

Regular meeting of the Haworth
Planning Board on June 17, 2015, at the
Municipal Center.

PRESENT Thomas Ference, Chairman
John Smart, Mayor
Andrew Rosenberg, Council Liaison
Andrew Anderson
Antonio Cammalleri
Edmond Ezra, Public Official
Nancy Minikes
Bernard Troy

Mark Madaio, Board Attorney

ABSENT: Leona Kosmac
Joan Landesman

The meeting was called to order and upon roll call, the above members were present.

Ms. Kosmac and Mrs. Landesman called to say that they would be unable to attend this meeting.

Due notice of this meeting was given in accordance with the New Jersey Open Public Meetings Act.

Dr. Ference noted that he has spoken with Mayor Smart and Councilman Rosenberg and they will wait to give their reports until the end of the meeting.

ACCEPTANCE OF THE MINUTES

April Minutes

The minutes of the April 2015 meeting were reviewed.

Mr. Troy moved to accept the minutes as presented, subject to the rights of absent members for statements directly attributed to them.

Seconded by Mrs. Minikes and unanimously carried.

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May Minutes

The minutes of the informal meeting conducted in May 2015 were reviewed.

It was noted that page 26, fifth paragraph from the bottom and also the last sentence should be amended to read, "Mr. Regan" instead of "Mr. Ryan."

Mr. Troy asked that page 23, fourth paragraph, first line should be amended to read, "Ms. Reiter explained that the Borough had to submit a Declaratory Judgment by July 8, 2015..."

Mr. Anderson asked that page 27, last sentence prior to the Mayor's Report be deleted.

Mr. Troy moved to approve the minutes as amended, subject to the rights of absent members for statements directly attributed to them.

Seconded by Mr. Anderson and unanimously carried.

CORRESPONDENCE

- Copy of a letter dated June 11, 2015 from Mrs. Fay to Mr. Zakim, principal owner of the Terrace Street Café relating to the placement of the solid waste container.

Dr. Ference stated that since the Borough is presently reviewing that area, Mr. Zakim should not yet place the container in the area previously indicated until the Borough decides on a permanent location.

- Certificates to those Board members who took and completed the basic course in Land Use Planning.
- Letter from Mr. Madaio stating that the Borough must follow the guidelines for Declaratory Judgment based on the Superior Court ruling.

Mr. Madaio told the Board that the Borough Clerk should be on the look out for a letter from COAH and the Mr. Regan should be advised.

- Letter from the Haworth Board of Education relating to a safety and security project on which they are in the process of working.

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Dr. Ference explained that the Planning Board does not have jurisdiction over the Board of Education - they only come to the Board for input and advice. He said the Board would set them up for the July meeting to have a discussion.

- Department of Environmental Protection News Release dated June 2015 relating to Governor Christie's revisions to flood areas.

Dr. Ference stated that Councilman Rosenberg would review the document. He said that it has been circulated to the Environmental Commission. They will have hearings on June 22nd and 25th.

MASTER PLAN ELEMENT

Mr. Madaio stated that he prepared and published the notices for the Public Hearing for the Proposed Adoption of the Master Plan Element hearing for this evening.

In essence, the following statements were made while the document was being reviewed.

Dr. Ference stated that Caroline Reiter, Borough Planner from Christopher Statile's office, would take them through the document. He said that the Board was not in a position where it could act on it this evening.

Dr. Ference stated that this was an official public meeting and if they decide to use this document, they would have to prepare a resolution.

Dr. Ference said that Ms. Reiter and Mr. Hakim have been in touch. He asked Mr. Hakim if he had any comments, but he didn't have any at this time.

Ms. Reiter went over her background and credentials. She said she was there about the Borough's Fair Share Plan. Ms. Reiter explained that up until recently, COAH was the one who would provide the affordable housing. She talked about the different rounds. Ms. Reiter said that Round 3 was in 2008 but they have proposed a new Round 3, which has not yet been adopted. Ms. Reiter said the process was for towns such as Haworth which have to file a Declaratory Judgment between June 8 and July 8, 2015.

Ms. Reiter said she was there for the Fair Share Plan which has to be included in the Declaratory Judgment. The Governing Body could also choose to review it. She said there was a five-month time period afterwards for filing new documents.

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Ms. Reiter pointed out that Haworth has been active in the process and had received a certification in 1999 - Round 2, but it was overturned.

Dr. Ference said it was his recollection that they had not received a response or feedback from COAH.

