

TOWNSHIP OF MOORESTOWN
TOWNSHIP COUNCIL
SPECIAL OFFICIAL ACTION MEETING
June 24, 2021

The Special Meeting of the Moorestown Township Council was called to order by Mayor Gillespie at Town Hall, Council Chamber, 111 West Second Street, Moorestown at 6:12 p.m. Attendance was as follows:

Nicole Gillespie, Councilmember	Thomas J. Merchel, Township Manager/CFO (absent)
Sue Mammarella, Councilmember	Patricia L. Hunt, Township Clerk
Quinton Law, Councilmember	Kevin E. Aberant, Township Attorney
Jake Van Dyken, Councilmember	
David Zipin, Councilmember	

MAYOR'S STATEMENT: At 6:12 p.m., Mayor Gillespie read the Open Public Meetings Act statement in full, as printed on the agenda.

"Notice of this meeting has been provided in accordance with the Open Public Meetings Act" by:

- a. Posting a copy of the amended meeting notice and agenda on the bulletin board at the Municipal Complex.
- b. Filing a copy of the amended meeting notice and agenda in the office of the Township Clerk at the Municipal Complex.
- c. Forwarding a copy of the amended meeting notice and agenda to the Burlington County Times and Courier Post.
- d. Forwarding written notice to each person who has requested copies of the regular meeting schedule.

All of the above posting, filing and mailing have taken place on the 18th day of June, 2021.

Mayor Gillespie noted that staff believes the livestream is working. There is no way to make virtual comments at the in-person meeting.

ROLL CALL: Mayor Gillespie took roll call. All were present with the exception of Mr. Merchel.

DISCUSSION: Nagel Tract and Lockheed Martin Property Exchange ([Presentation-Click Here](#))

Mayor Gillespie advised that the purpose of this meeting is to continue discussion from the last meeting (at which there were technical difficulties). She advised that the public hearing will be held on Monday, no formal action will be taken this evening.

Mayor Gillespie advised she felt there may have been some confusion on the history of the property. She gave the following power point presentation:

Nagle Tract - History

- January 5, 1987 – Township filed a petition for substantive certification of its affordable housing plan with COAH
- February 24, 1988- Township purchases the Nagle Tract as the intended location of an affordable housing development
- May 16, 1988- COAH adopts a Resolution granting the Township substantive certification of its affordable housing plan; Nagle Tract identified as the location of 148 units (100% affordable)
- July 9, 1997- COAH adopts a Resolution granting the Township substantive certification of its affordable housing plan; Nagle Tract identified as location of 148 units (100% affordable)

Nagle Tract - Recent History

- March 16, 2018 – Moorestown resolves its Affordable Housing Declaratory Judgment lawsuit by entering into a settlement agreement with Fair Share Housing Center; Nagle Tract proposed location of a 152-unit development, 45 of which would be set aside as affordable (30%).
- November 18, 2020 – Fair Share Housing Center agrees to amend the settlement agreement to permit the developer of the Nagle Tract to apply for funding for 2021 to build a 152 unit development with 76 units (50%) set aside as affordable; the 31 unit yield difference allows Township to avoid having to provide these units through the more costly Market to Affordable and Accessory Apartment programs (estimated savings of \$2.4 million)
- February 22, 2021 – Judge Dow enters Conditional Judgment of Compliance and Repose (this provides immunity from builder's remedy lawsuits); conditions include requiring Township to select developer within 90 days, and to expeditiously work with developer to submit a 2021 application for mixed income tax credits (deadline- August 31, 2021)
- March 8, 2021 – Council adopts Resolution authorizing execution of Memorandum of Understanding appointing Walters-Cornerstone Development LLC as the developer of the Nagle Tract
- March 12, 2021 – Lockheed Martin and Department of the Navy send letters to the Township that national security concerns preclude development of Nagle Tract for any reason due to proximity to CSEDS facility; Lockheed proposes to exchange Nagle for nearby land it owns

An aerial view depicting the Nagle tract and the proposed tract was shown.

