

HILLSBOROUGH TOWNSHIP PLANNING BOARD
APPROVED PUBLIC MEETING MINUTES
November 04, 2021

Board Attorney, Eric M. Bernstein, Esq. of Eric M. Bernstein & Associates, called the Planning Board public meeting of November 04, 2021 to order at 7:34 p.m. The meeting was held in the Courtroom of The Peter J. Biondi Building. All stood for the Pledge of Allegiance.

Mr. Bernstein announced: This meeting has been duly advertised according to Section 5 of the Open Public Meetings Act, Chapter 231, Public Law 1975 ("Sunshine Law"). Notice of the 2021 Annual Meeting Schedule has been provided to the officially designated newspapers, the Township Clerk, posted on the Township's Website, and available at the Hillsborough Township Municipal Complex. Further notice has been provided to the same that as of July 01, 2021, the remainder of 2021 Planning Board meetings will be held in person at the Peter J. Biondi Building. Live virtual participation will no longer be available.

Application documents have been made available on the Township's website at <https://hillsboroughnj.civicclerk.com/>. Complete applications files are available in the Planning and Zoning Department for inspection, in accordance with the public meeting notice.

Mr. Bernstein said neither Chairman Suraci nor Vice Chairman Julian is in attendance. After roll call, appointment of an Acting Chairman will be addressed. For the record, the Township's Affordable Housing Consultant, Jennifer Beahm, PP, AICP, is on the telephone since she is not able to be present due to her having conjunctivitis. He asked the audience to speak loudly and one at a time.

ROLL CALL

Mayor Shawn Lipani – Present
Robert Wagner, Jr. - Present
Deputy Mayor Frank DelCore - Present
Robert Peason – Present
Carl Suraci, Chairman – Absent
Neil Julian, Vice Chairman – Absent

Nathan Santaromita – Absent
Ron Skobo – Present
Kenneth Hesthag, Secretary – Present
John Ciccarella (Alt. #1) – Absent
Curt Emmich (Alt. #2) – Absent

Board / Township Professionals: David K. Maski, PP, AICP, Township Planning Director; Eric Bernstein, Esq., Board Attorney (Eric M. Bernstein & Associates); Jennifer Beahm, P, AICP, Township affordable Housing Planning Consultant (Leon S. Avakian Inc.) (attending remotely); Michael Lombardozzi, CSR, Board Court Reporter; and Caz Bielen, Videographer (Premier Media).

Mr. Bernstein called for nomination of an Acting Chairman from Class IV members.

A motion to nominate Robert Peason as Acting Chairman was made by Mayor Lipani, seconded by Mr. Skobo. No other nominations were made. Nominations were closed.

Roll Call: Mr. Wagner - yes; Mr. Peason - yes; Mr. Skobo – yes; Secretary Hesthag – yes; Deputy Mayor DelCore – yes; Mayor Lipani – yes. Motion carries.

Acting Chairman Peason proceeded going through the agenda items.

CONSIDERATION OF MEETING MINUTES

None

CONSIDERATION OF RESOLUTIONS

None

PLANNING BOARD BUSINESS

None

BUSINESS FROM THE FLOOR *(For Matters Not on the Agenda)*

Maria Janucik – 720 East Frech Ave., Manville and Hillsborough Township property owner

- Ms. Janucik questioned why she had not received a copy of requested meeting minutes and resolution in reference to the Campus Associates application, for each she had submitted OPRA requests.

Mr. Bernstein answered, as far as the resolution, one was never formalized. There will be one coming before the Board shortly regarding the approval, as per the Settlement Agreement; the Ordinance, and the last hearing in October. That resolution will indicate the original denial and subsequent approval.

- Ms. Janucik continued to question why the draft resolution had not been before the Board previously.

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Mr. Bernstein said the draft did not come before the Planning Board. Regardless, it is a matter of attorney-client privilege until it is acted upon by the Board.

Acting Chairman Peason said they will look into the minutes.

- Ms. Janucik asked why Judge Miller did not reside over the Campus matter.