Ms. Reiter said she knew that Haworth did not receive a Substantive Certification and if they had received a response, it might not have made any difference.

Mr. Hakim stated that the Borough made its first petition on December 28, 2008 and they were contacted by COAH seeking additional information on open space in the community and a proposed spending plan. So on March 16, 2009, we sent a letter on Mayor DeRienzo's letterhead. He explained that it was information gathering.

Dr. Ference stated that he did not want anything popping up as a surprise.

Ms. Reiter said that the Borough was found to be complete and then nothing happened and that was why they were classified as a participating municipality. She said that the municipality has to show continual compliance.

Ms. Reiter reviewed her draft of the Housing Plan Element and Fair Share Plan. She went over the tables. Ms. Reiter said that that the Plan had to identify how Haworth is going to meet its obligations.

Ms. Reiter said that Haworth is in Region 1. She went over the components. She stated that the housing conditions in the Borough are excellent and, therefore, propose no rehabilitation.

Ms. Reiter stated that in prior rounds from 1987 to 1999, they had an obligation of 65 units. She said the town submitted a Vacant Land Assessment and showed that there was no available land. Ms. Reiter said she didn't know if the Spectrum property was included. She noted that the golf course properties were not available.

Ms. Reiter went over some requirements including having any fees collected go into the COAH trust fund and used solely for affordable housing. They also requested an overlay zone (AOZ).

Dr. Ference noted that they have satisfied both of these requests.

Ms. Reiter stated that Haworth has been given a certain time to adopt an ordinance which would allow some things to actually materialize. She said that an AOZ exists today - it was in the Borough's prior round which had been satisfied.

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Ms. Reiter said that they needed a Realistic Development Plan (RDP).

Dr. Ference stated that they were not required to do anything but have it in the plan.

Ms. Reiter said that Round 3 will go from 1999 to 2025. She said that Haworth will also have to submit a Declaratory Judgment. She said that they looked at a variety of things and have to come up with a number. Ms. Reiter said they will take it upon themselves to develop an obligation for Haworth. They are party to litigation. Ms. Reiter said that in Round 1, the obligation was 65 units and under the Fair Share Plan, the obligation is 227. She said that they had actually computed higher for the Borough. She said they tried to see what could be substituted for a town like Haworth as well as a projection of affordable housing units.

Ms. Reiter said they looked at factors including vacant land and they looked at what Mr. Hakim had previously prepared. She said that they took the list and the only changes were that a couple of lots were no longer vacant. Ms. Reiter said they came up with 13.79 acres of developable land and substituted demolition numbers. She said there were a lot of theoreticals. In theory, demolition adds to the municipality's available housing. She explained.

Mr. Anderson asked if demolitions are based on the fact that older structures may be available.

Ms. Reiter explained that methodologies have been used and the number was multiplied against some other things. She said the number of Fair Share housing units was 33 and they brought it down to 13.6. She explained the calculations.

Ms. Reiter reviewed what they thought they had to do without changing the characteristics of Haworth. She said that in 1999 they decided there was a vacant land problem and now there are new environmental regulations. Ms. Reiter said there were 14 vacant lots, which were very small in size. She said there was also Borough and privately-owned land, which were not next to each other. Ms. Reiter elaborated.

Ms. Reiter said they looked at alternatives such as existing housing such as proposed apartments on the second story in the business zone, which gave it a residential component in the area. Ms. Reiter stated that she thought the Borough could receive 18 rental credits. She said that plan would not require every business property owner to go out and build an apartment, however, the Borough would have to effectively make it possible for those who wished to do so. Ms. Reiter said she had a draft ordinance which the Borough could use. She stated that this was a realistic option.

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Ms. Reiter said they thought about including the Schaeffer's Gardens land because they felt this would be an appropriate use for its five acres. She said this was another situation where the town would need to pass a simple zoning ordinance because it would require a zoning change. Ms. Reiter pointed out that no one would be telling anyone that they must do it.

Ms. Reiter said the courts would allow a maximum of ten accessory apartments, which are apartments created over garages, etc. She pointed out that this was only a possibility for some property owners.

Ms. Reiter said that the Spectrum property was wonderful to have in town. They could provide an expansion and the town could get 6 credits for units.

There was discussion.

Ms. Reiter stated that housing for Spectrum residents is needed throughout the state.

Dr. Ference stated that they had an affirmative policy on that.

There was additional discussion.

Ms. Reiter said they want to develop a good plan to keep in character with the town and to develop plans for where it wants to go in the future while representing good planning and strategies.

