CITY OF UNION CITY
HUDSON COUNTY, NEW JERSEY
PLANNING BOARD

SPECIAL MEETING	TRANSCRIPT OF RECORDED PROCEEDINGS

City Hall
3715 Palisade Avenue
Union City, New Jersey

Monday, September 18, 2017
Commencing at 6:04 p.m.

M E M B E R S   P R E S E N T:

YDALIA GENAO, Mayor's Designee
ALICIA MOREJON
CAROLINA FERNANDEZ
RUDY RIVERO
FRANKLIN MEDINA
ALEJANDRO VELAZQUEZ, Alternate No. 1, (Left at 6:55 p.m.)
JOSE GUARENO, Alternate No. 2
JEANNE KOEHLER, Vice Chairperson
DIANE CAPIZZI, Chairperson

M E M B E R S   A B S E N T:

BRIAN P. STACK, Mayor
CELIN VALDIVIA, Commissioner

A L S O   P R E S E N T:

CARLOS VALLEJO, Secretary to the Board

WILFREDO J. ORTIZ, II, ESQ.
Attorney for the Board

A L S O P R E S E N T:

SCARINCI HOLLENBECK
BY: PATRICK J. McNAMARA, ESQ.,
Corporation Counsel

DAVID SPATZ, Consultant
Community Housing & Planning Associates, Inc.

SUSAN S. GRUEL, Planning Consultant

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THE SECRETARY: May I have your attention, please?

Please take notice that on Monday, September 18, 2017, at six p.m., a Special Meeting is scheduled for the City of Union City Planning Board, to be held in the Municipal Chambers of the City Hall, 3715 Palisade Avenue, Union City, New Jersey.

This is a meeting called in compliance with Chapter 231, Public Law 1975, of the Open Public Meeting Act.

Notice of this meeting has been provided as follow:

Notice of this meeting, setting forth the time, date, and location, to the agenda, to the extent known, was sent to The Jersey Journal, The Record, and The Hudson Reporter, has been posted on the bulletin board in City Hall, and has been made available to the public in the Office of the Municipal Clerk.

Before we call roll for tonight's meeting, can we just rise to salute the flag, please?

(Whereupon, the Pledge of Allegiance was said by all.)

THE SECRETARY: Thank you.

ROLL CALL:

THE SECRETARY: Roll call for tonight's meeting.

Mayor Brian P. Stack? Absent.

Ydalia Genao?

MS. GENAO: Yes.

THE SECRETARY: Commissioner Celin Valdivia? Absent.

Alicia Morejon?

MS. MOREJON: Yes.

THE SECRETARY: Diane Capizzi?

CHAIRPERSON CAPIZZI: Here.

THE SECRETARY: Carolina Fernandez?

MS. FERNANDEZ: Here.

THE SECRETARY: Rudy Rivero?

MR. RIVERO: Here.

THE SECRETARY: Franklin Medina?

MR. MEDINA: Here.

THE SECRETARY: Jeanne Koehler?

VICE CHAIRPERSON KOEHLER: Here.

THE SECRETARY: Alejandro Velazquez?

MR. VELAZQUEZ: Here.

THE SECRETARY: Jose Guareno?

MR. GUARENO: Here.

THE SECRETARY: Let the record indicate there are nine present.

Those absent tonight are Mayor Brian P. Stack and Commissioner Celin Valdivia.

We have a full quorum for tonight's meeting.

* * *

Housing Element and Fair Share Plan:

THE SECRETARY: First item on the agenda, Housing Element and Fair Share Plan.

Mr. McNamara, please?

MR. McNAMARA: Thank you, members of the Board, Mr. Chairman.

Patrick McNamara from the law firm Scarinci Hollenbeck, here to follow up on our prior appearances before you with regard to the Housing Element and Fair Share Plan that has been prepared, and has been approved by the court, that was presented to you last spring.

We're here tonight to seek your ratification of that plan, because it's a necessary element of the regulatory and legislative process.

What will then happen from here is we will prepare, after you hear from Ms. Gruel tonight, we will ask you to vote to authorize preparation of a resolution to be adopted at a subsequent meeting.

We will then be looking forward to starting the process of introducing it, and then adopting a series of ordinances, which will implement the plan and will bring it to life and make it effective throughout the city.

So, with that, I'd like to call Ms. Gruel to come up and give a brief synopsis of the plan.

And I need her to be sworn in, please.

(Whereupon, there was a pause in the proceedings.)

MR. ORTIZ: Pat, would you like us to mark -- pre -- is that pre-marked, or do you want to mark it?

MR. McNAMARA: The board that's here has been previously shown, but for the benefit of the record, we'll remark it as Exhibit A-1. It's been prepared by Heyer Gruel and Associates. We showed this to you at the last hearing.

The properties that are highlighted in -- in yellow are owned by the Housing Authority and managed by the Housing Authority of the City.

Those sites that are in red are either existing or targeted sites for the development of affordable housing here in the City.

And certainly, this plan, as Ms. Gruel has noted in her prior presentations, is not static. One of the things we will be looking to do to effectuate this plan, and also the settlement agreement that was entered into with the Fair Share Housing Center, is to create a sliding scale ordinance that will allow as larger developments come in, or smaller developments come in, an appropriate amount of affordable housing will either be set-aside, or a very significant monetary contribution will be made. In the settlement agreement, the monetary contribution, in lieu of constructing a unit, is I believe $170,000.00.

That’s far higher than you would find in many other municipalities throughout the State, and it’s done deliberately to try to incentivize developers to create the affordable housing units, rather than making the contribution.

With that, Ms. Gruel, for the benefit of the record and the public, would you please provide us with your educational background, your licenses, and experience as a professional planner in the State of New --

Oh, you need to be sworn in first.

MS. GRUEL: And I didn’t get sworn in.

MR. McNAMARA: I’m sorry.

MS. GRUEL: We were so busy --

MR. McNAMARA: We have to do that first.

MS. GRUEL: -- with the -- all the electronic --

MR. McNAMARA: I’m sorry.

MS. GRUEL: -- paraphernalia.

MR. DILLON: Before you start, please raise your right hand.

Do you swear the testimony you’re about to give this Board is the whole truth?

MS. GRUEL: I do.

MR. DILLON: State your name and spell it for the record.

MS. GRUEL: Susan S. Gruel, G-R-U-E-L. I’m a licensed professional planner in the State of New Jersey. I have -- I’m a partner in the planning firm of Heyer Gruel Associates, and have qualified as an expert witness in front of numerous boards and bodies and in court.

MR. ORTIZ: Madam Chairwoman?

CHAIRPERSON CAPIZZI: Yes, please.

MS. GRUEL: Thank you.

MR. McNAMARA: Thank you.

MS. GRUEL: And --

MR. McNAMARA: Ms. Gruel, you testified --

MS. GRUEL: I have been --

MR. McNAMARA: I’m sorry.

MS. GRUEL: And -- and part of it is we were retained by the City to prepare and be involved in the Affordable Housing Plan for the City.

I have appeared in front of this Board --

Bless you.

-- I have appeared in front of this Board several times where we have discussed the different portions of the Housing Plan. And -- and I'd just like to say that we have been -- I was so busy with getting this ready.

MR. McNAMARA: That's okay.

MS. GRUEL: Maybe I'm -- I'm --

MR. McNAMARA: Ms. Gruel?

MS. GRUEL: -- saying stuff --

MR. McNAMARA: That's okay. No. That's quite all right.

You testified and were qualified as an expert at the April 26th hearing before Judge Costello.

MS. GRUEL: Yes.

