

MINUTES OF THE SPECIAL JOINT MEETING OF THE MAYOR AND TOWNSHIP COUNCIL AND PLANNING BOARD OF THE TOWNSHIP OF HARDYSTON HELD ON SEPTEMBER 14, 2016

The meeting was called to order by Mayor Hamilton at approximately 7:00 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 Kula, Councilman Cicerale, Councilman Miller, Councilman Verrilli, Manager Marianne Smith and Clerk Jane Bakalarczyk. Present from the Hardyston Township Planning Board were Brian Kaminski, Carl Miller, Robert F. Schultz, William Hickerson, Leslie Hamilton, Randy Roof, Planning Board Attorney Thomas Molica and Township Planner, Carrine Kaufer.

SALUTE THE FLAG

EXECUTIVE SESSION:

BE IT RESOLVED by the Township Council of the Township of Hardyston on the 14th day of September, 2016, that:

1. Prior to the conclusion of this **Regular Meeting**, the Township Council and the Planning Board shall meet in Executive Session, from which the public shall be excluded, to discuss matters as permitted pursuant to N.J.S.A. 10:4-12, sub-section (s):
2.
 - () b. (1) Confidential or excluded matters, by express provision of Federal law or State statute or rule of court.
 - () b. (2) A matter in which the release of information would impair a right to receive funds from the Government of the United States.
 - () b. (3) Material the disclosure of which constitutes an unwarranted invasion of individual privacy.
 - () b. (4) A collective bargaining agreement including negotiations.
 - () b. (5) Purchase, lease or acquisition of real property, setting of banking rates or investment of public funds, where it could adversely affect the public interest if disclosed.
 - () b. (6) Tactics and techniques utilized in protecting the safety and property of the public, if disclosure could impair such protection. Investigation of violations of the law.
 - (X) b. (7) Pending or anticipated litigation or contract negotiations other than in subsection b. (4) herein or matters falling within the attorney-client privilege.
 - () b. (8) Personnel matters.
 - () b. (9) Deliberations after a public hearing that may result in penalties.
3. The time when the matter(s) discussed pursuant to Paragraph 1 hereof can be disclosed to the public is as soon as practicable after final resolution of the aforesaid matter(s).

Motion to adopt: Miller
 Seconded by: Kula

MOTION	YES	NO	ABSTAIN	ABSENT
Miller	<u> x </u>	_____	_____	_____
Hamilton	<u> x </u>	_____	_____	_____
Kula	<u> x </u>	_____	_____	_____
Cicerale	<u> x </u>	_____	_____	_____
Verrilli	<u> x </u>	_____	_____	_____

Motion carried.

A motion was made by Cicerale to come out of Executive Session, seconded by Kula. All in favor. Motion carried.

MINUTES OF THE SPECIAL JOINT MEETING OF THE MAYOR AND TOWNSHIP COUNCIL AND PLANNING BOARD OF THE TOWNSHIP OF HARDYSTON HELD ON SEPTEMBER 14, 2016

NEW BUSINESS:

- A. Resolution of the Mayor and Council of the Township of Hardyston Approving a Settlement Agreement with Fair Share Housing Center, Inc. in the Matter Docketed as SSX-L-431-15 and Authorizing Negotiation and Execution of a Settlement Agreement

**MAYOR AND COUNCIL OF THE TOWNSHIP OF HARDYSTON
RESOLUTION APPROVING A SETTLEMENT AGREEMENT
WITH FAIR SHARE HOUSING CENTER, INC.
IN THE MATTER DOCKETED AS SSX-L-431-15
AND AUTHORIZING NEGOTIATION AND
EXECUTION OF A SETTLEMENT AGREEMENT**

DECIDED AND ADOPTED: September 14, 2016

WHEREAS, in accordance with the *Mount Laurel* doctrine, every municipality in the State of New Jersey has a constitutional obligation to create a realistic opportunity for producing a fair share of the regional present and prospective need for housing low and moderate income families; and

WHEREAS, the New Jersey Supreme Court issued its Decision and Order on March 10, 2015, in the matter captioned as In Re Adoption of N.J.A.C. 5:96 & 5:97 by the Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"), wherein the Court held that because COAH failed to adopt amended Third Round Rules, constitutional compliance cannot be evaluated under COAH's jurisdiction, which thereby rendered the FHA's exhaustion of administration remedies futile and (re)established Superior Court as the forum of first instance for evaluating compliance with *Mount Laurel* obligations; and

