



The Borough of Hightstown
148 North Main Street
Hightstown, NJ 08520

BOROUGH OF HIGHTSTOWN

PLANNING BOARD/BOROUGH COUNCIL JOINT MEETING AGENDA

February 13, 2012 – 7:30 P.M.

Meeting call to order by Steve Misiura

STATEMENT: Adequate notice of this meeting has been given in accordance with the Open Public Meetings Act, pursuant to Public Laws 1975, Chapter 231. Said notice was advertised in the, Trenton Times and Windsor-Hights Herald as required by law, and is posted in the Borough Clerk's Office.

1. Flag Salute

2. Borough Council Resolution 2012-073 Naming an Acting Deputy Clerk

3. Roll Call – Planning Board

- Borough Council

4. Approval of Agenda

5. Public Comment

6. Discussion - COAH Affordable Spending Plan

7. Adjournment – Borough Council

8. Approval of Minutes: January 9, 2012

9. Discussion - Zoning for Service Station

10. Committee and Professional Reports

11. Chairman and Board Member Comments

12. Adjournment – Planning Board

Resolution 2012-73

*BOROUGH OF HIGHTSTOWN
COUNTY OF MERCER
STATE OF NEW JERSEY*

NAMING AN ACTING DEPUTY CLERK FOR THE JOINT MEETING OF FEBRUARY 13, 2012

WHEREAS, The Borough Clerk is not available for the February 13, 2012 joint meeting of the Borough Council and Planning Board; and

WHEREAS, it is the desire of Borough Council to deputize Susan Jackson, Planning Board Secretary, to perform the duties of the Borough Clerk for the joint meeting of the Borough Council and Planning Board on February 13, 2012; and

WHEREAS, Susan Jackson, Planning Board Secretary, shall perform all the duties of the Borough Clerk for said meeting.

NOW, THEREFORE, BE IT RESOLVED by the Mayor and Council of the Borough of Hightstown that Susan Jackson, Planning Board Secretary, is hereby named as Acting Deputy Clerk for the joint meeting of the Borough Council and Planning Board on February 13, 2012 and shall perform the duties of the Borough Clerk for said special meeting.

CERTIFICATION

I hereby certify the foregoing to be a true copy of a resolution adopted by the Borough Council at a meeting held on February 13, 2012.

Debra L. Sopronyi
Borough Clerk

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MEMORANDUM

To: Hightstown Mayor and Council From: Tamara L. Lee, PP, AICP, LLA, ASLA

Re: COAH/Spending Plan Date: February 4, 2012

Recently I sent to you a proposed version of a revised Spending Plan. A number of good questions have been raised and I wanted to address them in advance of our discussion on Monday night.

1. The Spending Plan notes that approximately \$140,000 will be spent on 'administrative costs.' This \$140,000 is not *'in addition to dedicated COAH funds'* but rather it is the equivalent of 20% of the total anticipated affordable housing revenue in the municipal trust fund and it is part of the housing fund revenues. Presently we calculate that the Borough will collect about \$702,917 in affordable housing fees and 20% of that sum is about \$140,000. The State rules stipulate that up to 20% of a town's affordable housing funds may be used for administrative costs associated with creating affordable housing. The Borough is not required to spend 20%. The Spending Plan simply acknowledges that it may spend up to that much.
2. If the Borough collects more money than we anticipate, the excess money must be spent on affordable housing.
3. The Borough is responsible for the administrative costs as they occur. Typically these costs are associated with establishing the units themselves. In Hightstown's case, it would include such things as, the work required by Borough professionals to draft contracts with the two group homes or the Public Housing Authority. When units are created by a developer, such as on South Academy or Williams Street, the developer is responsible for doing the administration (generating the deed restrictions and qualifying the income of the residents). Typically there are little or no administrative costs to the Borough on new unit construction projects. A few years ago, when the State's affordable housing problems started to drag on and towns were subsequently required to amend their plans, as we're doing again now in Hightstown, the Legislature adopted a rule that temporarily allows towns to use administrative costs to pay for professionals fees associated with revising submissions of affordable housing plans. That's good for the towns, except that it also eats into the 20% maximum that can be spent on administrative costs

associated with actual units. Fortunately for Hightstown, our current housing plan is not heavily dependent on the types of projects that will generate a lot of administrative costs. Something like a municipally sponsored housing project has substantially more administrative costs for the host municipality.