MR. McNAMARA: And at that hearing, the plan that's being presented here tonight is essentially the same document that was reviewed and approved, not only by the Special Master, Ms.

Christine Cofone, but also by the court.

MS. GRUEL: That's correct.

MR. McNAMARA: If you could just --

MS. GRUEL: And --

MR. McNAMARA: -- please provide a brief synopsis then.

MS. GRUEL: And it is -- it is basically the same plan that was presented to this Board, and I'll just hit the highlights.

As you recall, there is an obligation of about 1400 units that is all rehabilitation, that the City has, because the City is an urban aid community, and therefore, doesn't have any new construction obligation.

However, as a result of numerous affordable housing developments and units being constructed throughout the City, over -- you know, these years, there are over 1300 affordable units within the City at this stage.

And in addition to that, as Mr. McNamara said, which we went over previously with you, and is part of the settlement agreement, is there's also a mandatory sliding scale, where a developer either has to construct units, depending on the number of units that he's proposing. It goes from five percent to 15 percent.

There are also provisions for a payment in lieu of -- of constructing. But again, as Mr. McNamara said, it is 175,000 a unit, for in lieu, which is determined to be approximately the cost of constructing an affordable unit. So, we didn’t want to have that out there.

And those are additional affirmative measures that are being --

MR. ORTIZ: Can --

MS. GRUEL: -- that are being proposed.

MR. ORTIZ: I don't think we ever marked it. We talked about the color.

MR. McNAMARA: Well, for the benefit of the record --

MS. GRUEL: Oh.

MR. McNAMARA: -- the exhibit I previously described, as Ms. Gruel was getting prepared to give her testimony, for the benefit of the record, we’ll mark as Exhibit A-1.

(Whereupon, Aerial of Affordable Housing Sites, dated September 2017, was received and marked as Exhibit A-1.)

MR. McNAMARA: Ms. Gruel, could you please identify what I've labeled as Exhibit A-1, for the benefit --

MS. GRUEL: Yes.

MR. McNAMARA: -- of the record?

MS. GRUEL: It is an aerial with affordable housing sites located; identified on. Yellow is the Housing Authority sites, and pink, red is other affordable housing that are existing within the -- the City.

Those -- that -- this map is also within the Housing Plan. You all have a version of this, so --

MR. McNAMARA: And this was presented at the hearing before Judge Costello, as well.

MS. GRUEL: Yes.

MR. McNAMARA: Thank you.

MR. ORTIZ: And this one's specifically dated September 2017.

MS. GRUEL: This one is September 2017.

Thank you.

MR. McNAMARA: The material aspects, it reflects the same sites that were presented in the report as you've just highlighted and in the prior testimony given to Judge Costello. There aren't any new sites that have been added to it.

MS. GRUEL: No, not at this point.

MR. McNAMARA: And the City is now attempting to actually look for other sites, as well as encouraging developers to try to do inclusionary housing, where possible.

MS. GRUEL: That's correct.

And actually, there will be some minor revisions to your Development Fee Ordinance, to be compliant with the -- with Affordable Housing standards, where that provides the basis for getting the money.

Also, as part of the -- the plan and I know that we've spoken about that, as well, is the Affordable Housing Trust Fund Spending Plan that is a requirement of housing.

How are you going to project to spend your money that you get through your Development Fee Ordinance?

So, we have that laid out. Again, projections. There are certain requirements, in terms of providing certain affordability assistance, writing down rentals for affordable households.

But in terms of the new construction,

either it would be done through rehabilitation, possibly Blue Chapel and veterans housing is another targeted area that is identified within the spending plan that the money is proposed to be used for.

MR. McNAMARA: Now at this point, approximately six -- 600,000 in funds have been collected, to the best of your knowledge. And we've already had numerous submissions making requests for some of those funds to be allocated to the various projects you've just mentioned.

MS. GRUEL: Yes.

MR. McNAMARA: And we anticipate, as other development proceeds within the City, that contributions to that fund will continue to be made, as required by State law, particularly by non-residential developments, where there's a set fee that has to be paid, based on the value of the improvements to continue to replenish this fund, going forward in the future.

MS. GRUEL: That's correct.

MR. McNAMARA: Okay.

Thank you.

Mr. Chairman, I have no further questions of the witness, at this time, and make her available to the Board and the public.

MR. VELAZQUEZ: So, it'd be -- it would be everything going forward, after -- if there was an adoption after.

MR. McNAMARA: Correct. So that we can implement the settlement agreement, we need you to approve the plan, as has been presented.

From there, I think it's ratify -- your approval gets ratified by the governing body. We would then be looking to introduce a series of ordinances and resolutions.

A lot of the resolutions are for the more ministerial aspects of the program.

The ordinances will include revising the Land Use Development Ordinance, to implement the terms of the settlement agreement, and the terms of the order of the court to provide for that sliding scale that Ms. Gruel has testified to, so that all future development that -- where applications are filed will have to adhere to these requirements going forward.

MS. GRUEL: And in terms of your Development Fee Ordinance, and getting the money, you already have one in place, so you're already collecting funds. It's just a matter of tweaking some of the wording in it. It's not any major change --

MR. McNAMARA: Because one of the --

MS. GRUEL: -- to what you have already.

MR. McNAMARA: -- one of the requirements is before the money is spent, it used to be you had to submit an annual report to COAH. Since, I don't know if there's anybody left there to turn off lights these days, and haven't been for a number of years, we're now obligated to advise the court through the Special Master.

Ms. Cofone, unfortunately, she had a conflict this evening and could not be here, but she had previously endorsed the plan that is here before you. And it is also in conformance with the general terms of the settlement agreement that's entered into with Fair Share Housing Center.

So, those hurdles have been crossed, but going forward, until either COAH is reinstated and re-staffed by the next governor, or there are some other alternative created, we're going to be obligated, as are all the other municipalities in the State who are doing this, to continue to advise both the special master and the court as to when we get spending requests in, and which ones the municipality is interested in dedicating funds to, so that the court sees that the funds are being used appropriately, and within the purposes of -- of requirements of state law and state regulations.

MS. GRUEL: And there are also certain monitoring, as we go along, monitoring requirements to make sure that everything, not only the funds are being spent properly, but the status and whether you're moving forward in terms of -- of what you're -- what the City is proposing, and how that's going --

MR. McNAMARA: Yeah.

MS. GRUEL: -- successfully.

MR. McNAMARA: And once we get through these next steps, there will be a compliance hearing. We'll be back before Judge Costello. We have to give everybody notice that we demonstrate to the court, we've taken all the procedural, administrative and governmental approvals necessary here with you and with the Board of Commissioners and the City Administration, so that we can demonstrate to the special master and the people at Fair Share

Housing Center that we're implementing things as committed to at the Fairness Hearing several months ago.

MR. VELAZQUEZ: There's no little angles, God forbid, that there's ever going to be any loopholes on any of the developers that are going to buy into these.

MR. McNAMARA: We would certainly hope we've drafted the ordinance well enough to prevent that. You will see the ordinance, like any other land use ordinance that comes to you. Once it's been introduced by the Board of Commissioners, it will come here. Ms. Gruel's office and our office have already been working on a draft. If it hasn't been sent to you, we'll make sure you get it, so we get your feedback in advance. We value that very much.

And our hope would be that as we get into the fall, we can start passing these resolutions and implementing these -- and adopting these ordinances and implementing them to be able to bring this plan to life.

VICE CHAIRPERSON KOEHLER: Is there -- is there a limit to -- let's say, a developer wants to opt out of the Fair Share Housing and they pay the 175 per unit, is there a limit to how many units they can --

MR. McNAMARA: Yes, there is a limit. Where, for larger developments, I believe the threshold is either 150 or 200 units.

