

**CITY OF NORTHFIELD COUNCIL WORK SESSION MINUTES
SEPTEMBER 9, 2014**

At 6:03pm, this meeting was called to order by Mary Canesi, Municipal Clerk. It was properly advertised in the Press of Atlantic City on January 11, 2014 in accordance with Public Law 75, Chapter 231.

FLAG SALUTE

The flag salute was led by Mayor McGee. Following the flag salute a moment of silence was observed.

ROLL CALL

Present: Devine, Dewees, O'Neill, Piergiovanni, Perri, Travagline
Absent: Chau

Mayor Jerry McGee, Solicitor Kris Facenda, Municipal Engineer Dan Kwapinski, Michael Jedzeniak of Surenian and Associates, and Professional Planner Tiffany CuvIELLO were also in attendance.

WORK SESSION / TOPICS FOR DISCUSSION

- Mt. Laurel Issues

Council President Travagline introduced Mike Jedzeniak from Surenian and Associates, and Tiffany CuvIELLO, Professional Planner.

Michael Jedzeniak introduced himself, saying he represents Surenian and Associates from Mt. Laurel and specializes in Mt. Laurel issues. His is the only firm that does so and represents 45 towns in NJ and accordingly they are very familiar with COAH and related issues. His firm has been retained by Northfield to deal with issues with one particular property owner, and with Northfield's COAH obligations.

6:07pm Councilman Chau entered the meeting

Mr. Jedzeniak offered to answer any questions at the end of his presentation. He explained the Mt. Laurel Doctrine, created by NJ Supreme Court in 1975. The ruling involved the courts saying that the Township of Mt. Laurel was using its zoning laws to exclude lower income residents. In 1975, towns were warned and the case worked its way through the system. In 1982, the Mt. Laurel II decision was rendered and builder's remedy suits were created; if towns were not compliant a builder or property owner could sue you and the end result would be a far greater density than present laws would have permitted. The quid pro quo was that the developer would have to

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do a substantial percentage of affordable units. Over 100 builders' remedy suits were filed. As a result, in 1985, the legislature enacted the NJ Fair Housing Act as an alternative to builders remedy suits. This created an administrative path. Over the years the rules have been invalidated a number of times. When COAH was formed, they were the ones who decided what each town's fair share obligations were. Some are high and some are low, but every town has an obligation. Northfield had an obligation since 1985-1986 when the rules first came out. Right now, COAH has proposed new rules, which will become effective in November of this year. Northfield's prior obligation was 307 units, broken into 3 groups: rehab units (14), prior cycle obligation (190 new units), and the round 3 obligation, which was invalidated, was (103) units. This was invalidated and Northfield's new proposed obligation is a lot lower, 187 units lower at 120: 4 rehab units and 116 prior cycle units. He explained that he expects that these numbers will be immediately challenged.

Mr. Jedzeniak stated Northfield did not get a plan approved through the judicial route (builders remedy) or through the administrative route (COAH). He explained before a suit can be filed, the builder has to attempt to negotiate in good faith with the municipality. In the beginning of April, 2014, Northfield was approached by a property owner, Mitchell Gurwicz and Son (MGS), regarding a 23 acre property and they indicated they were interested in doing a development. The letter pointed out that the City had not met its COAH requirement and that it was vulnerable to a builders remedy suit. This was the pre-suit negotiation that would precipitate a builders remedy suit if negotiations were futile. The reason you want to avoid the suit is because it involves hundreds of thousands of dollars in legal and planning fees. The main thing Mr. Jedzeniak's firm attempted to do was to avoid negotiations from becoming futile and to prevent Northfield from becoming involved in a builders remedy suit. MGS was originally looking for 20 unit density, which consisted of a rental development of 460 units with 15% set aside for affordable units. Mr. Jedzeniak pointed out that just because you are negotiating with one developer, you are not insulated against other builders remedy suits. The firm asked Northfield if there were any other parcels that could be developed; the firm wanted to eliminate the threat of suits from other developers. The governing body adopted a resolution stipulating that Northfield was not compliant, and by filing a declaratory action and motion for temporary immunity. This basically requested that a judge rule that a plan Northfield ultimately adopted would satisfy its COAH requirement. This was an attempt to narrow the City's exposure to one developer. About a week ago we got an order from the judge that limited its exposure, so the attempt was successful. Right now, you have an order that protects you from any other builders remedy lawsuits. Once you know your obligation, the planning board should adopt the plan, which

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would then go to the governing body to endorse the plan, then it goes to a judge, and ultimately the plan will be implemented.

