

**CITY OF NORTHFIELD COUNCIL WORK SESSION MINUTES
OCTOBER 14, 2014**

At 6:02pm, 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: Chau, Devine, Dewees, O'Neill, Perri, Travagline
Absent: Piergiovanni

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

WORK SESSION / TOPICS FOR DISCUSSION

- Mt. Laurel Issues

Council President Travagline introduced Michael Jedzeniak and Tiffany CuvIELLO.

Michael Jedzeniak introduced himself and gave an overview of tonight's presentation. He explained that his firm specializes in Mt. Laurel litigation and COAH issues.

Councilman Piergiovanni entered the meeting at 6:06pm.

Mr. Jedzeniak explained that the Supreme Court said that municipalities that have zoning powers can't use those powers to exclude lower income households. Several years later the case went back to the Supreme Court and they issued Mt. Laurel 2; this is where Builder's Remedy was created. A builder or property owner could file a suit against a municipality that has not met its fair share and could get a much greater density than current zoning regulations would allow. This resulted in the creation of the Council on Affordable Housing (COAH) in 1983, which became the administrative path, whereas the Builder's Remedy was the judicial path. As part of COAH, fair share numbers were adopted in 1987. Once a town files their Fair Share Housing Plan with COAH, they are protected from Builder's Remedy lawsuits. There

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have been 3 official "Rounds". The third Round should have been adopted in 1999, but it wasn't and COAH ended up in litigation. In 2003, Round 3 was finally adopted, and these rules were invalidated in 2007. A second set of Round 3 rules were adopted, and then in 2010 those were invalidated as well. In 2013, COAH was sent back again, and in November of 2014 the 3rd set of Round 3 rules will be adopted, but they too, will more than likely be challenged. Northfield's fair share numbers will change under the new Round 3 rules. Under the old rules Northfield's obligation would have been 307 units, but under the new Round 3 rules it is significantly lower at 120. Mr. Jedzeniak explained how Northfield became in the position we are in and why Northfield did not previously voluntarily comply is a complicated issue. In April of 2014, before his firm was retained, the City received a letter from the attorney for Max Gurwicz and Sons' (MGS) which clearly indicated the City was vulnerable to a Builder's Remedy suit. Negotiations began and as long as you don't reach an impasse, you are protected from a Builder's Remedy suit. Mr. Jedzeniak feels confident that negotiations have been successful, and he is ready to present that the City adopt a new zoning ordinance that rezones the property in question and avoids the 100's of thousands of dollars in legal fees and the typically bad outcome of a Builder's Remedy suit. Mr. Jedzeniak then turned the floor over to Professional Planner Tiffany CuvIELLO.

Tiffany CuvIELLO explained that the Gurwicz property consists of just over 21 acres, 20.4 to residential, and the remainder to commercial along Tilton Road. The initial proposal was a much higher density with 460 units, and present proposal is 265 units, one and two bedroom units with 15% set aside for affordable housing, at 40 units, with the remainder at market rate. The 40 units would be mixed in with the market rate units and the present density is 13 units per acre. The current ordinance allows for senior housing, which permits 12-15 units per acre. The surrounding area housing is at 12 units per acre. The proposed ordinance includes adequate setbacks, parking, recreation areas, lighting, buffer requirements, etc... The 40 units would be priced according to regional income guidelines. A person must qualify under certain income standards, and will have to have a certain credit rating. The one person household moderate income level is \$41,000.00 per year and lower is \$25,000.00 and change per year. The two person household moderate income level is \$47,000.00. The idea is that the market rate units offset the cost of the affordable units - there are no subsidies. The individual must earn the income. There are no vouchers accepted to meet income guidelines. The builder gets additional density to offset the lower rents for those units, this is not public housing, and it cannot become public housing.

Ms. CuvIELLO explained that this property is part of a settlement to avoid a Builder's Remedy suit. The City will not be done after this project. There will be an additional number of affordable units that Northfield must address. There are some projects in

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town that can be used to address that number, but this is the first part of a multi-part process

Mr. Jedzeniak addresses the issue of builders 2 through 10, and the few other parcels of undeveloped land in Northfield. Northfield sought and was granted temporary immunity against other developers or property owners until January 15, 2015. As long as Northfield adopts and files a plan on or before that date, the City remains immune. If the deal with MGS goes through, the City will get at least 40 credits, but the City will have to put together a final fair share plan.

