

# **Franklin Borough Planning Board**

## **Meeting Minutes for**

### **October 6, 2021**

The meeting was called to order at 7:30 PM by the Chairman, Mr. Wes Suckey, who then led the assembly in the flag salute.

Mr. Suckey read the Statement of Compliance pursuant to the "Open Public Meetings Act, Chapter 231, PL 1975."

#### ROLL CALL OF MEMBERS:

Mr. Wes Suckey, Chairman (Present)  
Mr. John Christiano, Vice Chairman (Present)  
Mr. John Sowden, Mayor (Present)  
Mr. Concetto Formica, Council liaison (Present)  
Mr. Floy Estes (Present)  
Mr. Jim Nidelko (Present)  
Mr. Jim Williams (Present)  
Mr. John Friend (Present)  
Mr. Richard Knop (Present)  
Mr. Michael Raperto, Alternate #1 (Present)  
Ms. Sharon Schultz, Alternate #3 (Present)

#### ALSO, PRESENT:

Dave Brady, Planning Board Attorney  
Ken Nelson, Planner

#### **PRESENTATION:**

##### ***Housing Element and Fair Share Plan***

Mr. Suckey stated that this meeting has been dedicated to discussing the Housing Plan.

Mr. Suckey stated that he will hand the meeting over to Mr. Nelson who will give the board an introduction to the Housing Plan.

Mr. Nelson started by saying that he was pleasantly surprised to see everyone in attendance tonight and believed that it was important that everyone attended tonight to understand and give their feedback to the Housing Plan document.

Mr. Nelson gave a brief introductory on what the Housing Plan is and why it is important that the board discuss and give their feedback to the document so that it can be adopted.

Mr. Nelson stated that he would turn the meeting over to Mr. Brady to discuss the legal aspects to the housing element.

Mr. Nelson stated after Dave addresses the board Jessica Caldwell will lead the discussion on the drafted housing plan following the agenda and taking any questions and concerns as she reads through key points in the document.

Mr. Nelson gave a brief history lesson on how the affordable housing act came about, dating back to the early 1970's.

Mr. Nelson stated that the 1976 Mt. Laurel decision is what really got the issue moving in terms of the municipalities and state having an obligation to provide an opportunity to have affordable housing in the boundaries of their municipalities.

Mr. Nelson stated because of the Mt. Laurel case it created a council for the affordable housing and really administered the whole affordable issue in the state of New Jersey for many years.

However, years later in the Chris Christy administration, COHA dismantled, leaving the Supreme Court to take over the affordable housing act over again.

Mr. Nelson stated that Dave and Jessica can go into more detail on the Supreme courts rule in the affordable housing act if anyone should have any questions.

Mr. Nelson stated to get back on track why we are here tonight is because Franklin Borough from the very beginning took the Affordable Housing Act very seriously and prepared a Housing Plan.

Mr. Nelson stated the most visible one being the Senior Housing called the Franklin House in Franklin located on Mill Street.

Mr. Nelson stated that Franklin Borough deserves kudos for taking the Affordable Housing act seriously and actually producing something that fits within the Affordable Housing Act right from the beginning.

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Mr. Nelson state that he would turn the meeting over to Mr. Brady who will explain the legal aspect of the importance of following through with affordable housing.

Mr. Brady explained the Mt. Laurel case having a huge impact on how the state handled inclusion zoning from there on out.

Mr. Brady stated that inclusion zoning is leaving out the lower income population which is unconstitutional which led to a series of decisions that lead to builder remedies law suits.

Mr. Brady explained that a Builder Remedy law suit is when the development is inclusionary.

Mr. Brady stated that this essentially made zoning "walk out the door." Which end up giving builders extra density and square footage for their projects to make up for the fact the municipality had inclusionary zoning to make room for the lower and moderate housing.

Mr. Brady explained that COHA dismantled and how the supreme court took control over affordable housing decisions. Fast forward a few years and the supreme court came up with allowing municipalities to come up with their plans showing realistic opportunities for lower and moderate people to be able to live in these new developments.

Mr. Brady stated that if a municipality went through with coming up with a plan and their plans were approved. The municipality received protection over the builder remedies law suites.

Mr. Brady stated that Franklin Borough has not done this yet, largely because the state has bigger municipalities with much more inclusionary problems going on than Franklin Borough.

Mr. Christiano asked if the town needs to have a reserved stock of affordable housing or do, they just need a plan in place to be able to execute the affordable housing.

Mr. Brady stated that the most important thing is that there is a plan a realistic plan which is a big part of adopting the Master Plan.