4. Right now, the time period for this Spending Plan spans from 2012 to 2018. However, be aware, as the controversy over affordable housing drags out, the State may change the timeframe. They've already changed it once and that change is the subject of one of the many battles that are being fought over affordable housing.
5. If there is a shortfall and the Borough's affordable housing fund cannot pay for all of the proposed units, the Borough has a few options, such as issuing a bond or pursuing grants. However, the only option that we've really focused on is the State affordable housing trust fund. The State would prefer that municipalities issue bonds to fund any shortfall and the old COAH organization required it. But since the new regulations were adopted, the Borough (and many other towns) has refused to commit to issuing a bond to pay for the shortfall. Instead the Borough's first choice has been to pursue and expect funds from the State affordable housing trust fund. We have deliberately avoided committing Hightstown taxpayers to paying for more affordable housing.
6. The projected \$304,500 in development fees is based on historical trends of new units in town. Though I initiated a discussion with Borough staff to get more recent statistics on how many new units were created over the last three years, this Spending Plan has been revised so quickly that assembling more recent information has not yet been possible. However, even if the recent economic downturn resulted in fewer houses being built, the financial projection in this Spending Plan should not be based on the aberration of the last three years. An estimate of two units per year is still a valid calculation. If there is a shortfall in the funds because fewer new housing units are built, then the Borough has a few options. It can either revise its Housing Plan or pursue more funds from the State's affordable housing trust fund.
7. It is difficult to compare Hightstown's Plan to other towns. Especially in the current climate of uncertainty over affordable housing matters, housing plans have become increasingly more diverse. There are many towns that are doing more than Hightstown and many that are doing less. The Borough's objective has been to do as much as possible to demonstrate our due diligence, without doing anything that would allow the State's affordable housing policy to dictate or change the character of Hightstown.
8. The current Spending Plan has been designed to minimize risks to the Borough. Frankly, the biggest risk at this point is that the State may not approve the Spending Plan because the Housing Plan includes a significant waiver request. But the position in the Borough has been that if Hightstown does not ask for the

waiver, the resulting Housing Plan will unacceptably change the character of the Town. It's worth noting that we actually have a better chance at getting the waiver approved than we did in 2008, because the State claims it is more 'municipality friendly.'

9. If we do nothing and allow the State to take the funds, we will not be able to demonstrate that the Borough has done its due diligence in terms of the Fair Housing Act. Assuming new affordable housing regulations are someday adopted, the Borough will have a more clearly defined obligation to provide affordable housing. (The Fair Housing Act says every town has the obligation – that's not in dispute. The extent of our obligation is the element that is debatable.) But if we forfeit the housing funds, the Borough will have no funds with which to subsidize and fulfill our obligation. Without a viable plan to generate affordable housing, and no money to implement a plan, the Borough will be subject to 'builders' remedy.' That's a process by which a developer sues a non-compliant town. Unable to defend itself, the town is typically ordered by the Court to build virtually whatever the developer asks for. In cases where builders remedy has been exercised, towns have been dramatically and adversely impacted. Usually these cases involve developer driven projects that are so intense that it becomes economical to demolish existing neighborhoods and replace them with very high density projects.
10. Forfeiting the existing funds will not reduce the Borough's COAH requirement. Although the funds reflect the COAH obligation, the COAH obligation is generated by a completely different, unrelated formula.

Cc: Michael Theokas, Borough Administrator
Debra Sopronyi, Borough Clerk
Fred Raffetto, Esq.
Gary Rosensweig, Esq.
Hightstown Planning Board
Susan Jackson, PB Secretary

HIGHTSTOWN AFFORDABLE HOUSING TRUST FUND SPENDING PLAN

PREAMBLE

Presently, the Governing Body of the Borough of Hightstown and the Hightstown Borough Planning Board find the current state of affordable housing regulations in New Jersey to be very uncertain and exceedingly difficult to carry out. Over the last several years, the State's Regulations have been revised and challenged repeatedly in Court, leaving municipalities with no clear pattern or means to implement affordable housing plans. In the meantime, the Borough has accumulated affordable housing funds through development fees and a regional contribution agreement.

