

BOROUGH OF PINE BEACH
SPECIAL MEETING
October 3, 2016

The Mayor and Council of the Borough of Pine Beach held a special meeting on October 3, 2016 at 7:30 PM in the Municipal Building, 599 Pennsylvania Ave. Mayor Cuneo called the meeting to order and read the Statement of Adequate Notice:

“IN COMPLIANCE WITH THE ‘OPEN PUBLIC MEETING LAW, P. L. 1975 C 231, NOTICE OF THIS MEETING WAS SENT TO THE BERKELEY TIMES, AND ASBURY PARK PRESS AND ALSO POSTED ON THE BULLETIN BOARD OF THE PINE BEACH MUNICIPAL BUILDING AND THE PINE BEACH POST OFFICE. THIS STATEMENT SHALL BECOME A PART OF THE OFFICIAL MINUTES OF THIS MEETING.”

ROLL CALL: Present: Mr. Budesca, Mrs. Coletti, Mr. Newman, Mr. Polhemus,
Mr. Reitz, Mr. Wieck

UNFINISHED BUSINESS

None

NEW BUSINESS

Mayor Cuneo requested an executive session for purpose of discussing pending or anticipated litigation. Mr. Budesca made a motion to enter into Executive Session, with Mrs. Coletti seconding.

WHEREAS, the Mayor and Council of the Borough of Pine Beach have determined that in accordance with the provisions of NJSA 10:4-12b, Closed Session to discuss (7) Any pending or anticipated litigation is necessary. The public will be informed of the discussion within forty-five days of the conclusion (NJSA 10:4-13)

Members of the public left the meeting room.

Discussion took place in executive session.

A motion to close the Executive Session and return to the Special Meeting was made by Mr. Newman and seconded by Mr. Budesca. At 8:25 pm members of the public were invited to return to the meeting.

Mayor Cuneo explained that the Council discussed a pending law suit against the Borough by the Fair Share Housing Center and New Jersey Builders Association concerning affordable housing availability in Pine Beach.

Mayor Cuneo introduced attorney Michael Jedziniak, a Borough resident employed by Surenian Associates, a legal firm specializing in affordable housing issues. They represent several towns in New Jersey. The Mayor further explained that the legal bills are crushing us, and that we are attempting to get out of the law suit. The court date is set for Thursday, October 6. Mr. Jedziniak has been negotiating with Fair Share Housing Center, an affordable housing advocate, and a solution to be removed from the law suit has been found.

Mr. Jedziniak attempted to simplify the Borough's situation with an explanation. New Jersey has the Mt. Laurel doctrine, where towns cannot use their zoning powers to exclude poor people. Every town has a calculated fair share number to provide affordable housing.

Pine Beach is one of ten or twelve towns in the state that have had their plan approved in three rounds with the Council On Affordable Housing.

If the town doesn't comply with Fair Share Housing demands a judge can order development in town by ordering re-zoning of property. It is much better for the town to decide where the affordable housing can be placed and comply with the Fair Share Housing Center.

Pine Beach is one of about forty towns in New Jersey that has insufficient land to satisfy the obligations.

Under the Fair Share formula of approximately 170 units we have insufficient vacant land to meet the numbers and the number can be adjusted to zero, but we must make our best efforts to capture affordable housing.

Our plan with the Council on Affordable Housing (COAH) the Borough agreed to develop the B 1 zone with affordable housing by allowing up to 12 units per acre. The property is approximately four acres, so the density could be 48 units, or allowing for parking and a buffer, there could be 30 units.

There have been negotiations with the Fair Share Housing Center, and the agreement would allow for three rehabilitations of homes owned by people meeting the income guidelines. In the past the Borough did six rehabilitations.

In addition, the Borough must provide at least six affordable units, not age restricted, in the B1 zone. This would cause an adjusted number to zero. We will negotiate with OCEAN Inc., Homes for All, or other non-profit groups. If we agree to do this, Fair Share Housing will settle the lawsuit.

The trial is set for Thursday, October 6, and the costs could be astronomical. It is best to get out of the lawsuit. The offer on the table is a very good offer and it's the best we can do.

