



Chairman Schwinder asked if there were any comments or questions about the vouchers. Hearing none he asked for a motion to accept, which was made by Mr. Kutzin, second was offered by Mr. Goursky all were in favor.

**Resolution:**

**Korik Residence, 17 Furman Dr., Block 107A, Lot 6**

Rear yard setback variance from required 35 ft. to proposed 29.9 ft. and a building maximum coverage variance from required 28% to proposed 28.8%.

Chairman Schwinder asked the Board if there were any questions or comments on the Resolution as prepared. Mr. Ascolese was asked if all the points had been covered in the Resolution to which he replied yes. Hearing no comments from the Board, Chairman Schwinder asked for a motion on the Resolution which was offered by Mr. Adams, second was made by Mr. Cimino. Mr. Adams, Mr. Bresa, Mr. Carlos, Mr. Cimino, Mr. Kutzin, and Chairman Schwinder were in favor. The Resolution was approved.

**Application:**

**Berens Residence, 2 Hartland Ave., Block 107A, Lot 6:**

Mr. & Mrs. Berens were asked to approach the Board in regard to their application to replace a 4 ft. fence with a 6 ft. fence. Mr. Martin reviewed the notifications and receipts. He asked the Berens' if there was a copy of their newspaper announcement available. They replied they had not placed one. Mr. Martin advised them that an announcement must be placed in the newspaper in accordance with the regulations for variance request. Ms. Shust advised the Berens that a sample announcement was in the Land Use Application packet. This application has been carried over to July 12.

**Public Hearing:**

**Proposed 2018 Housing Element and Third Round Fair Share Plan Update**

Chairman Schwinder asked Ms. Bogart to explain the principal items in the proposed update. Ms. Bogart distributed a copy of the plan to each of the Board Members, one for the files as Exhibit Borough #1 and copies of correspondence dated June 21, 2018 as Exhibit Borough #2.

Ms. Bogart stated that the changes to the plan were outlined on pages 1 – 26 the balance of the report was in reference to current requirements and charts.

Ms. Bogart advised Chairman Schwinder this report not only covered the Housing Element and Third Round Fair share Plan, but the Affordable Housing mentioned in the "Board Business" of the agenda.

Ms. Bogart continued that in the past the Borough had not met the recommended units for Fair Share Plan and therefore, had been assigned a number. With this update, the required Fair Share Housing units has been adjusted, which meets with the approval of the Court.

Currently, the Round Two Fair Share Housing requirement is in effect, which allows the Court to determine where the housing would be provided, and includes an overlay of the entire community. With this new document, which demonstrates our proactive approach to Fair Share Housing, the overlay has been removed from the entire community and only covers the downtown CB10 district. Mr. Martin interjected that with the Board's approval, this plan would be memorialized and sent to the Mayor and Council and recommended as a New Amendment to the Master Plan, Ms. Bogart affirmed that this Board would have to approve the document, recommend it to the Governing Body, who in turn would have to approve it and forward to the Court.

Ms. Bogart continued that at the hearing on June 20<sup>th</sup>, Judge Padovano finalized the housing requirements, granted judgment, and complimented the Borough on their proactive approach to the Fair Share Plan. The Borough has 120 days to implement the document.

Mr. Goursky asked what would be the results if the documents were not implemented. Ms. Bogart replied the current overlay and requirements would remain in effect and would leave the Borough open to law suits.

Chairman Schwinder stated that the Special Master was pleased with the proactive approach of the Borough to meet the Fair Share requirements as was Mr. Gordon of Affordable Housing. Ms. Bogart stated the Borough had worked very closely with both agencies, as together we worked through each procedure, with a realistic approach.

Mr. Martin stated that developers would now be bound by the RDP (Realistic Development Potential). Ms. Bogart stated that other communities were not being as proactive and would have to abide by the Second Round overlay specifications.

Chairman Schwinder asked Ms. Bogart to review the highlights of the document. Ms. Bogart continued that pages 1 – 26 were the most important and she would try to be brief. She explained that Housing Onus which was placed on us is due to census data of 1975 which identified residents. On page 4 that history is revisited as well as the requirements of the Mt. Laurel decision, and the regulations imposed by COAH at that time. Judge Padovano approved of our efforts and plans, and removed the second round overlay. Fair Housing needed assurance as to how Emerson was addressing the regulations, which was satisfied by this document.

