TOWNSHIP OF SADDLE BROOK
PLANNING BOARD

Following are the minutes of the Saddle Brook Planning Board's Regular Meeting, held on Tuesday, August 24, 2021 at 7:31 p.m.

1. FLAG SALUTE

2. ROLL CALL: Mr. Ambrogio, Mr. Browne, Mr. Hickey, Mr. LaGuardia, Councilman Gierek, Mr. Cook and Mayor White - PRESENT Mr. Compitello, Mr. Maniscalco, Mr. Mazzone and Ms. Barrale - ABSENT
Also present were Mr. Pellino, Board attorney, Mr. Briglia, Board engineer and Mr. Paparozzi, Board planner.

Mr. Ambrogio sat in as acting chairman.

3. CHAIRMAN ANNOUNCES – OPEN PUBLIC MEETINGS ACT

4. RESOLUTION
Preliminary Major Site Plan Approval for Saddle Brook Urban Renewal Associates, LLC
435 North Midland Avenue, Block 1401, Lot 18
Mr. Pellino reviewed the special conditions of the resolution.
Mr. Cook made a motion; seconded by Mr. Browne to adopt the resolution of approval for Saddle Brook Urban Renewal Associates, LLC. VOTE: Mr. Ambrogio, Mr. Browne, Mr. Hickey, Mr. LaGuardia, Mr. Cook and Mayor White – YES

5. AMENDMENT TO HOUSING ELEMENT & FAIR SHARE PLAN
Mr. Pellino – There has been some back and forth regarding the settlement and the terms of the settlement, which has caused the need for an amendment. Every municipality in NJ is required, in order to do zoning, to have a Master Plan. Under NJ law, it is exclusively the jurisdiction of the Planning Board to adopt the Master Plan. It's up to the Mayor and Council to adopt the ordinances which implement the Master Plan. The Housing Element and The Fair Share Plan is one section of the Master Plan. You're being asked to amend your Master Plan by adopting a new Housing Element and Fair Share Plan. The changes are not major/significant. They are designed to fulfill the Township's obligations under its settlement agreement with its fair share litigation. It's the township that actually makes the settlement, but it's left to the Planning Board to adopt the actual Housing Element and Fair Share Plan that fulfills that settlement. It consists of demographic information, households, incomes, etc. It goes over what was agreed to be the borough's fair share to provide affordable housing, based on past obligations, future obligations, obligations to rehabilitate housing and it delineates some of the areas where that housing is going to go. Attached to this is the Spending Plan. This isn't adopted by the Planning Board, but we're supposed to recommend it. The Township attorney heard from the Township planner who said we are to disregard the Spending Plan because there's going to be an amendment to that, so it's going to come back to us.
Mayor White – Who are these recommendations/requests coming from, the special master or the judge?
Mr. Pellino – A negotiation between our planner and the special master, which is basically what the judge is going to follow. This is really just working out the details of how this is going to go. I don't think the judge is actually involved in this.
Mr. Hickey – After this one is built, how many more do we have to do?
Mr. Pellino – Saddle Brook's third round number is somewhere of 400 units. There are certain developments that the settlement agreement specifically targets to provide a certain number of units, but then there are overall obligations. The Township has already adopted zoning overlay