Susan, correct me if I'm wrong.

MS. GRUEL: Well, that's for a set-aside.

MR. McNAMARA: Right. There is a cap for larger developments, where they can only pay up to --

MS. GRUEL: Fifty.

MR. McNAMARA: -- half --

MS. GRUEL: It's 50.

MR. McNAMARA: Oh --

VICE CHAIRPERSON KOEHLER: Fifty units?

MS. GRUEL: Fifty or more units, the developer can only contribute funds up to one-half of the units to be constructed.

VICE CHAIRPERSON KOEHLER: To be constructed, not as their allocation.

MS. GRUEL: As affordable units.

VICE CHAIRPERSON KOEHLER: Okay. Affordable units.

MR. McNAMARA: Right.

MS. GRUEL: Okay. So you can't -- so, for the larger projects, you can't just pay --

VICE CHAIRPERSON KOEHLER: Um hum.

MS. GRUEL: -- totally, without providing some units on-site.

VICE CHAIRPERSON KOEHLER: Okay.

MS. GRUEL: Half of the units on-site. The smaller projects that are under 50, yes.

VICE CHAIRPERSON KOEHLER: Um hum. You can.

MS. GRUEL: You can. The smaller ones.

VICE CHAIRPERSON KOEHLER: Buy all of them out.

MS. GRUEL: You can.

VICE CHAIRPERSON KOEHLER: I see.

MR. McNAMARA: Right. But then, the funds --

MS. GRUEL: But not under the --

MR. McNAMARA: But then, the funds stay here in the City.

VICE CHAIRPERSON KOEHLER: Right.

MR. McNAMARA: They go into this trust account and can be spent on rehabilitating existing older housing stock, where you've got bathrooms and kitchens that are sorely outdated and need upgrading, and aren't built to Code, roof repairs. There's a whole set of criteria that you have to go through to demonstrate that it's an appropriate subject for use of those funds, before any money is committed by the City Administration or the Board of Commissioners.

MS. GRUEL: But it's at the discretion of the Board --

CHAIRPERSON CAPIZZI: Um hum.

VICE CHAIRPERSON KOEHLER: I see.

MS. GRUEL: -- as to whether you want to give them an in lieu payment option.

VICE CHAIRPERSON KOEHLER: I see.

MS. GRUEL: So, it's may.

VICE CHAIRPERSON KOEHLER: Um hum.

MS. GRUEL: It is not -- it is not mandatory that -- at least, that's not the way that we propose to have the ordinance written.

VICE CHAIRPERSON KOEHLER: Um hum.

MS. GRUEL: That it is not mandatory that the developer has the right. The developer may request to the Board, to this Board or the Zoning Board a in lieu payment.

VICE CHAIRPERSON KOEHLER: And then, this would apply -- these ordinances, once finalized, would only apply to new construction going forward. The shovel is in the ground --

MS. GRUEL: Right.

MR. McNAMARA: Projects that are --

VICE CHAIRPERSON KOEHLER: -- it was --

MR. McNAMARA: -- already in the ground or going --

VICE CHAIRPERSON KOEHLER: It's not --

MS. GRUEL: They're gone.

MR. McNAMARA: They're --

VICE CHAIRPERSON KOEHLER: They don't have to --

MR. McNAMARA: That -- we can't retroactively apply it.

MS. GRUEL: No.

VICE CHAIRPERSON KOEHLER: Got it.

MR. McNAMARA: Once the Ordinance is adopted, and the appropriate period lap -- runs, which is usually 20 days after adoption, once that period happens and the ordinance is on the books, from that date forward, it binds on all applicants for all projects.

The existing ordinance for the development fee for nonresidential development, where we collect the fee, has been on the books for ten years? Maybe no, 1998?

MS. GRUEL: Well, it was 2009 --
MR. McNAMARA: 2009?
MS. GRUEL: -- was the last time -- was --
MR. McNAMARA: All right. So, that’s nine years you’ve had that fee in place, so you’ve been collecting funds for that. And that will continue to happen.
MR. ORTIZ: And so, that’s important, obviously, for -- from my perspective, but advise the Board anything in the pipeline right now, this is not going to apply.
MR. McNAMARA: Correct.
MR. ORTIZ: But any new application after the ordinance is passed, this will apply.
MR. McNAMARA: Correct.
MS. GRUEL: That's correct.
MR. ORTIZ: So, applications are the threshold.
MR. McNAMARA: Right. This is governed the same way any other ordinance change would be under the time of application statute that was implemented about five or six years ago, where the Ordinance that is on the books the day you file is what governs.
CHAIRPERSON CAPIZZI: Um hum.

MR. McNAMARA: It used to be you could file, then the town could change the Ordinance, because they didn't like your application, to force --

CHAIRPERSON CAPIZZI: Right.

MR. McNAMARA: -- you to go from the Planning Board to the Zoning Board.

Towns can't do that anymore. It's what's on the books the day you file is what governs, no matter changes --

MR. VELAZQUEZ: You're not --

MR. McNAMARA: -- happen afterward.

MR. VELAZQUEZ: You're not going to have that group partying on 44 -- (indiscernible)-- 37 waiting for the big affordable housing unit. That's what I'm interested in. The big building that are going up there, the huge one. That's why.

CHAIRPERSON CAPIZZI: Any other questions?

Is this open to the public?

MR. ORTIZ: (Indiscernible).

CHAIRPERSON CAPIZZI: Any questions from the public?

Yes?

Just say your name and address, please.

MR. PRICE: Yes.

Larry Price --

MR. DILLON: Willie? Want him sworn?

MR. PRICE: -- 1006 --

MR. ORTIZ: Always.

MR. DILLON: Please raise -- please raise your right --

Do you want to be sworn or not?

MR. ORTIZ: Or affirm.

MR. PRICE: I don't know.

MR. DILLON: Swear him in?

Okay. Yeah. Please raise your right hand.

Do you swear --

MR. PRICE: I think I will be giving testimony so --

MR. DILLON: Okay.

MR. PRICE: Yes.

MR. DILLON: Do you swear the testimony you're about to give this Board is the whole truth?

MR. PRICE: Yes, I do.

MR. DILLON: State your name for the record.

MR. PRICE: Larry Price, 1006 Palisade Avenue.

MR. DILLON: Thank you.

MR. PRICE: Okay. I guess the first question I would ask is a general one.

In the Morris County case, Judge Skillman said, talking about affordable housing generally, that -- that -- the -- that it’s applied against cities because they fail to provide a realistic opportunity for the construction of low and moderate income housing.

Okay. Our round one requirement was zero.

Correct?

MS. GRUEL: That's correct.

MR. PRICE: Our round two requirement was zero.

MS. GRUEL: Correct.

MR. PRICE: Correct?

And our round three requirement is zero.

MS. GRUEL: Correct.

MR. PRICE: That’s a pretty good indication that, in fact, Union City provides a realistic opportunity for low income and moderate income housing.

So, why are we even here? Why are we doing this?

MR. McNAMARA: Let me start.

It was a policy decision made by the --

Oh, I got to use the microphone.

MR. PRICE: Oh, oh, sorry.

MR. McNAMARA: That's all right.

MS. GRUEL: Oh, here.

MR. PRICE: You stand next to her.

MR. McNAMARA: Okay.

MS. GRUEL: Okay. You can stand next --

MR. McNAMARA: I can talk into the lapel.

MS. GRUEL: Talk into my --

MR. DILLON: No, no. Stand -- stand by the banister, Mr. McNamara.

MS. GRUEL: Wait a minute. Wait a minute. Wait a minute.

