many students may be generated by the Township's pending development were discussed. He also said that there is general agreement about the projections and potential costs.

Committeewoman Ness said that she has met with Board President Jill Weber twice to discuss the pending development in the Township and the Borough.

Committeewoman Swartz said that the Township Committee has an unmitigated desire to protect the community. She noted that the Township is haggling over 100 units, and the Borough has a very different vernacular.

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

Committeewoman Swartz moved to adjourn at 9:57 PM. Committeewoman Ness seconded the motion, which carried unanimously.

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Gregory J. LaConte  
Municipal Clerk