Mr. Jedzeniak stated we are getting to the point in negotiations now that it could be presented to the planning board and governing body, to re-zone the MGS property to avoid the Mt. Laurel litigation. If things fall apart, Northfield is not protected from MGS in terms of a lawsuit. They can still sue you. Right now, both sides seem comfortable enough to proceed with the re-zoning process. There is nothing major in the zoning change, other than it would substantially address Northfield's COAH obligation.

Ed Little, 105 Walnut Avenue asked what round Northfield operating under.

Mr. Jedzeniak stated we are operating under the proposed round 3 obligation. But, there is no difference in the negotiations with MGS.

Tiffany CuvIELLO explained unless MGS does 100% affordable units, the City will still have to provide a plan to address the balance of that obligation, whatever that number is.

Mr. Little asked what the definition of "affordable" is.

Ms. CuvIELLO stated the units would be deed restricted up to 30 years, income levels are set by HUD and that they change every year. There is no subsidy. They have reduced rent based on income level. For Northfield, low to moderate income for a one and one-half person household is \$43,787. A three person income would be \$52,545. Low for one and one-half is \$27,000.00 and change; and for three people is around \$33,000.00. They have to make a lower income in order to qualify. They don't get extra money to pay the rent.

Mr. Jedzeniak reiterated that to qualify they have to show income and can't be destitute.

Mr. Little then asked how binding the numbers are going forward.

According to Mr. Jedzeniak it would go through Zoning, and any future changes have to go back to the governing body.

Council President Travagline said during negotiations they tried to limit the number of three bedroom units. There are only about 14 total, and that is by law. MGS did not seem to want the three bedroom units. The majority are one bedroom units.

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Dr. Richard Levitt, 2204 Bay Drive, asked if the two-for-one rental bonus still apply.

Mr. Jedzeniak said under current rules, if you have a COAH rental unit, you would get two credits for every one unit. But you have to do more than just put it in your plan. The position his firm takes is that you can count on bonus credits, but you may not actually get them until the unit is actually constructed.

Dr. Levitt expressed concern that with the balance of the units needed to satisfy the obligation, there may not be enough time. He needed some parameters as to how many units they need to find.

Mr. Jedzeniak said he urges towns to look at all possible areas in their towns.

Ms. CuvIELLO stated 120 units have to be where we start right now; there are some group homes that will give some credits.

Dr. Levitt asked if the city looked into rehab, are there any grants available.

Ms. CuvIELLO said there are four units that have already been rehabbed, and Atlantic County has a program under the Atlantic County Improvement Authority.

Mr. Jedzeniak reiterated that numbers will be challenged and said he would bet that they end up a little bit higher.

Council President Travagline asked Ms. CuvIELLO to explain what she's been working on.

Ms. CuvIELLO created a plan that creates affordable rate housing and market rate housing on the MGS site that will work on the site. 20.4 acres of the site would be dedicated to the residential zone. Another 2.7 acres will be reserved and the multi-family units will be behind the present commercial site. We are now at a 13 unit density, there is an ordinance being developed that addresses all related planning issues, such as coverages, setbacks, parking, etc., and creates a new residential multi-family zone that will apply only to this property. The 13 unit density is lower than the senior density the parcel's current zone permitted. COAH tells you how many 1, 2, and 3 bedroom units you can have. There will be recreation areas, such as a clubhouse and pool, and additional landscaping to ensure the attractiveness of the community. Also included are provisions for breaks in the facade so the building won't have an institutional look.

