

BOROUGH OF BERLIN  
SPECIAL MEETING MINUTES  
MONDAY, NOVEMBER 28, 2016  
MUNICIPAL BUILDING  
59 SO WHITE HORSE PIKE  
BERLIN, NJ 08009  
7:00 P.M.

MEETING CALLED TO ORDER:

FLAG SALUTE:

SUNSHINE NOTICE: Adequate notice of this meeting has been given in accordance with the Open Public Meeting Act, Pursuant to Public Law 1975, Chapter 231. Said notice has been advertised in the Courier Post, The Inquirer and posted on the Borough Hall Bulletin Board & Website showing the date, place and time of said meeting.

ROLL CALL: Mayor Jim Bilella, Council President Jim Pearce, Council Members Kupchik, Miller, Badolato, Rocco and Buchanan.

ABSENT: Council Member Kupchik

PRESENT ALSO: Cheryl Lynn Walters – Platt & Riso, Jim Clarkton, from CME - Borough Planner, Acting Municipal Clerk Lois J. Sahina and Administrator/CFO Mike Kwasizur

CONFERENCE CALL ATTENDANCE: Planning Board Attorney Stuart Platt

NOVEMBER 28, 2016 COUNCIL MEETING AGENDA DISCUSSION

MEDIATION AGREEMENT ON THIRD ROUND COAH REQUIREMENTS:

Mayor Bilella – Mediation Settlement for the third-round COAH Compliance has been going on for many years. In the past, the Borough of Berlin has not been proactive in COAH compliance. In the first two rounds the borough lost millions of dollars in law suits and legal fees. We were forced to accept high density housing, such as the Nexus Apartment complex, with little or no control of what we received.

Third round requirements have been up in the air for several years. Recently the Supreme Court decided that all third-round COAH compliance requirements would be decided by the state court system. This past administration has been very proactive in our approach to this third-round compliance. We have hired solicitor Stuart Platt and CME to represent in our mediation.

I attended one of the mediation sections and explained to the judge that we already have our fair share of low to moderate income housing for these families, but unfortunately it doesn't count. She asked why it doesn't count? I pointed to the fair share housing people that were in mediation with the dispute, and they don't give us credit for them and the judge said that saying that is ridiculous and they need to work this out with us.

After much discussion between our attorney, planner and fair share housing people, we came up with a plan and Jim Clarkton has reached out to some of the apartment complexes and assisted living facilities that we already have within the borough and obtained the documentation that we needed to prove that we already have the housing stock and that we don't need to build new.

We have been able to make our case and this agreement allows us to meet our third-round COAH requirements through July 2025 with the existing housing stock that we already have in our borough today. This third round would require us to have an additional 131 addition COAH units than what was agreed to in the first and second rounds, however now we get credit for whatever is on our books and in the borough today. We do not have to build any new housing to meet the requirements until 2025. Fair Share Housing just came up with this decision. I strongly recommend that Council approve this settlement.

Professional Explanation of the agreement by Stuart Platt, Planning Board Attorney

The current third round extends from 1999 -2025. This time period would include the existing housing stock without other further litigation. Within this third round is a time period called a gap period, which extends from 1999 -2015. There has been a lot of litigation in other counties and towns in NJ in trying to determine whether this gap period no longer applies. The is the fair share housing sector who is on the other side of this mediation agreement who really speaks for the affordable housing components. This will be argued in the Supreme Court on Wednesday and don't know how this decision will turned out if the gap period is considered.

A mediation agreement provides the borough to meet the housing obligation agreements until 2025 with the existing housing stock without any further litigation and risking the chance that the supreme court decision could raise our requirements of 131 units.

The downside of waiting for a gap period decision could result in an increase to 217 units from 131 in the third-round period. This would be a raise in fair share housing units by 118 allocations which is just a few less units than what this agreement requires. The downside of not settling is much greater than settling. Accepting this agreement will avoid great costs in building and litigation fees in the future.

This agreement must be followed by an amendment to the master plan, which would include and updated housing element and fair share plan approved at a public hearing by the planning board, ultimately endorsed by council, constant with this mediation agreement if approved tonight. This fair share housing plan is than submitted to Judge Samuel Artist, Superior Court Judge overseeing this case in Camden County. This would grant the Borough of Berlin what is called a Compliance Approval and Regiment Appose. Which means as long as we abide by this agreement until 2025 we will not be subjected to an increase of fair share housing increase.

Mr.Platt summarized the agreement and then followed in detail an explanation of each line including all the elements of each stated components.

Jim Clarkton reviewed the prior round charts and third round charts and explained the breakdown of units that we currently have as units that are included in the agreement for low to moderate housing.

Occupant of these units can't be changed from low to moderate to higher income units. We would basically work with the owners of these properties to keep these properties within these guidelines. We would basically be spending the money that the borough already has in our affordable housing fund to pay these owners to keep within these requirements.

If we do have to add 11 new units to meet requirements than we would have to build five times the density. All of the units that we currently have are already counted. New credits added to our town which were never given in the past is Spring Oaks Assisted Living, which accounts for a 65% eligibility factor.

Prior to 2026, round four will begin and the courts or NJ legislature will than establish new rules or laws based on how to calculate your new affordable housing obligation from 2025-2035.

Other towns are doing zoning overlay and either they build on this land or you will be sued. This than forces units to be built with no say to the town. This is what happened with the Nexus Project. This agreement is making us compliant without overlay, law suits or new building, other than the eleven units that we need to address in this agreement. We will then be compliant for the next ten years.

If the Nexus project becomes a very long drawn out process and they take a long time to build, as long as they have the plans, approvals, permits and are building, then these units would still be counted towards our obligation from round two. If the agreement is not met than there would have to be another agreement for unit requirements met in some other fashion.

The day of Agreement should be November 28, 2016 on the first page and on page 4 the footnote needs to be revised to represent May 20, 2016.

PRIVILEGE OF THE FLOOR: no one spoke

Motion to Approve Resolution; R11-13;2016 - Council Member Miller

Sec.; Council Member Badolato

RCV; All present were in favor

Mayor Bilella announced to Mr. Platt that the motion has been approved. Mr. Platt thanked the Mayor for his help with making it well known our position to the judge. He would make sure he settled this case to benefit the Borough and its residents.

PRIVILEGE OF THE FLOOR: no one spoke

Motion to adjourn; Council Member Buchanan, Sec.; Council Member Miller

Lois J. Sahina

Acting Municipal Clerk

November 28, 2016

*Lois J. Sahina -  
Acting Clerk 11/28/16*