Mr. Brady stated having a realistic plan on file at your municipality is what will give you the protection you need against any sort of builder's remedy law suit.

Mr. Nelson stated that the board needs to remember that the plan before them is a drafted plan and there will be edits and that's why it is important to have these kinds of meetings to collaborate and discuss what the town wants to see in the plan.

Mr. Nidelko asked what the time line looks like to having this plan completed.

Mr. Nelson stated that the best-case scenario would be by the end of this year.

Mr. Nelson stated that this is also going to involve the council's input as well.

Mr. Nelson stated that this will be a joint effort with the planning board and council to finalize the plan.

Mr. Suckey asked if Mr. Brady had anything else to add.

Mr. Brady did not.

Mr. Suckey turned the meeting over to Ms. Caldwell.

Ms. Caldwell thanked Mr. Suckey and stated that she would be addressing the overall plan and what it does and how it is laid out.

Ms. Caldwell stated that she would also be going over the faire share plan as that is what is going to need the most input from the board.

Ms. Caldwell stated that the Fair Share Plan is really the plan on how you plan to distinguish the affordable Housing Plan.

Ms. Caldwell stated that the housing plan element is one of the key elements in adopting your master plan.

Ms. Caldwell stated that she would be focusing on the Fair Share Plan because that allows for more discussion and input from the board.

Mr. Nelson stated that the draft was based on the 2010 census.

Ms. Caldwell stated that they do have a 2020 census that they can incorporate the numbers into the plan.

Ms. Caldwell stated that the numbers should not be significantly different where it would impact the plan.

Ms. Caldwell stated that there may be some population increases has the trend right now seems to be getting away from the city and moving more into the rural communities.

Ms. Caldwell briefly described the fair share plan and what it means for the municipalities and how the Fair Share Plan has control over whether or not a municipality is granted the certification of approval of their Housing Plan.

Ms. Caldwell stated that the number you used was the Jacobson Number.

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Ms. Caldwell explained that number is the number that the fair share center has agreed to accept in most communities.

Ms. Caldwell stated it is also is a moderate number being one of the lowest when it comes to calculating the numbers.

Ms. Caldwell also briefly went over the present need, which is the rehabilitation number.

Ms. Caldwell explained that is a number that can be determined if a town has set a said a plan to rehabilitate an area in their municipality.

Ms. Caldwell stated they heavy lift out of all this is the perspective need which is cumulative with round three which started in 1999 and has been rumored to stop in 2025.

The perspective need number is 304 units.

Ms. Caldwell stated Franklin's total obligation totaling these number is 330 units.

Ms. Caldwell stated the 304 is really the big one that needs to be addressed.

Ms. Caldwell also explained how the obligation needs to be distributed.

Ms. Caldwell stated that Franklin has developed a lot of units but most of them are for seniors.

Ms. Caldwell explained in the perspective needs number we can only have 25% of that number be dedicated to senior housing which equals 76 units.

Ms. Caldwell stated that 50% of the obligation needs to family units.

Ms. Caldwell stated there are also alternative living arrangements and group homes that make up the other 25%.

Mr. Nidelko asked if there was a specific time frame to when these units need to be built.

Ms. Caldwell explained that it gets tricky because it is a plan and the borough needs to plan to have these number in place and there should be a realistic opportunity for the units to be built by the third round which is in 2025.

Ms. Caldwell explained to Mr. Nidelko and the board that the borough can zone for them but it is up to a developer to build them. The town is not reliable to build them.

Ms. Schultz asked if these numbers needed to be on existing developments or anything new that comes in.

Ms. Caldwell stated that this would only apply to new applications coming in looking to develop on property that has be designated for moderate and low incoming house or is in the plan of being a property that has a specific number that has to be met upon the completion of the development or apartment complex.

Ms. Caldwell stated that she was on page 30 and that is where it has the breakdown of the existing areas that will count as credit.

Ms. Caldwell stated that she and Mr. Nelson on still researching what would be credit worthy and what is not at this point.

Ms. Caldwell stated the housing units listed on page 30 make the number pretty even. If through research we find that one or more of these examples are not credit worthy then the number goes up and the town needs to find other areas to create credit.

Ms. Caldwell stated that there needs to be more research done to see how much things have changed since the last housing element that was done.

Ms. Schultz asked if there is a property that has this restriction attached to them but is vacant does it still count.

Ms. Caldwell answered with yes if it is available then yes.

Ms. Schultz asked if the property sells does the restrictions go along with the sell.

Ms. Caldwell explained that it all depends if it is deed restricted and if that is part of the sale.