Ms. CuvIELLO stated that she cannot predict with absolute confidence how many children this will add, but a Rutgers study indicated that this type of development will generate .323 school age children per unit, which comes to approximately 86 children. There are other developments she is working on that have .17 per unit. At that rate it would be about 45 children, but with some level of certainty, there will be between 45 and 86 children. She does not believe that this number should overburden the school. She also explained the bedroom breakdowns required under COAH.

PUBLIC SESSION

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

Pat McCarthy, 2002 Bay Drive, asked if there are 1, 2 and 3 bedroom units and how many affordable credits does Northfield currently have.

According to Ms. CuvIELLO, yes, 9 are 3 bedroom units.

Mr. Jedzeniak clarified that there are 85% market rate units. Gurwicz and Sons agreed to minimize the number of bedrooms in those units; they are only 1 and 2 bedroom units in the market rate units. Northfield currently has 12 credits and this proposal is for 40 more credits. Mr. Jedzeniak explained the history of the 2 for 1 rental bonus, and that you don't get the credit until they are constructed and rented.

Mr. McCarthy feels guidelines are not clear.

Ms. CuvIELLO agrees, but the one thing that is clear is that there is an obligation.

Mr. Jedzeniak said COAH rules don't credit for modest housing, they credit units that have deed restrictions that require that the people that move in are certified as low or moderate income.

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Mr. McCarthy asked how many builders remedy lawsuits have been successfully settled.

Mr. Jedzeniak stated hundreds.

Mr. McCarthy asked if COAH regulations pertained to developing municipalities.

Mr. Jedzeniak stated it used to but was invalidated in 1983.

Bob Zlotnick, 8 Ridgewood Court, asked if Meadowview factored in and if there has been an environmental study done.

Ms. CuvIELlo stated that nursing homes are not considered residential units and that the applicant must meet all outside agency standards as part of the application process.

Leslie Kaufman, 10 Dani Drive, asked why we can't we satisfy the whole hundred now. And can they be obligated to have a higher number of affordable units.

Mr. Jedzeniak stated they would not have agreed to more than a 15% set aside without a huge increase in density. For a development like this, for every affordable unit, they would have 5-6 market rate units. This is part of negotiation, typically everyone wants low density.

Ms. CuvIELlo stated that one of the proposals was 330 units, which would give you possibly ten more affordable units.

James Miranda, Oak Avenue, asked what else is in the negotiations. Are there plans for additional traffic signals, adding athletic facilities, library etc.

Ms. CuvIELlo stated some of those can't be fully negotiated. The City can't force them to make offsite improvements. We have requested pedestrian connections, that the commercial be maintained on the front portion. Regarding Tilton Road, that is a County road so the County must address that. They will also have to address necessary sewer infrastructure improvements.

Paul McSorley, Dolphin Avenue, asked how in stone is the no subsidy ruling, or can builder readdress it, as happened in Absecon.

Mr. Jedzeniak stated he can address that specifically, as he represents Absecon as

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well. That was a very unusual case, it was a negotiated settlement, and it was not court ordered.

Ms. CuvIELlo stated there can be no project based rental subsidy. The ordinance will come with a settlement agreement and if they want to change it they have to re-open that agreement.

Mr. McSorley asked if a portion is in Egg Harbor Township.

Ms. CuvIELlo stated that part of the parcel is in EHT, but that portion will not be developed.

Jim Leeds, 35 Northfield Plaza, asked about draft ordinance.

Ms. CuvIELlo stated the draft ordinance provides for what has been negotiated thus far, Planning Board, Planning Board attorney.

Mr. Jedzeniak stated the ordinance codifies what has been negotiated. Step 1 introduces the zoning ordinance, it would be referred to the Planning Board, they then have 35 days to make a recommendation for adoption, or not. There are certain things that we agreed to that would not be in the ordinance, and those would be in the Developer's Agreement.