Mr. Jim Keesling asked about a time frame for the project. Mr. Jedziniak replied that we would have 90 days from his meeting with Judge Troncone in November to identify a developer, and then two years to begin construction.

Mr. Andrew Ciufia asked about the six total not age restricted units and if the buildings proposed on the old trailer park were included. Mayor Cuneo explained that property is privately owned and approved for a total of eight units, one of which is low to moderate income. That one is included in our numbers. The property in the B-1 Zone is Borough owned.

Mr. Jedziniak explained that it is a common misconception that people who qualify are jobless. There is a COAH link to the regional income limits, and he believes in Ocean County a family of four with moderate income is \$62,000 and low income family of four is \$42,000. People have to prove income to be in the units. This is not for the homeless or no income people but for people with low to moderate income. There probably are many people in town who would qualify.

Ms. Dot Kulina asked about Fair Share Housing Center, and Mr. Jedziniak answered that they are they an advocacy group. They are a non-profit organization, an affordable housing advocate. They are in tandem with developers. Fair Share Housing Center and New Jersey Builders Association have gone after the Borough in this lawsuit.

Ms. Kulina stated that the people getting assistance from Ocean Inc. . are getting funding from the state. She asked if the suit is specific to the town and Mr. Jedziniak explained that it is the town.

Mr. Jedziniak stated that no one knows the future of COAH. If you didn't do anything you would be subject to builders remedy. This way we get immunity from further lawsuits.

Ms. Kulina stated that the Borough has six group homes and this will bring in more people and will affect her home value and quality of life.

Mr. Keesling stated that currently we have an adjusted zero obligation; 164 adjusted down to zero. Mr. Jedziniak explained that there are two aspects, the allocated number is 164, adjusted using a formula to zero. Considering the adjustment, the Borough must at least try to create affordable housing opportunities. Fair Share Housing attacked us years ago and wanted to use the Merion Ave. property, and the Borough was focusing on the B 1 zone. It's a good site, near the highway transportation. When Farragut Academy went under, the Borough had 5 acres of land and didn't do any affordable housing there.

Mr. Keesling asked how many low income units does fair share housing think we have and Mr. Jedziniak replied that we have five group homes and one unit on Motor Rd, totaling 18 credits . We did six rehabilitations in the past, and we will do three more within ten years. The rehabilitations are homes in town that need upgrades like roof, heat, or winterization, and we will spend \$10,000 for affordable low/moderate households to help with repairs. The Mayor explained that it can be a forgivable loan so if the resident stays in the home for ten years the loan is forgiven. The town helps them bring the home up to code.

Fair Share Housing has a prediction of growth that Pine Beach will need 116 new units.

Mr. Budesza stated that Mr. Jedziniak has done an excellent job in keeping the focus on the B 1 zone; if we go to trial other properties could come into play and create a bigger problem to us. This is a certain area we can control.

Ms. Cathy Castino asked about the negotiations with Fair Share Housing Center. Mr. Jedziniak explained that the number was negotiated down to six units not age restricted. Ms. Castino was concerned that the previous proposal by Mr. Gooding was for 24 units age restricted, with 3 units being for disabled. If Fair Share Housing is comfortable with six units, why are we discussing 24? Mr. Jedziniak explained that this just came about and needs to be negotiated, but there must be six units not age restricted. Ms. Castino suggested building 6 affordable single family homes. Mr. Jedziniak explained that this agreement will allow the Borough to continue to negotiate with OCEAN Inc. or Homes for All. When we got our plan approved last time, COAH the town agreed to 12 units per acre and 24 is lower than the 12 per acre. This just came about, subject to negotiations now.

The Borough can now negotiate whatever deal with developer as long as there are six affordable units not age restricted. The design and density will be determined later.

Mr. Budesza stated that the agreement allows us to negotiate the project. This agreement is to get out of the law suit. The project will be further discussed to see what is economically viability.

Mayor Cuneo stated that we were working on set of rules from past, but now they are defined. We will settle the lawsuit with Fair Share Housing and the agreement for six units will be in effect until 2025.

