

December 29, 2008

A special meeting of the Allendale Planning Board was held in the Municipal Building on December 29, 2009. The meeting was called to order at 6:37 p.m. by Mr. Quinn, Chairman. The requirements of the Open Public Meetings Act were met by the required postings and notice to publications.

The following members answered roll call: Mr. Barra, Mr. Bernstein, Mr. Fliegel, Mr. Gravina, Mr. Thomas and Mr. Quinn. Mr. Sirico and Mr. Tatosian were absent. Mr. Dunn was also present.

Mr. Quinn stated that the only item on the agenda was a special hearing for review, discussion and adoption of the proposed Master Plan amendment pertaining to the Borough's third round Housing Element and Fair Share Plan. This evening the Planning Board members will hear the plan and expert testimony from the COAH planner. and listen to comments from the public as well, and then come to a decision as to whether or not the plan will be adopted.

Mr. Dunn said tonight's agenda concerns an amendment of the Master Plan of the Borough of Allendale. Specifically it relates to the third round Housing Element and Fair Share Plan. Notice was required to be given for the public hearing. Mr. Dunn understands that the proper notice was given to the adjacent municipalities over ten days before tonight's meeting date. Notice was given for the originally scheduled meeting which was December 19<sup>th</sup>. The meeting could not be held on that date due to a significant snow storm in the area. The Mayor was present at the appointed time on that evening to announce that the matter was duly carried to this evening's date.

Mr. Quinn said the Board members have all been given a third round document and Fair Share Plan which he assumes everyone has read. He turned the meeting over to Allendale's COAH Planner, Mary Beth Lonergan.

Mayor Barra said the Planning Board will, after hearing her presentation, open to the public for comment. After the Planning Board votes there will be a five minute adjournment and then the Mayor and Council will vote on the plan. Members of the Mayor and Council are present to listen to comments made during the public hearing. There will be no questions for the Council at the time they vote.

Ms. Mary Beth Lonergan, a NJ Licensed Planner and a Senior Associate with Clarke Caton Hintz, was present to address the audience as Allendale's COAH Planner.

Ms. Lonergan was sworn.

Ms. Lonergan provided a certified copy of the notice that was given to the County Planning Board ten days in advance of this meeting. Ms. Lonergan explained that affordable housing is deed restricted housing for low and moderate income households. The moderate COAH income limit for Bergen County for a four person household is just

under \$62,000. For a two person low income household it is just under \$31,000. She said that typically a family that is eligible for low or moderate housing may have one wage earner who may work for a school district or the municipality. Sample rents for a three bedroom moderate income home are approximately \$1200 a month. A low income two bedroom would rent for around \$800. A moderate income two bedroom house could sell for around \$110,000. A low income two bedroom house would sell for about \$63,000.

Newspapers in the State of New Jersey have written a lot about COAH's round three issues. Round one began in the 1980s. The third round growth share methodology is very different from rounds one and two. In the first two rounds a number was assigned to the municipalities by COAH. In the third round COAH assumes affordable housing will be provided as the town grows both residentially and non-residentially. Many communities across the state prepared initial third round plans in 2005 and submitted them to COAH. The regulations were challenged and key portions of them were overturned in 2007.

The plan that Allendale is proposing tonight is based on the 2008 regulations.

The 2004 COAH regulations say that there is a statewide affordable housing obligation of 52,000 affordable housing units. For every eight market rate housing units built, a municipality would have to provide one affordable unit. Similarly, for every 25 jobs created, one affordable housing unit would have to be provided by the municipality. The job generation was factored into square footage on non-residential development. For instance, retail development used to be one affordable housing unit for every 25,000 square feet of retail space. When the Appellate division overturned these key provisions of COAH's initial third round regulations, they sent COAH back to the drawing board and it took COAH over a year to come up with revised regulations. They changed their statewide need, more than doubling it from the 52,000 affordable housing units to 115,000 affordable units. The ratios were dramatically increased to one affordable unit for every four market rate units. Also, instead of one unit for every 25 jobs, it is one unit for every 16 jobs. The retail figure has gone from 25,000 square feet of retail space to equal one affordable unit, to 9,400 square feet to equal one affordable unit.

Although the Borough has experienced little non-residential development, COAH will now accept actual job counts. COAH will be providing guidance on how to make these job counts.