Deputy Mayor DelCore said Judge Miller recused himself due to questions of a possible conflict which you raised at previous Planning Board meetings.

Mr. Bernstein said the Court was advised of your concerns and Judge Miller did what he did.

- Ms. Janucik asked for information in reference to the Order by Judge Shanahan.

Mr. Bernstein advised the ordinance is not before this Body. It was the carrying out of a judicial decision. The Judge rendered a decision, and the Town decided rather than appeal the decision, it would go forward to comply with His Honor's decision; hence came the ordinance.

- Ms. Janucik continued to ask questions on the Campus application and the action taken, including removal of trees.

Mr. Bernstein stated the matter of the Campus Associates application and any relief sought is a matter of public record. Asking questions after the fact will not change the application.

Deputy Mayor DelCore reiterated the matter is not before the Board, and we do not have all of the information available at this time. Therefore, no one is able to provide exact information related to the Campus application, including the matter of tree removal.

Acting Chairman Peason asked that the questioning move forward.

- Ms. Janucik asked for information on NJDEP permits for the Campus application.

Deputy Mayor DelCore said whatever permits are required will need to be granted. If they have already been acquired is not known at this moment.

- Ms. Janucik asked about the timing of permits.

Deputy Mayor DelCore instructed the speaker to ask questions the Board can answer. The Board is not responsible for the NJDEP timeframe.

- Ms. Janucik questioned the number of projects an Intervenor can submit for.

Deputy Mayor DelCore said that is not a question for this Board.

Mr. Bernstein concurred the line of questioning was for the Township Committee, not the Planning Board. It becomes a matter for this Board if and when an application is submitted.

- Ms. Janucik asked questions related to development by M&M Realty.

Mr. Bernstein confirmed Judge Miller and the Fair Share Housing Center have approved of the arrangement between Hillsborough Township and M&M Realty.

- Ms. Janucik asked how they are an affordable housing developer but yet will not have affordable housing on that site.

Mr. Bernstein said this developer will have affordable housing on another site as part of the agreement.

Mr. Bernstein noted the questions being asked have already been asked and answered at Township Committee meetings.

- Ms. Janucik continued to ask questions in reference to Phase II of the Sherman Tract.

Mr. Maski said that application is not currently before the Board.

Acting Chairman Peason said questions are being asked on an application that has not yet been before this Board.

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- Ms. Janucik continued to ask questions in reference to applications not before the Board, and was again advised this was not the time for such questions.

No further questions.

Acting Chairman Peason continued with agenda items.

CONSIDERATION OF ORDINANCES

None

PUBLIC HEARING

- **Housing Plan Element and Fair Share Plan** – Presentation by Jennifer Beahm, PP, AICP, of Leon S. Avakian, Inc., Township Affordable Housing Planning Consultant

Mr. Bernstein again stated Ms. Beahm is participating by phone due to an illness, and will be making the presentation. One of the requirements to complete the Township's Affordable Housing Compliance Plan is the adoption by this Board of the Housing Plan Element and Fair Share Plan.

Jennifer Beahm, PP, AICP was sworn, provided her credentials, and gave the following testimony:

Ms. Beahm said the Housing Plan Element and Fair Share Plan has been six years in the making. In July, 2015, the Township filed a declaratory action with the Superior Court in Somerset County as a participating municipality. After which time, we have been working diligently with the Court appointed Special Master, as well as the Fair Share Housing Center and Judge Miller, in order to be able to come before you this evening to present the Plan, which has been on file with the Township.

Much of the work included in this plan has already been completed. There have been a number of interested parties over the years, and settlements have been reached. Some of these projects have already been before the Board, and two have already started construction.

Pages 1-25 of the Plan provides a summary of updated demographics, which is a requirement of the MLUL. That update is really a regurgitation of the Census. It is not data created by anyone involved here, and is subject to change. The Census is a recording that occurs at least once every ten years in order to make sure all of the planning documentation within the Township is up to date.