WHEREAS, in accordance with Mount Laurel IV, the Township of Hardyston ("the Township" or "Hardyston") filed a Declaratory Judgment action with the Court on July 8, 2015 under Docket No. SSX-L-431-15, and case managed by the Honorable Stephan C. Hansbury, P.J.S.C. ("the Litigation"); and

WHEREAS, pursuant to the Court's Order of November 2, 2015, the Township was required to submit an updated and amended Housing Element and Fair Share Plan demonstrating the Township's compliance with its *Mount Laurel* obligations ("2016 HEFSP"); and

MINUTES OF THE SPECIAL JOINT MEETING OF THE MAYOR AND TOWNSHIP COUNCIL AND PLANNING BOARD OF THE TOWNSHIP OF HARDYSTON HELD ON SEPTEMBER 14, 2016

WHEREAS, Township Planner Carrine Piccolo-Kaufer, P.P. prepared the 2016 HEFSP, entitled "2016 AMENDMENT AND SUPPLEMENT TO THE 2008 HOUSING ELEMENT AND FAIR SHARE PLAN," dated March 2016; and

WHEREAS, the Mayor and Council of the Township of Hardyston ("the Mayor and Council" or "Governing Body") adopted a Resolution dated March 23, 2016 approving the 2016 HEFSP and confirming that it would adopt same upon approval by the Court and issuance of a Judgment of Compliance and Order of Repose, granting Substantive Certification of the 2016 HEFSP to the Township, among other relief, immunity against builder's remedy litigation and exclusionary zoning challenges for a period of ten (10) years from the date of the Court Order and grants to the Township the judicial equivalent of substantive certification for a period of ten (10) years upon entry of the Court Order ("the Judgment"); and

WHEREAS, Fair Share Housing Center, Inc., a non-profit housing advocacy group with offices at 510 Park Boulevard, Cherry Hill, New Jersey 08002 ("FSHC") appeared in the Litigation as an interested party with standing to object to the 2016 HEFSP; and

WHEREAS, Hardyston and FSHC have agreed to settle any and all of FSHC's objections to the 2016 HEFSP and have memorialized the terms of this settlement in a Settlement Agreement executed by FSHC on or about August 21, 2016 ("the Settlement Agreement"), a copy of which is attached hereto as Exhibit A; and

WHEREAS, the Court shall conduct a Fairness and Compliance hearing on September 19, 2016 ("the Hearing"), at which time 2016 HEFSP and the Settlement Agreement shall be presented to the Court so that the Court can approve same and enter the Judgment; and

WHEREAS, the Mayor and Council has reviewed the Settlement Agreement and hereby approves same. The Mayor and Council hereby authorize counsel to present the Settlement Agreement to the Court at the Hearing, and execute the Settlement Agreement on behalf of the Township and the Mayor and Council, and authorize the Mayor, Township Clerk, and any all such other individuals as may be necessary, to execute the final form of Settlement Agreement on behalf of the Governing Body.

MINUTES OF THE SPECIAL JOINT MEETING OF THE MAYOR AND TOWNSHIP COUNCIL AND PLANNING BOARD OF THE TOWNSHIP OF HARDYSTON HELD ON SEPTEMBER 14, 2016

NOW, THEREFORE BE IT RESOLVED, by the Township of Hardyston Planning Board, County of Sussex, State of New Jersey, as follows:

1. Counsel for the Township of Hardyston in the Litigation is authorized to negotiate, finalize, and execute a Settlement Agreement, and to obtain a Judgment of Compliance and Order of Repose from the Superior Court of New Jersey at the time of the Hearing.

2. The Mayor of the Township of Hardyston, Township Clerk, and such other individuals as may be necessary, are authorized to execute the final form of Settlement Agreement on behalf of the Governing Body.

This Resolution shall take effect immediately.

A motion was made by Miller to approve the resolution as presented, seconded by Cicerale. All in favor. Motion carried.

B. Resolution of the Hardyston Township Planning Board Approving a Settlement Agreement with Fair Share Housing Center, Inc. in the Matter Docketed as SSX-L-431-15 and Authorizing Negotiation and Execution of a Settlement Agreement

**HARDYSTON TOWNSHIP PLANNING BOARD
RESOLUTION APPROVING A SETTLEMENT AGREEMENT
WITH FAIR SHARE HOUSING CENTER, INC.
IN THE MATTER DOCKETED AS SSX-L-431-15
AND AUTHORIZING NEGOTIATION AND
EXECUTION OF A SETTLEMENT AGREEMENT**

DECIDED AND ADOPTED: September 14, 2016

WHEREAS, in accordance with the *Mount Laurel* doctrine, every municipality in the State of New Jersey has a constitutional obligation to create a realistic opportunity for producing a fair share of the regional present and prospective need for housing low and moderate income families; and

