

MINUTES OF THE HARDYSTON TOWNSHIP COUNCIL SPECIAL MEETING
HELD ON JULY 12, 2005.

The meeting was called to order by Mayor Kievit at 6:30 P.M. with the opening statement that the meeting had been duly advertised and met all the requirements of the Sunshine Law. Also present were: Deputy Mayor Hamilton, Councilwoman Ross, Councilman Lasinski, Manager Marianne Smith and Clerk Jane Bakalarczyk

SALUTE THE FLAG:

ORDINANCES:

2nd READING: 2005-08

ORDINANCE OF THE TOWNSHIP COUNCIL OF THE TOWNSHIP OF
HARDYSTON AMENDING SECTION 90.1 ENTITLED "LOW AND MODERATE
INCOME HOUSING" OF CHAPTER 185 ENTITLED "ZONING" AND AMENDING
SECTION 185-90.1 ENTITLED "GROWTH SHARE HOUSING
REQUIREMENTS"

WHEREAS, the Council on Affordable Housing has promulgated draft regulations adopting a formula known as "growth share" as the method of calculating each municipality's future fair share under the Mt. Laurel II and Fair Housing Act doctrines; and

WHEREAS, the purpose of the growth share formula as promulgated by COAH is to promote production of affordable housing and affordable housing funds in lieu of construction as a function of growth occurring in municipalities based upon certificates of occupancy issued after January 2004; and

WHEREAS, the Township of Hardyston is expecting to experience some growth in the next decade which will result in a substantial growth share requirement for the Township; and

WHEREAS, the Planning Board of the Township of Hardyston has recommended this ordinance to the Township Council and finds it to be consistent with the Master Plan of the Township of Hardyston.

WHEREAS, the New Jersey Supreme Court and the New Jersey Legislature have recognized in So. Burl. Co. NAACP v. Mount Laurel, 92 N.J. 158 (1983) ("Mount Laurel II") and the Fair Housing Act, N.J.S.A. 52:27D-301 et seq. (FHA) that New Jersey municipalities have certain responsibilities concerning the need to provide affordable housing for low and moderate income households; and

WHEREAS, the Legislature gave the New Jersey Council on Affordable Housing (COAH) "primary jurisdiction for the administration of housing obligations in accordance with sound regional planning consideration in this State" (N.J.S.A. 52:27D-304 (a)); and

WHEREAS, in Mount Laurel II, the Supreme Court ruled that municipalities had the power to address the Mount Laurel responsibilities the Court had established through inclusionary devices and rejected "that inclusionary measures amount to a taking without compensation" (Mount Laurel II at 271); and

WHEREAS, in Mount Laurel II, the Supreme Court found that "Zoning does not require that land be used for maximum profitability and on occasion, the goals may require something less" (Mount Laurel II 274 n. 34); and

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WHEREAS, in Holmdel Builders Association v. Township of Holmdel, 121 N.J. 550, 582 (1990), The supreme Court referred to its Mount Laurel II decision and emphasized that in designing inclusionary ordinances, “no density bonuses, compensatory benefits, or subsidies were specifically required,” and

WHEREAS, COAH has adopted substantive regulations that authorized municipalities the ability to require residential developers to construct one affordable housing unit for every eight market units the developer constructed (N.J.A.C. 5:94-4.4 (a));

WHEREAS, COAH has adopted substantive regulations that authorize municipalities that ability to require nonresidential developers to produce affordable housing based on a formula requiring one affordable housing unit for every 25 jobs projected in Appendix E (cite 36 N.J.R. 3850).

WHEREAS, the Township of Hardyston will require developers of residential and nonresidential projects to provide affordable housing consistent with the Court decisions and COAH’s rules and regulations.

NOW, THEREFORE, BE IT ORDAINED by the Township Council of the Township of Hardyston as follows:

SECTION 1. Article XXI, Section185-90.1D, entitled “Affordable Housing Development Fees,” is hereby amended to read,

(1) Imposition of fees.

(a) Mandatory participation, Residential, Commercial and Industrial. Any developer of commercial and/or industrial property in the Township shall have the responsibility to participate in the Township’s efforts to provide its fair share of lower-income housing. Mandatory commercial and/or industrial development fees shall be .50% of the equalized assessed value for commercial and/or industrial development. Mandatory residential development fees shall be 1% of the equalized assessed values for residential development. These fees shall be required in conjunction with application for a building permit for all projects which do not require a land development application approval or have received all pre-requisite municipal land-use approvals prior to December 1, 2004. All other land development projects will be subject to growth share provisions of this ordinance.

SECTION 2. Section185-90.1 entitled “Low and Moderate Income Housing” is hereby amended to read as follows:

F. Growth Share. A growth share housing requirement shall apply to all zones as the minimum obligation. Additional obligation may be assigned under certain circumstances to advance the purposes of zoning and to promote the public good.

1. Residential subdivisions or site plans of two (2) lots/units to eight (8) lots/units shall be required to provide a cash contribution of one eighth of the estimated cost of an affordable housing unit as determined in paragraph 7 below or 1% of the equalized assessed value, whichever is greater, to the Housing Trust Fund for each new market housing lot/unit.
2. Residential subdivision or site plans of nine (9) lots/units shall be required to construct one (1) affordable unit.