ordinances, which are designed to encourage future development of affordable housing. This encourages the development of affordable housing in different parts of the township. The settlement agreement says you have to provide a realistic opportunity to fulfill your fair share. I don't think anybody believes that all of that housing is going to be built, but you have to make it feasible that it can happen. Any multifamily dwelling in an affordable housing zone has to provide usually 20% affordable, if they're units for sale and 15% affordable, if they're going to be rentals.
Mr. Hickey – If you don't satisfy it, you don't get penalized?
Mr. Pellino – No. You carry it over to the next round.
Mayor White – The way it was explained to me was, we have to make good faith effort to do what we say we're going to do in that round. If we do that, we have immunity all the way up to 2025. Then they'll revisit it.
Mr. Pellino – It's not economically feasible without some type of public assistance to build a complete affordable housing development, like Ingerman. Theirs is based on tax credits to come from the NJHMFA. They're selling tax credits to investors and that's what helps to make that project 100% affordable and viable economically. For someone to build a regular project 100% affordable just isn't in the cards. Generally, what's happening is they're doing what we call a set aside, as per an ordinance. If they're units for sale, 1 in every 5 has to be affordable.
Mayor White asked Mr. Pellino to explain builder's remedy.
Mr. Pellino – COAH was a division of the DCA. Towns submitted what they believed was a fair share plan to COAH. There was negotiation, COAH adopted rules and said they were in compliance. Under the Christie administration, COAH became dysfunctional and the Supreme Court said everyone had to go back to court and get a judge to approve this. Compliance, whether COAH or court approval, gives you immunity from the builder's remedy. Where courts found that a town was not providing its fair share of affordable housing, a builder would be allowed to force you to give them bonuses to build this pretty much where ever then want and as dense as they want. If a court found that a town was in noncompliance, they would grant the builder's remedy because the builder was going to provide a set aside, but he was going to build it really dense and really high. That was both the remedy and the punishment to municipalities. The fact that Saddle Brook has entered into the settlement agreement and has gotten court approval means that you're granted immunity to the end of this round.
Mr. Ambrogio – What about the nonresidential development fee we collect?
Mr. Pellino – The fee goes into the township's affordable housing trust fund to be used towards affordable housing. Another component you have is the rehabilitation of deficient housing units. That fund can be used for that. Families that are income qualified, from rentals as well, who have deficiencies in a significant structural component of the home can, under rehabilitation program, get a loan from the township's affordable housing rehabilitation fund. The township gets a mortgage that gets paid when the house is sold, typically at a zero interest rate. When the money comes back, it gets used again. This program has to be administered by someone to make sure the people qualify and make sure the contractors are hired.
Mr. LaGuardia – I believe the number for the third round was 459. If, by 2025, we've only build 58 units, do we have to revisit it with the special master?
Mr. Pellino – What's happened in previous rounds, is that obligation gets carried over.
Mayor White – The senior housing (30 units) counts too.
Mr. Pellino – Typically, that number gets carried over into the next round.
Mr. LaGuardia – This originally started with Mt. Laurel 20-30 years ago, right?
Mr. Pellino – In the 70's. NJ Supreme Court came up with the doctrine that there is a constitutional obligation of every municipality in the state to provide its fair share of affordable housing. There were a series of Mt. Laurel cases because after they decided it, Mt. Laurel was not compliant. NAACP brought the suit. They brought it back to court again, so there's Mt. Laurel 1, 2, 3 and 4 spanning the 70's and 80's. That's how this whole doctrine of having a constitutional obligation to satisfy your fair share came about. Initially, there was no mechanism

to get the immunity. If you got sued, you had to argue it in court. The legislature passed the Fair Housing Act, which formed COAH as the mechanism to seek an administrative stamp of approval and get noted for your compliance and get the immunity. When COAH broke down, the Supreme Court sent everybody back to court. In 2015, municipalities were given a window to file declaratory judgement action to gain compliance. The group was called the Fair Share Housing Center, a group dedicated to providing housing for poor people.
Mr. Paparozzi – The township is showing good will by rezoning the affordable housing districts and the project that we just passed. Any further developments that come in and are held to the 15 and 20% will show that the township is trying to comply. In 2025, they will carry the numbers.
Mr. Pellino – I don't think there's a municipality in the state that's really happy with the way this works. In order to try to fulfill numbers and to get the fair share housing settled, they had lawyers sent in on every case. To get them to say it was okay, you had to do things that weren't the greatest.
Mayor White – Didn't they resist in Englewood Cliffs?
Mr. Pellino – Yes. They've been stripped of their zoning power. Their Planning and Zoning Boards can no longer function. Every application has to go to the court because they were in noncompliance and resisted the settlement. They're going to wind up with very dense developments.

Mr. Browne made a motion; seconded by Mr. Cook to adopt the amendment to the Housing Element & Fair Share Plan Amendment. VOTE: Mr. Ambrogio, Mr. Browne, Mr. Hickey, Mr. LaGuardia, Councilman Gierek, Mr. Cook and Mayor White - YES

6. VOUCHERS

Mr. Browne made a motion; seconded by Councilman Gierek to pay the following vouchers, provided funds are available:

Carroll Engineering, 08/12/21, Digital Room, LLC, $1,741.67
Carroll Engineering, 08/12/21, Willows at Saddle Brook, LLC, $1,102.36

All in Favor – YES

7. OPEN AND CLOSE THE MEETING TO THE PUBLIC

Mr. Browne made a motion; seconded by Mr. Hickey to open the meeting to the public. All in Favor - YES
No public participation.
Mr. Browne made a motion; seconded by Mr. Hickey to close the meeting to the public. All in Favor – YES

8. ADJOURN

Mr. Browne made a motion; seconded by Mr. Hickey to adjourn the meeting. All in Favor - YES

Meeting adjourned 8:21 p.m.

Respectfully Submitted,

Jayne Kapner
Planning Board Secretary