WHEREAS, the New Jersey Supreme Court issued its Decision and Order on March 10, 2015, in the matter captioned as In Re Adoption of N.J.A.C. 5:96 & 5:97 by the Council on Affordable Housing, 221 N.J. 1 (2015) ("Mount Laurel IV"), wherein the Court held that because COAH failed to adopt amended Third Round Rules, constitutional compliance cannot be evaluated under COAH's jurisdiction, which thereby rendered the FHA's exhaustion of administration remedies futile and (re)established

MINUTES OF THE SPECIAL JOINT MEETING OF THE MAYOR AND TOWNSHIP COUNCIL AND PLANNING BOARD OF THE TOWNSHIP OF HARDYSTON HELD ON SEPTEMBER 14, 2016

Superior Court as the forum of first instance for evaluating compliance with *Mount Laurel* obligations; and

WHEREAS, in accordance with Mount Laurel IV, the Township of Hardyston ("the Township" or "Hardyston") filed a Declaratory Judgment action with the Court on July 8, 2015 under Docket No. SSX-L-431-15, and case managed by the Honorable Stephan C. Hansbury, P.J.S.C. ("the Litigation"); and

WHEREAS, pursuant to the Court's Order of November 2, 2015, the Township was required to submit an updated and amended Housing Element and Fair Share Plan demonstrating the Township's compliance with its *Mount Laurel* obligations ("2016 HEFSP"); and

WHEREAS, Township Planner Carrine Piccolo-Kaufer, P.P. prepared the 2016 HEFSP, entitled "2016 AMENDMENT AND SUPPLEMENT TO THE 2008 HOUSING ELEMENT AND FAIR SHARE PLAN," dated March 2016; and

WHEREAS, the Township of Hardyston Planning Board ("the Board") adopted a Resolution dated March 24, 2016 approving the 2016 HEFSP and confirming that it would adopt same upon approval by the Court and issuance of a Judgment of Compliance and Order of Repose, granting Substantive Certification of the 2016 HEFSP to the Township, among other relief, immunity against builder's remedy litigation and exclusionary zoning challenges for a period of ten (10) years from the date of the Court Order and grants to the Township the judicial equivalent of substantive certification for a period of ten (10) years upon entry of the Court Order ("the Judgment"); and

WHEREAS, Fair Share Housing Center, Inc., a non-profit housing advocacy group with offices at 510 Park Boulevard, Cherry Hill, New Jersey 08002 ("FSHC") appeared in the Litigation as an interested party with standing to object to the 2016 HEFSP; and

WHEREAS, Hardyston and FSHC have agreed to settle any and all of FSHC's objections to the 2016 HEFSP and have memorialized the terms of this settlement in a Settlement Agreement executed by FSHC on or about August 21, 2016 ("the Settlement Agreement"), a copy of which is attached hereto as Exhibit A; and

MINUTES OF THE SPECIAL JOINT MEETING OF THE MAYOR AND TOWNSHIP COUNCIL AND PLANNING BOARD OF THE TOWNSHIP OF HARDYSTON HELD ON SEPTEMBER 14, 2016

WHEREAS, the Court shall conduct a Fairness and Compliance hearing on September 19, 2016 ("the Hearing"), at which time 2016 HEFSP and the Settlement Agreement shall be presented to the Court so that the Court can approve same and enter the Judgment; and

WHEREAS, the Board has reviewed the Settlement Agreement and hereby approves same. The Board hereby authorizes counsel to present the Settlement Agreement to the Court at the Hearing, and execute the Settlement Agreement on behalf of the Township and the Board, and authorizes the Board Chairman, Board Secretary, and any all such other individuals as may be necessary, to execute the final form of Settlement Agreement on behalf of the Board.

NOW, THEREFORE BE IT RESOLVED, by the Township of Hardyston Planning Board, County of Sussex, State of New Jersey, as follows:

1. Counsel for the Township of Hardyston Planning Board in the Litigation is authorized to negotiate, finalize and execute a Settlement Agreement, and to obtain a Judgment of Compliance and Order of Repose from the Superior Court of New Jersey at the time of the Hearing.

2. The Planning Board Chairman, Board Secretary, and such other individuals as may be necessary, are authorized to execute the final form of Settlement Agreement on behalf of the Board.

This Resolution shall take effect immediately.

A motion was made by Hickerson to approve the resolution as presented, seconded by Kaminski. All in favor. 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 Verrilli to adjourn at approximately 7:10 p.m., seconded by Kula. All in favor. Motion carried.

Jane Bakalarczyk, RMC/CMC
Municipal Clerk