MR. McNAMARA: Okay.

MS. GRUEL: Wait a minute.

MR. McNAMARA: It was a policy decision made by the Board of Commissioners that there was a desire to make sure that in future years, that affordable housing continue to be created, that people would not get priced out of current housing as we've often seen in gentrification in other adjacent municipalities, particularly Hoboken and Jersey City, where a lot of people are being displaced as certain neighborhoods are gentrified, redeveloped and rental prices, especially rentals because people in the low and very low income brackets can't afford a mortgage, and so can't buy a unit, so they're pretty much locked into rental housing, that that continue to be available here.

And that was an important priority of the Board of Commissioners and the City Administration.

So, when we developed what ultimately became the framework for this, in consultation with Ms. Gruel's office, Mr. Spatz's office, the idea was to create a mechanism so that as density and other projects came into the City, there would be an allocation. And these units are then locked in for a period of 30 years. Once they're developed, they have to be deed restricted.

So, it would preserve a element of affordable housing, even if gentrification continued to occur and market rate housing continued to be at a higher price point, as compared to maybe five years ago, or ten years ago.

And further, we also had a significant rehabilitation share, as Ms. Gruel noted in her testimony. And part of what we were trying to do is say, in the future, that we'll -- and other urban municipalities have rehabilitation shares, that that obligation, in part, could help be met by, in the future, mandating there be some degree of set-asides; that there always be provision here so that over the coming years, and this plan is good for a ten year period, and then will need to be revisited as others will across the State, that there had to be provision, there had to be an automatic mechanism to ensure that no matter how much economic growth or new density or new development occurred, it wasn't being done at the sacrifice of loss of affordable housing units to the community as a whole.

MR. PRICE: Okay. But that's a discreet -- a decision by the Board of Commissioners is different from being -- having to cope with Mount Laurel litigation.

MR. McNAMARA: Well, what it does is it -- by having this plan, we -- and we get substantive certification, it protects the City for a period of at least ten years from any builder's remedy litigation of any kind.

Absent doing this, that threat is still

potentially, you can argue about the merits of how that -- how serious that threat could be, but it was an important enough policy decision that the City felt that this should be moved forward, so that not only do we provide for affordable housing going forward over the coming ten years, we also have a guaranteed defense against any builder wanting to come in and build -- overbuild a project, put in such a high level of density that it didn't fit within the fabric of the community, from a planning standpoint.

MR. PRICE: Okay. How realistic is that threat?

The people in Basking Ridge, with their ten acre minimum lot size, have to worry about that so, because they're not providing an opportunity for low and moderate income housing.

MR. McNAMARA: Um hum.

MR. PRICE: But in Union City, we don't -- we don't have restrictive housing like that.

MR. McNAMARA: Well, it --

MR. PRICE: We have -- we -- as evidenced by we have no requirement.

MR. McNAMARA: Because we didn't have an affirmative requirement doesn't mean you don't have the threat of a builder's remedy lawsuit, first.

And second, if you look at how gentrification has dramatically changed the waterfront of Jersey City, how much it's changed so many commun -- sections of the Hoboken community, so many people have been priced out. And so, it was a policy decision made here that the City Administration, and the Board of Commissioners did not want to see that happen in Union City. That they did not want to see people getting priced out and proverbially speaking, getting kicked to the curb for the benefit of gentrification.

This helps prevent that from happening.

MR. PRICE: Okay.

Question.

You said ten years protection.

MR. McNAMARA: Correct.

MR. PRICE: But Morris County says six years.

MR. McNAMARA: It was six years, not substantive certification is for ten years.

MR. PRICE: Okay.

MR. McNAMARA: When -- when that decision was made, it was for six years.

MR. PRICE: Okay.

MR. McNAMARA: Under the old regulatory framework, and correct me if I'm wrong, Susan --

MS. GRUEL: No, you're right.

MR. McNAMARA: -- it was six years for statute of repose. Now it's ten.

MR. PRICE: Okay. So, this would carry us out to 2017 or --

MR. McNAMARA: To 2027, yes. Ten years.

MR. PRICE: Sorry. I --

MR. McNAMARA: That's all right.

MR. PRICE: I said --

MS. GRUEL: It's okay. It's okay. We knew what you meant.

MR. PRICE: Okay.

I think, Ms. Gruel, I put the -- what is the difference between current need, 1442 unit -- and affordable housing?

MS. GRUEL: The -- the current need is generally translated to substandard units that are occupied by affordable households, that need some kind of -- well, again, substandard units that are generally remedied by rehabilitation, a rehabilitation program.

However, when you get that need, you can either address it through a rehabilitation program, or you can address it through new construction.

Okay?

So, there is a fourteen hundred and, I think, 42 unit need that is based on various variables in the census.

MR. PRICE: Correct.

MS. GRUEL: Okay?

And -- and that need, it's suggested, that part of that need be addressed through rehabilitation, through the continuation of a rehabilitation program, with some of that funding coming from the Housing Trust Fund, but some of the other need would be through new construction, through this -- through these other mechanisms that were being suggested, as well as they are addressed through existing units, affordable units that have been constructed.

MR. PRICE: Okay.

What I'm really asking here is, we have a present need, and we have the Affordable Housing program. And I'm saying what's the link, if any, between those two programs?

MR. McNAMARA: There's a link in that you have what's called under the regulatory framework, a present need, as well as a prospective need. And so, what you're trying to do is plan not only for what you think your obligation is today, dating back over, because of the absence of regulations, because regulations we operated under expired in 1999, and three different times, COAH tried to adopt rules that were called the Growth Share Methodology. Three times, the last being in 2015, the courts invalidated it.

So, we've been also wrestling with a gap from 1999 to 2016, which the courts have now said, definitely, municipalities must plan for. So, you have a retrospective need, you have a present need, you have a prospective need, and these can be addressed through both the rehabilitation of existing units that are deteriorated, or in a condition that they would qualify for rehabilitation, as well as constructing new units.

And I believe you still get a --

MS. GRUEL: So, that's the link.

MR. McNAMARA: -- two for one rental credit

--

MS. GRUEL: Yes.

MR. McNAMARA: -- when you do rentals. If you have, say, a 40 unit obligation, under State regulation, and you did 20 units, and you locked them in as low or very low income units, you get a two for one credit for locking them in at the lowest level, so that people of very modest means still have the opportunity to have decent rental housing.

MS. GRUEL: So, the link is that whether it's through a need for -- to address statistically substandard affordable units, or whether it is a link to address, which in this case because the City is an urban aid community, it doesn't have it, a prospective new construction obligation, based upon certain criteria.

One way or the other, the link is that affordable households need to be addressed and need to be in -- in standard housing, not substandard housing, but adequate housing, and be reasonable to that income level.

So, to the extent that it's either addressing the present need, the rehabilitation need that is addressed through not only rehabilitation or -- and/or new construction, in both instances, they're addressing existing and prospective affordable house -- affordable income households.

MR. PRICE: Okay.

Let me ask you about the 1442.

MS. GRUEL: Okay.

MR. PRICE: On page 25 of your report --

MS. GRUEL: Um hum.

MR. PRICE: -- it says, therefore, the present need now equates to the indigenous need, which means --

MS. GRUEL: Right.

MR. PRICE: -- the obligation is based on deficient housing as determined by pre-1960 overcrowded units, incomplete plumbing, and incomplete facilities.

MS. GRUEL: Um hum.

MR. PRICE: Okay. If I return earlier to page 18 of your report, it indicates -- by the way, could I stop there for -- on page 18, the source is the 2009, 2013 American Community --

MS. GRUEL: Yes.