Mr. Keesling was concerned that the decision had to be made within 90 days, and he suggested asking Fair Share Housing for an extension for one year or two. At the last meeting, Mr. Gooding of Ocean Inc. stated that the funding had to be committed by end of year. Mayor Cuneo explained that Mr. Jedziniak had basic information on the Ocean Inc. negotiations so he wouldn't be swayed in the negotiations with Fair Share Housing Center.

Mr. Keesling asked if Mr. Jedziniak could work on deal to continue to move in good faith, perhaps he could increase the time frame. Mr. Budesza explained that we will have 90 days from the November 14 hearing on this agreement before Judge Tronccone. We can agree but in theory the judge can reject the proposal. Mr. Jedziniak stated that if we can agree, we will be out of the trial. If a funding issue comes up, it's not our concern.

Ms. Kulina remarked that Ocean Inc. applied for and received the grant before the town even knew about it. Mayor Cuneo agreed that they were premature in their application but the funding would disappear if it wasn't requested.

Mrs. Kulina asked if this will get us off the hook with COAH. She is concerned about giving away public property

Mr. Budesza reiterated that we are today looking to get out of the law suit. We negotiated to get the six unit number. The agreement identifies two entities and we will be open to negotiations. We want to get out of the expert and legal bills connected with continuing the lawsuit.

Mayor Cuneo explained that the Surenian firm represents five Ocean County towns, who will pool their monies together. Every town pays its share and if the other towns settle we will have to pay the full freight. If we settle, we will be out of the lawsuit. Two other towns have settled. Berkeley will do 94 rehabilitations and 610 affordable units. Beach Haven settled Friday, no rehabilitation, 130 units adjusted to zero, because similar to Pine Beach, there is no available land. They have to do zoning changes, an overlay zone on entire business district, and rezone for an affordable housing set aside if there are five units or more.

Pine Beach has designated the B 1 zone, so there is one spot in town for the affordable housing.

Mr. Keesling stated that he has done a lot of research, and is concerned with what actually will be done with the land. If the requirement is for six units, why would we put in 24? It impacts all of us. The area has several group homes nearby also and Mr. Keesling feels we have enough. At the last meeting, someone mentioned that there have been several heroin rings in the last three months in Ocean Inc. properties.

Mr. Jedziniak stated that when this agreement gets us out of the lawsuit, then negotiations will take place.

Ms. Castino asked about the date the Borough would have to sign with a developer, and Mr. Budesá answered that 90 days from the November 15 date, approximately February 15.

Mayor Cuneo explained that then there would be a two year period to break ground. Mr. Jedziniak has seen developers agreements done quickly while others take a long time.

The Mayor felt that once the word gets out, other agencies will be in touch with us. He hasn't spoken to anyone besides OCEAN Inc. recently but in the past someone wanted to build a three story building with

Mr. Jedziniak felt that if needed he would suggest 90 days subject any reasonable additional time approved by the court if some time is needed.

Mr. Jedziniak reports to the court, and Fair Share Housing is an interested party and needs to be posted on it. He felt that as long as we show that we are proceeding in good faith the judge will work with the town.

Mr. Jedziniak stated that once the agreement is signed he will go to court for a fairness hearing. Fair Share Housing represents lower income households, We will notice New Jersey Builders Association and they probably won't object.

Mr. Keesling asked about the New Jersey Builders Association being involved in the law suit, and it was explained that they are a for profit entity. He was concerned about the idea of using Vocational School students to do the building, and Mayor Cuneo explained that it is one of the ideas is to use the students along with a builder.

Mr. Keesling asked about the COAH count, and it was explained that there is one credit per bedroom with group homes plus the unit in Mr. Lipton's development. AMIB has 8 units, 21 Plus has 5; Block 77 Lot 29.01 has 4 plus the 1unbuilt unit.

Ms. Castino asked about development fee; paid when a new home is built, and Mr. Jedziniak explained that 1 1/2 % of the equalized value of the improvement is held in trust creating affordable housing opportunities. It can be used for rehabilitation, administrative costs, up to 20% attorney fees. It has to be used for affordable housing costs. The Borough's Spending Plan has been approved.

