

SPECIAL WEST AMWELL TOWNSHIP COMMITTEE MEETING

July 2, 2015 – 7:30 p.m.

The West Amwell Township Committee met on the above date and the meeting called to order at 7:31 p.m. by Mayor George A. Fisher. Present: Mayor Fisher, Committeemen Rich and Dale, Attorney Faherty and Clerk Lora Olsen. Also in attendance were Richard Cushing and John Cronce.

In compliance with the Public Meetings Act, Mayor Fisher announced that this Special Meeting was called pursuant to the provisions of the Open Public Meetings Act with notices faxed to the Hunterdon County Democrat and the Trenton Times on June 29, 2015. A copy of this notice is and has been available to the public and is on file in the office of the Municipal Clerk.

The meeting was recorded via digital recording system.

APPOINTMENT OF SPECIAL COUNSEL FOR AFFORDABLE HOUSING:

Attorney Richard Cushing of Gebhardt Kiefer overviewed his municipal experience and distributed copies of his resume. He relayed that he is currently involved with the filing of Declaratory Judgment (DJ) for 7 other municipalities. Mr. Cushing commented that compared to the current situation, COAH was a cakewalk and proceeded to provide a brief history of the COAH progression. He noted that the 'evil doer' is Fair Share Housing, a group of smart lawyers funded by the Builder's Association. He suggested that the group is not motivated by money but by a philosophy of helping poor people. This is the group that challenged the growth share methodology that was presented and the court became involved. Subsequently COAH was unable to adopt due a deadlocked vote. Fair Share Housing hired David Kinsey who developed a new methodology for deriving municipal housing obligations and the group pushed municipalities to comply with the Kinsey numbers. The direction of most municipalities is to hire Dr. Burchell to come up with numbers similar to the COAH numbers in 2014 that caused the deadlock and sent the matter to the Supreme Court. The current plan is to appoint 15 judges to review the DJ's as to Affordable Housing obligations. Municipalities have until July 8th to file their DJ or lose the benefits under the Supreme Court's decision. Once this step is completed, the next stage is to prepare a Fair Share Plan as to how to meet the obligation. The major problem is that there is no target and no one knows the number that has to be met, although Fair Share Housing is sticking by the Kinsey numbers. The next step is the decision by the 15 judges as to the right numbers, whether this be Kinsey, Burchell or some third option. Mr. Cushing relayed that the League will participate and has hired a planner to critique the Kinsey numbers. Dr. Burchell will be coming up with his own number as he works for Rutgers and they do not want him to critique those of Kinsey. The League has also hired an economist to come up with reasons why the numbers of Fair Share Housing are so high. The situation is frustrating to all involved. Questioned as to why Fair Share Housing is given so much weight, Mr. Cushing advised the Supreme Court gave marching orders to the 15 judges to determine how to do the job and five months to solve. He also relayed that the government has competing interests in that builders give money to legislators whereby making the latter sensitive to the former. As things currently stand five units would be built for every one unit of Mt. Laurel housing. In order to reduce whatever numbers are proposed, a vacant land analysis would allow for a reduction in obligation and open space/preservation lands would assist in this. Mr. Cushing continued that Kinsey has projected a statewide need of 200,001 affordable units, which would have to be allocated throughout the state, but certain municipalities with heavy concentrations of low and moderate income people and severe financial problems would have no obligation. This would then shift the burden to other municipalities depending on region and ability to handle development. The major problem, per Mr. Cushing, is that the Supreme Court should not be making policy. However, the Supreme Court decided in the 1970's that there was a constitutional right under the NJ Constitution that municipalities supply this type of housing. Discussion continued over the shifting demographics of various counties, transportation and work issues, and related concerns that do not appear to be considered in the numbers provided. There is also nothing about sewers and local capacity, if any.

Mr. Cushing continued that Fair Share Housing is taking the position on every single DJ action that is filed and is preparing a response for reasons most likely to do with consistency. He anticipates that they will insist on their number being the correct one and meeting the five month plan deadline. Otherwise the municipality is acting in bad faith and has to be punished. In addition to all this, there's the NJ Civil Rights Act, which is modeled after the 1983 federal law that Fair Share Housing has threatened to invoke. If a municipality fails to carry out its constitutional obligation for affordable housing, it is argued that this triggers the NJ Constitution Act which allows the shifting of attorney's fees from the plaintiff to the defendant. Although this would be covered through the insurance carriers, there will be an effect on premiums. Mr.

Cushing advised that there be an outreach to the Township's legislators to get them to act, although there are only limited things they will do because of the Court's ruling. However, there are things that can be pursued such as: 1) authorize the planner to communicate with Dr. Burchell to make sure that preserved land is factored into his numbers and 2) have the planner do an analysis of Kinsey's report as to the assumptions made with respect to the Township, e.g., was Kinsey aware that 35% of the Township is preserved and can't be built upon. This is important because later on there's going to be a battle over the decision. The next consideration for the municipality is the 2% cap as there is a limited amount of money that can be spent on lawyers and planners. The question here is whether this will be under or outside the cap, which is something for the legislators to determine. Mr. Cushing's position is to do the minimum and take a step by step approach with the planner, with the first step being the filing of the DJ. Questioned as to what would happen if the decision was not to participate, Mr. Cushing advised that Fair Share Housing will most likely look at the towns that didn't file and immediately make a motion to say that Kinsey's number be used; litigation would follow; and, the Township will wind up in a place it does not want to be. It would be a big risk. However, by filing the DJ by July 8th, the Township shows good faith and makes it more likely that the judge would approve the previously submitted plan. With West Amwell's receipt of substantive certification from COAH, there is presumably protection against a builder's remedy. Discussion continued about the growth share methodology that was used previously to arrive at the numbers assigned, noting that those numbers were set aside by the Supreme Court, and that the Township's new numbers are probably going to be higher, although how much higher is still an unknown.