Mr. Troy referred to Ms. Reiter's statement about Schaeffer's Gardens. He asked if they would be creating a situation if they passed an ordinance allowing development of multiple units. He gave an example.

There was discussion about what such an ordinance might create.

Mr. Madaio explained that interested parties would have to come in for site plan approval before anything could be constructed.

Dr. Ference said they were talking about a response to the State law. He asked what would happen if they didn't make some land available.

Mr. Troy asked if the six units was going to make a big difference.

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Ms. Reiter said the town could purchase the land and build whatever they wanted on that land. She said she didn't think the Borough could say they had a vacant-land problem.

Councilman Rosenberg said that this suggestion brings the opportunity of a real likelihood that there could be development on the Schaeffer Gardens' site as well as having accessory apartments on Schraalenburgh Road and Hardenburgh Avenue.

Mr. Madaio asked if there were any other options. He said that COAH did not have to change the character of the town.

Ms. Reiter said this was a situation of a non-conforming use.

Dr. Ference said they were developing not only submissions, but strategies. He said that Ms. Reiter's suggestions would require a lot of back and forth over time and they would make a good-will proffer. Dr. Ference elaborated. He asked if the Borough would have a favorable approval if they had thirty-four units rather than forty.

Dr. Ference said the Board respects the fact that the law is the law. He asked about the probability of Haworth getting an approval.

Mr. Anderson had questions about accessory apartments and the sample ordinance.

There was discussion.

Ms. Reiter said they utilized AOZ zone with some minor modifications. She said that it would not be a surprise if any towns to go back and forth.

Mr. Anderson asked if they would be over-reaching if they looked at that property.

Mr. Troy said that the Borough could be told that it would be OK or they would have to find a couple more places for units. He asked if the courts could come back and say they wanted a few more units if they don't put it in the other 6.

Ms. Reiter said she did not know what would happen with the Declaratory Judgment. She explained that the ordinance would not be passed until the Borough's plan was approved.

There was discussion.

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Mr. Troy told Ms. Reiter that she did a good job but with the additional six units, he felt they would be creating a problem.

Ms. Reiter explained that adding the 6 units was to show the courts that the Borough was going for and supplying different alternatives.

Mr. Troy asked if they could go from eighty-seven units to thirty-four instead of forty.

There was discussion.

Dr. Ference said that if they wanted Substantive Certification, they had to present something as well as an interactive process. He said the courts might come back and hit them with a new way to create units. Dr. Ference felt that the Board should think about the number of units with that strategy.

Dr. Ference said that if they decided to create an ordinance for something other than single-family houses, then the Borough could constrain the numbers and not leave it wide open.

Mr. Hakim said he thought this was a legitimate effort but he thought there were issues with each of the proposals for providing affordable housing units. He said that because he felt that way, the Borough should be a little more aggressive in citing what they believe is their obligation. Mr. Hakim stated that when Ms. Reiter said that 87 units was a little gracious because the prospective need of 99 units could be lowered. He said that part of what was proposed had been based on the amount of vacant land. Mr. Hakim said it creates a vision to a reviewer of what is available but those acres are in multiple sites and the town cannot do anything with them.

Ms. Reiter stated that substantially, 99 units came about by using the information which applied to vacant land. She elaborated. Ms. Reiter said the Borough would have to identify the vacant land and while the land might not be available to develop, that was the number.

Ms. Reiter said they could say that there were no demolitions. This was a process which is undefined so we did what was accurate and which made sense for the courts. Ms. Reiter explained that was why she did it the way she did it.

Dr. Ference asked if this was the best case scenario in terms of the town's obligations, and Ms. Reiter replied that it was a realistic number.

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Mr. Hakim said he was thinking along the lines which the Chairman used - that is, there were going to be some negotiations reached. He asked why the Board isn't being more aggressive and reaching a number that is livable.

Ms. Reiter pointed out that they would be applying for a Vacant Land Adjustment so she did not think her numbers weren't realistic.

Dr. Ference said he wanted to separate the different numbers and he wanted to know the best case and the worst case scenarios. He said he felt that they were going to have a series of judgments and at some point, they will get a number. Dr. Ference said that the Board would understand the process of how they got to the number by the time they accepted it. He elaborated. Dr. Ference said he wanted to see how "it flies" with the different numbers and asked if they were going to talk about how the various options would work.

Mr. Troy asked about taking out some of the units.