Many times, banks take the property back and resale without these types of deed restrictions.

Then unfortunately the town loses those credits and has to find new credits the next time they update their Fair Share Plan.

Mr. Christiano asked what happens when the town loses what he considers valuable housing stock.

Mr. Christiano asked how it effects the plan.

Ms. Caldwell stated that it really doesn't.

Ms. Caldwell explained the number that your addressing is a regional number.

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Ms. Caldwell stated that if the houses that were getting torn down were part of the affordable Housing Plan, then that would impact your numbers but if houses are being torn down and do not have affordable housing attached to them then there really is no impact to the town.

Ms. Caldwell stated that the most important thing to take away from this meeting is that the borough is working on having a plan in place.

Ms. Caldwell said that having a realistic plan providing affordable housing in your town is what is important.

Mr. Brady stated it is the first round of defensive.

Mr. Brady stated that having a defensible plan in place is what is important and will protect the borough like Ms. Caldwell said in having Builders Remedy law suit against the borough.

Ms. Caldwell stated that they have to challenge the plan first and if you have defensible plan in place like Mr. Brady stated then you are usually protected.

Ms. Caldwell stated that when you look at the plan before you further researching like stated before the borough currently has the 340 units accounted for.

Ms. Caldwell stated right off the top we know we have to research West Wind Manor and Concetto Towers further to make sure that they do fall into the affordable housing credit.

Ms. Caldwell stated with that being said and after further research we are missing 100 units in affordable housing credits the board needs to come up with a plan or area on where they would want to make up these 100 units.

Ms. Caldwell stated that it can get tricky because you do not want to set a blanket that any new development coming in needs to reserve a specific amount to affordable housing. When the time comes to do a rehabilitation, you do not want the project not to happen because of the restrictions that were placed on the developer.

Ms. Caldwell you have to make sure you do not hamstring yourselves into a mandatory all new developments no matter what the area is to set aside a certain amount of affordable housing within their project.

Ms. Caldwell stated this allows for more of the rehabilitation opportunities to come to life.

Mr. Nelson stated that brings up a good point and a discussion the board should have on a property that could fit along these lines as far as being a designated area for units reserved for affordable housing within our plan.

Mr. Nelson stated the site formerly known as the super Walmart site can be used as a reserved area for the affordable Housing Plan. However, we know that there would be some restrictions from both the Highlands and the DEP because of the environmental issues in that property.

Mr. Nelson stated reserving that knowing that there will not be approvals for dense development in that area could be disingenuous.

Mr. Formica asked if you could be hindering that property even more if the town does that.

Mr. Nelson replied by yes, it could.

Mr. Raperto asked where the land would be on Parker Street?

Mr. Raperto stated that is a small parcel and is on an old Parker Shaft.

Mr. Raperto stated that the question he is trying to ask is the town a loud to put properties on the plan that we know that will never be buildable towards the town's credits.

Ms. Caldwell stated that it has to be based on how much you know it can't be developed.

Ms. Caldwell stated know one truly knows if a property can be developed until they put in an application and start looking into the property.

Mr. Brady stated that it needs to be defensible.

Mr. Christiano asked if the old Harden Lumbar property was on this list.

Mr. Nelson stated no and that he did have to go back and add a few of the properties that have been addressed at TCC meetings.

Mr. Suckey stated that the old Walmart site came in with over two hundred units they were looking to put on that property.

Mr. Suckey stated a mix of apartments and town houses and another 50 in housing.

Mr. Suckey also stated that the old Harden Lumbar property was looking to put in 60 units at 20% that's 12 units at affordable housing.

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Mr. Nelson even stated that the board can also look into the zinc mine property that can also be reserved for credits when developed weather or not it ever gets developed.

Mr. Suckey also stated that the property at the end of Rutherford Ave across from Rt 23 has 43-unit approval.

Mr. Nelson stated that he would only use that one as a last resort.

Mr. Suckey stated so with all this being said all we are responsible for is planning and reserving properties for Affordable Housing once it becomes developed.

Mr. Nelson agreed and explained with everything that has been discussed tonight he believes that the borough will be in good shape as far as coming to the magic number they need.

Ms. Caldwell agreed and stated that is good news and once she and Mr. Nelson go back to draft and research and take out if need be and add on what was discussed this evening the Borough should be very close if not at the number they need.

Ms. Caldwell stated she believes that we can create a plan that is defensible and meets the needs of the community.

Mr. Formica asked is there a point when the town runs out of space for developments and if so, what happens as far as the plan do, they give any sort of forgiveness or account for the smaller towns that do not have as much space as larger municipalities.

