

CALL TO ORDER

Special Meeting of the Mayor and Borough Council held on April 5, 2018 was called to order by Mayor Kennedy O'Brien at 6:33 P.M. followed by a salute to the flag.

STATEMENT OF NOTICE OF PUBLICATION

Municipal Clerk Farbaniec announced that this Special Meeting has been advertised and posted in accordance with Open Public Meetings Act Chapter 231, P.L. 1975 by advertising in the Home News Tribune, notifying the Star Ledger and the Sentinel Publishing Co., posting on the bulletin board and filing with the Municipal Clerk.

ROLL CALL

- Roll Call: Councilpersons Buchanan, Grillo, Kilpatrick,
Lembo, Novak
- Absent: Councilman Melendez
- Others Present: Municipal Clerk Farbaniec
Business Admin. Frankel
Attorney Ed Washburne
Borough Engineer Cornell
Mike Jedziniak, Esq., COAH Counsel

Mayor turned the meeting over to the COAH Special Counsel.

Appearing was:
Mike Jedziniak, Esq. Special Mount Laurel (COAH) Counsel
Attorney with Jeffrey Surenian & Associates

He said that the purpose of tonight's meeting was to get through the next step in the COAH process. He also indicated that he is filling in for Jeff Surenian and Mike Edwards the two regular attorneys on this case. He said that the goal of tonight's meeting was as a follow-up to the Planning Boards Meeting of March 29, 2018, in which they adopted the Borough's Housing Element and Fair Share Plan – Under Protest and the next step is for the Borough Council to consider endorsing that plan also under protest. This will put the borough in the position to file with the court and Special Master and move forward toward the review and approval process.

Mayor asked if there were any question or comments from the governing body.

None made.

Mayor asked that the resolution be read into record.

The Clerk read the following Resolution into Record:

RESOLUTION No: 2018-117

**RESOLUTION OF THE BOROUGH COUNCIL OF THE BOROUGH OF
SAYREVILLE, MIDDLESEX COUNTY,
NEW JERSEY ENDORSING AN AMENDED HOUSING ELEMENT AND
FAIR SHARE PLAN UNDER PROTEST PURSUANT TO S.
BURLINGTON COUNTY NAACP V.
MOUNT LAUREL TWP., 92 N.J. 158 (1983)**

WHEREAS, the Borough Council adopted Resolution 2016-197 on June 13, 2016, which provided as follows:

NOW THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Sayreville that it does approve hereby the proposed Housing Element and Fair Share Plan presented at its June 13, 2016 Council meeting and further approves and endorses the proposed Housing Element and Fair Share Plan dated May 28, 2016, revised June 10, 2016 with amendments thereto, which is on file with the Borough Clerk and available for public viewing, subject to the Borough finally negotiating a complete and final Settlement Agreement and Housing Element and Fair Share Plan approved by the court and subsequent to formal adoption of a Master Plan Amendment and

WHEREAS, according to the plain, unambiguous language of this resolution, the sole action taken by the Borough was to *conditionally* approve a *draft* Housing Element and Fair Share Plan and quite clearly and inescapably did not authorize the execution of any Settlement Agreement; and

WHEREAS, the Borough anticipated that it would have a second “bite at the apple” before authorizing the execution of the “complete and final Settlement Agreement” since only a draft of an agreement existed when the Borough adopted Resolution 2016-197; not that it was delegating the authority of its Mount laurel attorney to negotiate and for the Mayor to sign any agreement and

WHEREAS, the fact that the primary purpose of the Agreement involved zoning – a function squarely and exclusively within the jurisdiction of the Borough Council – it was particularly important for the Borough Council to approve the final form of agreement; and

WHEREAS, the Borough Council was not satisfied that they were being fully informed by their Mount Laurel attorney about the Settlement Agreement and about all their rights, which culminated in the Council retaining a whole new set of professionals; and

WHEREAS, Jeffrey R. Surenian and Associates, LLC, one of the new professionals, has brought a motion on the Borough’s behalf asserting *inter alia* that the Agreement signed by the Mayor is not binding and enforceable because the Borough Council never authorized the Mayor to execute that Agreement; and

WHEREAS, the Court has ordered the Borough to adopt the ordinances and take various other measures to implement the “Settlement Agreement,” but acknowledged that if he grants the Borough’s pending motion, he will give the Borough the opportunity to present an amended housing element and fair share plan for the Court’s consideration – one that is not constrained by any agreement; and

WHEREAS, as a result of the foregoing, on March 29, 2018, the Planning Board adopted an amended Housing Element and Fair Share Plan that complies with the order of the Court because the substance of the Plan is constrained by the “Settlement Agreement”; and

WHEREAS, however, the Planning Board adopted the amended Housing Element and Fair Share Plan “under protest” as permitted under Mount Laurel law, thereby preserving the Borough’s right to adjust course if the Borough prevails in its claim, as detailed in its pending motion, that there is no enforceable agreement and that, therefore, it is free to comply in a manner of its choosing; and

NOW THEREFORE BE IT RESOLVED that the Borough of Sayreville, County of Middlesex, State of New Jersey, does hereby endorse the amended Housing Element and Fair Share Plan adopted by the Planning Board on March 29, 2018.