Mr. Leeds asks about other areas that could be rezoned similarly.

Ms. CuvIELlo stated that the new zone is one area, but the other part of the process is the plan that protects the City of Northfield from other developers.

Mr. Leeds asks if the ordinance has to be finalized by the January 15th deadline.

Mr. Jedzeniak stated by avoiding a builders' remedy suit, you retain control of your zoning destiny.

Steve Wynne, 107 Haviv Drive, stated the cost of 86 students is over \$700,000.00.

Mr. Jedzeniak asked how adding one student costs anyone \$12,000.00.

Mr. Wynne said he understands a threshold cost at which time you must hire additional staff.

Mr. Jedzeniak stated of the 86 students, a number of them could already be in the

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town. He is not suggesting it's not a consideration, of course it is, but don't forget to include certain things that affect those numbers.

Mr. Wynne stated this project will cost taxpayers an additional \$400,000.00 just for the school.

Ms. CuvIELlo stated the reality is you are going to have something developed here, you are going to do it this way or through the courts and possibly end up with more density and a higher number of students.

Council President Travagline stated the affordable units are inevitable. He offered to sit down with Mr. Wynne or anyone else.

Councilman O'Neill asks if the children are school aged.

Ms. CuvIELlo stated, yes, the numbers are school aged children.

Jeff Schlundt, Franklin Avenue, asks if the developer can change to Section 8 housing.

Ms. CuvIELlo stated there are 2 types of Section 8, voucher and subsidy based. The City cannot legally prevent vouchers.

Mr. Jedzeniak stated that is true anywhere; you can't legally prevent anyone from accepting Section 8 vouchers.

Councilman Chau asked if project can be done in phases.

Mr. Jedzeniak stated they can't do all the market rate units and then decide not to do the affordable units. He can ask for changes but we can say no.

Megan Sher, 224 Roosevelt Avenue, refers to Somers Point, where multiple families moved in to one unit.

Ms. CuvIELlo stated that Northfield can adopt an ordinance to prevent multiple families from living in a single rental unit.

Megan Sher asked if the courts consider what is happening in the local economy. Mr. Jedzeniak stated sites have to be suitable, but some factors are more unpredictable.

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Megan Sher inquired as to how much other space do we have where this can occur.

Ms. CuvIELLO stated the driving range across the street, but, nothing of substantial size is owned by the City.

Austin Gerber, Meredith Court, expresses concern with density.

Ms. CuvIELLO stated the new ordinance will limit the RC zone as an overlay on that property.

Mr. Gerber stated he feels the negotiated terms don't make sense because there are no multi-family dwellings in Northfield.

Ms. CuvIELLO explains that the style of housing is what density is based on.

Mr. Gerber asked if there is still a payment in lieu of.

Ms. CuvIELLO stated not in this development.

Mark Bruno, Ridgewood Court, said he left Somers Point because the affordable housing destroyed the City. He feels this may lead to the requirement of additional law enforcement officers. Has this been taken into consideration?

Ms. CuvIELLO stated that the cost of any necessary additional officers cannot be put onto the developer; Northfield has to consider this when budgeting in the future.

Mr. Bruno asked if this could have been avoided, by someone in the past, is that person liable?

Mr. Jedzeniak stated it is not one individual person; it is the governing bodies and Planning Boards over the years.

Lisa Brown, 9 Haviv Drive, stated her understanding is that this was a Planning Board issue. She referred to an email she sent to the Planning Board President asking if we are COAH compliant. She asked if eminent domain is being considered.

Council President Travagline stated that eminent domain is being considered

Mrs. Brown asked what happened in 2009-2010 when Ms. CuvIELLO was hired by the City before.

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Ms. CuvIELlo stated that the state put out a moratorium.

Nick Grasso, 302 Roosevelt Avenue, asked what is the maximum number of units that could go on this site if we went to court and lost.

Mr. Jedzeniak stated probably 16 units per acre; they asked for 20 up front.