The discussion turned to the judges in the 15 vicinages, with special emphasis on the Somerset-Warren-Hunterdon one. The latest word is that it will be Tom Miller, who Mr. Cushing described as a wonderful man and a great judge. However, his fear is that the sheer volume will be overwhelming for him due to the number of municipalities involved in this particular vicinage, the determination of the question as to which methodology is correct and subsequent appeals.

Returning to budget realities, Mr. Cushing advised that the Township file the plan, begin some preliminary work on the housing plan with Shirley Bishop, and take a wait and see approach after that. He also advised that if things went to trial over the Burchell/Kinsey numbers, another attorney would probably need to be brought in to handle the matter for the Township. Mr. Cushing advised that the filing would run approximately \$4000. In response to a question as to how much has been allocated so far, another \$2000 has been spent for Dr. Burchall's work. Still to come is the vacant land analysis and plan preparation. As to where the money would come from, attorney fees would be charged to Legal OE. The Committee was also advised that copies of the DJ filing have to be sent to all parties on the service list, approximately 28 people, that were a party to the March Supreme Court case.

The Clerk noted that a request that the Court approve West Amwell's spending plan, amended on May 23, 2012 and forwarded to COAH for review and approval but never approved by them, needs to be included. Mr. Cushing advised that he is aware of this.

The following resolutions were presented for consideration:

**TOWNSHIP OF WEST AMWELL
HUNTERDON COUNTY, NEW JERSEY**

**RESOLUTION #109-2015
RESOLUTION APPOINTING SPECIAL ATTORNEY**

WHEREAS, there exists a need for the performance of legal services for the Township of West Amwell for the year 2015 in connection with affordable housing litigation and issues which cannot be handled by the Municipal Attorney; and

WHEREAS, funds are, or will be made, available for this purpose to be certified by the Treasurer; and

WHEREAS, the Local Public Contracts Law (N.J.S.A. 40A:11-1 *et seq.*) authorizes the hiring of an attorney without competitive bidding providing that the Resolution authorizing the award of contracts for "Professional Services" without competitive bidding and the contract itself be made available for public inspection.

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and Committee of the Township of West Amwell, Hunterdon County, New Jersey, as follows:

1. Richard P. Cushing, Esq., of Gebhardt & Kiefer, PC, is hereby appointed to serve as Special Attorney for the Township of West Amwell during the year 2015 in order to provide legal services for the Township of West Amwell.
2. The Mayor and Committee shall enter into a mutually agreeable written compensation agreement with said Attorney within thirty (30) days of the date of this Resolution.
3. This Agreement is awarded without competitive bidding as a "Professional Service" under the provision of the Local Public Contracts Law, N.J.S.A. 40A:11-5.

The Resolution was unanimously approved on motion by Dale, seconded by Fisher.

Mayor Fisher was unanimously authorized to execute the Professional Services Agreement with Richard P. Cushing on motion by Rich, seconded by Dale.

RESOLUTION #110-2015
(Amending Resolution #91-2015)

BE IT RESOLVED by the governing body of West Amwell Township that Resolution #91-2015 is hereby amended to include Richard Cushing, along with members of the Gebhardt and Kieffer firm, as special counsel for the preparation and filing of a Declaratory Judgment action in the Superior Court on behalf of the Township seeking a judgment of compliance with the Township's Third Round affordable housing obligation and also seeking an order of immunity from Mt. Laurel builder remedy lawsuits during the process of adopting and filing the Housing Plan Element and Fair Share Plan with the Court as well as during the period of Court review of the Township's plan and all implementing ordinances.

BE IT FURTHER RESOLVED that as special counsel, Richard Cushing, et al, is authorized to provide whatever additional services, in line with Resolution #91-2015, as may be appropriate or as needed in line with the above matter, and upon the submission of proposals for same.

BE IT FURTHER RESOLVED that this Resolution shall take effect immediately.

The Resolution was unanimously approved on motion by Dale, seconded by Rich.

ADDITIONAL SUMMER HELP IN DPW:

The need for an additional person was briefly debated with the emphasis being on being able to pay more attention to road conditions. Mr. Cronic urged that another person would help the mowing situation here as well as at the firehouse and park. It would also keep the peace with the Hills development. An offer will be extended first to Mr. Roy, who was one of the previously interviewed applicants.

CLOSED SESSION:

RESOLUTION #111-2015

WHEREAS, Section 8 of the Open Public Meetings Act, Chapter 231, P.L. 1975, permits the exclusion of the public from a meeting in certain circumstances, and

WHEREAS, this public body is of the opinion that such circumstances presently exist,

NOW, THEREFORE, BE IT RESOLVED by the Committee of West Amwell Township, County of Hunterdon, State of New Jersey, as follows:

1. The public shall be excluded from discussion of and action upon the hereinafter specified subject matter.
2. The general nature of the subject matter to be discussed is as follows:
SAFTETY AND PROTECTION OF THE PUBLIC
3. It is anticipated at this time that the above stated subject matter will be made public when the matter has been resolved.
4. This Resolution shall take effect immediately.

The Resolution was unanimously approved on motion by Dale, seconded by Fisher.

The meeting returned to Open Session at 9:22 p.m. with no announced results.

OPEN TO THE PUBLIC:

No public was in attendance.

ADJOURNMENT:

There being no further business, the meeting was unanimously adjourned at 9:24 p.m. on motion by Fisher.

Respectfully submitted,

Lora L. Olsen, RMC
Township Clerk

APPROVED: July 15, 2015