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Mr. Jedzeniak stated MGS still has to go before the planning board and follow the regular process.

Council President Travagline felt negotiations were always done with Northfield's best interest at heart. There should be a limited exposure in terms of additional students in the school. Unfortunately, with the lawsuit behind it, the negotiations had to move forward. He then opened the session back up to the public for questions.

Lisa Brown, 9 Haviv Drive, asked for a timeframe to break ground.

Ms. CuvIELLO said that is not known, it is up to MGS. If we move forward, the ordinance could be effective by the end of the year, but MGS still has to go before the planning board. It could be 2015-2016 if project moves forward.

Council President Travagline explained MGS wanted to introduce the ordinance today; he felt it was important to keep the public informed. The City will give similar presentation at the October meeting.

Mrs. Brown asked for meeting to start at 7pm so the whole meeting can be on video.

Council President Travagline suggested getting the videographer here earlier.

Mrs. Brown asked about Northfield not having a COAH plan in place.

Mr. Jedzeniak reiterated what he said previously.

Mrs. Brown asked for dates of prior COAH rulings.

Mr. Jedzeniak reiterated the dates.

Ms. CuvIELLO stated the original obligation was much higher, many towns resisted the affordable housing obligation and did not adopt a plan.

Mr. Jedzeniak explained if the City had adopted a plan in 1987 and implemented the plan, and then changed that plan as the new rules and COAH were adopted, and then the rules got invalidated in 2003. At that point only 3 towns out of 566 had approved plans. Towns spent a lot of money adopting a plan and having to adopt a new plan after they were invalidated.

Ms. CuvIELLO said Northfield would have had a 307 unit obligation.

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Mrs. Brown stated, but, Northfield would have been immune from a suit and would not be rushed now.

Mr. Jedzeniak agreed. He explained further that a lot of towns waited.

Mrs. Brown asked Council President Travagline if he heard anything about COAH before this matter.

Council President Travagline stated he had not heard of COAH before the suit.

Dr. Levitt explained the Planning Board had not ignored COAH. The City hired Ms. CuvIELLO several years ago to explore the issue of whether Northfield should be compliant or not. They looked around town and saw very little exposure. They took calculated risk, COAH was a moving target.

Mrs. Brown said she had an email from Dr. Levitt where he responded to her question if Northfield was COAH compliant. Dr. Levitt said we were not but that Northfield was low risk.

Council President Travagline closed the public Mt. Laurel portion of the meeting. He urged all to come forward with questions.

Councilman Perri asked Tiffany CuvIELLO if there was an open space requirement that fell into a different municipality.

Ms. CuvIELLO replied yes, it is in Egg Harbor Township, but it will satisfy the open space requirement.

Councilman Perri asked who picks up the adjusted fee for the rental unit.

Ms. CuvIELLO said there are a higher number of market rate units to offset the affordable units.

Councilman Perri asked about density of surrounding municipalities.

Ms. CuvIELLO explained they range from 8.5 to 17.8 units per acre; there is a very large range in the area. The average is just about 12. She also looked at Northfield's ordinance for senior housing which sets density at 12.

Councilman Perri asked if sewer infrastructure was addressed at the planning board.

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According to Ms. Cuiello MGS would have to meet the requirements of the utility authority.

Councilman Perri explained that the sewer is not an authority, it is maintained by the City. The existing system cannot handle that flow. He feels it is a major concern.

Ms. Cuiello will discuss the matter with the engineer.

Mr. Jedzeniak said under COAH rules municipalities don't have an obligation to give the developer whatever they want, but they do have to do whatever they can to make the development possible.

Councilman Perri asked who controls who goes in the units.

Ms. Cuiello said there is an administrative officer who oversees who goes in the units, and that process is overseen by COAH.

Mr. Jedzeniak said every municipality will have a municipal housing liaison, created by ordinance, paid or not, often not. That person is the liaison to the community as well. In terms of who will certify the households, the developer would hire a professional administrative agent. There is a screening process.