The meat of the matter starts on page 26. In prior Rounds, the Township has been proactive and actually just weeks away from getting certification in 2010 before the rules were invalidated. This iteration, which is more than the typical six-year time period, evaluates the present need which is the Township's obligation of 75 units; the prior Round obligation from 1987-1999, which is 461 units and has been certified previously; and what they call the "gap" period which ranges from 1999-2025, and amounts to 1,378 units, which is overwhelming.

Through multiple iterations, meetings and discussions, we were able to get the Fair Share Housing Center and the Court to agree that Hillsborough is unique in character in that even though there is a lot of acreage in the municipality, there is only a portion of it that is realistically developable, which are the areas that have the infrastructure, sewer and water. While other townships may not have infrastructure everywhere, the likelihood in those instances is that it could be extended as it exists. In this particular circumstance, due to the geology etc., it is unlikely the sewer would be extended outside the sewer service area. As a result, both the Fair Share Housing Center and the Court agreed the Township would be eligible for a durational adjustment, meaning we would evaluate the land available for development in the sewer service area, and that the area outside of the sewer service area, whatever the difference would be between what had been evaluated in the sewer service area and outside, would be what they consider a durational adjustment.

Even though the rules had gotten invalidated in 2010 and there was no action until 2015, the Township continued to move forward with projects that had been part of their Plan in 2010. As a result, there were a significant number of units the Township was able to take credit for; about 525 units in total, that were able to be credited against the new obligation. After months of discussions, both the Fair Share Housing Center and the Court agreed the Townships affirmative obligation within the sewer service area to be 1,109 units. The Township was already in the process of negotiating with developers, many of which have already been before the Board at prior Planning Board meetings, in order to address that obligation. The summary of that obligation is identified on pages 35-36. There is a typo in the chart; one additional bonus credit is not represented. The obligation of 1,378 has been met. Included are supportive housing credits; inclusionary rentals; 100% affordable projects; and age restricted rentals. All of that yields 1,099 credits, plus the 279 credits of bonus. Going back to the durational adjustment, the Township was able to take credit for Town Center zoning that would enable someone to develop, and potentially take credit for 260 units to be developed through the Town Center zoning. All totaled gets us to the 1,378 number.

This Plan is reflective of what has been done and approved by the Court, and basically is retroactively summarizing a lot of

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the action the Board has taken thus far, over the past several years, and has put the Township in a compliant position through the end of this Round, which is 2025.

No questions from the Board.

Open to the public.

Susan Gulliford – Hunt Club Road

- Ms. Gulliford asked if the Census data is considered by the Court when determining the obligation.

Ms. Beahm said no. They have a very detailed methodology that have been utilized by professionals on behalf of the Fair Share Housing Center and municipalities, and have been vetted out. The Census information is included as part of the “Housing Plan”. It is included to make sure the demographics have been updated with the most recent demographic information.

- Ms. Gulliford asked, so when building more units, which brings more people into town that does not increase our obligation?

Ms. Beahm said there is a very specialized formula used. What is most important is the availability of vacant land; it is not population driven.

- Ms. Gulliford said Duke Farm and the Sourland Mountain are not areas of land included for development.

Ms. Beahm agreed. She said that land was taken into consideration for the durational adjustment.

- Ms. Gulliford asked how the Court would view the Township purchasing more land for open space.

Ms. Beahm said deed restricted open space property that becomes part of the Township’s Inventory would not be considered. The number for this Round has already been adjudicated. Anything done now would go towards 2025 numbers.

Mr. Bernstein said the Township acquired the land known as “Hillsborough Properties” in recent years. Had that acreage been left in its prior standing of “developable”, would have added over 250 more affordable housing units to the Township’s obligation. It has since been taken out of the number.

- Ms. Gulliford said the \$14 million purchase, that has not been completed, if purchased, would that be considered for the next Round?

Mr. Bernstein said if that land is in the sewer service area, it would be potentially considered for Rounds 4 and 5. Any “unmet need” has been taken care of by the Town Center ordinance. Therefore, any future building that produces affordable housing not in the Plan, goes towards the next Round, but is not counted towards any obligation the Town will have in the next Round. The Town will start at zero units for the next Round, provided all of the projects listed have been approved by July 01, 2025.