MR. PRICE: -- Survey Five Year Estimates about --

MS. GRUEL: Yes.

MR. PRICE: -- what the nature of the housing is.

MS. GRUEL: Um hum.

MR. PRICE: What kind of survey -- who is America (sic) Community Survey? What kind of survey did they did (sic)?

MS. GRUEL: It is -- it is a reputable -- I guess, supplement to the U.S. Census data, since they only do it every ten years. American Community Survey has certain checkpoints between that ten year period, where they provide more updated information, based upon surrogates and the way that they do -- I can't -- don't ask me all the details of how they do it.

But that they -- that they do certain estimates based upon this -- the census and update with information.

They are reputable. Everybody uses them. And it is a very legitimate source.

MR. McNAMARA: Ms. Gruel, there were also other reports that were generated. One by professionals hired by the 350 plus member municipal consortium, Econsult.

And there were also expert reports from experts retained by Fair Share Housing Center that had a fairly decent range of numbers.

My recollection, the Fair Share Housing Center had a number for Union City that was significantly higher than what they ultimately agreed to in the settlement agreement.

MS. GRUEL: In terms of rehabilitation.

MR. McNAMARA: Right. I think it was north of 2,000.

MS. GRUEL: It was -- yes. And it's -- and it all depends. As anyone knows, you can play with numbers and statistics.

The -- the important point here is that there was a settlement based upon a 1442 number that was for rehabilitation number. And that's the key provision here that that is a target. However, in Union City, frankly, the City has always been proactive with their affordable housing obligations, and with trying to address it.

So, what the number is, it's almost irrelevant because you have always been extremely proactive.

MR. PRICE: Okay.

MS. GRUEL: And I commend the City for that.

MR. PRICE: The 1442, though, consists of three elements. The -- the overcrowded pre-1960 housing; pre-overcrowded being defined as more than one -- one occupant --

MS. GRUEL: One point oh-one.

MR. PRICE: -- per room. Okay. As well as -- you know, lacking complete kitchen facilities, and lacking complete plumbing facilities.

Now, on page 18, you have numbers for the latter, which come from American Community, which I assume --

MS. GRUEL: Right.

MR. PRICE: -- probably comes to the U.S. Census --

MS. GRUEL: Right.

MR. PRICE: -- in 2010.

MS. GRUEL: No. They're -- they're modified slightly for that.

MR. PRICE: Okay.

MS. GRUEL: But --

MR. PRICE: But anyway, you have three elements. What -- how much does each element --

MS. GRUEL: I don't -- I don't have that.

That's a statistical methodological calculation. We get that information from these various sources. We don't do that anymore than we calculate if they're in communities where there's a prospective affordable need. That's a whole different methodology, in terms of weighting, in terms of averages, in terms of how you determine what the variables are.

We know what the variables are, but some are overlapping.

So, I can't tell you, I know what it is. We use those numbers to determine what the need is. In any instance, here, it's only the rehabilitation number. In other communities that we work, it may be the prospective, the gap, the prior round obligation.

We use numbers that -- that are based upon certain methodologies. And then, there's a settlement as to what those numbers are.

So, I can't tell you. I -- if you ask me to calculate that out, as to exactly how that was done, I can't do it. We rely on --

MR. PRICE: One of the -- one of the problems here is that we're saying this is the need, but there's no hard number behind this --

MS. GRUEL: Well, let me --

MR. PRICE: -- is the need.

MS. GRUEL: Let me tell you about rehabilitation. Okay? And that need.

That is a statistical number that is based, basically, on census data. Does that mean in the field that those translate directly? No. There are some communities that actually go out and do surveys, say whatever their rehab number is, it's -- let's say it's a thousand, and they say, no, we don't have a thousand substandard units that are occupied by affordable households. We're going to go out and we're going to do a survey.

You can actually do that. Often times, there aren't that many. There can be substantially less.

The important part of that is the normal way of addressing a -- a substandard unit, a -- a need, okay, a present need is to provide an -- a rehabilitation program. Set up a rehabilitation program that is funded -- again, it can be funded through some of the county funds, from community development block grant funds, it can be through the -- the spending plan funds, development fee, and it then has to be advertised sufficiently for households, qualified households to be able to come and utilize those funds.

The purpose of that is to provide the opportunity for house -- qualified households to come and utilize those funds, with the purpose of rehabilitating those units to make -- to make them so they are not substandard. Okay?

And they have to have a major defect in the system. They can't just paint the house, as such.

MR. PRICE: Okay.

MS. GRUEL: Okay? That's the purpose. The purpose is doing that, generally.

In this instance, the City is continuing to have a rehab program continued, but in addition to that, they are also providing opportunities for new construction as well, and to acknowledge that they already have over 1300 units of affordable housing throughout the City.

MR. PRICE: Okay.

What are the chances of -- bear in mind, we have three categories; overcrowded, inadequate plumbing, inadequate kitchen.

MS. GRUEL: Um hum.

MR. PRICE: What are the possible -- what are the chances that one unit qualifies under all three and --

MS. GRUEL: It could.

MR. PRICE: -- has been counted as all three?

MS. GRUEL: It could.

MR. PRICE: It doesn't --

MS. GRUEL: And that's --

MR. PRICE: -- have a kitchen, it doesn't have a bathroom --

MS. GRUEL: But that's why --

MR. PRICE: -- and it's got four people in it.

MR. ORTIZ: Mr. -- Mr. Price? Mr. Price?

MS. GRUEL: But Mr. Price, that's --

MR. ORTIZ: Excuse me.

Mr. Price, if you have questions as to the plan specifically, that -- that's perfectly fine and you have every right to do that.

If you're asking our experts to speculate, which is what you're -- how I'm hearing it, then -- then all we're -- all we're doing is really dancing around the issue.

Please ask about --

CHAIRPERSON CAPIZZI: Um hum.

MR. ORTIZ: -- the particular plan, Mr. Price, --

MR. PRICE: Mr. Ortiz --

MR. ORTIZ: -- please.

MR. PRICE: The defining quality of an expert is that they can ask -- answer hypothetical questions.

MS. GRUEL: Not in an area that I did not --

Okay?

MR. PRICE: Say, I don't know.

MS. GRUEL: The methodology --

MR. PRICE: Say, I don't --

MS. GRUEL: I'm just telling you and I told you before, I didn't do the method -- I did not, and your -- your speculation that one unit could -- could be deficient in all those three areas, --

CHAIRPERSON CAPIZZI: Um hum.

MS. GRUEL: -- absolutely. And that's what I'm saying.

MR. McNAMARA: Ms. Gruel --

MS. GRUEL: I don't know how those are counted --

MR. PRICE: Okay. That's a -- that's a

fine answer.

MS. GRUEL: -- to come up with that.

MR. PRICE: That -- that -- whatever.

MS. GRUEL: Okay?

MR. PRICE: Okay.

MR. McNAMARA: Ms. Gruel, there’s also a regulatory process for the expenditure of trust funds that was established by COAH decades ago, that has to be adhered to by any applicant coming in for the use of housing trust funds --

MS. GRUEL: Yeah.

MR. McNAMARA: -- that lays out various criteria that have to be met, beyond what Mr. Price has articulated here.

I don't have the rules here in front of me this evening. But the spending plan that you’ve included in this document, that has been made available to the public, then sets forth a process, and then has to be adhered to by any applicant that has to be followed by State regulation, any time any funds are expended for a rehabilitation purpose.

Essentially, am I correct?

MS. GRUEL: Yes.

MR. McNAMARA: Okay.

MR. PRICE: Okay. Fine.

Let me go to one last question, and then a comment.