Mayor Smart said he needed answers to some question; should the town get defined yet; could the town get some background once they define their obligation; and, what is the town's scope of things that could be done.

Mayor Smart said that with regard to Mr. Troy's point, some things have already been taken out because they did not work in Haworth. He pointed out that Haworth has already limited the number and want to be able to say that we will do everything that we could do.

Ms. Reiter said that an alternative would be additional Spectrum access apartments, apartments in the business district, accessory apartments, and the possibility of developing the Schaeffer's Gardens property. Ms. Reiter said they could buy that property and do what they want with it but it would not be financially feasible. She said there was also a markdown/buy down which would have multi units along with affordable units.

Ms. Reiter said that nobody knows what is going to happen and her concern with all of the options is that she does not want anyone coming in and having questions about the vacant land. She said she wants to show the courts that the town is doing positive things.

Mr. Troy asked if it would help the Borough's application by saying that they considered all of the options and these were the best.

Ms. Reiter explained that what the Borough says to the courts is not going to make them think it is good.

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Dr. Ference reminded the Board that they would be discussing this again.

Ms. Reiter pointed out that they are going from 87 units to 40 units with the Vacant Land Adjustment. She said that the Superior Court could call the town to say they want to see what they have been doing and to see if they are being proactive.

Dr. Ference said that Ms. Reiter brought the number down to 40 less. He asked if the Borough would have to live with that number.

Mr. Madaio said that for now, they should call the target 40. He elaborated. He asked if anyone had problems with the alternatives. Mr. Madaio said that the point was that it was an acceptable practice to use that as a number.

Mr. Anderson said he felt it seemed a little thin as a rationale.

Mr. Madaio said they should think about using County roads rather than side streets in town for accessory apartments.

Ms. Reiter said it was a good idea since there are bus lines going along County roads.

Dr. Ference noted that those points should be made.

Mr. Madaio said that the Downtown Redevelopment and second story apartments was a useful alternative and no one was offended by it, but it had to go through the zoning process. He said that Ms. Reiter was correct when she said this was a good way to get a realistic number.

Mr. Madaio said that the Board was saying that they are just negotiating and Ms. Reiter is saying that she is going in with an honest number - she is not just negotiating. He talked about the Schaeffer's Gardens land and how the town would have to make that decision. Mr. Madaio asked the Board to remember that 5 = 25 and 6 = 30. He pointed out that these numbers were not just put on paper, and if they had to have 30 units, changes had to be made.

Dr. Ference stated that negotiation is what people do. He reminded everyone that there would be discussions after their number was submitted and from what he has been told, this is generally acceptable.

Ms. Reiter stated that the number she developed is what she feels makes sense. She elaborated. Ms. Reiter said that 65 has been held up twice in court. She reminded the Board that 6 = 30 and they could go to a higher density.

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Mr. Cammalleri asked if the 87 units were in addition to the 65.

Ms. Reiter replied that 65 was in addition on a prior Round and it was satisfied by the town with the Spectrum property and some other land.

Dr. Ference said that in the Housing Element Plan was quite good and a large part of it is that the vacant land is still going to be vacant land. It was based on some pieces of land and logic, which has already been discussed.

Mayor Smart pointed out that they have gone over several options and he felt this was a very reasonable number. With the Fair Share, they wanted 229 units and it was brought down to 87 - and it was just brought down again. He said that if they took out 6 units out of the 40, they would have a huge gap. Mayor Smart said he had to point out that the Schaeffer's Gardens property has had an existing conversation. He said he felt that the perception was a matter of presentation.

Mr. Troy said he was not concerned about available housing but wanted some thought given to the school population.

Councilman Rosenberg said it didn't make a lot of sense for the Board to go below 40. He said that if they assented to that concept to include the southern extension of Valley Road where there are some small and older homes, they might opt to consider available accessory housing components. He pointed out that the bus would be nearby.

Ms. Reiter said that with accessory apartments, the town could only claim 10 units successfully as affordable housing units. That is why we used only used 10 in the plan.

Mr. Hakim suggested that the location of accessory apartments not be along County roads because on those roads, the homes are larger.

Mr. Ezra asked if there was such a thing as being able to purchase RCAs.

Ms. Reiter replied that RCAs are no longer permitted. She said the town could partner with other towns but that was also limited.

Dr. Ference stated that they had previously given money to Paterson.

Ms. Reiter noted that such information was not in the report.

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Dr. Ference said he was going to ask if the Board felt it was prepared to act on the plan this evening but it clearly seemed that the answer would be, "No." He said that they could carry the matter over to next month.