Mrs. Saxton asked if rental properties would be considered for rehabilitation and she was told that only owner occupied homes qualify. The owners must be income eligible. The Mayor explained that people apply and receive a forgivable loan and if they stay in the home they don't have to repay it.

Ms. Castino asked if the settle agreement is specific to using the B 1 zone for housing. Mr. Jedziniak explained that the property is one parcel. He also stated that the Borough would be open to negotiations now with various proposals to get in. Mrs. Castino asked why the Borough would consider building more than six units. Mayor Cuneo will discuss further to find out the economic feasibility for the prospect.

Mr. Keesling asked the Mayor to make every effort to have just the six units. We will document making our best efforts for the six units and Mr. Jedziniak would have to go before the judge if there is a problem. Mr. Budesá felt there would be a problem under that scenario because there is someone willing to develop the area with 24 units. The area was zoned for 12 units per acre. We can't mislead the court. We just

found out about the non-age restricted units today; we can fashion a deed restriction. They would still be one bedroom units, which would control just how many people can live in it.

Mr. Keesling felt that it was premature to discuss the matter with Mr. Gooding, but the Mayor explained that those negotiations helped form this settlement. The Mayor got a copy of the proposed agreement Saturday and was out of town, read through it, made notes and contacted Mr. Jedziniak. He contacted the Fair Share Housing group and they would not change the agreement to allow the six units to be age restricted. Mr. Jedziniak feels this is the best deal that could be negotiated. The Mayor not happy with the age restriction being removed, but agrees this is the best deal we could get without litigation. If we go to court we could be required to have twelve units per acre.

Ms. Jane Cox asked about the size of each 1 bedroom unit, and the Mayor stated that they would be 600 sq. ft. apartments.

Ms. Castino asked if the construction would be one phase built and done and the Mayor felt that it would be done completely.

Mr. Jedziniak added that Ocean Inc. is not aware of this change.

Mr. Ciufia felt that rentals are not as palatable as ownership, and perhaps we could build six single family homes. Mr. Budesza added that would change the dynamics of the project, that children will become an issue.

Mayor Cuneo asked to be brought back to the purpose of this meeting, to enter into agreement with Fair Share Housing so Mr. Jedziniak can take it to courts.

Mr. Budesza made a motion to authorize the execution of a settlement agreement with the Fair Share Housing Center (Resolution 16-87) and Mrs. Coletti provided a second.

Mr. Polhemus stated that this settlement agreement is to keep us from going into litigation. It does not mandate how many units, only that six non age restricted units will be constructed. The Mayor will negotiate further.

Mr. Reitz asked when would mayor sign and it was explained that the Mayor will sign the agreement tonight and Mr. Jedziniak will take it to court. Fair Share Housing Center will sign after mayor.

Roll Call: Yes, Mr. Budesza, Mrs. Coletti, Mr. Newman, Mr. Polhemus, Mr. Reitz, Mr. Wieck

Ms. Kulina asked about the Closed session, and Mr. Budesza explained that no formal action takes place in Closed Executive Session, and once the Council is out of the session the meeting is open.

Mr. Keesling asked if the Council proceeded in accordance with Roberts Rules of Order, and Mr. Budesza explained that there is separate Legislation regarding items that can be discussed in Executive Session and they remain confidential until can be deemed to release. Mr. Polhemus remarked that the majority of Council members can't meet to discuss Borough business without notice. Mayor Cuneo added that Council asked for something else to discuss in executive session but we did not advertise it so it was not done.

Mr. Budesza explained that only certain issues can be discussed in closed session, such as Collective Bargaining Agreement, Purchase, lease or acquisition of real property, Public Safety , Pending or anticipated litigation or contract negotiation and Personnel.

Mr. Jedziniak mentioned that negotiations have been ongoing for some time. He will bring the agreement to court Thursday.

There being no further business to bring before the public, the meeting was adjourned following a motion by Mr. Newman and a second by Mr. Budesza.