Ms. Caldwell said you can be considered built out and that's when you do a vacant lot analysis.

Ms. Caldwell explained then you have to adopt an ordinance that anything new coming in has to have a small percentage of the Affordable Housing.

Ms. Caldwell assured the board that is not the case in the Borough and we have some time before we will be considered built out.

Mr. Nelson stated that it seems that we are at the point if there are no further questions from the board Ms. Caldwell and I will go back through the draft and address all of the points that were mentioned tonight and come back to the board with a final plan.

Mr. Nelson stated because this is an element of Master Plan it will need to be heard at a public hearing and allow for the public to ask questions.

Mr. Nelson stated the council also needs to weigh in whether Ms. Caldwell and I go to a council meeting or we have a special joint meeting.

Mr. Nelson stated we just need to makes sure all stake shareholders are involved in the process.

Mr. Nelson suggested not doing this until he and Ms. Caldwell come back to the board with a second draft.

Mr. Christiano stated that have a plan is one step but does not give you full protection unless certified by the court.

Mr. Brady stated that he does not suggest it at this point,

Mr. Brady stated it almost invites scrutiny in when in fact there is nothing being scrutinized right now.

Mr., Brady stated there is no reason to pay and go through the lengthy process when it really is not needed. Having a plan right now is enough to help defend any kind of builder's remedy.

Mr. Brady stated furthermore that is decision the council would make not the planning board.

Mr. Christiano expressed his strong opinion on getting the plan certified would probably be in the towns best interest as they have into lawsuits dealing with this issue twice in his 10 years sitting on this board.

Mr. Christiano stated we just don't know what's larking out there and the borough still has lot of valuable properties that developers could ran come in really reek some havoc on this issue.

Mr. Nelson stated that as long as you have something defensible the borough hall does not necessarily need to have a court certified plan to be defensible.

Mr. Nelson stated that he would just like to make one more point,

Mr. Nelson stated that the Highlands council is paying for this. This is not being paid for from the town funds.

Mr. Suckey stated to summarize Ms. Caldwell and Mr. Nelson will go back through the draft and edit things where need be along with research some of the properties that were addressed then come back with another draft to review with the board.

Mr. Nelson stated that is correct and believes there does not need to be a special meeting that we could review the draft at our regular planning board.

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Ms. Schultz suggested a combined meeting with the council.  
Mr. Suckey stated that the council was invited tonight and you can see who showed.  
Mr. Christiano asked if Mr. Nelson intends to use the Walmart site.  
Mr. Nelson said he would discuss it further with Ms. Caldwell but he thinks he may in cooperate it into the plans.  
Mr. Williams stated to also add the old Harden Lumber property.  
Mr. Suckey stated he believes that will be an active project with in the next few months.  
Mr. Suckey suggested adding the property at the end of Rutherford Ave behind the deli.  
Mr. Suckey stated that should be counted for credit as it has already been pre-approved for 43 units.  
Mr. Nelson stated again he will discuss with Ms. Caldwell and work out a plan.  
The board discussed possible properties that could be approved and other ideas for Mr. Nelson and Ms. Caldwell to look into when working on the next draft.  
Ms. Caldwell stated that she believed that this was a great 1<sup>st</sup> step and a good meeting.  
Mr. Nelson said he hope to have another draft by December's meeting and looking to finalize everything early next year.  
Mr. Suckey thanked Mr. Nelson and Ms. Caldwell for their time presenting this plan.  
Mr. Suckey stated he would close that part of the meeting and would continue with the regular board business.

**OPEN PUBLIC SESSION:**

Mr. Suckey opened the meeting to the public. Mr. Suckey stated there was no one present from the public.  
Mr. Suckey closed the meeting to the public.

**APPROVAL OF MINUTES:**

NONE

**PAYMENT OF BILLS:**

NONE

**APPLICATION FOR COMPLETENESS**

NONE

**APPLICATIONS TO BE HEARD**

There were no applications to be heard.

**APPROVAL OF RESOLUTION**

There were no resolutions

**OLD BUSINESS:**

NONE

**NEW BUSINESS:**

None

**DISCUSSION:**

Mr. Suckey stated that the regular October meeting will be a busy night.  
Mr. Suckey stated we will be hearing three applications that night and it will be a late meeting.

**ADJOURNMENT:**

**Mr. Christiano made** a motion to adjourn.

Seconded by **Ms. Schultz**

**All were in Favor.**

The meeting adjourned at 8:28 P.M

Respectfully submitted,  
Michelle Babcock  
Planning Board Secretary