Although the Borough has been pursuing re-certification under Round Three since 2005, its latest amended petition is still pending approval by the NJDCA. Unable to complete the process through no fault of its own, and with an understanding that the State is considering taking all unspent municipal housing funds for other public purposes, the Governing Body of Hightstown, in consultation with the Borough's Planning Board, has now decided to move forward to fulfill the intent of the Fair Housing Act, using current State affordable housing regulations as a guide. The Borough's Affordable Housing Spending Plan has been revised and follows herein. The Borough is seeking an expedited approval of this revised Plan, at which time the Borough will strive to implement the Plan in accordance with the priorities articulated in the Plan.

INTRODUCTION

In 2008, the Borough of Hightstown prepared a Housing Element and Fair Share Plan to address its regional fair share of the affordable housing need in accordance with the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.), the Fair Housing Act (N.J.S.A. 52:27D-301) and the regulations of the Council on Affordable Housing (COAH) (N.J.A.C. 5:97-1 et seq. and N.J.A.C. 5:96-1 et seq.) that were in place at the time. The current state of affordable housing regulations makes it difficult for the Borough to ascertain with any surety what the Municipality's ultimate fair share obligation will be and how it might satisfy that obligation. However, the Borough is nonetheless committed to doing its due diligence while the status of affordable housing regulations is resolved in the Courts and/or the State legislature. Toward that end, the Borough of Hightstown has revised its previously submitted Spending Plan to reflect an updated strategy to create affordable housing units within the Borough. Once this amended Spending Plan is approved, the Borough will work diligently to create affordable housing units that satisfy the intent of the Fair Housing Act, if not the final regulations yet to be enacted.

Hightstown first petitioned COAH for substantive certification in 1998 and received prior approval to maintain an affordable housing trust fund. A development fee ordinance creating a dedicated revenue source for affordable housing was approved by COAH in 2004 and adopted by the Municipality on November 15, 2004 and amended and re-adopted on September 6, 2005 and approved by COAH shortly thereafter. The ordinance established the Hightstown Affordable Housing Trust Fund for which this spending plan is prepared.

As of January 27, 2012, the Hightstown Affordable Housing Trust Fund includes \$398,417. All development fees, payments in lieu of constructing affordable units on site, funds from the sale of units with extinguished controls, and interest generated by the fees are deposited in a separate interest-bearing affordable housing trust fund in the Sun National Bank for the purposes of affordable housing. These funds shall be spent in accordance with N.J.A.C. 5:97-8.7-8.9 and 8.11 as described in the sections that follow.

1. REVENUES FOR CERTIFICATION PERIOD

Little or no development is anticipated in Hightstown. The Borough has projected revenue based on historical trends. All revenue is expected to come from development fees. There are no quantifiable projects currently anticipated that would employ payments in lieu.

(a) Other funding sources:

Funds from other sources, including, but not limited to, the sale of units with extinguished controls, repayment of affordable housing program loans, rental income, proceeds from the sale of affordable units and the State Affordable Housing Trust Fund.

(b) Projected interest:

Interest on the projected revenue in the municipal Affordable Housing Trust Fund at the current average interest rate.

The Borough expects to collect \$21,750 in development fees per unit from residential development; however, due to the current moratorium on the imposition of non-residential development fees, the Borough does not expect to collect any additional funds from non-residential development before July, 2013. The current timeframe under consideration is 2012 and 2018. Historic trends indicate that two (2) housing units are added to the housing stock each year; therefore fourteen (14) units over the seven year period will generate 14 times \$21,750 or \$304,500. All interest earned on the account shall accrue to the account to be used only for the purposes of affordable housing.

2. ADMINISTRATIVE MECHANISM TO COLLECT AND DISTRIBUTE FUNDS

The following procedural sequence for the collection and distribution of development fee revenues shall be followed by Hightstown Borough:

(a) Collection of development fee revenues:

Collection of development fee revenues shall be consistent with Hightstown's development fee ordinance and the State-wide non-residential development fee moratorium in accordance with COAH's rules and P.L.2008, c.46, sections 8 (C. 52:27D-329.2) and 32-38 (C. 40:55D-8.1 through 8.7).

(b) Distribution of development fee revenues:

The affordable housing trust funds will be distributed on a case-by-case basis in accordance with COAH procedures, and as is appropriate and in the best interest of each municipal affordable housing initiative, following successful negotiations between the Borough and affordable housing project sponsors.