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3. Residential subdivisions or site plans of ten (10) to thirteen (13) market lots/units shall be required to comply with subsection 185-90.1 F. 2. plus a cash contribution of one eighth of the estimate cost of an affordable housing unit per market unit as determined in paragraph 7 below or 1% or the equalized assessed value. Whichever is greater, for each market housing lot/unit of ten (10) and up to thirteen (13), or construct one additional affordable housing unit in lieu of paying any fees for lots ten through thirteen.
4. Residential subdivisions or site plans of fourteen (14) to eighteen (18) market lots shall be required to comply with 185-90.1F. 2. plus construct one additional affordable housing units.
5. Residential subdivisions of nineteen (19) market lots or more shall follow the pattern established in 185-90.1F 1, 2, 3 and 4.
6. Non-residential development shall provide one (1) affordable housing unit for every twenty-five (25) jobs projected in accordance with Appendix E of N.J.A.C. 5:94-1, et seq. titled "UCC Use Groups for Projecting and Implementing Nonresidential Components of Growth Share."
7. For payment in lieu of construction, the cost of the affordable housing unit shall be the estimated cost of construction and land of an affordable housing unit as estimated by the Township Engineer. These affordable housing requirements shall apply to all building permits and certificates of occupancy issued and based upon Board approvals adopted after December 1, 2004, and to any extensions and amendments to existing site plans or subdivision approvals. If low and moderate units are constructed or funded in lieu of construction in accordance with this subsection F, then the percentage housing trust fund fee in Section 90.1 D(1) above shall not apply. This section shall not apply to building permits issued for changes or additions to existing residential, commercial or industrial structures which do not require subdivision or site plan approval.
8. More than one affordable unit may be on a building lot. A market unit and an affordable unit may be on the same lot. Single-family homes, duplex and triplex structures are also permitted with a minimum lot size of ½ acre. Apartments over retail and offices are permitted in zones where retail and offices are permitted.
9. Alternative mechanisms permitted under COAH's regulations may be permitted by a developer's agreement, if recommended by the planning board and approved by the Township Council in place of on-site construction of affordable units. These alternative mechanisms may include the purchase of an existing market-rate house at another location in Hardyston Township and conversion to an affordable deed restricted housing unit conforming to COAH rules, payment in lieu of construction to the Township Housing Trust Fund, funding a Regional Contribution Agreement (RCA), participation in gut rehabilitation and a

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contribution to the Housing Trust Fund for the municipal housing rehabilitation obligation. An applicant shall only be entitled to satisfy its obligation to construct one (1) affordable housing unit on site for every eight (8) market units or one (1) affordable unit per every twenty-five jobs (25) via one or more of the alternative mechanisms stated within this subparagraph, if the Board recommends that alternative and the Township Council approves the alternative mechanisms a developers agreement.

10. Compliance. Full compliance with the affordable housing requirements of a project shall be automatic, essential and non-removable conditions of approval. The applicant must demonstrate to the Board by way of a Developer's Agreement that the affordable housing obligation will be satisfied prior to obtaining the first building permit with compliance being a continuing condition during construction.
11. The lot area and bulk requirements as per the Residential Zone District in which the subdivision occurs shall apply except that affordable units may be constructed in single, family, duplex, triplex or quadruplex units on a lot of one half acre in size.
12. A 30-year deed restriction as required by COAH on the affordable units shall be imposed.
13. Affordable units: 50% of the units shall be low income and 50% moderate income. The initial affordable unit provided for each new development project shall be a low income affordable unit unless otherwise permitted by the Township.
14. The bedroom mix shall be in accordance with current COAH rules.
15. The affordable housing structures shall be consistent in size (except for single family) and architectural features with the neighborhood or as approved by the reviewing board.

SECTION 3. All ordinances or parts of ordinances or resolutions that are inconsistent with the provisions of this Ordinance are repealed to the extent of such inconsistency.

SECTION 4. The Township Clerk is directed to give notice at least ten days prior to the hearing on the adoption of this ordinance to the County Planning Board and to all others entitled pursuant to the provisions of N.J.S.A. 40:55D-15. Upon the adoption of this ordinance, after public hearing, the Township Clerk is further directed to publish notice of the passage and to file a copy of this ordinance, as finally adopted, with the Sussex County Planning Board, as required by N.J.S.A. 40:55D-16.

SECTION 5. This ordinance shall take effect after publication and passage according to law.

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A motion was made and seconded to open the meeting to the public. All in favor. Motion carried. No public comment. A motion was made and seconded to close the meeting to the public. All in favor. Motion carried. A motion was made by Ross to approve Ordinance 2005-08 on second reading, seconded by Hamilton. All in favor with Lasinski casting a "NO" vote. Motion carried.

PUBLIC PORTION: A motion was made and seconded to open the meeting to the public. All in favor. Motion carried. No public comment. A motion was made and seconded to close the meeting to the public. All in favor. Motion carried.

ADJOURNMENT: A motion was made by Hamilton to adjourn, seconded by Ross. All in favor. Motion carried.

Jane Bakalarczyk, RMC
Municipal Clerk