COAH's third round regulations were adopted on June 2, 2008, and there were immediately 25 challenges to it, including a challenge by the League of Municipalities which was backed by 300 municipalities. The most dramatic change to the Fair Housing Act was the elimination of Regional Contribution Agreements. The Borough had proposed an RCA which has been eliminated by "the stroke of a pen". This has affected many municipalities throughout the state.

In addition to changes with regard to Regional Contribution Agreements, the Robert's Bill and other amendments now require a mandatory statewide non-residential development fee. The fee is 2.5% of equalized assessed value across the board. The main importance of the Borough's submission to COAH is to protect against Builder's Remedy or exclusionary zoning challenge. The Borough will be allowed to hold these mandatory fees as a municipality that is participating in this process. Those municipalities that do not participate in this process will see those fees go to the state.

Also there is a new requirement for 13% of all affordable housing units to be provided for low income housing.

The last issue to review is projected COAH growth. It is important to keep in mind that these are projections. Every municipality must evaluate its actual growth which is triggered every time a Certificate of Occupancy is issued. As the years go by, if a town is issuing Certificates of Occupancy for market rate homes, it is important to track how many affordable credits you will have access to. Specifically the Borough must tally up actual growth for the first time. If COAH reviews our plan by 2009, we will evaluate our plan through the end of 2011. The third round period began on January 1, 2004. There is growth that has occurred already and it is important to keep track of it.

Ms. Lonergan asked the Board if anyone had any questions.

Ms. Sheehan asked for more information on the concept of a "builder's remedy". Ms. Lonergan said a town that is not under COAH's jurisdiction is subject to a builder's remedy. By being under COAH's jurisdiction we are protected from a builder's remedy law suit. This suit takes away the Borough's powers to zone as we see fit, and puts the action into Superior Court where a builder/plaintiff asks for zoning that he/she does not have right now.

Ms. Lonergan's office is frequently appointed as a court appointed master in towns that have been sued. Many of those suits have been brought because there is non-residential zoning that the developer is asking to be switched to residential. Most typically, developer's ask to do multi-family, dense housing. By adopting a plan tonight, the Borough is able to choose how it would like to see its affordable housing addressed. By submitting a plan, Allendale is protected from a developer's lawsuit. Also because we are complying by having a plan, we get to keep the fees that are collected. If a municipality doesn't have a plan the money goes into a state affordable housing trust.

Mr. Herndon asked what happens if Allendale loses jobs. Ms. Lonergan responded that the only way to decrease a job growth number is if non-residential square footage is demolished.

Mr. Gravina asked what the rules are regarding amendments to the plan. Ms. Lonergan responded that the plan can be amended as often as the town desires once it is certified.

The third round obligation is a three component obligation that includes Allendale's rehabilitation share of four substandard housing units that are occupied by low or moderate income individuals. The obligation would consist of improving these units.

Allendale's prior round obligation was 137. Our third round growth share is 20 affordable housing units. COAH had initially projected that the Borough would grow by 268 housing units. That number has been decreased to 102 housing units. That number will be divided by five which leaves 20 housing units. COAH is predicting that 341 jobs will be lost. The loss of jobs will not generate any growth share.

In the first two rounds, regional contribution agreements were allowed. In those years we transferred money to Jersey City and the Borough of Ridgefield for affordable units to be built in those towns using Allendale COAH dollars.

Allendale has built senior housing and we plan to build special needs housing at Orchard Commons. Inclusionary zoning which have yet to be built includes the former farm site and the Whitney/Garden Homes Site. The Borough proposes to eliminate two sites as part of its third round plan. Those are the Board of Education site and the Episcopal Church site. The prior round obligation was addressed with a total of 140 credits, units and bonuses.

The third round rehabilitation share will either be addressed by the Borough working with the Bergen County Community Development or with another experienced rehabilitation entity. That will be firmed up later in 2009 or 2010.

Lastly the third round growth share will have a minimum number of rentals that must be provided and a maximum number of senior units and a maximum number of bonuses.

Initially Allendale's third round compliance mechanisms include an additional unit at the existing Allendale Senior Housing. That unit has been used off and on as a meeting space that at this point the Board has voted to turn into an additional affordable unit. The main bulk of the third round growth share is proposed to be addressed by the acquisition and future construction of affordable housing on the Foreit property. That will provide a mixture of special needs housing (shared living) of five bedrooms, senior rentals of up to four units, seven family sale units and three family rental units. That totals twenty units including three surplus units from round two.