3. DESCRIPTION OF ANTICIPATED USE OF AFFORDABLE HOUSING FUNDS

(a) **Rehabilitation and new construction programs and projects (N.J.A.C. 5:97-8.7)**

Hightstown Borough will take appropriate action, consistent with the law, to provide between \$1,040,000 to \$1,125,000 to rehabilitation or new construction programs as follows:

Rehabilitation program: \$ 80,000 for a total of eight (8) rehab units.

New construction project(s): \$960,000 to \$1,045,000 total; \$30,000 for the Hightstown Group Home, \$100,000 for the Holly House, \$25,000 to \$110,000 for South Academy I/Ordonez and \$805,000, or \$35,000/unit, for the Public Housing Authority project.

New Construction projects will include the following:

1. Hightstown Group Home - Renewal of expired deed restriction, 3 units
2. Holly House – Renewal of expired deed restriction, 10 units
3. Public Housing Authority – Gut rehab, 23 very low income units
4. South Academy I/Ordonez – Redesign and approval of a 2006 development approval; new plan will generate four (4) total units, including one(1) to four (4) affordable units, depending on the Borough's ability to negotiate the project's redesign.

The above noted projects will be pursued in the order in which they are listed.

Note for information – There are two (2) other projects within the Borough that will generate affordable housing units, however, no expenditure of funds is required to produce the affordable units at these sites. On Williams Street, a mixed use project was approved. It will include nine (9) market rate townhouse units, three (3) market rate apartment units and three (3) affordable apartment units. On South Academy, the second project, South Academy II/Habitat is an approved townhouse development with four (4) affordable units and no market rate units.

The housing plan described above will generate 44 to 47 affordable housing units. Based on the latest Affordable Housing regulations, the plan may also generate 19 bonus credits. Therefore, this plan will generate 63 to 66 affordable housing credits for Hightstown. The Borough's pending petition indicates that Hightstown's affordable housing obligation for Round Three and Round Two is 50 units, therefore the proposed plan well exceeds the Borough's current obligation projections.

(b) **Affordability Assistance (N.J.A.C. 5:97-8.8)**

Projected minimum affordability assistance requirement:

Actual development fees through 1/27/12		\$ 398,417.00
Actual interest earned through 1/27/12	+	\$ incl.
Development fees projected 2012-2018	+	\$ 304,500.00
Interest projected 2012-2018	+	\$ ---
Less housing activity expenditures through 1/27/12	-	\$ ---
Total	=	\$ 702,917.00
30 percent requirement	x 0.30 =	\$ ---
Less affordability assistance expenditures through 12/31/2004	-	\$ ---
PROJECTED MINIMUM Affordability Assistance Requirement 1/1/2005 through 12/31/2018	=	\$ ---
PROJECTED MINIMUM Very Low-Income Affordability Assistance Requirement 1/1/2005 through 12/31/2018	÷ 3 =	\$ ---

Hightstown recognizes that State regulations stipulate that 30% of the housing funds should be dedicated to housing assistance and a third of those funds should be committed to very low income housing assistance. However, with the current perception that the State will assume control of all unspent housing funds, the Borough of Hightstown chooses at this time to defer the funding of an assistance program and commit all potential funds to those efforts that will generate affordable housing units in town.

(c) **Administrative Expenses (N.J.A.C. 5:97-8.9)**

Hightstown projects that \$140,583.40, or approximately 20% of \$702,917.00, the existing and projected municipal affordable housing funds, will be available from the Borough's Affordable Housing Trust Fund to be used for administrative purposes. Administrative costs will be incurred for re-petitioning COAH for Third Round certification, administration of agreements with the Hightstown Group Home, the Holly House, South Academy I/Ordonez and the Public Housing Authority project. The rehabilitation project will be managed with funds from the State's Affordable Housing Fund.

(d) **Unspent Regional Contribution Agreement Funds (N.J.A.C. 5:97- 7.5(c))**

As of 1/27/12, the Borough of Hightstown had a total of \$174,000 remaining in an account established pursuant to a Regional Contribution Agreement with Township of Manalapan. It is the intention of the Borough to utilize these funds to supplement affordable housing funds generated through development fees. Together the cumulative total of the two affordable housing accounts will fund the affordable housing initiatives outlined in this Spending Plan.

The total of the two accounts, including projected fees, is \$702,917 (Affordable Housing Trust Fund) plus \$174,000 (RCA) or \$876,917 total.

4. EXCESS OR SHORTFALL OF FUNDS

The Governing Body of the Borough of Hightstown agrees to take appropriate actions, consistent with the law, to fund any shortfall and it may bond if there are no other available resources, including the State's Affordable Housing Fund.

