

Borough of Kinnelon

Planning Board

June 4, 2015

The regular monthly meeting of the Kinnelon Planning Board was called to order by Mr. Powell at 7:40 p.m., Thursday, June 4, 2015 in the Municipal Building.

It was reported that adequate notice of this meeting had been given in accordance with the Sunshine Law by posting a notice on the municipal bulletin board, by publication of a legal notice in the Suburban Trends on January 2015 and by sending the meeting date to the Daily Record and Herald News on January 2015.

Present and answering roll call in addition to Mr. Powell was Mayor Collins, Mr. Savino, Mr. Gadhavi & Mr. Barish. Absent from the meeting was Mr. Orcutt, Mr. Dotti, Mr. Larson and Mrs. Roselius.

Mr. Powell stated that a change to the Committee appointments needed to be made. Mr. Larson will be tied up for several months due to the fact his wife broke her arm. The Zoning & Ordinance Committee will be Bill Yago as the Chairman, Adam Barish and Mehul Gadhavi.

Mr. Powell stated that under new business we have the Reexamination of the Master Plan complete revision.

Mr. Yago stated that he was very satisfied with the end product and were very thorough.

Mr. Burgis stated that was well worth the efforts for the end product.

Mr. Powell stated that they weren't changing the Master Plan it was just a reexamination of the Master Plan.

Mayor Collins stated that he wanted to commend the efforts of the committee and Mr. Burgis and that the end product will serve the Borough as we move forward and the thorough review was warranted.

Mr. Barish stated that this was on the Website for the public to review.

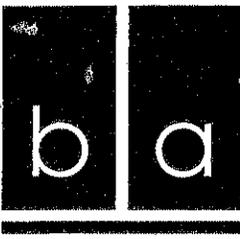
Mr. Powell opened the meeting to the public.

Mr. Sisco stated the he wanted to thank the committee and hopefully this will last another 100 years.

In hearing no one else from the Public Mr. Powell then opened the meeting to the Board.

A motion to approve the Master Plan Reexamination was offered by Mayor Collins, Second by Mr. Savino with the affirmative vote of all on roll call.

Mr. Yago stated that Mr. Burgis had an item to discuss regarding COHA and the Supreme court ruling and what the Boroughs obligations are. Mr. Burgis then went over his report dated June 3, 2015.



COMMUNITY PLANNING  
LAND DEVELOPMENT AND DESIGN  
LANDSCAPE ARCHITECTURE

**B U R G I S**  
ASSOCIATES, INC.

PRINCIPALS:  
*Joseph H. Burgis PP, AICP*  
*Edward Snieckus, Jr. PP, LLA, ASLA*

## Memorandum

To: Borough of Kinnelon  
From: Joseph Burgis PP, AICP  
Subject: Summary of Supreme Court's March, 2015 Affordable Housing decision  
Date: June 3, 2015  
BA#: 3045.01

### I. Introduction

Pursuant to our discussion, I have prepared the following summary of the New Jersey Supreme Court's March, 2015 Affordable Housing decision. The following is noted:

On March 10, 2015, the Supreme Court issued its ruling on Fair Share Housing Center's (FSHC) Motion in Aid of Litigant's Rights. In this unanimous 6-0 opinion, the Supreme Court assumed jurisdiction over the Fair Housing Act process unless and until COAH acts to adopt valid regulations. In sum, there are four over-riding issues which initially merit attention. These are:

- A. The Court determined that COAH is effectively a dis-functional entity. They highlighted the fact that, while COAH was required to promulgate 3<sup>rd</sup> Round rules and housing-need numbers in 1999, fifteen years later they still haven't been able to establish a constitutionally sufficient program to affirmatively address the need of low and moderate income households.
- B. The Court has now assumed jurisdiction over the Fair Housing Act and affordable housing issues. The Court will continue to control this issue, until COAH &/or the Legislature ever addresses this matter and provides a meaningful & constitutional approach to accommodating the development of affordable housing.
- C. The Court did recognize that there are some towns that deserve some on-going protection because they did what they were supposed to do, i.e. file 3<sup>rd</sup> Round plans, even if they did not achieve certification. They recognized that their inability to obtain certification of their Housing Elements and Fair Share Plans (HE&FSP) was of no fault of their own, but rather was due to the inertia of COAH. Consequently, they identified three categories of towns:

1. Towns that received 3<sup>rd</sup> Round certification: 56 towns.

These towns are presumptively entitled to immunity from Mt Laurel lawsuits once they file a declaratory judgment.

2. Towns that filed 3<sup>rd</sup> Round Plans but never received certification: 315 towns.

These towns must secure immunity by a trial judge on a case-by-case basis after filing their declaratory judgment.

3. Towns that haven't done anything. 194 towns.

These towns can be sued at any time.

Kinnelon falls into the second category, being one of the 315 municipalities that filed a Third Round Plan but never receiving certification from COAH.