Councilman O'Neill noted there are many homes for sale at a time when a new developer wants to come in. What if builder looks at economy in a year and decides not to break ground.

Mr. Jedzeniak said the zone is the key to your getting the credits; they can be credited before they are constructed. At first it would not put you out of compliance, but it could if the property languished for ten years.

Councilman O'Neill asked if there is a way to phase the development so that they don't clear cut 20 acres of trees and then stop building.

Ms. Cuiello explained that the performance guarantees would be in place to restore the property if necessary; the planning board can ask for a construction schedule, and it is typical.

Mayor McGee asked does it have much of an impact on property values.

Ms. Cuiello stated she is not an appraiser, and does not value properties but that is a question that people ask. This is market housing, and it is behind commercial. She

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suspects that it would not substantially affect the values one way or another. This is just her opinion as planner.

Mr. Jedzeniak stressed that the towns should focus on trying to control their own destinies. Once you get sued by one builder, you lose control. There is usually no perfect solution. He agreed with Ms. Cuvillo's prediction that it will not have a big impact up or down.

Councilman Chau asked what if a developer comes in and doesn't want to build affordable housing.

Mr. Jedzeniak would suggest offering an incentive to include them, such as density bonuses, waivers of certain fees. He advised the public that the team negotiating for Northfield did not lie down, despite MGS having significant leverage. He felt the Northfield team did a very good job despite a bad hand.

Council President Travagline asked if a suit was filed, could they have gotten more units.

Mr. Jedzeniak explained the original proposal was 20 units per acre. Mr. Jedzeniak feels they could have convinced a judge, three years from now when it would have settled, it would have been higher than Northfield ended up at, which was 13

Council President Travagline stated so it would have cost hundreds of thousands of dollars, to possibly end up with a higher density

Mr. Jedzeniak replied, yes, a typical Mt. Laurel suit is several hundred thousand dollars. One municipality in North Jersey is at \$1,000,000.00 in fees over a five year period, and the case is not settled. The developer is also seeking to have its own legal fees reimbursed, under the Civil Rights Act.

Councilman Perri noted Mt. Laurel III and Mt. Laurel I on the Engineer's Report which referred to pumping stations; these were there prior to the Planning Board application cancelation by MGS and prior to the lawsuit.

Council President Travagline reviewed regular meeting agenda. He noted that Resolution 158-2014 required 2/3 vote and as a result, it would be voted separately from the consent agenda

Council President Travagline thanked Ms. Cuvillo and Mr. Jedzeniak. They will be back in October to give the same presentation.

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7:28pm Ms. CuvIELlo and Mr. Jedzeniak departed the meeting.

Councilman Perri asked if it was our mistake that resulted in bids being rejected for 157-2014

Council President Travagline stated it was a typo.

Council President Travagline made the assignments for the regular meeting.

PUBLIC SESSION

Council President Travagline opened the meeting to any member of the public wishing to speak on any subject.

Dr. Richard Levitt, 2204 Bay Drive, distributed pictures of the bike path, showing lost limbs on Bradford Pear trees. They are no longer accepted as street trees because of how they grow. He urged council to have significant trimming done. They are encroaching on Wabash Avenue.

Councilman Dewees said he is working on it; will be segmented, can't do all at once.

Mayor McGee recommended replacement with a tree such as a Cleveland Pear that won't require as much maintenance.

Councilman Perri noted presence of a lot of stumps, and they are unsightly. There are also plaques with no trees, they should be replaced.

Lou Milone, 106 Haddon Avenue, referred to the agreement with Commercial Utility Consultants, and doesn't understand why residents would have to opt out.

Council President Travagline said the program wouldn't work if it were an opt-in program, because it's about numbers. The new company would be the producer, not the supplier.

Mr. Milone said he would opt out.

Seeing no one else from the public wishing to speak, Council President Travagline closed the public session.

At 7:38pm on motions properly made and seconded this meeting was adjourned.

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Respectfully submitted,

Mary Canesi, RMC
Municipal Clerk