Options

- Refuse the land swap: • Navy could exercise power of eminent domain to condemn the Nagle Tract, with only requirement be to provide “just compensation” for the taking; ”just compensation” is bare land costs, which is worth much less to Township since value to Township includes potential yield of affordable housing units that could be provided at the property
- Lose land + costs offer from Lockheed Martin
- It would be impossible to locate, investigate (due diligence), and purchase alternate land to accommodate 76 units by August 31, 2021

- Township would fail to satisfy conditions of the Judgment of Compliance, with consequence being a potential loss of immunity from builders remedy lawsuits
- Accept the land swap:
- Get a slightly larger piece of land, and receive compensation for any additional cost to develop as compared to developing Nagle Tract
- Able to pursue development this year and meet conditions of Judgment of Compliance
- Retain immunity from builder's remedy

The proposed development was shown on the overhead.

COUNCIL COMMENTS:

Mr. Van Dyken asked Mr. Aberant to explain builder's remedy lawsuits. Mr. Aberant advised that when a municipality does not provide its fair share of affordable housing, a developer goes to court and they sue the municipality to build at a higher density (than provided for under the municipality's zoning). He advised that these lawsuits became scarce due to the Fair Housing Act and provided a municipality had substantive certification, the town was immune to a developer's lawsuit. Builder's lawsuits are a possibility again. The Township has an order granting immunity; it must satisfy its judgment of compliance or be subject to builder's remedy lawsuits.

In response to Mr. Zipin's questioning, Mr. Aberant advised that the Township is in its third round which carries it through 2025. After 2025, there will be a new round. He could not comment on what a future round will look like. He advised that the rezoning of the Nagle tract will preclude the tract from being counted in a future inventory.

In response to Mr. Law's questioning, Mr. Aberant advised that this development cannot be transferred to another site such as the Kmart site as the Kmart site is included in the affordable housing plan as MX-2 zone which would permit development with a twenty-percent set aside. This site is part of the Township's unmet needs. He explained what unmet needs is. Mayor Gillespie advised that the eighty (calculated) units at the Kmart site would not count against the eighty-six units the Township is obligated to build at the Nagle site. It was noted that the Township is not building the site, it is partnering with a developer. The developer is putting out the money to build. No developer would invest in a site that the Navy has said you cannot build on. Mr. Aberant found that the two properties are functionally equivalent. The fact that the two properties are equivalent in size has allowed the developer to pivot quickly. Based upon Ms. Mammarella's questioning, Mr. Aberant advised on the potential outcome of a builder's remedy lawsuit (build at a higher density well in excess of what is permitted; greater impact on the school system; greater impact on services; could build out of character of the town with no restrictions).

PUBLIC COMMENTS:

Gregg Gallo, 11 Baldwin Hill Place, thanked Council for the work it does. He advised that the Nagle tract has been in the plan; it predates him when he was on Council. In the past thirty years, Lockheed Martin has never said the tract was not a good location for housing. Mr.

Aberant advised that tract has been in the affordable housing plan since 1988. It was only when Council publicly appointed the Walters Group as the developer of the site, the issue arose and the Vice President of Real Estate for LMC advised that it was not aware that the Township owned the property. Mr. Gallo asked if the Township has discretion in prioritization. He advised how the Township has always valued the mall property and tried to protect it and noted that it is now part of the plan. He advised of the benefits and that there is so much good about building around the mall.

Kathy Sutherland, 417 North Church Street, advised that the officer from the Navy advised at a meeting that this property and what was happening was an oversight on LMC's part. She expressed support for the new site and her appreciation that LMC has agreed to swap land with the Township, alleviating cost to the Township. She noted that the children can walk to school, not much bussing will be needed. She encouraged Council to move forward with the plan so that the town is not at risk.

Vince Carita 718 Bentley Court, advised that the public was not aware that the land is designated for affordable housing; one has to delve into research to learn that. He suggested that signage be posted on designated lots in order to bring about public awareness. Questions and answers were had. In looking to buy more time for the Township, Mr. Carita suggested requesting the judge allow additional time due to the unexpected circumstance. Mr. Aberant advised that the Special Counsel and Fair Share Housing Center (FSHC) are aware of the situation and have agreed to a consent order providing for the substitution of the property (finding it to be equivalent); and they do not see a basis for extending the timeline. If the Township makes a request of the judge, the FSHC will not support it. Mr. Carita felt this process was being pushed through and that public input was needed. He asked if the residents could expect formal answers to their questions. Mayor Gillespie said she believes that Council has responded to all questions on the record. She asked that the letter from LMC and the Navy be posted online.