- Ms. Gulliford said one of the arguments noted in the newspaper about the Campus project is that this was a “concept” but had not yet been presented, heard and discussed. It was not a final development, but that did not fly with the Court.

Mr. Bernstein said they were part of the Plan and an Intervenor. If another party were to come in that is not necessarily a party to the litigation, and make a similar kind of concept; it is a separate issue. Campus Associates was a party to this litigation from day one.

- Ms. Gulliford asked about the project by the Aeropres site.

Mr. Bernstein said the “Valley Road” project is in and has been approved as part of the Plan as far as the Township meeting its affordable housing obligation.

Deputy Mayor DelCore said as of this Plan, the Township has a fully conforming Plan that has no future obligation remaining.

Mr. Bernstein said there will be no potential future obligation in this Round, if it is all satisfied.

Deputy Mayor DelCore noted the third Round is not the end.

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Mr. Bernstein agreed there will be a Round 5, that no one has any idea what will be. At the moment, it is ultimately what the Court oversees because the Legislature has shown no inclination to get in the middle. And so, this process will start again within the next year or two, for an obligation we will not know for 2025.

Maria Janucik – 720 East Frech Ave., Manville and Hillsborough Township property owner

- Ms. Janucik asked for more information on the “Environmental Constraints” noted on page 22 of the Plan. She asked why properties with flood hazard areas are looking to be developed by Intervenor.

Ms. Beahm said just because there is an area of wetland or area regulated for flood hazard, does not preclude development on the balance of the property, whether for affordable housing or not. A developer has the right to secure permits with NJDEP, which is an outside agency. Any approval the Board gives is always conditioned upon an applicant receiving and securing outside agency approvals. They are afforded as much time as necessary, in most instances, to secure those permits. Just because there are wetlands or environmentally sensitive areas on a property does not make it undevelopable in totality. That is true for all development Statewide; not just for affordable housing.

Ms. Beahm said there were other properties put forth to the Township that had significant environmental constraints that would restrict access, that were not considered for the Plan.

- Ms. Janucik asked how many of these projects have wetlands.

Ms. Beahm said she did not have that number but said there is a fair amount.

- Ms. Janucik noted specific projects. She said every one of these projects has some kind of environmental issue.

Ms. Beahm said that is incorrect. Those noted are four of eighteen projects. Just because a site is in the Plan does not equal an Intervenor.

Ms. Beahm said this is a Master Plan element hearing. Site specific questions can be asked at the time of each development application hearing. She again reiterated that sites not developable were not entertained to be part of this Plan. Those included demonstrated there are developable areas, and deemed appropriate by the Fair Share Housing Center and the Court.

- Ms. Janucik asked for more information on information found on page 26 of the Plan.

Ms. Beahm said the Supreme Court of New Jersey appointed the Affordable Housing Center the Authority in 2015.

Mr. Bernstein cited the statute, and said the seminal case that started all of this gave Fair Share a seat at the table in every municipality, and the authority to speak on behalf of affordable housing. Dr. David Kinsey is their expert.

- Ms. Janucik asked if the Judge made a ruling on the case in West Windsor, and now that determines the affordable housing obligation for every municipality in New Jersey.

Ms. Beahm confirmed that to be the case.

Mr. Bernstein said the determination established the formula that can be used for such. Therefore the answer to the question is yes.

- Ms. Janucik asked for clarification on the number for the Town Center District.

Ms. Beahm said the obligation was provided; it was not selected by the Township. She said the point of this exercise is to demonstrate how the Township has complied with the obligation, not to re-litigate the number. The 260 credits noted is for potential development, which the zoning allows for.

- Ms. Janucik asked for more information on the Hillsborough Properties property.

Mr. Bernstein said that property was owned by a developer known as “Hillsborough Property” which the Township acquired for open space during this period of time, which took it out of the equation for potential additional housing development and an additional affordable housing obligation of about 200 units.

Mayor Lipani noted that area is by Mountain View Park.

- Ms. Janucik asked why more information was not provided for the Affordable Housing Spending Plan. She asked if the money spent to purchase the Sherman Tract was included.

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Ms. Beahm said it was.