Ms. Lonergan showed an aerial photograph of the Foreit property using 2007 DEP aerials.

Mr. Quinn asked if there were questions from any Board members before the matter was opened to the public.

Mr. Thomas asked why the farm was included in the round three plan. Ms. Lonergan responded that the Borough received word from the former farm site that they were still interested in having inclusionary zoning but at a reduced yield.

Mr. Thomas asked if the plan could still be amended. He said that the Church and Board of Education properties were preferable for development because of their easy access to public transportation and public services. Also there is an economic consideration. The farm has been included in rounds one and two with no intention to build townhouses there. The effect of that has been to reduce the economic value of that property to the former owner, now deceased, and her heirs. To keep the property in round three continues to affect the economic value of that property. He asked if it would be possible to remove the farm from round three and add those units somewhere else.

Ms. Lonergan said to make this change tonight would be a major change to the plan that has been in effect for ten days. There is not time to amend the plan now. However, the Board has the ability to amend the plan twice before it is certified, and an unlimited number of times after that. She suggested that the issue be brought up at a later date for a full Board review.

Mr. Thomas asked if the owner should file an objection to the plan in the next 45 days. Ms. Lonergan said she did not have a comment.

Mr. Barra asked Mr. Thomas when he was in contact with the owners of that property. Mr. Thomas said two days ago he was in touch with a representative of the executor of the estate. Also he spoke with that person four days ago and on and off during the past two years.

The meeting was then open to the public for comments.

Mr. Michael D'Antonio of 316 East Allendale Avenue was sworn.

Mr. D'Antonio said that for the past five years he has been interested in having his property listed as a site. He asked Ms. Lonergan if she had any data to support her statement that the sites on the east part of town are wetlands.

Ms. Lonergan responded that the Borough analyzed sites through the Affordable Housing Sub-Committee. The consensus of that group was that the plan that was presented tonight was should include the Foreit site.

Mr. D'Antonio said Ms. Lonergan failed to mention the toxic waste that has contaminated the site for many years. In addition, it is located close to the railroad. He asked why the town should give up a tax ratable to become an affordable housing site. He asked what would be wrong with rezoning residential sites or putting third floors on the stores in town. He asked if Ms. Lonergan would acknowledge that she received a letter about the water on his property and if it changed her mind about his site. He asked why his site plus the twenty acres behind his site have been overlooked.

Ms. Lonergan said she did not overlook analyzing Mr. D'Antonio's site but it was determined that the Affordable Housing Sub-Committee did not want to use his site for

affordable housing purposes. Instead the Affordable Housing Sub-Committee selected the Foreit site as the only new affordable housing site.

With regard to adding a third floor, it was deemed not to be a viable option in Allendale at this time.

With regard to potential contamination on the site, the Borough will perform due diligence on assessing the site. There will be a phase one environmental review. Brownfield sites are considered the way of the future for development. Many sites throughout the state are able to be reclaimed and be developed as a residential development.

With regard to flood plains, anything that is proposed on the Foreit site will be fully analyzed by our Borough Planner and Engineer. It is most important for COAH to certify this plan, but many steps will precede a shovel being put in the ground for development. A letter of wetlands interpretation and an analysis by a licensed professional engineer with regard to any impact by a flood plain or wetlands on the site plan will be a necessity.

With regard to the railroad tracks, it is a common occurrence in the state of New Jersey for housing to be located that close to the tracks.

Mr. D'Antonio asked why two sites were removed from the plan and why two sites can't take those places.

Ms. Lonergan responded that the owners of the two sites no longer desired inclusionary zoning. That is one of the steps that COAH requires a municipality to take to remain in the third round plan.

Ms. Lonergan said that the town didn't replace two sites with two sites because one site was able to address the obligations.

Mr. Steven Talarico of 7 Delta Court was sworn. Mr. Talarico asked if the surrounding neighbors will have the ability to have any input on the plans.

Mr. Barra responded that they would.

Mr. Quinn commented that there would be a site plan presentation to the Planning Board. At that time the public will have an opportunity to ask questions of the professionals who testify. There will also be an opportunity to make comments before the Board votes.

Mr. Talarico said the main concern of the residents is the issue of traffic. He is concerned that people will use his neighborhood as a cut through.