Mr. Grasso stated he feels residents would be willing to fight it if the downside is only an additional 60 units.

Council President Travagline asked do you want to spend a million dollars?

Mr. Grasso stated we will pay \$400,000.00 in school taxes a year, in three years you'd make up the money. He suggested having all of the required affordable units in one spot.

Karen White, 232 Davis Avenue, asked what are the benefits of fighting this project.

Mr. Jedzeniak stated that litigation would be between 2 and 5 years, a million dollar legal bill would not be unheard of. He does not recommend litigation. He was president of Toms River School Board, 18,000 students, and he would debate anyone about the assumptions that are being made about the costs associated with additional students.

Mrs. White asked that the City to come up with annual costs of the development and consider fighting it.

Nick Grasso asked how many cases have been won.

Mr. Jedzeniak stated there have been cases that have been won, but ultimately you always have to do a plan. This is a case where Northfield has very few defenses. It is a suitable site, the builder hasn't made any technical errors, the municipality wins in about 10% of cases, but in this case Northfield's odds are less than that.

Paul McSorley asked if we can lose on purpose and if the City has looked at eminent domain and green acres. Is there a hardship argument due to changes in the local economy. He asked if anyone has challenged Mt. Laurel.

Mr. Jedzeniak stated many have unsuccessfully challenged Mt. Laurel.

8:02pm Ms. CuvIELlo left the meeting due to a prior engagement.

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Dr. Richard Levitt, Planning Board, President, notes that the location is ideal. He asked if rental credits can be obtained early if the project is shovel-ready.

Mr. Jedzeniak stated that can happen, but it is not a guarantee. He would not want to sit on the Planning Board and try to find a suitable location for the other units we will need. That is something the council would have to address.

Dr. Levitt points out that the earlier obligation would have been over 300 units if the City had been COAH compliant years ago.

Michael Wolf, Merritt Drive, asked if there is fee-shifting with Mt. Laurel.

Mr. Jedzeniak stated, no, Gurwicz would have to pay his own fees.

Mr. Wolf asked if citizens can see the Developer's Agreement before it is finalized.

Mr. Jedzeniak stated yes.

Mr. Wolf asked who has responsibility for screening the applicants.

Mr. Jedzeniak stated all paperwork has to route through COAH and they are all public documents.

Karen White asked how long has property been undeveloped and how long has he owned it.

Council President Travagline stated Mr. Gurwicz has owned the property for a very long time.

Karen White asked if we know whether or not Gurwicz will file a lawsuit and are there any state sanctions if we don't file.

Mr. Jedzeniak stated, yes, MGS will file and the enforcing mechanism is a developer who wants to build.

Lisa Brown noted that COAH numbers keep changing, but as long as we have a plan in place we would be immune from builders remedy.

Mr. Jedzeniak agreed.

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Lisa Brown asked if in 2 years if MGS can't rent them and sells the property, does the agreement go with the property.

Mr. Jedzeniak stated yes.

Council President Travagline and Mr. Jedzeniak spoke regarding the amount of credits we have and that some of the group homes in the City may be considered

Scott Sarraccio, 821 West Mill Road, asked for number of foreclosures, and how to fight that with legislators.

Councilman Perri stated the building department has the numbers that banks have to notify them.

Mr. Sarraccio asked if the City can obtain the property as eminent domain.

Mr. Jedzeniak stated that would be tricky since it will be apparent what we are trying to do.

Seeing no one else from the public wishing to speak, Council President Travagline closes public session at 8:26pm.

Councilman Perri asked if anyone in the public was here representing MGS.

Council President Travagline said they were invited but declined. He asked if anyone in public is here from the Gurwicz organization, with no response.

Council President Travagline calls five minute recess

Councilman Piergiovanni leaves meeting at 8:38pm and did not return.

Council President Travagline resumed the meeting and reviewed the regular agenda.

At 8:40pm Council President Travagline opened the public session, seeing no one wishing to speak the public session was closed.

At 8:40pm on motions properly made and seconded this meeting was adjourned.

Respectfully submitted,

Mary Canesi, RMC
Municipal Clerk