Chairman Schwinder wanted to know if the definition of Fair Housing was addressed in this document. Ms. Bogart explained there are several levels of need, which includes low and medium income as well as family size and needs. Chairman Schwinder asked if Ms. Bogart knew of anyone in the Borough on housing assistance (Section 8). Ms. Bogart replied that she knew of families and at the moment the needs and records keeping are being addressed by the building owners. The Borough will have to hire an administrator for the Fair Share Housing applications and selection of recipients. This selection would be based on applications being submitted and a "lottery" drawing system, after intensive research of applicants financial and family needs.

Mr. Bresa wanted to know if this was a shared position or solely for Emerson. Ms. Bogart said it was a shared position, and that qualified personnel are difficult to find.

Chairman Schwinder asked if a lottery had ever been held in Emerson, Ms. Bogart replied she had no knowledge of it.

Chairman Schwinder wanted to know how the Germanario development (Emerson Plaza East) had been handled as far as Fair Housing was concerned. He was told they had assigned apartments in another building to cover that requirement. At this time the Germanario property is being self-administered, but the Borough must administer all future housing to maintain records and credits.

Ms. Bogart continued it is the Borough's obligation to provide the number of units as required by the Court and COAH, either with new units or rehab of available property. The Borough has agreed to help with rehab, which averages about \$ 10,000.00 per unit, and to date approximately \$200,000.00 has been paid for low and medium income units, which was deposited into a COAH trust fund. The Mayor confirmed that this was true.

Mr. Goursky wanted to know who determines who qualifies and was told it would be the Housing Administrator who would make the determination,

Ms. Bogart continued that as shown on page 14, the rent roll in 1987-1999 required 74 units, which the Borough failed to address, and the Borough was sued. In 2002, additional units were required. The Borough provided information showing there was no vacant land available and the 54 units would be addressed by overlay. This new proposal removes the overlay requirements. The settlement agreement reduces the units required by 30%.

Chairman Schwinder asked about the RDP Realistic Development Potential. Ms. Bogart said it was State mandated, however with the vacant land adjustment due to watershed and recreational areas, the units will be reduced to 54.

The Table on Page 14 shows the various obligations. Chairman Schwinder thought they were unrealistic. Ms. Bogart said this is the obligation based on state Quota and proof was provided to show what is a realistic number. Chairman Schwinder stated the Special Master was proactive on the Fair Share Housing issue. Ms. Bogart stated our plans provide the best interest of the Borough, while addressing the housing needs. Mayor Lamatina said original the requirements were 400, the Special Master and Court, by removing the overlay, have a realistic view of the requirements.

Mr. Martin stated that the earlier statewide analysis was very high and the communities have a more realistic view, which will appear better for the Borough in the 4<sup>th</sup> round review in 2025. Ms. Bogart confirmed that if everything is in place the 4<sup>th</sup> round should be easy to address, since the vacant land and density number will be more realistic. Since there is no vacant land, the unmet needs would have to be reduced. In a prior decision part of the unmet obligation was met by paying Ridgefield to provide 10 units of scattered rehabilitation. The 2001 determination included 1.87 acres of the Emerson Golf Course. The Borough of Emerson has a current need of 20 units. The total obligation is 234 units, including the 74 units included in the prior round.

Ms. Bogart continued there were very few "family" affordable housing units. Therefore the Borough has set aside \$200,000.00 to be used for rehabilitation of approximately 10 units working with Habitat for Humanity.

The available vacant parcels would then be reviewed to see if the property can be developed or is underutilized, or not suitable due to wetlands, suitability, access and EPA restrictions.

At the hearing, Judge Padovano stated that block 419 is necessary to meet the obligation of Fair Share Housing units for Emerson. He identified Block 419 as good for very low income housing. Judge Padovano approved of the plans as proposed. .

Mr. Kutzin asked if Emerson exceeded requirements, what would happen to the credit(s)? Would they be applied toward requirements of 2025? Mr. Martin said that with this plan, Emerson would be in control. Without the plan, we would be ruled by the Special Master and Courts.

Chairman Schwinder asked for a motion to open the floor on this matter only, which was made by Mr. Goursky, second by Mr. Sudano, all were in favor. Since there were no hands, Mayor Lamatina made a motion to close the floor, which was seconded by Mr. Goursky, all were in favor.

Chairman Schwinder asked about attorney review, and how quickly the plan has to move. Ms. Bogart replied it should be recommended to the Mayor and Council as soon as possible for the July or August meetings. She thought a special hearing might be required to pass the Resolution. Mr. Cimino asked if there were extensions available and was told no. Mayor Lamatina said he would like to have the Resolution for the next Mayor and Council meeting. Ms. Bogart thought the attorney would require a Resolution.