Oh, let me do an aside here for a second.

On page 29, this is --

MS. GRUEL: I happen to be on page 29. How about that?

MR. PRICE: Great minds travel in a similar path.

MS. GRUEL: Oh, my gosh.

MR. PRICE: Okay. The -- part of the agreement is, the City agrees that for projects in redevelopment areas involving less than 50 units, a one for one density bonus will be applied for each affordable unit required.

The problem I have with this is our Land Development Ordinance doesn't have a density requirement.

MR. McNAMARA: If you write a redevelopment plan, you can specify a density formula, based on either building controls or on height or on a formula of X units per acre.

The purpose of having that in there is quite often redevelopment projects are on contaminated property, there's often abandoned property that are -- that are looked at, so you're dealing with demolition costs and remediation costs.

So, the idea of the density bonus was to say, look, we would like to have affordables, we realize you're eating certain cost to redevelop the property, and it is a common instrument, and it's been used in numerous other municipalities, to allow a one to one density bonus, because the unit that's being done as affordable, you're not going to make any money off of.

MR. PRICE: Well, the purpose -- all I'm saying to you, the purpose of a bonus is to provide an incentive for --

MS. GRUEL: Correct.

MR. PRICE: -- a developer to do something.

MS. GRUEL: Correct.

MR. McNAMARA: Right.

MR. PRICE: And what I'm saying here is the Land Development Ordinance --

MS. GRUEL: Um hum.

MR. PRICE: -- has no density requirement.

MS. GRUEL: Um hum.

MR. PRICE: What we really have are design requirements. In other words, a studio has to be

400 square feet, a three bedroom has to be 900 square feet. They -- you're entitled to a certain height and a certain cube, and you can -- if you're the developer, you can divide it up however you want.

If you -- you could have maybe 20 studio apartments or you could have ten three bedroom apartments.

So, I'm say -- but there's no density requirement, so you're allowing a bonus that's -- you have to provide a different incentive, I think, is what I'm -- what I'm really saying.

MR. McNAMARA: We'll be more than happy to take it under review.

MS. GRUEL: Yeah.

MR. PRICE: Yeah.

MS. GRUEL: Thank you.

MR. McNAMARA: But we're targeting it just at redevelopment areas.

MS. GRUEL: Yeah.

MR. PRICE: The redevelopment --

MR. McNAMARA: In other words, if you write -- if you -- if you designate a --

MS. GRUEL: Statutorily required redevelopment areas.

MR. McNAMARA: -- property for redevelopment under State law, and then you write a redevelopment plan for it, instead of following the land development use, you have to -- Ordinance, you have the option, in the redevelopment plan, to say the formula will be 20 units per acre, 25 units per acre.

MR. PRICE: Correct.

MR. McNAMARA: Or whatever it is.

MR. PRICE: Oh, okay.

MR. McNAMARA: So then --

MS. GRUEL: So that's what we're talking about.

MR. McNAMARA: -- if it is, and you say, hey, we'll give you 25 to the acre, but if you put a couple of additional affordable units, we'll let you go up a couple more, as the offset, to help offset the cost because the affordable unit is not going to be profitable to the developer.

MR. PRICE: Okay.

MR. McNAMARA: It's a common mechanism that's been used.

MR. PRICE: It might be to -- to provide a real incentive, you might have to -- because I'm saying, we have six redevelopment areas in Union City. None of them --

MR. McNAMARA: We're not looking to go back and reopen any existing ones. This would be a mechanism for future redevelopment areas.

MR. PRICE: Okay.

Okay, now, I have -- if you will turn to --

MS. GRUEL: Let me see if I can -- if I can choose --

MR. PRICE: Oh.

MS. GRUEL: -- the same page that you're going to, and then we'll really -- I'll really get nervous.

Page 11. No.

MR. PRICE: No. Sorry.

MS. GRUEL: I tried.

MR. PRICE: It was the reconciliation of the 1442 to -- sorry.

MS. GRUEL: Oh, in the back? The --

MR. PRICE: Yes.

MS. GRUEL: In the very back, with the -- with the summary? Is that what you're -- 32?

MR. PRICE: Keep your finger on page 30, if you would.

MS. GRUEL: Okay.

Present need.

MR. PRICE: Okay.

Okay, and page 31. Okay.

MS. GRUEL: Right.

MR. PRICE: Okay. On page 30, we -- we start with the present need obligation, 1442, at the --

MS. GRUEL: Right.

MR. PRICE: Page 30.

MS. GRUEL: Right.

MR. PRICE: Okay. At the top.

MS. GRUEL: Right.

MR. PRICE: And then, there are how you meet -- I take it this -- this isn't entitled to describe how you're going to meet that present need obligation.

MR. McNAMARA: That's the plan at present, yes.

MR. PRICE: Okay. Okay.

And total existing proposed comes up to 1327. Fronts from affordable housing, so on 52 plus -- and then, there's a blank --

MS. GRUEL: Correct.

MR. PRICE: -- which I filled in as 63, because that would then make the second part total up to 1442.

MS. GRUEL: Okay, if you want to. But that one is up in the air. We don't know, because we don't know how many projects will come in with the mandatory sliding scale set-aside.

MR. PRICE: But if it were 63, then the obligation would be balanced by --

MS. GRUEL: Yeah.

MR. PRICE: -- whatever you call these -- the -- the proposed and existing units. Okay.

MS. GRUEL: It would. But we just didn't need to do that, so we didn't put that 63 in because in -- in our opinion, it would be at least that, but --

MR. PRICE: Okay.

Now, my question about this is that -- remember, the need arises from substandard or overcrowded units. Okay.

Most of the items on the list are existing properties.

MS. GRUEL: Yup.

MR. PRICE: Saint Michael's, the public -- whatever. They already exist.

MS. GRUEL: Um hum.

MR. PRICE: How are they going to meet an existing need?

MS. GRUEL: They statistically meet and you know what we're talking about is a -- a regulatory framework that all municipalities have to work within. The manner in which that regulatory framework works is, if you have existing affordable housing units that are credit worthy, which all these are, then those can be used to address your rehabilitation or present need requirement.

And that's why they actually meet that. But what is -- is unusual here is we statistically, as you just said, could probably meet the 1442 and do nothing else. But this Administration, this City wants to go over and above, and as you note, on page 29, the subheading is Additional Affirmative Measures.

It's -- basically, the City's already met its obligation, but they want to do over and above that, by doing this sliding scale and -- and requiring more affordable units in future development than they really have to, so that -- so that frankly, this City has gone over and above what they need to do.

MR. PRICE: Okay.

One last comment, and -- a question and a comment.

Probably the greater supply of affordable housing in Union City is provided by the rent controlled apartments, many of which are quite modest, whatever. And that wasn't even part of your study.

MS. GRUEL: Um hum.

MR. PRICE: Even though this is --

MS. GRUEL: Um hum.

MR. PRICE: -- a very large supply of our -- probably larger than all of the items -- I don't know how many rent controlled apartments, and how many are reasonably priced, but it probably is a lot more than 1300, because we have 25,000 units, so why didn't you --

MS. GRUEL: You make a --

MR. PRICE: -- look at a --

MS. GRUEL: -- extremely good point, and technically, you can't consider that within the addressing your affordable housing, because those -- those units are not 30 year deed restricted. Okay? And they have to be deed restricted, based upon a certain -- as you well know, certain income and -- you know, rent and all that.

But you are absolutely correct that that is a -- that is an additional inventory and pot of, practically speaking, affordable housing that is -- I -- I agree with you. It's there, but it doesn't meet the criteria in terms of being considered in light of this.