Greg Newcomer, 235 Fellowship Road, spoke about the importance of protecting the nation's security and the AEGIS program and LMC has agreed to make the Township financially whole. Mayor Gillespie confirmed same and said that if there are additional associated costs, LMC has agreed to cover them. An agreement is being drafted. Mr. Newcomer advised that he lives next to the project designated by the mall where there will be seventy-six affordable housing units developed. He hoped that, wherever affordable housing is located, the people will be welcomed; and he felt they will be a tremendous asset to the community.

Kate Wilson, 2 Split Rock Place, expressed her support for moving forward and urged Council to do so.

Colleen O'Hara, 348 Salem Crossing Road, expressed her opposition for the land swap and rushing the development; she found same to be negligible. She suggested LMC find another parcel to swap. She urged Council to seek more time from the Court. She suggested using the "unmet needs" properties. Mayor Gillespie advised that that would not alleviate building of the subject units.

Sue Coleman, 820 Matlack Drive, advised that no variances are required for the new site which is extraordinary; the developer is able to superimpose its original plan on the site; LMC is willing to put money up to lessen the Township's exposure; the solution that the Walters Group brings is financially attractive for the town; if the Township misses the August 31st deadline, then it will not get the needed tax credits (which is a negative impact on the taxpayers) and the Township will expose itself to lawsuits. Mayor Gillespie advised that if the Township misses the deadline it will have to go back to the original plan which includes market-to-affordable housing and accessory apartments. Ms. Coleman indicated that the financial exposure is what is going to cost the taxpayers and she felt that with LMC's financial commitment, to move forward is what is financially prudent. She felt the actions taken by Council have been in favor of the taxpayer.

Frederick Sutherland, 417 North Church Street, asked how much would builder's remedy cost the town if the Township does not move forward with the swap. Mayor Gillespie advised at least \$2.5 million because the Township will have to go back to the original plan providing the other units and the Township will be stripped of its immunity (builder's remedy lawsuits and higher density/over development/no restrictions).

There being no further comments, the floor was closed.

Mayor Gillespie advised that the public hearing for the two ordinances (one authorizing the exchange and the other, to swap the zoning on the two parcels) will be held on Monday.

COUNCIL COMMENTS:

Ms. Mammarella advised that after reviewing everything, she feels it is fair. She hoped Council would not delay; there is too much risk.

Mr. Zipin had hoped the Walters Group was able to return this evening. He expressed his support for affordable housing and felt this is a really nice and positive project and that it gets to the heart of the Mount Laurel doctrine. He advised that developing land impacts the town and same will exist no matter where it is placed. He felt the plan will meet the call of the doctrine to provide affordable housing seamlessly into the Township in a way that does not make anyone feel like it is a handout. He reminded all of the \$2,700 rent for a three-bedroom unit. He felt the project is in character with the neighborhood and the town and it is a way for the town to provide affordable housing and it is consistent with what the town is.

Mr. Van Dyken read a purpose statement by Department of Community Affairs aloud. He advised the LMC site meets all of the identifiers in the statement and he expressed his support to move forward.

Mr. Law thanked the public for bringing their concerns forward. He felt that identifying signage on properties, as suggested by Vince Carita, was a good point and felt Council should consider same down the line. Mr. Law said it goes without saying that no one saw this coming and he felt that LMC recognizes that and has offered to work with the town. He said, this is a fair land swap and that being located next to the school is a good thing. He said he wants to make every decision based on what is best for the taxpayer and if the Township does not move forward, the taxpayer could face severe implications.

Mayor Gillespie thanked everyone for attending and assured the public that Council will do its due diligence in making sure it does the right thing for the town.

ADJOURNMENT: At 7:30 p.m., there being no further business, a motion was made to adjourn.

MOTIONED BY: Mr. Zipin
SECONDED BY: Mr. Law
VOTE: All in favor

PATRICIA L. HUNT, RMC
Township Clerk