Mr. Hakim said that as Ms. Reiter has suggested, the town has to be sure of many things for a Declaratory Judgment but it also has to think of what happens when a reviewer looks at realistic opportunities. He said they are going to be looking at the Schaeffer's Gardens property as most realistic. Mr. Hakim said that when they look at other suggestions, they should keep in mind and ask themselves if a reviewer looking at the number thinks it is realistic. Mr. Hakim said there were issues with the other suggestions as well.

Dr. Ference said that other than developers wanting to build multi-family units, everything that could be done to satisfy the philanthropical concepts is going to require an approach which will not be cut and dry.

Dr. Ference said that Ms. Reiter explained that they had to do whatever was professionally sound and responsible. He felt that because of what Ms. Reiter said, because they have to reflect on what was presented this evening, and because specific aspects have to be clarified, the Board should carry this discussion over to the next meeting. Dr. Ference said he felt it would be good to put together an inventory of questions and he would like to know about what other issues anyone wanted to raise. Dr. Ference emphatically stated that the Board wants to do this right and they want to do it responsibly.

There was discussion about some of the verbiage, filtering, and footnotes in the draft.

Dr. Ference pointed out that filtering was not always understood - he felt it had to say that it was the "Fair Share Plan."

Mrs. Minikes said she felt that so many of the numbers were judgment calls and perhaps the numbers could be raised.

There was discussion about whether the town would not have to sell Borough-owned land and how they might have to make it up another way.

Ms. Reiter said that the courts could come back and say that the land could be used.

Dr. Ference stated that municipal land is being used for municipal use, it might be environmentally sensitive, or it might be classified as Green Acres land.

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Mr. Madaio said the reality was that they do not care about what the town's policy is. He explained.

Mr. Anderson commented that the exception is the driver.

Dr. Ference said that he had to read through some parts of page 7 relating to vacant land a few times and he felt it needed clarification.

Mr. Anderson stated that the map and list were not up-to-date.

Dr. Ference said that in the Housing Element section, after he got to page 21, he would like to see a summary and conclusion on page 22.

Ms. Reiter said that she would take care of it. She told the Board that she would be happy to have any comments in advance of the next meeting - she is always available.

Dr. Ference asked if there were any substantive questions or issues that the Board wanted to discuss now or next month.

There was discussion.

Dr. Ference said that they see the logic to how they got to the numbers but the Board has to come up with a reasonable response - it was their obligation.

Mr. Madaio explained they were not going to adopt anything right now. He said that Mr. Regan was filing a Declaratory Judgment, however, there wasn't any definite plan in place.

Ms. Reiter noted that the July 8th date for filing was not soft.

MAYOR'S REPORT

Mayor Smart reported that the Syrian Church was going to get a Certificate of Occupancy and they had to check the other pending items. He said that subsequent to the original Site Plan review, the Fire Department requested a way to access the west side of the building. The church installed some additional grassy pavers in front of the church for a turn around because they have used that area for over-fill parking and they would likely come back to the Board to get permission to use the back of the church for additional parking.

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Dr. Ference stated that they did not yet come back to the Planning Board for that review. He said he thought there would be a question of whether the Zoning Board or Planning Board would hear that application.

COUNCIL REPORT

Councilman Rosenberg stated that he didn't have anything to report at this time.

NEW BUSINESS

Councilwoman Groh was in attendance. She said she had some comments relating to the review of the Master Plan. Councilwoman Groh questioned why municipal buildings such as the school and library, were exempt from zoning laws.

Councilwoman Groh stated that there wasn't enough parking at the school and the library had a flood, and if their construction had been subject to town laws, these issues would have been addressed.

It was noted that people could park in front of the school.

Mr. Madaio stated that schools never have to come before the Planning Board. He said that in order to maintain good relations, they should send in their plans.

Dr. Ference noted that the Board has jurisdiction over parking on Valley Road.

Mr. Madaio stated that municipal buildings do not have to come before the Boards.

There was discussion.

Dr. Ference said that nothing came to the Planning Board but if anyone felt there were hazards, they should make it known.

Councilman Groh said that the library property was of concern to her.

Dr. Ference noted that the Haworth Library was a Governing Body issue. He said that she had the right to use the Planning Board for consultation.

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There being no further business, Mr. Troy moved to adjourn.

Seconded by Mr. Ezra and unanimously carried.

Respectfully submitted,

Dolores Fazio O'Dowd

Dolores Fazio O'Dowd