

**CALL TO ORDER**

Council President Jack Opdyke called the joint meeting to order at 6:00 p.m. and stated that in compliance with the “Open Public Meetings Act” this Meeting was duly noticed to the Hunterdon County Democrat and the Express Times on May 22, 2015; the Agenda has been posted at Borough Hall and distributed to the Courier News, the Express Times, the Hunterdon County Democrat, and the Star Ledger on May 22, 2015.

**ROLL CALL**

Present for the Meeting:

John Hindman  
Cathy Leach  
Michele Liebttag  
Jack Opdyke  
Caroline Scutt  
William Sullivan (arrived at 6:20 pm)

Absent from Meeting:

Mayor Cooper arrived at 6:25 pm.

**ROLL CALL**

Present for the Meeting:

Warren Cooper (arrived at 6:25 pm)  
John Dougherty  
John DenBleyker  
Gordon Dragt  
Randi Eckel  
Rocco Musolino  
William Sullivan (arrived at 6:20 pm)  
Cathy Suttle  
Jack Weeks

Absent from Meeting:

Gerry Case  
Sarah Scott

Borough Clerk and Planning Board Secretary, Brenda S. Shepherd, was present for the Meeting. Borough Attorney Albert Cruz, Planner Board Attorney Guliet Hirsch and Planner McKenzie were also present for the meeting. No members of the public were present.

**PUBLIC COMMENTS**

Council President Jack Opdyke opened the public comment session. Having no comments from the public, the public comment session was closed.

**EXECUTIVE SESSION**

**Potential litigation-In Re the Borough of Frenchtown Declaratory Judgment Action Seeking Approval of the Borough's Housing and Fair Share Affordable Housing Plan.**

Council President Jack Opdyke noted that the Governing Body and Planning Board must go into executive session for potential litigation. On motion by Cathy Leach, seconded by John Hindman and carried by favorable voice vote, the Mayor and Common Council and Planning Board approved to go into executive session at 6:20 pm and approved Common Council Resolution #2015-66 as

follows:

And on motion by John Dougherty, seconded by John DenBleyker and carried by favorable voice vote, the Planning Board approved to go into executive session at 6:20 pm and approved Planning Board Resolution #2015-21 as follows:

**BOROUGH COUNCIL RESOLUTION #2015-66  
PLANNING BOARD RESOLUTION #2015-21  
EXECUTIVE SESSION RESOLUTION**

**WHEREAS**, Section 8 of the Open Public Meetings Act (N.J.S.A. 10:4-12 (b) (1-9), Chapter 231, P.L. 1975, permits the exclusion of the public from a meeting in certain circumstances; and

**WHEREAS**, the Borough Council and Planning Board is of the opinion that such circumstances exist.

**NOW, THEREFORE, BE IT RESOLVED** by the Borough Council of the Borough of Frenchtown and the Frenchtown Planning Board, in the County of Hunterdon, State of New Jersey, as follows:

1. The public shall be excluded from discussion of the hereinafter specified subject matters.
2. The general nature of the subject matter to be discussed is as follows:
  - A. Potential litigation-In Re the Borough of Frenchtown Declaratory Judgment Action Seeking Approval of the Borough's Housing and Fair Share Affordable Housing Plan.
3. The Borough Council and Planning Board may take official action on those items discussed in Executive Session upon completion of the Executive Session.
4. The minutes of the discussions shall be made available to the public as soon as the matters under discussion are no longer of a confidential or sensitive nature.
5. This Resolution shall take effect immediately.

I, Brenda S. Shepherd, Borough Clerk and Planning Board Secretary, do hereby certify that the foregoing is a true copy of a resolution adopted by the Common Council of the Borough of Frenchtown and the Frenchtown Planning Board at a meeting held on June 3, 2015.

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Brenda S. Shepherd, RMC  
Borough Clerk/Planning Board Secretary

The Borough Council and Planning Board came out of executive session at 6:45 pm.

**RESOLUTIONS:**

**Planning Board Resolution #2015- 22 - Resolution endorsing the filing of a Declaratory Judgment Application and a motion for temporary immunity to allow the Borough to revise its certified Third Round Housing Element and Fair Share Plan and obtain a judgment of compliance and repose**

On motion by Jack Weeks, seconded by John Dougherty, and carried by unanimous favorable roll call vote, the Planning Board approved resolution #2015-22 as follows:

**RESOLUTION #2015-22  
BOROUGH OF FRENCHTOWN PLANNING BOARD  
COUNTY OF HUNTERDON, STATE OF NEW JERSEY**

RESOLUTION ENDORSING THE FILING OF A DECLARATORY JUDGMENT APPLICATION AND A MOTION FOR TEMPORARY IMMUNITY TO ALLOW THE BOROUGH TO REVISE ITS CERTIFIED THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN AND OBTAIN A JUDGMENT OF COMPLIANCE AND REPOSE