MR. PRICE: Okay.

MR. McNAMARA: One of the issues that's always come up about COAH going back to the -- in the '80s and '90s is it didn't allow municipalities to take stock of existing housing that wasn't deed restricted already, even though in terms of its price point, it was in the same market range as a deed restricted unit, which you are allowed to count.

It seems like an odd anomaly, but that's the way the regulatory framework --

MS. GRUEL: Yeah.

MR. McNAMARA: -- evolved back in the '80s and '90s.

MS. GRUEL: And even now, Section 8 vouchers, which I'm sure there are many in existence in Union City, cannot be counted because it goes with the household and doesn't go with the unit.

MR. PRICE: Okay.
MR. McNAMARA: If the person moves from unit A to unit B, the credit for Section 8 goes with them, it doesn't stay at unit A.
MS. GRUEL: It doesn't stay at unit --
MR. PRICE: The rent control --
MR. McNAMARA: So, therefore, for COAH purposes, it doesn't count.
MR. PRICE: -- goes to the unit but it's --
MS. GRUEL: It doesn't count.
MR. PRICE: -- not deed restricted for 30 years.
MS. GRUEL: Correct.
MR. PRICE: And so --
MR. McNAMARA: Right.
MS. GRUEL: That's what it is. We can all debate as to whether that makes sense or not, but that's the way --
MR. McNAMARA: People have been for 30 years.
MS. GRUEL: -- the regulatory --
MR. McNAMARA: I don't think you want to go there tonight.
MS. GRUEL: Yeah.
MR. PRICE: Yeah. Okay.

One final question.

There are a number of steps, one of which is there has to be a new housing element for a master plan, which would be adopted by the Planning Board.

MR. McNAMARA: Um hum.

MS. GRUEL: That's this.

MR. PRICE: That's this.

MS. GRUEL: Correct.

MR. PRICE: Okay. So, they vote on it and this is -- okay.

Then there are -- have to be at least one ordinance that had not been introduced yet, which have to be introduced --

(Whereupon, Alejandro Velazquez left the meeting at 6:55 p.m.)

MR. McNAMARA: Yes.

MR. PRICE: -- to the Board of Commissioners.

MR. McNAMARA: Right.

MR. PRICE: And then, come here for review --

MR. McNAMARA: Just like any other land use ordinance.

MR. PRICE: Just like any other --

MS. GRUEL: Correct.

MR. PRICE: -- Land Use --

MR. McNAMARA: Right.

MS. GRUEL: Correct.

MR. McNAMARA: But we also have to engage the Special Master and we have to keep the Fair Share Housing Center in the loop, as per our obligations under the settlement agreement. So, there's that additional step above and beyond that already required under the Municipal Land Use Law.

MR. PRICE: Okay.

One last -- and it's a comment, but it's really a question to you, Mr. McNamara.

MS. GRUEL: Ah-ha.

MR. McNAMARA: Okay. I'll try.

MR. PRICE: I read the following, which is from Pheasant Ridge Corporation versus Township of Warren. I'll give you a cite later if you want.

MR. McNAMARA: That's all right.

MR. PRICE: 2001 decision.

MR. McNAMARA: Um hum.

MR. PRICE: In which Justice LaVecchia said the following:

In evaluating whether a zoning ordinance is arbitrary, capricious or unreasonable, a court's rule is not to pass on the wisdom of the ordinance, that is exclusively a legislative function, rather a court engages in a review of the relationship between the means and ends of the ordinance. In the context of a zoning challenge, the means selected must have real and substantial relations to the objects sought to be attained, and the regulation or proscription must be reasonably calculated to meet the evil and not exceed the public need or substantially affect uses which do not partake of the offensive character of those which cause the problem sought to be ameliorated.

Don't you run a risk here -- I mean, you got a present need, and you've got a proposal for the -- a tax system, basically, on new -- don't you run a very real risk of violating Justice LaVecchia's --

MR. McNAMARA: I don't believe so. I haven't read that decision, but we're also dealing with a State constitutional mandate that dates back to the first Mount Laurel decision that was issued by the State Supreme Court, in

1973, which stated that every municipality had an obligation to provide the opportunity for the development of affordable housing.

MR. PRICE: Correct.

MR. McNAMARA: So, there's a State constitutional mandate that sits above and beyond the standard review of a -- of a court when it reviews a municipal ordinance, whether it's a land use ordinance or any other ordinance.

The Supreme Court, in its decision in March of 2015, invalidating for the third and final time the Growth Share Methodology that COAH had tried to adopt over the last 15 years unsuccessfully, reinvested in the courts the authority that COAH had to grant substantive certification and to approve plans.

So, now, the court, in effect, has deputized 21 Superior Court judges in -- one in each county, to now oversee this process.

Back in the 1980s, after the Mount Laurel II decision, the court created the builder's remedy methodology, so that builders could go to a town and say, if you don't let me build what I want to build here, I can sue you, and be allowed to do that.

That process shifted to COAH, when it was created in 1985. COAH has failed to meet that obligation, as the -- as the courts have repeatedly said, you've adopt -- you keep trying to adopt a set of rules we say are unconstitutional.

As a result of the March 2015 ruling, the Supreme Court said we're now taking this authority back away from COAH, because COAH has failed to live up to its regulatory and legislative obligations, and now vest it back with the courts, as it did in the early 1980s.

So, now, the judges are acting, in effect, as a super-regulatory agency, with a different standard because they're now vested with this by the Supreme Court, because of what it did to reinstate this builder's remedy power.

And since then, the State of New Jersey has done nothing, in the way of COAH coming back, properly adopting rules and doing anything. In effect, it's done absolutely nothing.

So, the court even went so far as to say, not only are housing element plans now subject to our review, but spending plans, as was -- as Ms. Gruel articulated here this evening, are now also subject to court review, because there's literally nobody left at COAH to do anything, let alone to try.

So, now, courts are vested with that, so they now have to take this in the context of is the municipality doing something that is consistent with its State constitutional requirements, to provide for the reasonable opportunity to create affordable housing?

And I certainly don't think Judge Costello, and you were at the hearing, sir, would have said that this plan met muster, and the Special Master said this plan met muster, if they were concerned that it was transgressing Judge LaVecchia's decision.

MR. PRICE: Justice LaVecchia. Okay. So, your short answer is, no, you don't think you --

MR. McNAMARA: I don't think it transgresses, sir, no. Not -- I have not had the benefit of reading the decision, but I think the actions that are being taken by the City are clearly within the rubric of the Mount Laurel doctrine, and the Fair Housing Act and the obligations of every municipality to meet its constitutional requirement.

MR. PRICE: Okay. Based on -- by the way, one point.

Judge Havey said in the '96 dec -- the whatever decision it is, there is not only judicial review -- you know, a priori, beforehand, but there can also be the usual certiorari review after the Ordinance is --

MR. ORTIZ: Mr. Price, again --

MR. McNAMARA: Well, that's up -- that's up to whoever decides the --

MR. PRICE: Mr. Ortiz, I'm finished. Would you mind just -- you know, behaving yourself? Okay?

MR. ORTIZ: Mr. Price, I think you should reconsider your actions.

You're having a legal argument. We're here for -- with lay people to review a plan.

CHAIRPERSON CAPIZZI: Um hum.

MR. ORTIZ: That's what we're here for. We're not here --

MR. PRICE: Fine. I'm finished.

MR. ORTIZ: If you would like to appeal this plan, that is absolutely your priority (sic) -- prerogative. Excuse me.