Mr. Quinn responded that the Planning Board is not supportive of having neighborhoods used as cut through paths. He added that the Board has looked at similar issues before.

Mr. Talarico said he is also concerned about the existing tree line.

Mr. Dunn stated that landscaping would be addressed.

Mr. Quinn added that the Board is meticulous about trees.

When there were no additional questions, the matter was returned to the Board.

Mr. Fliegel asked if Ms. Lonergan could elaborate on the farm property.

She said that in rounds one and two it was certified for 40 affordable housing units of which 32 would be market rate and 8 would be affordable. The owners desire to build a different type of structure, a detached, single family type that would still provide affordable housing but a smaller amount. The owners could also choose to make a payment in lieu of construction.

Mr. Thomas asked if it was appropriate to propose an amendment to the plan.

Mr. Quinn said Ms. Lonergan has testified that it would be impossible at this time.

Mr. Dunn said his immediate concern is that it appears to not be appropriate due to time constraint to get the plan filed. From a rules standpoint it could be considered.

Mr. Thomas said he believes it is improper to let this issue move forward at this time in this way. The value of the property will be affected for eighteen years. He stated that to make the change of removing this property from the plan would be a stenographic or typing change but not a change to the construction of the plan.

Mr. Quinn responded that the Board's attorney and expert say otherwise. They say it is a major change. He added that the property owner agreed to let the site remain.

Ms. Lonergan said that in two rounds that individual agreed to have the site remain and a letter was signed to that effect.

Mr. Thomas said those two units could be added to the Foreit property and the substitution would not be a problem.

Ms. Lonergan responded that it is not as simple as typing two fewer units in one spot and two less in another. It would increase the growth share to 23. That is more than retyping a few things. She said if a motion was going to be made to change the plan she asked that it be made for an amendment that would begin in January 2009.

Mr. Dunn added that it would create enough of a change that an additional public hearing would have to be held. He didn't think that should be done this evening with this plan.

Mr. Quinn said he didn't disagree with the concept, just the timing.

Mr. Thomas moved that on page fifty of the proposed plan under the caption “former farm site (letter I)” that the sentence that states, “It is anticipated that the owner will create eight market rate units on the site and either provide two affordable units on the site or payment in lieu of construction for two.” be deleted from the plan.

Ms. Sheehan seconded the motion as a courtesy so it could be voted on.

Mr. Barra said he finds it surprising that there were private discussions made with individuals who chose not to attend the public hearing. He said he was confused as to why if this was so detrimental to the owner that their representative is not here this evening.

Mr. Thomas responded that he was not speaking in an official capacity of the owner or the heirs. His interest is twofold, that Allendale provide its share of affordable housing in a manner that is consistent with good, sound urban planning concepts. Affordable housing units in the midst of single family homes where public transportation is twice the distance from other possible locations is not sound planning. Secondly, he is concerned that long time residents and heirs who did not cash in on the housing mania that developed here have an opportunity to get a fair return on their property in general. That will not be the case here because a COAH designation decreases the value of the property at a buyout price that is not specified and is not known. He reiterated that he is not representing anyone.

Mr. Barra responded that the amount in lieu of construction is known. He added that perhaps Mr. Jaworski who represents the owners is quite willing and prepared to make that payment in lieu of construction. Mr. Thomas’ statement that it is an unknown amount isn’t correct. z

Mr. Thomas said he has no interest in Mr. Jaworski or anyone else.

Mr. Dunn clarified that a “yes” on the upcoming vote is to approve the amendment made by Mr. Thomas.

On roll call Mr. Barra, Mr. Bernstein, Mr. Fliegel, Mr. Gravina, Mr. Quinn, Mr. Herndon, Ms. Sheehan voted no.

Mr. Thomas voted yes.

The motion was defeated.

Mr. Dunn presented a copy of a Resolution to adopt Allendale’s Housing Element and Fair Share Plan.

Mr. Fliegel moved to approve the Resolution, seconded by Mr. Gravina.

On roll call Mr. Bernstein, Mr. Fliegel, Mr. Gravina, Mr. Quinn, Mr. Herndon, Ms. Sheehan and Mr. Barra voted in favor of the Resolution.

Mr. Thomas voted against.

On a motion from Mr. Fliegel, seconded by Mr. Herndon, the Board voted unanimously to adjourn at 8:22 p.m.

Respectfully submitted,

Gwen McCarthy  
Municipal Clerk