WHEREAS, the Borough of Frenchtown Planning Board did, on December 17, 2008, adopt a Third Round Housing Element and Fair Share Plan consistent with the Rules of the New Jersey Council on Affordable Housing (COAH) at N.J.A.C. 5:97-1, *et seq.*; and

WHEREAS, the Borough Common Council did, on December 17, 2008, endorse the adopted Third Round Housing Element and Fair Share Plan and submit it to COAH along with a Resolution petitioning COAH for substantive certification of the adopted Third Round Housing Element and Fair Share Plan; and

WHEREAS, on May 14, 2009, the Borough received substantive certification from COAH of its adopted and endorsed Third Round Housing Element and Fair Share Plan; and

WHEREAS, COAH's Third Round Rules (at N.J.A.C. 5:96-1, *et seq.* and 5:97-1, *et seq.*) were subsequently invalidated by the New Jersey Supreme Court; and

WHEREAS, because of COAH's failure to adopt new, valid Third Round Rules, the New Jersey Supreme Court did, on March 10, 2015, issue an order eliminating the COAH administrative processes authorized by the Fair Housing Act (N.J.S.A. 52:27D-301, *et seq.*), with an effective date of June 8, 2015; and

WHEREAS, the New Jersey Supreme Court provided in said order that municipalities which had either received substantive certification of their Third Round Housing Elements and Fair Share Plans from COAH or which had petitioned COAH for substantive certification of their Third Round Housing Elements and Fair Share Plans in accordance with COAH's Rules but had not yet received substantive certification from COAH would be permitted a period of thirty (30) days beginning on June 8, 2015, within which to file declaratory judgment actions in Superior

Court in order to obtain the judicial equivalent of the substantive certifications that they had either received or that they had applied for under N.J.S.A. 52:27D-313, but had not yet received; and

WHEREAS, the Borough is one of the municipalities in the State of New Jersey that received substantive certification of its Third Round Housing Element and Fair Share Plan from COAH; and

WHEREAS, the Borough has exceeded the commitments it made to COAH in its certified plan and not only has granted final site plan approval to both of the new inclusionary redevelopment proposals in its plan (one of which is currently under construction) but also has added inclusionary residential overlay zoning on another site in the Borough that may yield another 16-20 affordable units; and

WHEREAS, the area covered by the overlay zone now has been designated as an Area In Need of Non-Condensation Redevelopment, and a Redevelopment Plan is currently being prepared with the likely outcome that the redevelopment of this site may yield up to 26 affordable units; and

WHEREAS, the Planning Board acknowledges that under the Rules proposed by COAH as N.J.A.C. 5:99, which Rules would have replaced N.J.A.C. 5:97, had they been adopted, the Borough's new third round fair share obligation would have included a four (4) unit Rehabilitation Share, a two (2) unit Prior Round Obligation for the period from 1987-1999, and a total Accrued and Prospective Fair Share Obligation for the period from 1999 to 2024 of fourteen (14) units, prior to deducting credits for any past affordable housing completions; and

WHEREAS, the Planning Board further acknowledges that it is now up to the judiciary to determine regional affordable housing obligations and to allocate such obligations to the municipalities in the housing region, which may result in a higher or lower obligation than COAH would have assigned to the Borough had COAH adopted proposed N.J.A.C. 5:99; and

WHEREAS, the Borough of Frenchtown requires time to revise its certified Third Round Housing Element and Fair Share Plan to eliminate all references to the growth share methodology previously espoused by COAH, to incorporate the new Area in Need of Non-Condensation Redevelopment into an amended Third Round Housing Element and Fair Share Plan, and, possibly, to address any additional obligation that may be assigned to it by the judiciary;

NOW, THEREFORE, BE IT RESOLVED by the Planning Board of the Borough of Frenchtown, County of Hunterdon, State of New Jersey, as follows:

1. The Planning Board hereby endorses the Borough Council's authorization for Albert E. Cruz, Esquire, Borough Attorney, to prepare and file a Declaratory Judgment action in the Superior Court of New Jersey, Hunterdon County, to be accompanied by such exhibits and certifications as deemed necessary and appropriate for the purposes of obtaining temporary immunity from all exclusionary zoning lawsuits so that the Borough can revise and adopt an

amended Third Round Housing Element and Fair Share Plan and submit it to the Superior Court for review and approval as a basis for a Judgment of Compliance and Repose.

2. The Planning Board hereby endorses the Borough Council's authorization for Elizabeth C. McKenzie, AICP, PP, Borough Planner, to prepare the above-listed amendments to the certified Third Round Housing Element and Fair Share Plan, and to undertake any other studies needed to address the Borough's third round fair share obligation, once the extent of that obligation has been affirmed or otherwise determined by the judiciary, which amendments shall be completed within the period of temporary immunity granted by the Superior Court leaving sufficient time for the revised Third Round Housing Element and Fair Share Plan to be adopted and submitted to the Superior Court by the established deadline.