BE IT FURTHER RESOLVED THAT the endorsement of the amended Housing Element and Fair Share Plan is taken under protest and that, therefore, it seeks the Court’s approval of said plan under protest.

/s/ Victoria Kilpatrick, Councilwoman
(Public Works Committee)

ATTEST:

BOROUGH OF SAYREVILLE

/s/ Theresa A. Farbaniec, RMC
Municipal Clerk

/s/ Kennedy O’Brien
Mayor

	<i>Buchanan</i>	<i>Grillo</i>	<i>Kilpatrick</i>	<i>Lembo</i>	<i>Melendez</i>	<i>Novak</i>
<i>Ayes</i>	X	X	X	X		X
<i>Nays</i>						
<i>Abstain</i>						
<i>Absent</i>					X	

At this time the Mayor opened the meeting to the public for questions or comments on the resolution. Those Appearing were:

- Jim Robinson, 11 Borelle Square

Asked someone to explain what the March 29th amended plan says or does.

Mr. Jedziniak said that overall the plan has an assumption that your round three Mount Laurel obligation is 785 units which is based upon a settlement that is under contestation. He said that there are various compliance techniques and on page 41 of the plan it identifies a whole set of compliance techniques and credits. He read from the chart on page 41 of the plan totaling 862 total credits anticipated subject to the courts approval.

Councilwoman Kilpatrick commented about the figures before and after are a result of Susan Gruel's review.

Mr. Robinson said these numbers are significantly different and asked if Heritage Homes was counted and about setbacks and if this resolution included a 15% or 20% set aside.

Mr. Jedziniak said that he was not sure of that answer but said that in the Mount Laurel arena, the typical bench mark is 15% set-aside for rental and 20% for for-sale Units.

Mr. Robinson asked if in the appeal to the Judge was it taken into account that the Planning Board that adopted the original plan met in closed session improperly and that a number of those people were not legally appointed. Mr. Jedziniak said that he believe that is a subject of a motion that is pending before the Judge.

Councilwoman Kilpatrick further responded, explaining that the brief is hundreds of pages and felt that this brief contained everything possible including the public being left out of the process. She thanked Mr. Surenian and his team and Mr. DuPont for preparing this brief.

Mr. Robinson commented about the way meetings get advertised and posted. He asked that all meetings regular and special be posted on the web site. He said that this meeting was not posted on line and that not all people read the newspaper.

-Steve Melanaski, Scarlett Drive

Questions concerning the new proposal by the Planning Board and approving resolution and why the public hasn't seen it. Then asked about the number of units and credits.

Councilwoman Novak explained the number of credits the courts have already accepted.

Councilwoman Kilpatrick explained what they are doing here tonight, that a Fair Share Housing Plan needed to be presented to the Judge whether they agreed with it or not – the original housing plan that was put in place in 2016 and that now through the work of the new professionals they have also considered all of these other units that have not been counted. Now they are willing to accept this Housing Plan, under protest, because they have to and will be asking the Judge to read through the very large brief and will ask the Judge to take all this into consideration when he renders his decision on April 9th. Other negotiations may occur with Kaplan and National Lead before that time. She also indicated that this Resolution is tied to a 350 page Fair Share Housing Plan.

Mr. Melanaski then asked about the Pro forma in a capacity plan on what all of this is going to mean to the town. He went on to talk about meeting notifications being pushed through NIXLE.

- Ruth Ann Mahoney, 2 Gerard Place

Asked about the borough's infrastructure with all the new building. She said that she feels that her questions go unanswered.

Councilman Grillo explained that this is still an ongoing matter, it is still developing and they will not know the true cost of infrastructure as site plans have not been done, environmental assessments, borings so we really do not know.

Mayor asked that Councilman Grillo explain his credentials. Co. Grillo said that he is a Professional Planner and has a Master's Degree in Planning and is the First Vice-President of the Economic Development of Staten Island. He went on to say that he felt that the mandate from this body should be that any project that does come across the planning board, zoning board or council is that there is an in-depth report on the infrastructure. Said that no one is trying to pull the wool over your eye as far as what the cost of services will be. This is a large project to be written in chapters and it is too early to provide accurate numbers.

Ms. Mahoney asked if this included Riverton and that if this Planning Board meeting happened after oral arguments on Thursday. Councilman Grillo said yes.