MR. PRICE: I'm just -- I'm just --

MR. ORTIZ: But the point I'm making is, you have this Board, who sits here, voluntarily, after working all day, and you're having an intellectual conversation about something that none of these people understand, nor does it affect their voting on this plan.

MR. PRICE: Mr. Ortiz, it was a 30 second remark, just to say we can look -- the courts can look at this thing beforehand, and they can look at it after, which I think Mr. McNamara would agree with.

MR. McNAMARA: And will happen at a compliance hearing, to be scheduled at a date in the future, before Judge Costello, on notice to the public, including yourself, sir.

MR. PRICE: Well, that's the compliance hearing, but --

MR. McNAMARA: Would bring --

MR. PRICE: -- Judge Havey says afterwards, you can go certiorari.

MR. McNAMARA: Well, if you wish to -- if Judge Costello rules favorably and the municipalities that have -- at the compliance hearing, and you wish to challenge that, by appeal to the Appellate Division, that's your prerogative, sir.

MR. PRICE: Wait a minute.

From what Judge Havey said, a prerogative writ act -- it would probably go to Judge Costello, it would go as a separate action, not as part of the Compliance Hearing, the way I read --

MR. McNAMARA: I don't know, I've never seen anyone -- anyone appeal a compliance hearing. But then again, there's a first for everything.

MR. PRICE: There's a first for everything.

MR. McNAMARA: Mr. Chairman, I have nothing further at this time.

CHAIRPERSON CAPIZZI: Okay. No other questions?

MR. McNAMARA: We would ask that the Board act favorably upon it.

CHAIRPERSON CAPIZZI: Yes.

MR. McNAMARA: And authorize counsel to prepare a memorializing Resolution.

CHAIRPERSON CAPIZZI: Okay.

THE SECRETARY: Can I have a motion to approve the Housing Element and Fair Share Plan?

CHAIRPERSON CAPIZZI: I'll make a motion.

THE SECRETARY: Motion by --

VICE CHAIRPERSON KOEHLER: I'll second.

THE SECRETARY: -- Chairwoman Diane Capizzi.

Second by?

VICE CHAIRPERSON KOEHLER: Koehler.

THE SECRETARY: Mrs. Koehler.

Roll call on the motion to approve the Housing Element and Fair Share Plan.

Mrs. Genao?

MS. GENAO: Yes.

THE SECRETARY: Ms. Morejon?

MS. MOREJON: Yes.

THE SECRETARY: Ms. Capizzi?

CHAIRPERSON CAPIZZI: Yes.

THE SECRETARY: Mr. Rivero?

MR. RIVERO: Yes.

THE SECRETARY: Mrs. Fernandez?

MS. FERNANDEZ: Yes.

THE SECRETARY: Mrs. Koehler?

VICE CHAIRPERSON KOEHLER: Yes.

THE SECRETARY: Mr. Medina?

MR. MEDINA: Yes.

THE SECRETARY: Mr. Velazquez is absent. He left at 6:55 p.m.

Mr. Guareno?

MR. GUARENO: Yes.

THE SECRETARY: Eight in favor, motion carries.

Thank you, Mr. McNamara.

MR. McNAMARA: Thank you very much. We appreciate your time --

MS. GRUEL: Thank you.

CHAIRPERSON CAPIZZI: Thank you for your presentation.

MR. McNAMARA: -- in giving us this Special Meeting.

MS. GRUEL: It will --

MR. PRICE: Question on this.

MS. GRUEL: -- be back.

MR. PRICE: As was indicated earlier -- you know, this is going to be -- were you just adopting this as part of your Housing Element of the Master Plan? Or will that be separate?

MR. ORTIZ: This is the Master Plan. This will be adopted into the Master Plan.

MR. PRICE: Is that what -- what that vote was, among other things?

MR. ORTIZ: It has to go back to the Board of Commissioners, just like any other land use ordinance.

MS. GRUEL: No, it doesn't. No, it doesn't.

MR. PRICE: Well, wait a minute. Wait a minute. The Master Plan is --

MS. GRUEL: No.

MR. McNAMARA: No. The Master Plan is here. They have to ratify --

MR. ORTIZ: No, not the Master Plan. I'm talking about --

MR. McNAMARA: -- as part of the settlement.

MR. ORTIZ: I'm talking about the --

MR. McNAMARA: Right.

MR. ORTIZ: -- the Fair Share Plan.

MR. McNAMARA: Right.

MS. GRUEL: They --

MR. ORTIZ: This now goes back to the Commissioners, am I correct, after our Resolution?

MS. GRUEL: They implement it.

MR. ORTIZ: Right. That's what --

MS. GRUEL: And they endorse it.

MR. ORTIZ: That's what -- that's what I meant.

MS. GRUEL: They implement it through the ordinances, so you will be -- as Mr. McNamara said, the ordinances will be coming back to you, once they introduce those ordinances.

CHAIRPERSON CAPIZZI: Right.

MR. ORTIZ: Understood.

MR. PRICE: But the question, the Housing Element is part of the Master Plan. The -- the -- you know, approving authority for a Master Plan is this -- this Board.

MR. McNAMARA: Correct.

MS. GRUEL: Yeah.

MR. PRICE: Okay. So, my question was, did that vote just incorporate this in the Union City Master Plan? Or will that be --

MR. ORTIZ: The implementation, as was just said, will be through the ordinance that will be coming back.

MR. PRICE: Well, wait a minute. That's the Ordi --

MS. GRUEL: But it was adopted.

MR. McNAMARA: No.

MR. PRICE: Wait a minute. Wait a minute.

MR. McNAMARA: The Resolution that was -- the motion you requested was that this be approved, so that it would be incorporated into the Master Plan of the City. I -- if I --

MS. GRUEL: Correct.

MR. McNAMARA: -- didn't articulate that properly, I apologize.

MR. ORTIZ: And --

MR. McNAMARA: If you want to revote, based on that, go right ahead.

CHAIRPERSON CAPIZZI: No.

VICE CHAIRPERSON KOEHLER: That was my understanding.

MR. ORTIZ: Let's --

MR. PRICE: Okay. So, the vote was --

MR. ORTIZ: And the -- and the Resolution will ratify everything in writing, Mr. Price.

MR. PRICE: But my only question was, what were you doing? And it was -- you were incorporating this --

MR. ORTIZ: Is it clear now?

MR. PRICE: -- in the Master Plan.

MR. ORTIZ: Are you clear now?

MR. McNAMARA: Yeah. That was the request here tonight by us.

MR. PRICE: Okay.

CHAIRPERSON CAPIZZI: Yes.

MR. PRICE: That -- that’s --

MR. McNAMARA: Okay.

MR. ORTIZ: That’s what I thought I said.

CHAIRPERSON CAPIZZI: Great.

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ADJOURNMENT:

THE SECRETARY: All right. There being no other item in tonight's agenda, can I have a motion to end tonight's meeting?

CHAIRPERSON CAPIZZI: Make a motion.

THE SECRETARY: Motion by Mrs. Capizzi.

Second by Mrs. Koehler.

All in favor?

(Whereupon, there was a chorus of ayes.)

THE SECRETARY: The ayes have it.

Thank you.

Good night, everybody.

Let the record show that the meeting has ended.

(Whereupon, the proceedings were concluded at 7:06 p.m.)

STATE OF NEW JERSEY :
:
COUNTY OF ESSEX :

I, DEBRA A. KASZNIAK, assigned transcriber, do hereby affirm that the foregoing is a true and accurate transcript in the matter of the SPECIAL MEETING of the UNION CITY PLANNING BOARD heard on Monday, September 18, 2017 and digitally recorded.

Monitored by: Kevin Dillon, Jr.
Proofread by: Deborah Dillon