- Ms. Janucik asked for more specific information regarding financial matters on the Sherman Tract. .

Ms. Beahm advised the questioning was not appropriate for this hearing. That is a matter for the Township Committee, not the Planning Board.

- Ms. Janucik asked if the Court has to approve the spending.

Ms. Beahm confirmed the initial spending plan had been approved by the Court. There is a requirement to update the evaluation. It is a fluid document; money gets recorded when money comes in and goes out.

- Ms. Janucik asked if the 18 projects listed need to go before the Planning Board.

Ms. Beahm confirmed all projects identified in the Plan, which are slated to provide the Township with affordable housing, if they are yet to come before the Planning Board, they will have to do that. They do not get to build just because they are in this Plan. Anything in this Master Plan document is basically saying this is how we are satisfying our obligation. All of the specifics for development will be presented to the Planning Board at the time of the application hearing and evaluated on their own merits.

- Ms. Janucik questioned one developer having more than one affordable housing project.

Ms. Beahm said having more than one project is perfectly acceptable.

Acting Chairman Peason asked Ms. Beahm to go over the figures in the chart on the last page of the Plan.

Ms. Beahm said the spending plan ultimately needs to be approved by the Township Committee. There was some confusion on how the numbers were displayed. She noted there is a typo for the affordability assistance and has since been corrected.

Mr. Bernstein said the Plan is going to be amended and is not necessarily part of the Master Plan approval. It will have to be approved separately by the Township Committee. It is merely an informational appendix for the Housing Plan.

Susan Gulliford – Hunt Club Road

- Ms. Gulliford asked if older affordable housing units counted into a previous round, now in need of rehabbing, can be put back into play.

Ms. Beahm said as long as the Township is not receiving credit for them in this Round or subsequent Rounds. What happens at the end of the deed restriction is that it can be sold to a non-income qualified household. If it is conditioned by someone who is not income qualified, then the answer is no. If it goes to someone who has to go through the income qualified process, and we are no longer getting credit, then it can. The individual would be required to stay in the unit for at least 10 years. At the 10-year mark the loan becomes forgiven. If they leave prior to the 10-years, the loan would need to be paid back to the trust fund.

- Ms. Gulliford asked if an Intervenor were to target a new property, if they are a step ahead, or have a different legal standing.

Mr. Bernstein said they potentially have the ability, as occurred in this case, to bring more than one property, to the Court for consideration, and as part of the Plan. Whether or not a developer is part of the Plan, they have an obligation to provide affordable housing units, when building five or more housing units. Intervenor included in this Plan do not get better status for future development outside this Plan.

Close public.

Mr. Bernstein said the request of the Board is to approve as part of the Master Plan, the Housing Plan Element and Fair Share Plan, so that it can then be brought before the Court for its approval, as part of the Township's compliance obligation to finalize all requirements for the 1999-2025 Round.

Ms. Beahm asked that the Board affirmatively approve the Housing Plan Element and Fair Share Plan, as presented.

Mr. Bernstein said the Township Committee will be asked to bless it, but this is a requirement of the Court, and a decision of the Planning Board.

Deputy Mayor DelCore thanked all of the professionals for their work throughout this daunting process.

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Mayor Lipani reiterated that this process is not over; it starts again in 2025. He encouraged the public to reach out to the Legislators to come up with a better way of determining when and where Fair Share Housing should be afforded and calculated, so that possibly we do not have as contentious a topic after 2025.

A motion to approve the Housing Plan Element and Fair Share Plan, as presented by Ms. Beahm, was made by Mr. Wagner, seconded by Secretary Hesthag.

Roll Call: Mr. Wagner - yes; Acting Chairman Peason – yes; Mr. Skobo – yes; Secretary Hesthag – yes; Deputy Mayor DelCore – yes; Mayor Lipani – yes. Motion carries.

Mr. Bernstein noted the upcoming meeting date.

ADJOURNMENT

A motion to adjourn was made and seconded. All were in favor; motion carries.

The meeting adjourned at 8:42 p.m.

Submitted by:
Debora Padgett, Planning Board Clerk