3. The Planning Board hereby endorses the Borough Council's authorization for the execution of a Common Defense Agreement with other participating municipalities and the payment of the Borough's pro rata share of the costs of retaining Robert Burchell, PhD, in an amount not to exceed \$2,000.00 without further Council approval, to calculate the Borough's fair share of the regional need for low and moderate income housing units.

4. The Planning Board hereby endorses the submission to the Superior Court of a copy of this Resolution, along with a copy of the previously certified Third Round Housing Element and Fair Share Plan and any other materials required by the Superior Court in connection with the Declaratory Judgment action and for the Superior Court's review of the Borough's Plan.

5. This Resolution shall take effect immediately.

#### CERTIFICATION

I, Brenda Shepherd, Administrative Officer and Secretary to the Planning Board, hereby certify the foregoing to be a true copy of a Resolution adopted by the Planning Board at a duly convened special meeting held on the 3rd day of June, 2015.

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Brenda Shepherd, Administrative Officer and  
Secretary to the Planning Board

**Common Council Resolution #2015-67 - Resolution authorizing the filing of a Declaratory Judgment Application and a motion for temporary immunity to allow the Borough to revise its certified Third Round Housing Element and Fair Share Plan and obtain a judgement of compliance and repose**

On motion by William Sullivan, seconded by Michele Liebttag, and carried by unanimous favorable roll call vote, the Mayor and Common Council approved resolution \$2015-67 as follows:

**RESOLUTION #2015-67  
BOROUGH OF FRENCHTOWN  
COUNTY OF HUNTERDON, STATE OF NEW JERSEY**

RESOLUTION AUTHORIZING THE FILING OF A DECLARATORY JUDGMENT APPLICATION AND A MOTION FOR TEMPORARY IMMUNITY TO ALLOW THE BOROUGH TO REVISE ITS CERTIFIED THIRD ROUND HOUSING ELEMENT AND FAIR SHARE PLAN AND OBTAIN A JUDGMENT OF COMPLIANCE AND REPOSE

WHEREAS, the Borough of Frenchtown Planning Board did, on December 17, 2008, adopt a Third Round Housing Element and Fair Share Plan consistent with the Rules of the New Jersey Council on Affordable Housing (COAH) at N.J.A.C. 5:97-1, *et seq.*; and

WHEREAS, the Common Council did, on December 17, 2008, endorse the adopted Third Round Housing Element and Fair Share Plan and submit it to COAH along with a Resolution petitioning COAH for substantive certification of the adopted Third Round Housing Element and Fair Share Plan; and

WHEREAS, on May 14, 2009, the Borough received substantive certification from COAH of its adopted and endorsed Third Round Housing Element and Fair Share Plan; and

WHEREAS, COAH's Third Round Rules (at N.J.A.C. 5:96-1, *et seq.* and 5:97-1, *et seq.*) were subsequently invalidated by the New Jersey Supreme Court; and

WHEREAS, because of COAH's failure to adopt new, valid Third Round Rules, the New Jersey Supreme Court did, on March 10, 2015, issue an order eliminating the COAH administrative processes authorized by the Fair Housing Act (N.J.S.A. 52:27D-301, *et seq.*), with an effective date of June 8, 2015; and

WHEREAS, the New Jersey Supreme Court provided in said order that municipalities which had either received substantive certification of their Third Round Housing Elements and Fair Share Plans from COAH or which had petitioned COAH for substantive certification of their Third Round Housing Elements and Fair Share Plans in accordance with COAH's Rules but had not yet received substantive certification from COAH would be permitted a period of thirty (30) days beginning on June 8, 2015, within which to file declaratory judgment actions in Superior Court in order to obtain the judicial equivalent of the substantive certifications that they had either received or that they had applied for under N.J.S.A. 52:27D-313, but had not yet received; and

WHEREAS, the Borough is one of the municipalities in the State of New Jersey that received substantive certification of its Third Round Housing Element and Fair Share Plan from COAH; and

WHEREAS, the Borough has exceeded the commitments it made to COAH in its certified plan and not only has granted final site plan approval to both of the new inclusionary redevelopment proposals in its plan (one of which is currently under construction) but also has

added inclusionary residential overlay zoning on another site in the Borough that may yield another 16-20 affordable units; and

WHEREAS, the area covered by the overlay zone now has been designated as an Area In Need of Non-Condensation Redevelopment, and a Redevelopment Plan is currently being prepared with the likely outcome that the redevelopment of this site may yield up to 26 affordable units; and