Mr. Adams wanted to know about the eminent domain suits and their effect. Ms. Bogart replied that Judge Padovano ruled block 419 is necessary for the Borough to provide Fair Share Housing.

Mr. Martin stated the Master Plan as amended requires Block 419 in order to meet the Fair Share Housing requirements. Mr. Adams stated as that any more than the 20% required would not be profitable to the developer. Ms. Bogart confirmed that the developer would not proceed with the project if it were not profitable to him. Chairman Schwinder asked if incentives could be provided by the Borough, to which Ms. Bogart replied yes.

Mr. Adams noted that on Table 1, the description should read acres not units. Ms. Bogart agreed, but said it did not change the requirements.

Chairman Schwinder noted that a special meeting would require a notice dated a minimum of ten days prior to the special meeting. Ms. Bogart said she thought a letter approving the action and record of vote would be sufficient for the Mayor and Council meeting. Mr. Martin said he could have the letter ready and emailed to the Borough Attorney. Mayor Lamatina wanted clarification from the Borough Attorney and was trying to reach her by phone. He asked Mr. Schwinder for a five minute recess, while he tried to reach her. The meeting was paused at 9:35 pm and resumed at 9:40 pm.

The Mayor advised the Board and Ms. Bogart that a resolution was not necessary, but a letter of confirmation would cover the situation. Since the next meeting would not be held until July 12<sup>th</sup>, a letter would be issued by Mr. Martin. Mr. Goursky made a motion to recommend the proposal with the corrections on page 20, Table 25. Chairman Martin said he would include a statement stating that the Land Use Board recommends the proposed Housing Element and Third Round Fair Share Plan as presented by Ms. Bogart on June 21, 2018 as an amendment to the Master Plan. Mr. Adams seconded the motion. Mr. Adams, Mr. Bresa, Mr. Carlos, Mr. Cimino, Mr. Goursky, Mr. Kutzin, Mr. Malone, Mr. Sudano and chairman Schwinder all voted yes. The Mayor abstained.

#### **Board Business:**

##### **Sub-Division Code update:**

Mr. Ascolese said he had reviewed local community regulations and believed Oradell was the best fit for Emerson. He said he had contacted the Zoning and Building Departments to see if they had any recommendations and was waiting for their response. He would have a report to present at the meeting of July 12.

##### **Fair Share/Affordable Housing:**

Chairman Schwinder advised the Board that Ms. Bogart had included the update on Fair Housing in her earlier report.

##### **Land Use Board Liability Seminar:**

Chairman Schwinder then asked Mr. Martin to conduct the 2018 Land Use Liability Seminar. Mr. Martin began at 9:45 pm. He first referred to a case decided by the Supreme Court the day before: Dunbar Homes vs the Township of Franklin. In regard to the completeness of applications and the time of application rule.

Mr. Martin then reviewed the handout that had been given to each of the Board Members and Professionals in attendance. Several legal scenarios were reviewed. Slide #48 included a statement which should be included on the Agenda of each meeting. At the end of the Seminar Mr. Martin requested a copy of the Attendance, which needs to be included with the report submitted for Insurance. The scenarios are available for review on request.

Chairman Schwinder then asked for a motion to open the floor to the public, which was made by Mr. Goursky, second by Mr. Malone, all were in favor.

Mr. Ed Bueti of 91 Chestnut approached the podium. He questioned whether the three family on 66 Clinton would be reclassified as a single family, now that it was under new ownership. Mr. Martin explained that as long as the dwelling is in existence and being used as a three family it cannot be changed. Only the owner can request a change in zoning. Mr. Adams wondered if the home was possibly in violation. Mr. Martin thought there was possibly a pre-existing non-conforming status on the home. Mr. Bueti said the CO application does not list fire and C/O detectors and property maintenance. The Mayor said the forms should be updated. Mr. Bueti questioned fire inspection and office generators. Mr. Martin asked Mr. Ascolese if the regulations were superseded by those of the State. Mr. Ascolese said he would direct the questions to the Building Dept. Mr. Bueti emphasized that all safety issues should be addressed on the forms.

Mayor Lamatina made a motion to close the floor to the public, second by Mr. Goursky, all were in favor.

Chairman Schwinder recommended that all members listen to the tapes, especially those that were not in attendance.

Mayor Lamatina made a motion to adjourn the meeting, second was offered by Mr. Malone all were in favor. The meeting was adjourned at 10:20 pm.

Respectfully submitted,  
Marie Shust  
Board Secretary