In the event of excess funds, any remaining funds above the amount necessary to satisfy the municipal affordable housing obligation will be used to expand the rehabilitation program.

5. BARRIER FREE ESCROW

Collection and distribution of barrier free funds shall be consistent with Hightstown's Affordable Housing Ordinance in accordance with N.J.A.C. 5:97-8.5.

SUMMARY

Hightstown intends to spend affordable housing trust funds and remaining RCA revenues pursuant to N.J.A.C. 5:97-8.7 through 8.9 and 7.5, consistent with the housing programs outlined in this Spending Plan report.

Hightstown has a balance of \$398,417 as of January 27, 2012 and it anticipates an additional \$304,500 in revenues before the expiration of substantive certification for a total of \$702,917. Adding the remaining RCA funds to this raises the balance available to \$876,917. The Municipality will require between \$1,040,000 to \$1,125,000 to implement the current affordable housing initiatives. The Borough will commit \$140,583.40 to administrative costs. Any shortfall of funds will be offset by other available resources, including, but not limited to the State's Affordable Housing Trust Fund. The Municipality will dedicate any excess funds toward expanding the rehabilitation program.

Governing Body Resolution Requesting Review and Approval of a Municipal Affordable Housing Trust Fund Spending Plan

WHEREAS, the Governing Body of the Borough of Hightstown petitioned the Council on Affordable Housing (COAH) for substantive certification in 2005; and

WHEREAS, The Borough of Hightstown received approval from COAH in 2005 of its development fee ordinance; and

WHEREAS, pursuant to the Executive Reorganization Act of 1969, P.L. 1969, c. 203 (C. 52:14C-1 et seq.), the Governor abolished COAH and transferred all functions, powers, and duties to the Commissioner of the Department of Community Affairs, effective August 29, 2011; and

WHEREAS, as a result of the Reorganization Plan, No. 001-2011, the review formerly to be conducted by COAH is now conducted by the Department of Community Affairs' ("DCA" or "the Department"), Local Planning Services unit; and

WHEREAS, the development fee ordinance establishes an affordable housing trust fund that includes development fees, payments from developers in lieu of constructing affordable units on-site, barrier free escrow funds, rental income, repayments from affordable housing program loans, recapture funds, proceeds from the sale of affordable units;

WHEREAS, N.J.A.C. 5:97-8.1(d) requires a municipality with an affordable housing trust fund to receive approval of a spending plan from the Department prior to spending any of the funds in its housing trust fund; and

WHEREAS, N.J.A.C. 5:97-8.10 requires a spending plan to include the following:

1. A projection of revenues anticipated from imposing fees on development, based on pending, approved and anticipated developments and historic development activity;
2. A projection of revenues anticipated from other sources, including payments in lieu of constructing affordable units on sites zoned for affordable housing, funds from the sale of units with extinguished controls, proceeds from the sale of affordable units, rental income, repayments from affordable housing program loans, and interest earned;
3. A description of the administrative mechanism that the municipality will use to collect and distribute revenues;
4. A description of the anticipated use of all affordable housing trust funds pursuant to N.J.A.C. 5:97-8.7, 8.8, and 8.9;

5. A schedule for the expenditure of all affordable housing trust funds, provided that the trust fund balance as of July 17, 2008 is committed for expenditure within four years of that date and that all development fees and any payments in lieu of construction are committed for expenditure within four years from the date of collection;
6. If applicable, a schedule for the creation or rehabilitation of housing units;
7. A pro-forma statement of the anticipated costs and revenues associated with the development if the municipality envisions supporting or sponsoring public sector or non-profit construction of housing; and
8. The manner through which the municipality will address any expected or unexpected shortfall if the anticipated revenues from development fees are not sufficient to implement the plan; and
9. A description of the anticipated use of excess affordable housing trust funds, in the event more funds than anticipated are collected, or projected funds exceed the amount necessary for satisfying the municipal affordable housing obligation.

WHEREAS, the Borough of Hightstown has prepared a spending plan consistent with N.J.A.C. 5:97-8.10 and P.L. 2008, c.46.

NOW THEREFORE BE IT RESOLVED that the Governing Body of the Borough of Hightstown requests that DCA's Local Planning Services review and approve Hightstown's spending plan.

Debra Sopronyi
Borough Clerk