WHEREAS, the Borough acknowledges that under the Rules proposed by COAH as N.J.A.C. 5:99, which Rules would have replaced N.J.A.C. 5:97, had they been adopted, the Borough's third round fair share obligation would have included a four (4) unit Rehabilitation Share, a two (2) unit Prior Round Obligation for the period from 1987-1999, and a total Accrued and Prospective Fair Share Obligation for the period from 1999 to 2024 of fourteen (14) units, prior to deducting credits for any past affordable housing completions; and

WHEREAS, the Borough further acknowledges that it is now up to the judiciary to determine regional affordable housing obligations and to allocate such obligations to the municipalities in the housing region, which may result in a higher or lower obligation than COAH would have assigned to the Borough had COAH adopted proposed N.J.A.C. 5:99; and

WHEREAS, the Borough requires time to revise its certified Third Round Housing Element and Fair Share Plan to eliminate all references to the growth share methodology previously espoused by COAH, to incorporate the new Area in Need of Non-Condensation Redevelopment into an amended Third Round Housing Element and Fair Share Plan, and, possibly, to address any additional obligation that may be assigned to it by the judiciary;

NOW, THEREFORE, BE IT RESOLVED by the Common Council of the Borough of Frenchtown, County of Hunterdon, State of New Jersey, as follows:

1. The Common Council hereby authorizes Albert E. Cruz, Esquire, Borough Attorney, to prepare and file a Declaratory Judgment action in the Superior Court of New Jersey, Hunterdon County, to be accompanied by such exhibits and certifications as deemed necessary and appropriate for the purposes of obtaining temporary immunity from all exclusionary zoning lawsuits so that the Borough can revise and adopt an amended Third Round Housing Element and Fair Share Plan and submit it to the Superior Court for review and approval as a basis for a Judgment of Compliance and Repose.

2. The Common Council hereby authorizes Elizabeth C. McKenzie, AICP, PP, Borough Planner, to prepare the above-listed amendments to the certified Third Round Housing Element and Fair Share Plan, and to undertake any other studies needed to address the Borough's third round fair share obligation, once the extent of that obligation has been affirmed or otherwise determined by the judiciary, which amendments shall be completed within the period of temporary immunity granted by the Superior Court leaving sufficient time for the revised Third Round Housing Element and Fair Share Plan to be adopted and submitted to the Superior Court by the established deadline.

3. The Common Council hereby authorizes the execution of a Common Defense Agreement with other participating municipalities and the payment of the Borough's pro rata share of the costs of retaining Robert Burchell, PhD, in an amount not to exceed \$2,000.00 without further Council approval, to calculate the Borough's fair share of the regional need for low and moderate income housing units.

4. The Common Council does hereby authorize submission to the Superior Court of a copy of this Resolution, along with a copy of the previously certified Third Round Housing Element and Fair Share Plan and any other materials required by the Superior Court in connection with the Declaratory Judgment action and the Superior Court's review of the Borough's Plan.

5. Notice of the filing of the Declaratory Judgment action and the motion for temporary immunity shall be simultaneously provided by personal service or certified mailing to: Edward Buzak, Esq., on behalf of the New Jersey League of Municipalities; Jeffrey Surenian, Esq., on behalf of Atlantic Highlands; Stephen Eisdorfer, Esq., on behalf of the New Jersey Builder's Association; Kevin Walsh, Esq., on behalf of Fair Share Housing Center; Jeffrey Kantowitz, Esq., on behalf of Martin and MTAE, Inc.; and Geraldine Callahan, Esq., DAG, on behalf of COAH.

6. Notice of the filing of the Declaratory Judgment action and the motion for temporary immunity shall also be simultaneously provided by personal service or certified mailing to: the Hunterdon, Somerset and Middlesex County Planning Boards; the New Jersey Highlands Council; the clerks of all municipalities within COAH's Housing Region 3; all affordable housing providers serving COAH's Housing Region 3; all landowners and/or contract purchasers included in the amended Housing Element and Fair Share Plan and/or offering to construct affordable housing within the Borough; and any other parties specifically requesting notice.

7. Notice of the filing of the Declaratory Judgment action and the motion for temporary immunity shall also appear in a newspaper of general circulation throughout the County of Hunterdon.

8. This Resolution shall take effect immediately.

#### CERTIFICATION

I, Brenda Shepherd, RMC, Clerk of the Borough of Frenchtown, hereby certify the foregoing to be a true copy of a resolution adopted by the Common Council of the Borough of Frenchtown at a duly convened meeting held on the 3rd day of June, 2015.

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Brenda Shepherd, RMC, Borough Clerk

**ADJOURNMENT**

Being no further business to come before the Mayor and Council and Planning Board, the meeting was adjourned at 6:45 pm on motion by Gerry Case, seconded by Randi Eckel and carried by favorable voice vote.

Respectfully submitted,

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Brenda Shepherd, RMC  
Borough Clerk/Planning Board Secretary