- Steve Melanaski, 28 Scarlett Dr.

Stated that he understood that it could not be written accurately but there would be a ball park that could be reached. Councilman Grillo said that moving forward after we get a determination from the court there could be a preliminary Pro forma. Mr. Melanaski accepted this reply only asked for updates moving forward.

Council President Kilpatrick asked when a Pro forma would typically be done on a project. Councilman Grillo said that going back it could have been done one to one and one half years ago. Council President Kilpatrick felt that a Pro forma should have been before this all came before the Planning Board. But now it's different with not knowing what we could potentially end up with, but the Pro forma should have been done over a year ago.

Councilman Grillo endorsed what Councilwoman Kilpatrick stated that it should have been done before the first COAH presentation but at this point there are too many moving parts.

Mr. Melanaski said that it does not matter what the numbers are, what about the school capacity? He felt this should still be done to have some type of prediction. Council President Kilpatrick stated the only thing we do know is that Kaplan and National Lead signed on as intervenors and we do know what is in the Fair Share Housing Plan for those two properties. Mr. Melanaski said it should be done on both.

- Ken Olchaskey, 108 North Edward Street

Questioned what the April 9th decision would mean.

Attorney Mike Jedzeniak explained that on that date the Judge will enter a decision and either be free from the old decisions that were made or if we will be bound by them.

Mr. Olchaskey asked for a better way of noticing meetings.

Mr. Olchaskey asked if the March 29th Planning Board meeting was announced at the last council meeting then suggested that when the council give their committee reports they should give more information.

- Jim Robinson, 11 Borelle Square

Questioned the resolution that the planning board adopted on March 29th and if the number of market rate units changed.

Mr. Jedzeniak said - There are a lot of credits for 100% affordable housing.

Mr. Robinson asked about moving forward is there a scenario where we could get more one for one units to help us so we could reduce the number of market rate apartments.

Mr. Jedzeniak said yes there will be a 9% tax incentive program which is one way to side step getting five for one.

Council President Kilpatrick also explained how SERA stepped in as an intervenor and offered that River Road property as 100% and how the council passed a resolution of an intent to bond in the event there is a short fall.

Mr. Robinson addressed Co. Grillo and his qualifications as a planner and about a Pro forma. Co. Grillo stated that the responsibility should lie with the Mount Laurel Committee.

Mr. Robinson that talked about the resolution and asked the Mayor why he executed the settlement agreement.

The Mayor responded that there are a number of attorneys serving the borough that he depends on for advice and would have to ask them why it wasn't brought to his attention not to execute it. He said that he only signs ones that are approved by the governing body. That he would not sign anything secretly without the approval and knowledge of the governing body.

Council President claimed that she did not even see the agreement. At one point another councilperson called her regarding the rezoning and increased density which she said she was never made aware of.

Mayor said that he would look into this matter.

- Steve Melanaski, 28 Scarlett Drive

Asked if the wording in the resolution would put the borough in jeopardy.

Response by Co. Novak and Kilpatrick that it does not put us in jeopardy.

Mayor explained that the protocol prior to his signing the documents is that the attorneys vet it, check it for accuracy, for errors, for legal matters. It then goes to the Clerk. The clerk does her process and then it is presented to him. He reminded everyone he is not an attorney and depends on them for correctness and advice.

He said he is dependent on the 1)Borough Attorney; 2)Board Attorneys; 3)Special Counsel to be sure the documents are legal, that the documents are in the best interest of the borough and that it passes all the legal requirements for council approval.

Council President Kilpatrick explained how she did not know the document existed.

- Ken Olchaskey, 108 No. Edward Street.

Commented on five minute closed sessions.

There being no further appearances, the Mayor called for a motion to close the public portion and adopt the Resolution. Council President Kilpatrick moved the public portion be closed and to adopt the resolution. Motion was seconded by Councilwoman Novak.

Roll Call – Ayes; Councilpersons Kilpatrick, Buchanan, Grillo, Lembo, Novak
(under protest)
Nays; None

Mayor stepped out of the meeting and Council President Kilpatrick took over the meeting.

- **EXECUTIVE SESSION** - None

- **PUBLIC PORTION**

Council President opened the meeting to the public for any and all questions or comments. There being none Councilwoman Novak moved to close the Public Portion. Motion was seconded by Councilman Buchanan.

Roll Call: Voice Vote, all Ayes.

- **ADJOURNMENT**

Councilwoman Novak made **a motion to adjourn** this meeting. Seconded by Councilman Buchanan.

Roll Call: Voice Vote, all Ayes. Carried.

Time: 7:59 P.M.

SIGNED:

Theresa A. Farbaniec, RMC
Municipal Clerk

Date Approved: _____