D. The Court established a very specific schedule for action:

1. They stayed their decision for 90 days: Begins June 8, 2015.
2. There is then a 30 day window to file a declaratory judgment: Between June 8 – July 8.

A declaratory judgment filing is only allowed by those towns that had previously filed 3<sup>rd</sup> Round plans. If the declaratory judgment is not filed by July 8, these towns are susceptible to action by a developer. However, the developer's action initially is to be addressed within the context of whether the town's HE&FSP affirmatively addresses the community's affordable housing obligation, as it may be adjusted by the imposition of COAH's Second Round methodology.

3. Municipalities have up to 5 months to prepare a HE&FSP.

II. Problems With The Decision: Issues Not Addressed

A. Question of Timing: The decision is not clear when the five month period referenced above commences. Conventional wisdom suggests it begins on June 8, thus indicating the five month period for filing of housing plans ends on November 8 (give or take a few days to allow for 30 or 31 day months).

B. The Court did not address the issue of individual municipal housing need numbers. They merely stated that the appropriate methodology to utilize is COAH's Second Round methodology.

- C. The use of this Second Round methodology is fraught with its own set of questions. The Court said the judges assigned to this issue (there are fifteen judges to be assigned to all Mt. Laurel matters) will determine numbers on a case-by-case basis. However, since the Fair Housing Act mandates a regional-need approach to this issue, it is difficult to see how housing-need numbers can be determined on a case-by-case basis. In all likelihood, the judges are going to have to meet and establish a uniform approach and set of numbers to allocate to the towns.
- D. Three sets of numbers have been prepared on behalf of different entities. Each purports to utilize the basic underlying components of the Second Round methodology. They are, as follows:
1. Robert Burchell, on behalf of COAH;
  2. David Kinsey, on behalf of the FSHC;
  3. Art Bernard, on behalf of the Builders Association.
- E. Their statewide housing-need number projections vary dramatically, as shown below:
1. Burchell: Approximately 52,000 affordable housing units
  2. Kinsey: Approximately 201,000 affordable housing units
  3. Bernard: Approximately 300,000 affordable housing units

Needless to say, these numbers are wildly divergent. The individual municipal numbers are equally reflective of these disparate ranges. For example, Burchell's Kinnelon's numbers include a zero unit rehabilitation obligation, an unanswered prior round obligation of 24 units (although he also acknowledges that the Borough has a zero unit buildable limit capacity) and a 2014-2024 prospective obligation of 1 unit. In contrast, however, Kinsey projects that Kinnelon has a rehabilitation obligation of zero units (the same as Burchell), a prior round obligation of 73 units, and a prospective affordable housing need of 298 units. This is what the judges are going to have to address immediately, to ensure that towns across the state will be able to file their plans in a timely manner.

### III. Things To Do

- A. The over-arching initial step that must be undertaken is the filing of a declaratory judgment no later than July 8. This should include the filing of your previously filed Third Round Plan, and a detailed accounting of whatever has been done to achieve affordable housing, such as approving site plans where affordable housing was provided, any zoning amendments regarding affordable housing sites, planning board and/or council minutes where this issue was discussed, expenditures of affordable housing trust fund money, etc.

- B. Request the judge gives the municipality the full five months to prepare the plan. This is suggested in light of the fact that the Court decision states that the judge may grant 'up to five months' to prepare a HE&FSP.
- C. Prepare and file your plan, if it is determined a new plan is necessary, no later than November 8, 2015.

JHB

Mr. Powell then asked Mr. Burgis if the people from COHA are paid employees.

Mr. Burgis said that there is a COHA staff and are paid employees of the State. That staff is processing spending plans. Mr. Burgis said that there is a Board of COHA and they are appointed and paid employees.

Mr. Powell stated that you have Highlands that's says you can't build unless you get approval and then COHA that states that you have to.

Mr. Burgis stated that there was a memorandum between Highlands and COHA addressing that.

Mr. Burgis said that he is recommending to the Municipalities to focus on Burchell's numbers because they seem to make sense. The borough might not have to do housing plan. The borough has 54 rental units and you are entailed to a certain number of bonus credits. Mr. Burgis stated that you might find that the Borough is already addressing the obligation.

Mayor Collins stated that we don't have a Developers Fee Trust Account here and would be a little bit of a challenge for us.

Mayor Collins also stated that Mr. Burgis has been invited to the Mayor & Council meeting next week.

A motion to approve the Bills and Adjourn was offered by Mr. Yago, second by Mr. Savino with the affirmative vote of all on roll call.

HYE – Meadtown \$480.00

Respectfully submitted,

Jennifer Highers, Secretary

cc: Planning Board Members  
Planning Board Attorney  
Planning Board Engineer  
Borough Clerk  
Board of Health  
Fire Prevention Bureau  
Zoning Official  
Construction Official  
Environmental Commission  
Tax Collector  
Assessor  
Department of Public Works  
Police Department  
Morris County Planning Board