

## **FAIR SHARE HOUSING CASE SUMMARY AND EXPLANATION BY TOM DUNN, BEATTIE PADOVANO, LLC**

### **From the approved Minutes of the Business Meeting on 5/27/21:**

Attorney Clemack referenced the copy of the letter addressed to him dated April 27, 2021 which was supplied to the Councilmembers from the Fair Share Housing Center which encompasses a proposed settlement. Thomas Dunn, Special Counsel on this matter, is here to explain the settlement and answer any questions.

### **Thomas Dunn gave the following presentation:**

I was engaged in Ringwood in 2015 as special counsel to assist Ringwood with development of ratable and to make recommendations with respect to affordable housing.

Mr. Clemack and I have reached a tentative settlement of Ringwood's affordable housing case that has been pending for about 5 years.

### **We recommend it to you because:**

- It will enable Ringwood to meet its constitutional obligation to provide a reasonable opportunity for meeting its fair share of its region's affordable housing.
- It will allow Ringwood to promote the redevelopment (and I emphasize redevelopment) of
  - About 20 acres of land (out of a total of 16,000 acres in the town) that has already been developed (and 18 of which has been paved over) in its two shopping centers on skyline drive; and
  - About 11 acres (out of a total of 16,000 acres), most of which has already been paved over along Greenwood Lake Turnpike near Wanaque.
- Other than that, the highlands regulations generally do not allow any new commercial development in Ringwood.
- It may result in a solution to the problems Ringwood is having with the James Drive Sewer Treatment Plant.

### **Explanation of Mount Laurel requirements.**

- In 1983 the Supreme Court held that every municipality in the state has an affirmative obligation to provide a reasonable opportunity for the municipality's fair share of affordable housing.
- After that decision, an administrative agency called COAH was created to
  - Determine the regional need for affordable housing.
  - To determine each municipality's fair share.
  - And to supervise the municipality's compliance.
- Ringwood participated with COAH in the first two ten-year rounds of compliance.
- The COAH process broke down in 2015 and the court took over. It essentially said that a municipality could apply to the court for a declaratory judgment so that its fair share could be determined and its compliance approved.

- Ringwood participated in this process and at the outset the experts for fair share housing council (the other side) said that Ringwood's fair share of affordable housing was 377 units.
- Because of litigation in Mercer County, for which Ringwood did not have to spend legal fees, the fair share number was reduced to 250 and by negotiation with FSHC that number has been reduced to 215 units of affordable housing. But nowhere near that number of units will ever be built.
- By participation in the litigation Ringwood was able to apply one of the COAH rules that said that a community without sufficient water or sewer capacity is entitled to what is called a durational adjustment. That means that Ringwood does not have to take any affirmative steps to zone for affordable housing anywhere other than in the two places – the shopping centers and Greenwood Lake Turnpike – unless and until sewer and water capacity become available.
- Under the highlands regulations Ringwood cannot possibly – even if it wanted to – provide sewer and water capacity except for those two places.
- So, to get the benefit of the durational adjustment for everything else, under the rules, Ringwood needs to put overlay zoning in place on those two areas.

### **Explanation of redevelopment under the highlands regulations.**

- This is not a redevelopment project in which Ringwood declares the properties blighted so it can take over the properties from the property owners and resell them so someone else could build what Ringwood wants in a redevelopment project. Any development that happens here would be solely done by private enterprise.
- This is simply a way to get highlands approval of properties with existing coverage.
- Any project for affordable housing requires sewer and water capacity.
- Under the highlands regulations no new sewer or water capacity can be developed for the typical affordable housing project.
- There is an exception to that rule:
  - A property or groups of properties that had impervious coverage on the date of the highlands act can be redeveloped so long as that impervious coverage is at least 70% of the property to be redeveloped.
- The DEP is not willing to allow that kind of redevelopment unless the property in question is in, or reasonably able to be part of, an existing sewer service area.
- Like a broken record, there are only two places in Ringwood where that can reasonably occur:
  - The two shopping centers, because they have great impervious coverage and are already in sewer service areas.
  - Greenwood Lake Turnpike because it has impervious coverage and is near to the Wanaque sewer service area.
- So for those two areas, the settlement proposes that Ringwood do the following:
  - Apply to the highlands council for a redevelopment area designation.
  - Commission a feasibility study as to whether the existing sewer treatment plant on the CVS shopping center property can be expanded or replaced with one that can be paid for out of connection charges and annual operating charges. That study might also be able to include ways of permanently solving James Drive problems.
  - Create an overlay zoning ordinance that permits mixed use development of the shopping centers and some housing in the Greenwood Lake area.

### **Explanation of overlay zoning:**

- Overlay zoning is zoning that keeps the existing zoning in place but creates a special possibility for properties that are in the overlay zone.
  - So, for the shopping centers, the existing CC-80 regulations remain in place. A broad range of uses—retail, office, service, restaurants etc can still be developed.
  - The same with the commercial zone on Greenwood Lake Turnpike.
- The proposed overlay zoning for the shopping centers also would allow mixed use development for the shopping centers.
  - Housing, probably apartments, at a density of 6-8 units per acre of the redevelopment area (20% of the units must be affordable).
  - Commercial—anything that is now permitted in the CC-80 district at a minimum that will keep a good complement of those uses on the site.
- The proposed overlay zoning for Greenwood Lake Turnpike would allow housing at the rate of 10 units/acre of the redevelopment area but only on properties that are greater than one acre in size. There are currently only two in that zone.
  - Shopping centers.
    - There are 24.11 acres in the redevelopment area shown on this map.
    - 18.09 acres are already developed, including 3.28 acres in roads.
    - That means there are 20.83 acres that can be redeveloped.
    - That is only 2.74 acres than are currently developed
    - At 6 units to the acre, there is a possibility of development of 120 housing units (24 would be affordable)
    - At 8 units to the acre, there is a possibility of development of 160 housing units. 32 would be affordable.
    - There will be at least 70,000 square feet of commercial that will have to remain or be replaced. (There are currently about 134,000 sq. Ft. In the existing centers).
  - Greenwood lake turnpike
    - There are 13.93 acres in this proposed redevelopment area.
    - 10.92 acres of them are already covered with buildings and pavement.
    - Only two of them contain impervious coverage in excess of 1 acre, for a total of 6.04 acres.
    - At 10 units to the acre there would be a possibility of development of 60 units (12 of which would be affordable).

### **If the council authorizes Mr. Clemack to sign this settlement, there is a long way to go before any of this development can become a reality, if at all. Before it can happen:**

- The court will have to approve the settlement in a public fairness hearing
- The highlands council will have to approve the redevelopment areas. This is discretionary with the council.
- For the shopping centers the sewer report will have to show that an expansion or replacement of the CVS treatment plant can be done
  - In an environmentally sound way.
  - Can be approved by the DEP
  - And can be financed using only connection fees and annual charges.

- For Greenwood Lake Turnpike there needs to be a determination whether Wanaque's pipes are able to convey the sewage capacity needed from this area and an agreement needs to be made with Wanaque and the Wanaque River valley Utilities Authority.
- The planning board and the council will have to create and consider:
  - A fair share plan and housing element that conforms to the settlement.
  - A zoning ordinance. At this point in the process, the planners will consider matters such as the height of the buildings and all of the other conditions that will be necessary to make the eventual product feasible and desirable.

But above all, the property owners must be willing to redevelop their properties. Any project needs to be marketable and financeable. They will need to factor in the loss of revenue by the restricted rents in determining mortgage-ability and fiscal feasibility. They will need to determine how to deal with their commercial tenants and a lot of other issues.